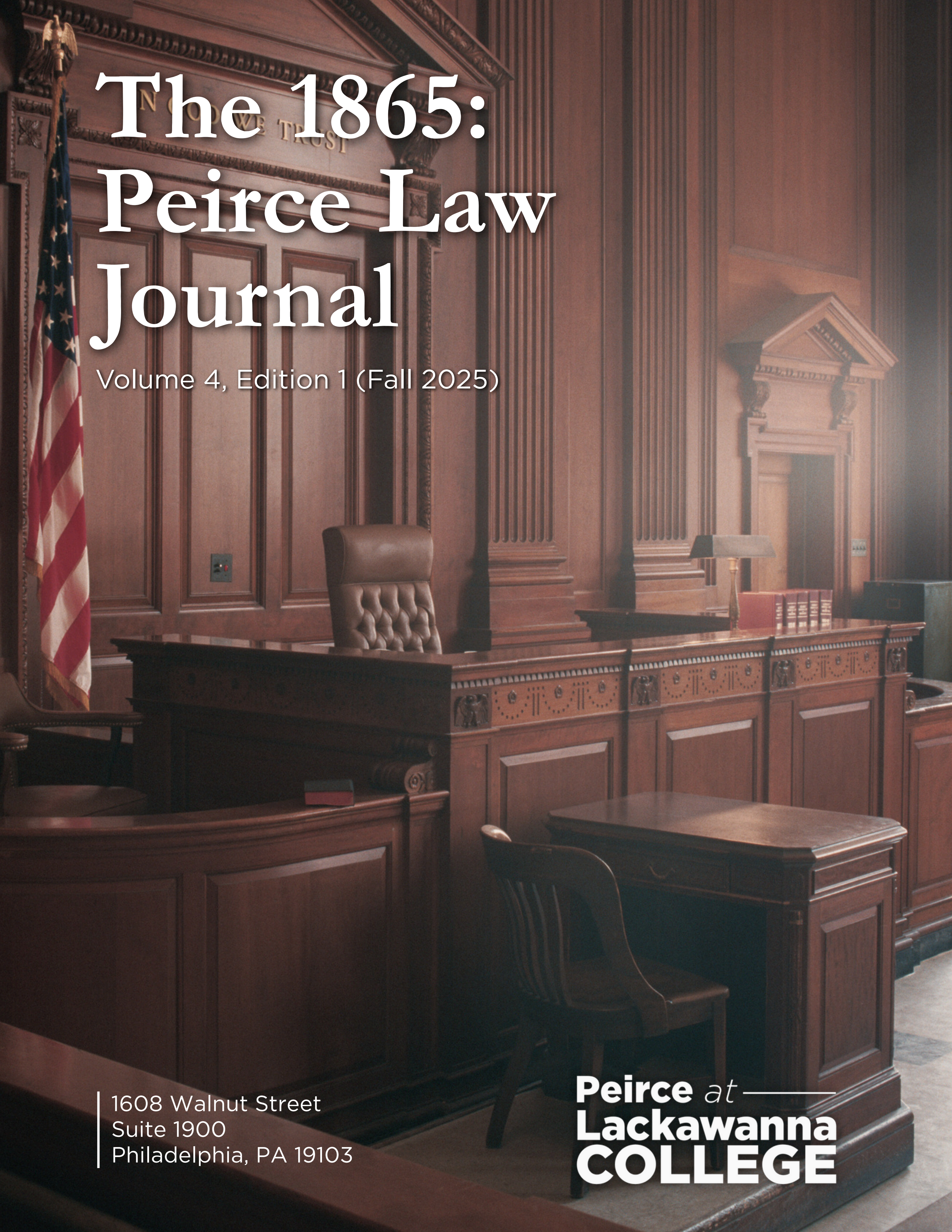

The 1865: Peirce Law Journal

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Peirce at Lackawanna College

Peirce at Lackawanna COLLEGE

THE 1865

1608 Walnut Street, Suite 1900
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THE 1865
PEIRCE LAW JOURNAL[1]

[1] *The 1865: Peirce Law Journal* uses outside editors (practicing attorneys) for the Journal's double-blind, peer-review process.

LEGAL STUDIES FACULTY

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TABLE OF CONTENTS

— HISTORY OF THE LEGAL STUDIES PROGRAM —

Peirce was established in 1865 as Union Business College to provide career-focused education for soldiers returning from the Civil War and was one of the country's first schools to embrace women as students.[1]

As the College grew, it was renamed the Peirce College of Business and moved to larger facilities. Growth led to distinction with honors in the form of awards and well-known commencement speakers visiting Peirce for graduation ceremonies, like John Wanamaker, Andrew Carnegie, and ex-presidents, including Benjamin Harrison, Grover Cleveland, Theodore Roosevelt, and William Howard Taft.[2]

Through the 1970s and '80s, Peirce's success was fueled by interest in its practical business and technology programs. While Peirce continued to be a leader in business education, Peirce established a paralegal studies program in 1985—one of the first paralegal programs in the region. After the paralegal program gained approval from the American Bar Association (ABA), the program quickly became one of Peirce's more popular offerings.

The ABA-approved Paralegal Program at Peirce—now part of the larger Legal Studies Program, which includes Criminal Justice—prepares students with critical, intellectual tools and practical application skills required to explore the intersections of law, business, and society.[3] The program currently offers associate's and bachelor's degrees as well as a post-bachelorette certificate and can be completed entirely online. However, some of the foundational courses in the program must be completed with live, synchronous courses.

In 2024, Peirce College and Lackawanna College announced a merger between the two institutions. The merger was finalized in July 2025. Under the Lackawanna banner, *The 1865: Peirce Law Journal*—now entering its fourth volume—will continue to serve as a forum for exploring timely legal issues, professional trends, and developments in the legal field. The journal will also remain a vital resource for student editors, offering hands-on experience in legal research, writing, and citation.

In addition to the print publication, *The 1865* will maintain an online platform. This digital component not only features journal articles but also serves as a space for short-form commentary and

[1] Peirce is designated as a Minority Serving Institution (MSI) by the U.S. Department of Education and is the only college or university in Pennsylvania dedicated exclusively to serving working-adults.

[2] Taft was also Chief Justice of the United State Supreme Court. Theodore Roosevelt was not yet president when he was the commencement speaker.

[3] The ABA (the American Bar Association) is the preeminent organization for legal academic programs. *See* https://www.americanbar.org/.

ongoing discussions related to emerging issues in the legal landscape. Through these initiatives, the legal studies program now at Lackawanna College is well-positioned to continue the program's leadership in legal education—both within this region and beyond.

— PEIRCE POCKET PART —

In each edition of *The 1865*, the "Peirce Pocket Part" provides the latest news, advancements, and initiatives from the Legal Studies Program. In this edition of *The 1865*, the Peirce Pocket Part proudly announces Peirce's merger with Lackawanna College.

What began as an announcement in 2024 became a reality in July 2025: Peirce and Lackawanna College officially merged. While the name has changed, the mission of Peirce's legal studies program and *The 1865: Peirce Law Journal* endures. The legal studies program will continue under the Lackawanna banner, offering students rigorous training in legal research, writing, and practical skills essential to the profession.

Likewise, *The 1865*—now entering its fourth volume—remains a vital platform for exploring pressing legal issues and trends, while providing student editors with invaluable hands-on experience in scholarship and citation. Together, the legal studies program under Lackawanna and *The 1865* carry forward Peirce's legacy of academic excellence and commitment to preparing the next generation of legal professionals.

— ABOUT THE LAW JOURNAL —

The 1865: Peirce Law Journal is a student-run, double-blind peer-reviewed law journal that provides a forum for original articles written by attorneys, paralegals, legal professionals, legal scholars, alumni, professors, and law enforcement. The Journal publishes once a year. *The 1865* addresses compelling issues, trends, and topics in the legal field as well as specific topics in the paralegal profession.

The Journal staff consists of a faculty advisor, a technical advisor, and a handful of current Peirce students. Each year, Peirce's Legal Studies Department selects three to five students to run the Journal as staff editors. The students are selected based on their outstanding academic achievements and writing and researched abilities. Students may also be admitted to the Journal by authoring an article suitable for publication (i.e., "writing on"). For the Journal's double-blind, peer-review process, the Journal uses "outside editors" (practicing attorneys).

SUBMITTING ARTICLES

Articles may be submitted each school year from September 1 through March 31. To submit an article, please forward the article as an email attachment to campbellc2@lackawanna.edu.[4] For the double-blind peer-review process, the author's name, email, credentials, and biographical information should be on a separate page from the article. After an article is submitted, all correspondence with the author will be via email.

JOURNAL GUIDELINES

All submitted articles will be carefully considered. However, articles must comply with college standards and the Journal guidelines. Articles that meet the standards and guidelines will be considered for publication through a double-blind peer-review process to ensure impartiality. All articles must be focused on or linked to a law-related topic. Submitted articles should be double-spaced, with one-inch margins in a word document. Articles should also be no fewer than 1,000 words and no more than 6,000 words. (Articles fewer than 1,000 words or larger than 6,000 words may be considered on a case-by-case basis.) Quotation marks and citations should be used for another author's language, and citations and references should also be used to support the article. For sources and references, please use footnotes rather than endnotes. For editing and citation checking, the Journal uses the *ALWD* citation manual (Associate of Legal Writing Directors). Articles formatted via *The Bluebook* are acceptable. Articles submitted in APA format may be

[4] Note that articles sent by regular mail will not be accepted.

considered if our staff editors can easily convert the citations and references to an *ALWD* format.

For more information about the Law Journal, please visit the Journal's home page[5], email campbellc2@lackawanna.edu, or follow the Journal on Twitter: @1865Law.

REFERENCES

The recommended citations for articles, comments, or essays in *The 1865: Peirce Law Journal* is: [Vol.] Peirce L. J. [first page of article] ([semester] [year]).

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The opinions expressed in the articles, comments, and essays in *The 1865: Peirce Law Journal* are solely the opinions of the authors. The opinions do not reflect Peirce or Lackwanna College, *The 1865,* or the staff and outside editors. Although *The 1865* was created as a forum for compelling issues, trends, topics in the legal field, and specific topics in the paralegal profession, *The 1865* was not created to offer legal advice. If seeking legal advice, please contact a legal professional.

LEGAL NOTICES

OUTSIDE EDITORS

If interested in reviewing articles as an outside editor for the Journal's double-blind, peer review process, please email campbellc2@lackawanna.edu. In the email, include a resume and the reasons for your interest.

[5] https://www.peirce.edu/degrees-programs/undergraduate/legal-studies/the-1865-peirce-college-law-journal

ARTICLES, COMMENTS, & ESSAYS

IS ARTIFICIAL INTELLIGENCE (AI) HELPING OR HARMING US?

By Charlene Glenn, Ed.D & Doris Hiegl, B.S. *

I. INTRODUCTION

AI is a disruptive force impacting businesses' models, labor costs, value propositions, supplier relationships, and the potential to make core product or offering obsolete. While some businesses are benefiting from increased productivity and creativity due to AI, others are concerned about the significant barriers that implementation of AI could place on a business. These barriers may include: hesitation around using the technology, legal and data security hurdles, regulatory friction, and the need for more physical and technological infrastructure to support AI.[1] According to a survey from the Pew Research Center, thirty-seven percent of adults think that AI will equally help and hurt them over the next twenty years.[2]

Proponents of AI have found that, after one hundred publicly traded companies launched ChatGPT, labor productivity was enhanced and employment was stabilized. Call centers, banks, and consumer goods corporations are using ChatGPT-powered bots to cut customer service costs while providing clients with personalized services.[3] Senior leaders in major corporations are planning for the future and envisioning using AI to analyze financial data and create initial drafts of reports so they can free up the work time of their executives and general managers to focus on other tasks.[4]

Opponents of AI are discovering AI tools are helpful with creative tasks, but with more analytical work, the technology leads to more mistakes.[5] Users of Microsoft's Copilot AI tool have found

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* Doris Hiegl is a graduate of *Peirce College* with a B.S. in Paralegal Studies and a dedicated paralegal in consumer law: Special thank you to my brilliant fellow author, Dr. Charlene Glenn, for inviting me to co-write this article. Last, but never least, thank you to Randy for your endless love and support.

[1] Sydney Ember, *Can A.I. Answer the Needs of Smaller Businesses? Some Push to Find Out.*, N.Y. Times, June 17, 2024, https://www.nytimes.com/2024/06/17/business/economy/artificial-intelligence-small-business.html.

[2] Rakesh Kochhar, *Which U.S. Workers Are More Exposed to AI on Their Jobs?*, Pew Rsch. Ctr., July 2023, at 1, 18.

[3] Jason Yu & Cheryl Qi, *The Impact of Generative AI on Employment and Labor Productivity.*, 44 Rev. Bus. 53–67 (2024).

[4] *See* Ember, *supra,* note 1.

[5] Danielle Abril, *I Used AI Work Tools to Do My Job. Here's How It Went.*, Wash. Post, Feb. 26, 2024, https://www.washingtonpost.com/technology/2024/02/26/

errors in creating emails based on the prompts given. AI includes desired elements in the email responses; however, on occasion it adds comments that are not requested.[6] In using AI tools to improve the processing of Medicare Advantage claims, health care executives and physicians have seen an uptick in the denial of claims. This has sounded the alarm for the healthcare industry because the goal of AI was to automate administrative tasks and ease the burden on providers; however, its adoption by insurance companies has created more denied claims.[7]

This article will explore the history of AI, the function and potential uses of generative AI, and state laws governing the use of AI. Additionally, this article will examine several legal cases and the impact of AI use in various industries.

II. ARTIFICIAL INTELLIGENCE (AI)

While there is no one, simple definition, AI is technology that enables computer systems to mimic human reasoning, decision-making, creativity, and autonomy to complete complex tasks.[8] The journey to understand if machines can truly think began in 1945 with Vannevar Bush's seminal work *As We May Think* in which he proposed a system that amplifies people's own knowledge and understanding.[9] Some years later, Alan Turing wrote a paper on the notion of machines being able to simulate human beings and do intelligent things, such as play chess.[10] In 1956, John McCarthy created the term *artificial intelligence* and held the first conference on the subject.[11]

As we chart the history of AI, below are the AI concepts that have emerged over the past seventy years:

> 1950's—Artificial Intelligence: Human intelligence exhibited by machines.
>
> 1980's—Machine Learning: AI systems that learn from historical data.

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work-ai-copilot-gemini-test/.

[6] *Id.*

[7] Alexis Kayser, *Hospitals Are Reporting More Insurance Denials. Is AI Driving Them?*, Newsweek (Nov. 13, 2024, 1:36 PM EST), (https://www.newsweek.com/hospitals-are-reporting-more-insurance-denials-ai-driving-them-1977706).

[8] Nat'l Aeronautics and Space Admin., *What is Artificial Intelligence?*, NASA, https://www.nasa.gov/what-is-artificial-intelligence/ (last updated May 13, 2024).

[9] Chris Smith et al., *The History of Artificial Intelligence*, 1, 4 (2006).

[10] *Id.*

[11] *Id.*

> 2010's—Deep Learning: Machine learning models that mimic human brain function.
>
> 2020's—Generative Artificial Intelligence (Gen AI): Deep learning models (foundation models) that create original content.[12]

III. GENERATIVE ARTIFICIAL INTELLIGENCE (GEN AI)

Gen AI is a technology that *generates* original text, images, video, among other content.[13] In 2024, Gen AI gained much attention and made headlines for breakthroughs in applications in various industries. Gen AI tools are built on *machine learning* and *deep learning*. Machine learning is the process of using a myriad of techniques to train an algorithm to use data to make predictions or decisions without being explicitly programmed for certain tasks.[14] The goal of machine learning is to train Gen AI to automatically learn insights and identify patterns from data and use that learning to continuously improve decision-making.[15] The most popular machine learning algorithm is called a *neural network* (or *artificial neural network*). Neural networks, much like the human brain, consist of interconnected layers of nodes (akin to neurons) that work together to process and analyze complex data.[16]

Meanwhile, deep learning is an advanced subset of machine learning that uses multilayered neural networks, called *deep neural networks*, that more closely mimic the human brain's ability to make complex decisions.[17] The goal of deep learning is to train Gen AI to learn complex patterns without human input.[18] This is called *unsupervised learning*.[19]

VI. USES OF GENERATIVE ARTIFICIAL INTELLIGENCE (GEN AI)

Gen AI is being marketed for use in many industries to deliver more efficient outcomes and to canvas new business opportunities. Below are some of the industries where AI is being considered for adoption:

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[12] Cole Stryker & Eda Kavlakoglu, *What Is Artificial Intelligence (AI)?*, IBM (Aug. 9, 2024), https://www.ibm.com/think/topics/artificial-intelligence.
[13] *Id.*
[14] *Id.*
[15] Colum. Univ., *Artificial Intelligence (AI) vs. Machine Learning*, Colum. Eng'g, https://ai.engineering.columbia.edu/ai-vs-machine-learning/ (last visited June 24, 2025).
[16] *See* Stryker & Kavlakoglu, *supra.*
[17] *Id.*
[18] *See* Colum. Univ., *supra.*
[19] *See* Stryker & Kavlakoglu, *supra.*

- In the automotive sector, AI may be used to help driverless vehicles become a reality by personalizing driver experiences and improving fleet management.

- In the banking sector, AI may be used to streamline the customer experience while meeting data compliance and data management requirements as well as protecting against cyber threats.

- In the cybersecurity sector, AI may be used to assist security technologies by helping businesses proactively combat evolving cyber threats and protect their operations, innovations, and data.

- In the energy sector, AI may be used to create utility power grids that are smarter, more efficient, and more stable by matching system load and supply in near-real time.

- In the manufacturing sector, AI may be used to drive process automation, supply chain optimization, and data driven decision-making to optimize manufacturing productivity, quality, and efficiency.

- In the healthcare industry, AI may be used in drug discovery, personalizing treatment plans, and creating synthetic medical images for training.

- In the art industry, AI may be used for image generation with image tools like Dall-E and Midjourney that can create realistic images based on text descriptions, impacting marketing and design.

- In employee screening, AI may be used to analyze resumes, extract relevant information, and identify qualified candidates based on skills and experience.[20]

V. STATE LAWS ON AI USE

Many states have started to enact laws to regulate the use of AI in the workplace, including New York City's Local Law 144,

[20] Intel, *Artificial Intelligence (AI) Use Cases and Applications*, https://www.intel.com/content/www/us/en/learn/ai-use-cases.html (last visited May 3, 2025).

Colorado's SB 205, and Illinois's HB 3773.[21] [22] [23] New York City's Local Law 144 was the nation's first law to create obligations for employers when AI is used for employment purposes—including obligatory bias audits—but is only triggered when automated tools play a predominant role in decisions.[24] Effective May 2024, Colorado became the first state to enact a law prohibiting employers from using AI to discriminate against their workers and, therefore, requiring companies to take extensive measures to avoid algorithmic discrimination. This law imposes broad rules on developers of high-risk AI systems and the businesses that use them.[25] In September 2024, Illinois became the second state to pass AI workplace legislation that requires employers to provide notice to applicants and workers if they use AI for hiring, discipline, discharge, or other work-related purposes. This law also prohibits employers from using AI in ways that result in workplace discrimination.[26] Additionally, over thirty states have formed AI committees or task forces to begin issuing reports and recommendations for proposed legislation.[27]

VI. AI LEGAL CASES

i. *Art/literature and copyright infringement*

One of the most common issues being addressed in recent AI-related lawsuits is copyright infringement. In the visual art industry, major corporations are being accused of stealing artwork to use as training data for AI-powered image generators without the consent of the human artists. In *Andersen v. Stability AI Ltd.*, visual artists, Sarah Andersen, Kelly McKernan, and Karla Ortiz, sued major software corporations, Stability AI, Midjourney, DeviantArt, and Runway AI, for copyright infringement, claiming that each company created AI-image software products that used these artists' stolen, copyrighted

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[21] Fisher & Phillips LLP, *Comprehensive Review of AI Workplace Law and Litigation as We Enter 2025* (Jan. 3, 2025), https://www.fisherphillips.com/en/news-insights/
comprehensive-review-of-ai-workplace-law-and-litigation-as-we-enter-2025.html.
[22] Fisher & Phillips LLP, *Colorado Lawmakers Pass Landmark AI Discrimination Bill – and Employers Across the Country Should Take Notice* (May 10, 2024), https://www.fisherphillips.com/en/news-insights/colorado-lawmakers-pass-landmark-ai-discrimination-bill.html.
[23] Fisher & Phillips LLP, *Colorado Lawmakers Pass Landmark AI Discrimination Bill – and Employers Across the Country Should Take Notice* (May 10, 2024), https://www.fisherphillips.com/en/news-insights/colorado-lawmakers-pass-landmark-ai-discrimination-bill.html.
[24] *See* Fisher & Phillips LLP, *supra.*
[25] *Id.*
[26] *Id.*
[27] Compl. at 1, *Andersen v. Stability AI Ltd.*, No. 23-cv-00201-WHO (N.D. Cal. Jan. 13, 2023), ECF No. 1.

artwork to generate images in response to text prompts.[28] Per the original complaint, Stability released Stable Diffusion, an AI-image product that produces images in response to text prompts, in August 2022.[29] In that same month, Stability also released DreamStudio, a web-server-based AI-image generator that uses Stable Diffusion as its underlying software library and thus relies on Stable Diffusion to generate images from text prompts. Stability used over five billion images scraped and copied from websites as training data for Stable Diffusion without the consent of the images' creators nor the host websites from which these training images were copied.[30] A substantial amount of the training images for Stable Diffusion were scraped and copied from DeviantArt, a longtime online community where digital artists share their work mostly in the form of digital images.

In November 2022, DeviantArt released DreamUp, a web-based app that generates images from text prompts and uses Stable Diffusion software as its underlying software engine.[31] DeviantArt claims that DreamUp "lets you create AI art knowing that creators and their work are treated fairly."[32] However, DeviantArt has never attempted to negotiate licenses for any of the training images it has scraped from its own website without the artists' consent, which violates DeviantArt's own terms of service and privacy policy.[33] Additionally, Stability has not attempted to negotiate licenses for any of the training images, nor has it shared any of the revenue with the artists who created said training images since launching its DreamStudio app and Stable Diffusion.[34] This lawsuit is still ongoing.

Meanwhile, in the journalism industry, prominent news outlets and organizations, such as *The New York Times*, *Daily News*, *The Intercept*, and *Raw Story*, are accusing major corporations of stealing journalists' copyrighted work to train generative AI ("Gen AI") tools.[35] In *The N.Y. Times Co. v. Microsoft Corp.*, The New York Times ("The Times") accuses major software corporations, Microsoft and OpenAI, of unlawfully using millions of The Times' copyrighted "news articles, in-depth investigations, opinion pieces, reviews, how-to guides, and more" to train their Gen AI tools, Microsoft's Copilot and OpenAI's ChatGPT.[36] These Gen AI tools

[28] *Id.* at 12.
[29] *Id.* at 13.
[30] *Id.* at 14.
[31] *Id.* at 25.
[32] *Id.*
[33] *Id.* at 13.
[34] Bruce Barcott, *AI Lawsuits Worth Watching: A Curated Guide*,Tech Policy Press (Jul. 1, 2024), https://www.techpolicy.press/ai-lawsuits-worth-watching-a-curated-guide/.
[35] Compl. at 2, *The NYT Co. v. Microsoft Corp.*, No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023), ECF No. 1.
[36] *Id.* at 18.

are chatbots that generate human-like text outputs in response to user-generated prompts.[37] Per the complaint, while Microsoft and OpenAI used a myriad of text sources to train these Gen AI tools, content from The Times was disproportionately used as it was part of a "higher-quality" dataset, as OpenAI states in *Language Models are Few-Shot Learners*.[38] [39] In other words, Copilot and ChatGPT were trained to generate content that mimics that of The Times without any license or other compensation to The Times. Additionally, there have been many instances of these Gen AI tools outputting "hallucinations" that misattribute content to The Times that The Times did not publish, causing commercial and competitive injury to The Times. Instead of Copilot or ChatGPT admitting to not having sufficient information to answer a prompt, these Gen AI tools will output misinformation as factual in a very convincing way.[40] This lawsuit is still ongoing as well.

ii. *AI "hallucinations" and libel*

In addition to The Times' copyright infringement lawsuit, ChatGPT's "hallucinations" issue is also being addressed in a first-of-its-kind defamation lawsuit. In *Walters v. OpenAI, LLC*, Mark Walters, a Georgia resident and the host of Armed America Radio, a Second Amendment advocacy program, is accusing OpenAI of publishing "libelous matter" against Walters via ChatGPT.[41] Per the original complaint, Fred Riehl, a third-party journalist, prompted ChatGPT to provide him with information about an unrelated lawsuit he was writing about, which was *The Second Amend. Found. v. Ferguson*.[42] After sending ChatGPT a correct link to the full complaint on The Second Amendment Foundation's website, Riehl prompted ChatGPT to summarize the complaint's allegations.[43] ChatGPT's summary misidentified Mark Walters as the defendant in the complaint who was accused of embezzlement and fraud. Walters is not nor was he ever a party to the lawsuit. Financial accounting claims are not mentioned in the complaint.

When Riehl asked ChatGPT to provide him with a copy of the portion of the complaint related to Walters, ChatGPT responded with a long, fully fabricated paragraph accusing Walters of

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[37] Tom B. Brown, OpenAI et al., *Language Models Are Few-Shot Learners* 9 (2020), https://arxiv.org/pdf/2005.14165.pdf.

[38] Compl. at 26, *The N.Y. Times Co. v. Microsoft Corp.*, No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023), ECF No. 1.

[39] *Id.* at 52.

[40] *See* Barcott, *supra.*

[41] Compl. at 1, *Walters v. OpenAI, LLC*, No. 23-A-04860-2 (Ga. Super. Ct. Jun. 5, 2023).

[42] *Id.* at 2.

[43] *Id.* at 3.

embezzlement and fraud.[44] When Riehl asked ChatGPT to provide him with a full copy of the complaint, ChatGPT produced a nearly six-page-long, fully fabricated complaint that greatly detailed false fraud and embezzlement allegations against Walters and included an erroneous case number. Riehl contacted one of the plaintiffs in the complaint regarding the allegations against Walters that ChatGPT produced. The plaintiff confirmed that the information ChatGPT produced was false. After Riehl notified Walters of ChatGPT's false allegations against him, Walters sued OpenAI for libel and negligence, noting that OpenAI is aware of ChatGPT's tendency to fabricate information and coined the term "hallucinations" in reference to this phenomenon.[45] This lawsuit is still ongoing.

iii. *Healthcare and willful misuse of AI*

Another common issue that is being addressed in numerous AI-related lawsuits is willful misuse of AI. This issue is particularly prevalent in the healthcare industry. In *Estate of Lokken v. UnitedHealth Grp., Inc.*, the families of two elderly patients, whom UnitedHealthcare insured prior to their deaths, accuse UnitedHealth Group of knowingly and willfully using naviHealth predict ("nH Predict"), a highly flawed AI model, to determine coverage criteria for patients.[46] Per the original complaint, UnitedHealth Group, the US's largest insurance company providing health insurance plans to 52.9 million Americans via its insurance arm UnitedHealthcare, illegally uses AI in place of real medical professionals to override elderly patients' treating physicians' assessments of medically necessary care and wrongfully deny these patients lifesaving care they are entitled to under Medicare Advantage Plans. UnitedHealthcare knows that nH Predict has a ninety percent error rate and consciously chooses to continue using it as UnitedHealthcare knows that only about 0.2 percent of policyholders appeal denied claims while the vast majority of policyholders either choose to pay for their prescribed post-acute care out-of-pocket or forgo said care altogether despite the very real dangers of doing so.[47] UnitedHealthcare disciplines and/or terminates its employees who deviate from the nH Predict AI Model's projections of necessary patient care, even if the additional care for a patient is justified.[48] In what appears to be an effort to cut labor costs, UnitedHealthcare has fraudulently misled its policyholders into believing that their claims are assessed based on their respective needs

[44] *Id.* at 4.
[45] Compl. at 1, *Estate of Lokken v. UnitedHealth Grp., Inc.*, No. 0:23-cv-03514 (Minn. Dist. Ct. Nov. 14, 2023), ECF No. 1.
[46] *Id.* at 2.
[47] *Id.* at 13.
[48] *Id.* at 4, 14.

and that their health plans pay for all medically necessary care.[49] UnitedHealthcare continues to use nH Predict while this lawsuit is ongoing. A similar class action lawsuit filed against Humana for unlawfully using nH Predict to wrongfully deny elderly patients care that is owed to them under Medicare Advantage plans is ongoing as well.[50]

iv. *Job recruitment and willful misuse of AI*

Willful misuse of AI is also arising in the job recruitment industry for the purpose of discrimination, also known as *digital redlining*.[51] In *Mobley v. Workday, Inc.*, Derek L. Mobley, a disabled Black man over the age of forty, is accusing Workday, a human resources management company, of creating an AI-driven employment system that intentionally does not have sufficient safeguards to prevent discrimination in the hiring process.[52] Per the first amended complaint, Workday serves medium-sized and large, global organizations in numerous industries, including but not limited to professional and business services, financial services, healthcare, education, government, technology, media, retail, and hospitality. Workday sells employer subscriptions, which include applicant screening services and professional consulting to enable them to use Workday applications. Workday recruiting processed 2.2 million job requisition transactions in May 2023, which was about twenty-two percent of all US job openings that month.[53]

Workday uses AI systems, which rely on man-made algorithms/inputs, to run its automated screening tools. Naturally, humans often have predispositions to discriminate consciously and unconsciously. Humans who create algorithms/inputs for AI systems are not exempt from these predispositions, which can cause the training data to instill discriminatory biases into the algorithms. Instead of human judgment, Workday uses an AI-powered automated system, which relies on man-made algorithms, to decide how the high volume of applications it reviews should be processed for the employers it serves.[54] Workday's algorithmic decision-making tools specifically screen out applicants who are Black, disabled, and/or over the age of forty, causing members of these oppressed groups to be disproportionately more likely to be denied employment and to be discouraged from applying to employers that use the Workday

[49] *Id.*
[50] Compl. at 1, *Barrows v. Humana, Inc.*, No. 3:23-cv-00654-CHB (W.D. Ky. Dec. 12, 2023), ECF No. 1.
[51] *See* Barcott, *supra.*
[52] Compl. at 4, 17, *Mobley v. Workday, Inc.*, No. 3:23-cv-00770-RFL (N.D. Cal. Feb. 20, 2024), ECF No. 47.
[53] *Id.* at 2.
[54] *Id.*

hiring platform. Consequently, this adversely impacts these individuals' career prospects, income, and quality of life.[55]

Workday's algorithmic decision-making tools determine which candidates to recommend to employers based on the demonstrated interests of said employers in certain types of candidates. Thus, Workday's AI system recommendations reflect whatever biases the employers exhibit, meaning that candidates from oppressed groups will be less likely to be recommended to an employer if said employer disfavors candidates from said groups. Per the complaint, this is a feature, not a flaw.[56]

Mobley is a disabled, college-educated Black man over the age of forty with extensive experience holding critical roles in the Enterprise server, banking, finance, and insurance industries.[57] Between 2017 and 2023, Mobley applied to over one hundred jobs that exclusively used Workday as a screening platform for talent acquisition and/or hiring. He was denied each time despite meeting, and in many instances exceeding, their educational and experiential requirements.[58] For some of these positions, Mobley received an automated rejection email within hours of applying.[59] Numerous positions for which Mobley applied required him to take a Workday-branded assessment and/or personality test, which constitutes unlawful disability-related inquiries designed to identify mental health disorders or cognitive impairments. Candidates with these disorders and impairments are likely to perform worse on these assessments/tests and be screened out. Mobley suffers from depression and anxiety.[60] This lawsuit is still ongoing.

V. FINAL THOUGHTS

As stated in the introduction of this article, a study reported that thirty-seven percent of adults believe that AI will equally help and hurt them over the next twenty years.[61] In reviewing the findings that we presented on AI, the question of whether AI is helping or harming us is still up for debate. Before organizations adopt the use of AI, they must have the technological infrastructure to support it. Building the infrastructure is costly, and there are other factors to consider, such as legal and data security barriers as well as new regulations on the horizon. Having the technological infrastructure in place has

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[55] *Id.* at 3.
[56] *Id.* at 15.
[57] *Id.* at 12–13.
[58] *Id.* at 19.
[59] *Id.* at 20–23.
[60] *Id.* at 20.
[61] *See Kochhar*, *supra*.

presented many industries the opportunity to use AI to increase productivity and efficiency to better serve customers.

While some organizations have experienced enhanced outcomes by using AI, other organizations' use of AI has negatively impacted their customers, employees, and business models. Additionally, some of the top software companies in the industry have been cited for willfully misusing AI by stealing material from a variety of different sources to build their AI platforms. These companies include Stability AI, Midjourney, DeviantArt, Runway AI, and Open AI. Willful misuse of AI has been reported by numerous plaintiffs mentioned in the legal case summaries explored in this article.

Given these legal actions, some states have had the foresight to take a proactive approach in preventing the misuse of AI by passing legislation to protect vulnerable parties. For instance, some legislation protects workers by putting in place obligations for employers when AI is used for employment purposes, including obligatory bias audits, prohibiting employers from using AI to discriminate against their workers, and requiring employers to provide notice to applicants and workers if they use AI for hiring, discipline, discharge, or other work-related purposes.

In evaluating whether AI is helping or harming us, software companies that are building AI platforms must do a better job of creating authentic content versus taking content from established sources. Additionally, content needs to be vetted and tested for bias before it is implemented. Organizations that are considering using AI must do a thorough analysis of its use, proposed outcomes, and the potential impact the use of AI could have on its stakeholders, i.e., employees, customers, suppliers, partners, and vendors.

THE CASE FOR NATIONAL FELONY RIGHTS RESTORATION

By Steven Peter Viera *

Felony disenfranchisement in the United States has roots dating back to colonial times, with a common law practice of "civil death;" a set of criminal penalties that included the revocation of rights.[1] Initially modeled after European practices that excluded criminals from civic participation, these laws were incorporated into state constitutions and statutes during the Nineteenth Century.[2] As of 2024, approximately 4.6 million Americans are disenfranchised due to felony convictions, with non-violent offenders constituting a substantial proportion of this group.[3] Internationally, the approach varies widely; while some countries like Canada and South Africa maintain minimal restrictions on voting, others, such as the United Kingdom, enforce more conditional rights deprivation.[4]

The legal basis for felon disenfranchisement is embedded in the U.S. Constitution, specifically Section 2 of the Fourteenth Amendment. This provision permits states to abridge voting rights "for participation in rebellion, or other crime," a point confirmed by the Supreme Court in *Richardson v. Ramirez*.[5] Courts have interpreted this clause as allowing states to deny voting rights to individuals based on criminal convictions. Meanwhile, the Equal Protection Clause[6] of the same amendment has been cited in challenges to the disproportionate racial impact of such laws, though these claims have often failed unless plaintiffs can show intentional discrimination.[7]

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[1] The Sentencing Project. (2023). *Voting rights in the era of mass incarceration: A primer*. https://www.sentencingproject.org/policy-brief/voting-rights-in-the-era-of-mass-incarceration-a-primer/.

[2] Schroedel, J., Rogers, M., Dietrich, J., & Garcia, B. (2024). Revisiting the Origins of Felony Disenfranchisement in the United States. *Studies in American Political Development*, 38(1), 103–16. doi:10.1017/S0898588X24000038.

[3] The Sentencing Project. (2022). Locked out 2022: Estimates of people denied voting rights due to a felony conviction. https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction/.

[4] Uggen, C., Van Brakle, M., & McLaughlin, H. (2009). Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement. In A. C. Ewald & B. Rottinghaus (Eds.), *Criminal Disenfranchisement in an International Perspective* (pp. 59–76). chapter, Cambridge: Cambridge University Press.

[5] Richardson v. Ramirez, 418 U.S. 24 (1974).

[6] U.S. Const. amend. XIV, § 1.

[7] *Hunter v. Underwood*, 471 U.S. 222 (1985).

At the state level, disenfranchisement policies vary significantly. Some states, such as California, New York, and Washington, automatically restore voting rights upon completion of a sentence, including parole and probation. In contrast, other states, including Tennessee and Virginia, require individuals to undergo a formal application process or obtain gubernatorial clemency to have their voting rights restored.[8] This variation reflects differing interpretations of state authority over voting rights, consistent with constitutional principles established in cases like *Ex parte Siebold* (1879)[9] and *Harper v. Virginia Board of Elections* (1966).[10]

Federal law does not provide a uniform standard, resulting in a legal patchwork where federal and state rights restoration processes often diverge.[11] For instance, individuals may regain their state-level voting rights or other civil rights but remain subject to federal restrictions, such as the inability to possess firearms unless they receive a presidential pardon. This disconnect raises important questions about the consistency and fairness of rights restoration across jurisdictions, the balance of state versus federal authority, and the broader implications of reintegration and civic participation among formerly incarcerated individuals. Moreover, these discrepancies highlight ongoing tensions in federalism and the evolving interpretation of constitutional protections under the Fourteenth Amendment.

This article proceeds in nine parts. Part I explores the divergent state approaches to voting rights restoration, highlighting contrasting policies from states like Maine and Vermont, which permit voting even during incarceration, to states such as Iowa and Kentucky that impose stringent application requirements. Florida's Amendment IV and its subsequent legal challenges exemplify both progress and persistent barriers. Part II examines the broader social and legal obstacles to reintegration faced by formerly incarcerated individuals, including restrictions on employment, housing and professional licensing, alongside the social stigma and psychological effects of disenfranchisement.

Part III reviews empirical research on how rights restoration correlates with reduced recidivism and discusses restorative justice frameworks supporting reintegration. Part IV addresses the disproportionate impact of disenfranchisement laws on communities

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[8] The Sentencing Project. (2022). Locked out 2022: Estimates of people denied voting rights due to a felony conviction. https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction/.

[9] *Ex parte Siebold*, 100 U.S. 371 (1879). Retrieved from https://supreme.justia.com/cases/federal/us/100/371/.

[10] *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

[11] Stewart, C. (2017). Restoring the right to vote: An overview of felon disenfranchisement policies. Harvard Law Review Forum, 130, 47-58.

of color and economically disadvantages populations, underscoring systemic racial and economic inequities. Part V expands the scope of the restoration of other civil rights including Second Amendment rights and access to public benefits and compares U.S. policies with international practices. Part VI surveys recent legislative reforms aimed at easing rights restoration, featuring examples of state initiatives and federal proposals such as the Democracy Restoration, including administrative barriers and political resistance. Part VIII delves into the ethical debates surrounding disenfranchisement, citizenship, and redemption, highlighting the paradox between felony candidates running for office and disenfranchised voters.

Finally, Part IX reviews pivotal case law shaping the legal framework for rights restoration, discusses judicial discretion, and evaluates potential legislative and policy remedies informed by comparative jurisdictions and advocacy efforts.

Through this comprehensive examination, the article aims to assess both the doctrinal coherence and the real-world consequences of the current legal framework governing rights restoration, offering insights into potential pathways for reform that promote equity, consistency, and democratic inclusion.

I. Restoration of Voting Rights

States have adopted divergent approaches to voting rights restoration. Some, such as Maine and Vermont, impose no voting restrictions on incarcerated individuals, whereas others, like Iowa and Kentucky, require formal applications for restoration even after sentence completion.[12] Florida's 2018 Amendment IV, which sought to restore voting rights to over a million individuals with past felony convictions, illustrates both progress and complications.[13] Although passed by popular vote, its implementation was constrained by subsequent legislation requiring payment of all legal financial obligations before rights could be restored.[14]

The constitutionality of felony disenfranchisement remains a subject of legal debate. Courts have upheld such laws under the precedent established in *Richardson*, though some scholars argue this interpretation is inconsistent with contemporary understandings of equal protection and democratic participation.[15] Recent judicial

[12] Uggen, C., Larson, R., & Shannon, S. (2020). Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction. The Sentencing Project.
[13] Morse, M. (2021). The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida. California Law Review.
[14] *Jones v. DeSantis*, 975 F.3d 1016 (11th Cir. 2020).
[15] Feinzig, J. M. (2022, January 14). Felon re-enfranchisement and the problem of "lost" rights. Yale Law Journal Forum, 131. https://www.yalelawjournal.org/forum/felon-re-enfranchisement-and-the-problem-of-lost-rights

commentary has increasingly scrutinized the connection between the nature of the offense and the denial of a fundamental right like voting.

II. Barriers to Full Reintegration

Formerly incarcerated individuals, particularly non-violent felons, face significant legal and social hurdles to reintegration. These include limited access to employment, housing, and education.[16] Many states maintain laws that restrict individuals with criminal records from obtaining professional licenses or public housing. For example, California prohibits individuals convicted of certain felonies from obtaining licenses in healthcare professions, such as nursing or counseling, unless they receive a formal waiver or clearance.[17] Similarly, the U.S. Department of Housing and Urban Development (HUD) allows public housing authorities to deny housing to applicants with certain criminal histories, a policy which disproportionately affects formerly incarcerated individuals.[18] The "ban the box" initiative has gained traction in some jurisdictions, aiming to reduce employment discrimination by removing criminal history questions from job applications.[19]

In addition to structural barriers, psychological and social stigmas contribute to the marginalization of non-violent felons. Studies have shown that disenfranchisement and civil exclusion negatively affect mental health and community engagement, often complicating efforts to reintegrate and live law-abiding lives.[20]

III. Impact of Restoration on Recidivism

Empirical research suggests a correlation between rights restoration and reduced recidivism. Studies indicate that individuals who feel reconnected to civic society through voting or employment are less likely to reoffend[21] Reintegration mechanisms, including rights restoration, are viewed by some scholars as components of restorative justice, aimed at repairing harm to both victims and society.

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[16] Christian, J., & Walker, K. (2021). *Re-entering society from prison*. In *EBSCO Research Starters: Law*. EBSCO. Retrieved July 2, 2025, from https://www.ebsco.com/research-starters/law/re-entering-society-prison

[17] Bureau of State Audits. (2017). Review of professional license restrictions on individuals with criminal convictions in California.

[18] Manza, J., & Uggen, C. (2006). Locked Out: Felon Disenfranchisement and American Democracy. Oxford University Press.

[19] Equal Employment Opportunity Commission. (2012). Consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. https://www.eeoc.gov/laws/guidance/ar-rest_conviction.cfm

[20] Uggen et al., *American Sociological Review*, Vol. 67, No. 6 (2002)

[21] Uggen, C., & Manza, J. (2006). Locked out: Felon disenfranchisement and American democracy. Oxford University Press.

For example, Bazemore and Umbreit[22] emphasize that restorative justice practices focus on rebuilding relationships and community ties, which include the reintegration of formerly incarcerated individuals through the restoration of civic rights.

Restorative justice frameworks promote the idea that once individuals have completed their sentences, they should be provided with opportunities to participate as full members of society. Zehr argues that restorative justice centers on healing and reintegration rather than punishment, emphasizing the restoration of rights and social inclusion as essential to repairing harm and rebuilding communities.[23] This approach emphasizes rehabilitation over punishment and supports policies that allow non-violent offenders to regain civic status, including the right to vote, as part of a holistic reintegration strategy.

IV. Racial and Economic Justice

Disenfranchisement laws disproportionately impact communities of color and economically disadvantaged populations. Black Americans are disenfranchised at a rate nearly four times greater than that of non-Black Americans.[24] These disparities are rooted in broader systemic inequities in the criminal justice system, including over-policing, prosecutorial discretion, and socioeconomic biases.

Efforts to restore rights often fail to address the intersectional barriers faced by marginalized communities. For example, the cost of legal financial obligations, a prerequisite for rights restoration in some jurisdictions such as Florida, disproportionately burdens low-income individuals.[25] Consequently, economic status becomes a *de facto* determinant of civic participation, raising equal protection concerns under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.[26]

V. Restoration of Other Civil Rights

In addition to voting, felony convictions result in the loss of Second Amendment rights. For example, federal law prohibits

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[22] Bazemore, G., & Umbreit, M. (1995). Rethinking the sanctioning function in juvenile court: Retributive or restorative responses to youth crime. Crime & Delinquency, 41(3), 296–316. https://doi.org/10.1177/0011128795041003004

[23] Zehr, H. (2002). The Little Book of Restorative Justice. Good Books.

[24] The Sentencing Project. (2022). Locked out 2022: Estimates of people denied voting rights due to a felony conviction. https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction/

[25] Stevenson, M. (2018). Discerning the Role of Prosecutors in the Mass Incarceration Crisis. The Yale Law Journal, 127(7), 1960-2002. https://doi.org/10.2307/44513063

[26] U.S. Const. amend. XIV, § 1.

individuals convicted of felonies from possessing firearms.[27] Courts have generally upheld these laws as constitutional, reasoning that the government can impose reasonable restrictions on the Second Amendment rights of certain groups, including felons, for public safety. Under federal law, individuals convicted of felonies are generally limited with avenues for relief.[28] Legal challenges have occasionally succeeded in restoring gun rights for non-violent offenders, particularly when plaintiffs argue that the prohibition lacks a compelling governmental interest.[29]

Other civil rights commonly affected include access to public housing, education loans, and certain federal benefits.[30] These restrictions often persist even after sentence completion, raising questions about the proportionality and necessity of continued sanctions. Comparative analysis reveals that many developed nations adopt more rehabilitative approaches. In Canada, for example, individuals may regain civil rights, including voting and firearm ownership, after completing their sentence and undergoing a parole review process.[31]

VI. Public Policy and Legislative Efforts

Recent years have witnessed a wave of legislative reform aimed at easing the reintegration of non-violent felons. States such as Virginia, California, and New Jersey have enacted automatic rights restoration policies, and clean slate legislation to facilitate reintegration. In Virginia, voting rights are automatically restored upon completion of a sentence, including parole and probation.[32] California's Proposition 17, passed in 2020, similarly restores voting rights to individuals on parole without requiring additional action.[33] Meanwhile, New Jersey has implemented the Clean Slate Act, which allows for the automatic expungement of certain criminal records to reduce barriers to employment and civic participation.[34] Federal proposals, including the Democracy Restoration Act, seek to

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[27] (18 U.S.C. § 922(g)).
[28] (18 U.S.C. § 922(g)).
[29] *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016).
[30] Olivares, K. M., & Burton, V. S. (1996). The collateral consequences of a felony conviction: A national study of state legal codes 10. *Federal Probation*, *60*(3), 10.
[31] Canada Elections Act, S.C. 2000, c. 9. https://laws-lois.justice.gc.ca/eng/acts/C-23.3/ Criminal Records Act, R.S.C., 1985, c. C-47.
[32] Virginia Code § 24.2-404. (n.d.). Duties of Department of Elections. Retrieved July 2, 2025, from https://law.lis.virginia.gov/vacode/title24.2/chapter4/section24.2-404/.
[33] California Secretary of State. (2020). Proposition 17: Restores right to vote after completion of prison term. Official Voter Information Guide. Retrieved July 2, 2025, from https://vigarchive.sos.ca.gov/2020/general/propositions/17/
[34] New Jersey Legislature. (2019). P.L. 2019, c. 150: Clean Slate Act.

establish a uniform standard for voting rights restoration in federal elections.[35]

Advocacy groups, including the ACLU, the Brennan Center for Justice, and The Sentencing Project, have played a crucial role in promoting such reforms and their efforts have focused on litigation, public education, and legislative lobbying, often in coalition with grassroots organizations.[36] [37] [38] These initiatives have contributed to measurable policy change, though challenges persist in ensuring consistent application and enforcement.

VII. Practical and Legal Challenges

Implementing rights restoration policies involves numerous challenges, including administrative inefficiencies, lack of public awareness, and political resistance. Inconsistent practices across jurisdictions can create confusion among formerly incarcerated individuals about their eligibility to vote or access benefits, potentially leading to unintentional legal violations.

The lack of a national standard has prompted some scholars and lawmakers to propose federal legislation mandating uniform procedures for restoring civil rights. For example, Christopher Uggen argues that a fragmented approach to disenfranchisement undermines democratic inclusion and calls for federal-level reforms to ensure consistency and fairness in civil rights restoration.[39] While states have traditionally controlled voting and civil rights policies, the growing disparities have fueled debate over the need for federal intervention to ensure equal protection and consistent rights access. For instance, the Democracy Restoration Act has been introduced in Congress multiple times to create a federal standard for restoring voting rights in federal elections, aiming to reduce inconsistencies across states.[40]

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[35] Democracy Restoration Act of 2019, S. 1068, 116th Cong. (2019). Retrieved from Congress.gov (https://www.congress.gov/bill/116th-congress/senate-bill/1068).

[36] Brennan Center for Justice. (2021). Restoring voting rights: A guide to current laws and policies. https://www.brennancenter.org/ourwork/research-reports/restoring-voting-rights-guide-current-laws-and-policies.

[37] The Sentencing Project. (2022). Locked out 2022: Estimates of people denied voting rights due to a felony conviction. https://www.sentencingproject.org/reports/locked-out-2024-four-million-denied-voting-rights-due-to-a-felony-conviction/.

[38] American Civil Liberties Union (ACLU). (n.d.). Voting rights restoration. https://www.aclu.org/issues/voting-rights/voter-restoration.

[39] Uggen, C., & Manza, J. (2006). Locked out: Felon disenfranchisement and American democracy. Oxford University Press.

[40] Jennifer Chung, *Felony Disenfranchisement: A Primer* (The Sentencing Project 2003).

VIII. The Ethical Debate

The ethical dimensions of rights restoration center on the notions of citizenship, redemption, and the boundaries of punishment. A central question is whether the consequences of a criminal conviction, particularly for non-violent offenses, should extend beyond the completion of a sentence, or whether rehabilitation and reintegration should be prioritized in a democratic society.

These debates intersect with principles of fairness, dignity, and social reintegration, contributing to evolving public and legal attitudes toward civil rights restoration. Critics of permanent disenfranchisement argue that once individuals have served their sentences, they have "paid their debt to society" and should be entitled to full civic participation. For example, Michelle Alexander contends that felony disenfranchisement is a modern form of racial and social exclusion that contradicts principles of democracy and equal citizenship.[41] Undermining the democratic principal of universal suffrage by denying the ability to participate in civil life, disproportionately affects marginalized communities, particularly people of color and low-income individuals.

In contrast, opponents assert that certain crimes justify continued exclusion from societal privileges, particularly those linked to moral standing and public trust. Roger Clegg, a former U.S. Deputy Assistant Attorney General and President of the Center for Equal Opportunity argues that voting is a privilege that can be lost by those who violate the social contract through serious crimes.[42] Clegg believes felon disenfranchisement helps preserve the integrity of the electoral process and reflects society's judgement about moral fitness stating that "someone who has committed serious crime, fails that minimum test of trustworthiness and loyalty that we require."[43]

One of the more striking inconsistencies in the current legal framework is that, under the U.S. Constitution, there is no provision preventing a person with a felony conviction, even one currently incarcerated, from running for or being elected President.[44] Constitutional scholars have affirmed that eligibility for federal office is strictly limited to age, citizenship, and residency requirements, and does not include any disqualifier based on criminal history.[45] At the same time, at least eleven states continue to disenfranchise individuals with felony convictions, particularly those on parole or probation,

[41] Alexander, M. (2010). The New Jim Crow: Mass Incarceration in the Age of Colorblindness. The New Press.

[42] Clegg, Roger, *Who Should Vote?*, 6 Tex. Rev. L. & Pol. 159, 159–90 (2001), available at *Texas Review of Law & Politics* (https://scispace.com/papers/who-should-vote-4a1dnl1as6).

[43] *Id.*

[44] U.S. Constitution, Article II, § 1.

[45] Amar, A. R. (2005). America's Constitution: A biography. Random House.

effectively prohibiting them from voting in the same election in which they could theoretically be a candidate in.[46] This paradox highlights a broader legal and ethical dilemma: while the Constitution permits candidacy for the highest office, state laws may bar the same individual from participating as a voter. Critics contend that this reflects not only a constitutional inconsistency but also a selective and contradictory application of civic trust and democratic participation.[47]

IX. Case Law and Judicial Impact

Judicial decisions have significantly shaped the legal framework for rights restoration. In *Richardson v. Ramirez*, the Supreme Court upheld California's disenfranchisement law, affirming that states may restrict voting rights under Section 2 of the Fourteenth Amendment.[48] This decision established the legal precedent allowing states to deny voting rights to individuals convicted of felonies, framing such restrictions as constitutionally permissible exceptions to the right to vote. Conversely, in *Hunter v. Underwood*, the Supreme Court invalidated Alabama's disenfranchisement provision due to racial animus, indicating that equal protection challenges may succeed under certain circumstances where laws are shown to be motivated by discriminatory intent.[49]

Judicial discretion also plays a role in the restoration of rights, especially in states that require individualized assessments or clemency processes. Judges often consider various factors, including evidence of rehabilitation, community support, and risk assessments, when deciding whether to grant rights restoration. This individualized approach aims to balance the interests of public safety with the potential for successful reintegration of formerly incarcerated individuals.[50] However, this system can result in inconsistent outcomes and create barriers due to its subjective nature and administrative complexities.

To address these issues, several reforms have been proposed. Legislative solutions include enacting automatic restoration policies that reinstate voting and other civil rights immediately upon completion of sentences, parole, and probation, as seen in states like

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[46] The Sentencing Project, *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction* (Oct. 2024) (https://www.sentencingproject.org/app/uploads/2024/10/Locked-Out-2024-Four-Million-Denied-Voting-Rights-Due-to-a-Felony-Conviction.pdf).

[47] Jefferson, T. (2024). The paradox of disenfranchisement: Eligibility for office vs. denial of the vote. Yale Law Journal, 133(2), 345–78.

[48] *Richardson v. Ramirez*, 418 U.S. 24 (1974).

[49] *Hunter v. Underwood*, 471 U.S. 222 (1985).

[50] Manza, J., & Uggen, C. (2006). Locked Out: Felon Disenfranchisement and American Democracy. Oxford University Press.

California and Virginia.[51] Such policies reduce administrative burdens and promote fairness by eliminating discretionary gatekeeping. Additionally, some scholars advocate for the establishment of clear, standardized criteria for judicial review to minimize arbitrariness and enhance transparency.[52]

Policy-based reforms also suggest expanding access to clemency by streamlining application procedures and increasing public awareness of rights restoration opportunities. The introduction of "clean slate" laws, which facilitate record expungement and thereby ease collateral consequences, complements rights restoration efforts by reducing stigma and improving social reintegration.[53] Comparative analyses show that countries with more rehabilitative criminal justice systems, such as Canada, employ parole review processes that include rights restoration as part of reintegration, providing a useful model for U.S. reform.[54]

Judicial remedies have emerged through litigation challenging overly restrictive disenfranchisement laws on constitutional grounds, notably equal protection claims in cases like *Hunter v. Underwood*[55]. Advocacy groups, including the Brennan Center for Justice and the ACLU, have pushed for both judicial and legislative strategies to promote more equitable restoration frameworks.[56]

In sum, a multifaceted approach that combines legislative clarity, judicial standardization, administrative efficiency, and robust advocacy is necessary to create a more coherent and just rights restoration system. Such reforms not only uphold democratic principles but also support the broader goals of restorative justice and social reintegration.

X. Conclusion

Felony disenfranchisement remains a deeply contentious issue rooted in historical practices of civil death, reflecting tensions between state authority, constitutional interpretation, and evolving ideas of citizenship. The fragmented landscape of laws disproportionately affects marginalized communities, raising serious concerns about fairness and democratic inclusion. Research shows

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[51] The Sentencing Project, *Locked Out 2024: Four Million Denied Voting Rights Due to a Felony Conviction,* at 5–7 (Oct. 2024) (https://www.sentencingproject.org/app/uploads/2024/10/Locked-Out-2024-Four-Million-Denied-Voting-Rights-Due-to-a-Felony-Conviction.pdf).
[52] Stewart, C., *Restoring the right to vote: An overview of felon disenfranchisement policies*. Harvard Law Review Forum, 130, 147–58 (2017).
[53] New Jersey Legislature. (2019). P.L. 2019, c. 150: Clean Slate Act.
[54] Corrections and Conditional Release Act, S.C. 1992, c. 20.
[55] *See Hunter v. Underwood, supra.*
[56] Brennan Center for Justice. (2021). Restoring voting rights: A guide to current laws and policies (https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration).

that restoring rights–especially voting and employment—supports reintegration and reduces recidivism, benefiting both individuals and society.[57]

Effective reform requires coordinated legislative, judicial, and advocacy efforts to adopt clearer policies like automatic restoration and clean slate laws. International examples, such as Canada's rehabilitative approach, underscore the importance of prioritizing reintegration over permanent exclusion. A consistent, transparent rights restoration system will strengthen democracy by upholding fairness, equality, and second chances for those who have served their sentences.

[57] Manza, J., & Uggen, C. (2006). Locked Out: Felon Disenfranchisement and American Democracy. Oxford University Press.

UNJUST JUSTICE—The Qualified Immunity Epidemic

By Collin Greger[*]

I. Introduction

Qualified immunity is a federal doctrine meant to protect government officials from civil liability that may arise while they are performing their job functions.[1] However, since it was created, qualified immunity has constantly caused undue harm to members of society. Its method of application allows government officials, specifically police officers, to negate any wrongdoings by simply raising the defense of qualified immunity.[2] There are several inherent issues with this doctrine, and many myths that advocates of this doctrine will use to support their position. There are, however, remedies for the doctrine; some offer changes to the existing doctrine, but another, more radical fix is to remove it from law entirely—complete abolishment.

This article will cover a brief history of qualified immunity, as well as how qualified immunity was intended to be used. This doctrine has been abused by corrupt government officials who continue to use it for their own immoral benefit, which ultimately harms innocent citizens. People continue to defend qualified immunity, but no defense is strong enough to allow such miscarriages of justice. Qualified immunity instills a sense of uncertainty in those who are forced into confronting it because it undeniably protects those who raise it as a defense. Society will only benefit from fundamental changes with this doctrine.

II. History of Qualified Immunity

The Civil Rights Act of 1871, also known as the Ku Klux Klan Act (KKK Act), sought to promote inclusivity within America, namely by enforcing the Fourteenth[3] and Fifteenth[4] Amendments. While this Act's main purpose was to give African Americans a way of seeking relief if their rights were violated by someone who was "acting under the color of law," its reach extended to all persons who ever had their constitutional rights violated by government officials.[5] Section one of

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[1] NCSL, *Qualified Immunity* at para. 1 (last visited July 7, 2025).

[2] *Id.* at para. 4.

[3] U.S. CONST. amend. XIV.

[4] U.S. CONST. amend XV.

[5] R. Owen Williams has published several books and articles. He edited The Encyclopedia of Antislavery and Abolition, and he served as president of Transylvania University.

the KKK Act, which is now commonly known as section 1983 of Title 42 of the United States Code, is arguably the most noteworthy section because it *creates* the guidelines in which American citizens can sue government officials.[6] Federal Rule 42 U.S.C.A. § 1983 states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.[7]

The doctrine of qualified immunity was first introduced in *Pierson v. Ray.*[8] The *Pierson* Court held that, "the defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under [section] 1983."[9] This means that if an individual brings a civil suit against a police officer, the officer can argue that the doctrine of qualified immunity is applicable because he or she acted in good faith and with probable cause.[10]

III. Qualified Immunity's Intended Purpose and Application

The doctrine of qualified immunity protects certain government officials so that they can perform their job duties without fear of being sued.[11] In *Harlow v. Fitzgerald*, the Supreme Court stated that "[T]here is the danger that fear of being sued will 'dampen the ardor of all but the most resolute, or the most irresponsible [public

R. Owen Williams, *Milestone Documents in African American History* at para. 14 (2d ed. 2017).

[6] 42 U.S.C.A. § 1983 (West 1996).

[7] *Id.*

[8] *Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).

[9] *Id.* at 557, 87 S. Ct. at 1219.

[10] *Id.*

[11] *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

officials], in the unflinching discharge of their duties.'"[12] Further, qualified immunity sets out to protect society against frivolous lawsuits, which waste time and resources.[13]

Harlow also set forth the standard by which it is to be determined whether the defense of qualified immunity is available to a defendant official; the Court chooses to do this by detailing scenarios when it will *not* apply:

> [I]f an official "*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], *or* if he took the action *with the malicious intention* to cause a deprivation of constitutional rights or other injury."[14]

The Court expanded on this standard by asking the question of whether the law the defendant official is accused of violating was clearly established at the time of the incident; this is an objective way to measure the likelihood that the defense of qualified immunity will be successful.[15] "Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment."[16] Using this method of "clearly established law" hopes to expedite the dismissal of frivolous suits against officials.[17]

If the actions of the defendant were not previously established, then the qualified immunity defense is available because the official is not expected to know whether an act is illegal if it has not been previously defined in caselaw.[18] The standard used to determine the availability of the defense of qualified immunity considers both the defendant official's intent as well as the predetermined nature of the action(s) (whether any established laws were violated); however, the Court does err on the side of protecting the defendant: "But where an official's duties legitimately require action in which clearly

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[12] *Id.* at 814, 102 S. Ct. at 2736 (citing *Gregorie v. Biddle*, 177 F. 2d 579, 581 (CA2 1949), cert. denied, 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363 (1950)).
[13] *Id.*
[14] *Id.* at 815, 102 S. Ct. at 2737 (citing *Wood v. Strickland*, 420 U.S. 308, 322, 95 S. Ct. 992, 1001, 43 L. Ed. 2d 214 (1975)) (emphasis added).
[15] *Id.* at 818, 102 S. Ct. at 2738.
[16] *Id.*
[17] Mike Callahan served in law enforcement for forty-four years. Thirty of those years were spent in the FBI, and he retired as a supervisory special agent/chief division counsel. Mike Callahan, *Protecting Cops from Frivolous Lawsuits: Qualified Immunity Explained*, LEXIPOL MEDIA GROUP, at para. 2, (Apr. 29, 2016) (https://www.police1.com/legal/articles/protecting-cops-from-frivolous-lawsuits-qualified-immunity-explained-SI2nJjd42TkeLI6v/).
[18] *See Harlow, supra.*

established rights are not implicated, the public interest may be better served by action taken 'with independence and without fear of consequences.'"[19]

IV. Qualified Immunity Under Pennsylvania Law

In 2011, Pennsylvania expanded upon the current qualified immunity enjoyed by police officers. Before the expansion, police officers were already allowed to use whatever force they deemed necessary to arrest an individual.[20] To further support that stance, legislation was passed that specifically immunizes officers from civil liability if a lawsuit were to arise out of an officer's use of force:

> An actor who uses force...in law enforcement as provided in 18 Pa. C.S. § 508 (relating to use of force in law enforcement) . . . is justified in using such force and shall be immune from civil liability for personal injuries sustained by a perpetrator which were caused by the acts or omissions of the actor as a result of the use of force.[21]

The statute, which was expanded upon, already grants an immense amount of discretion to police officers when carrying out their duties.[22] Any police officer can use as much force as he deems necessary to arrest an individual or to defend himself and/or bystanders.[23] Section 8340.2 reinforces the idea that police officers can use as much force as they want, with the potential of not facing any civil consequences. The autonomy granted by these statutes provides ample opportunities for abuse of power by law enforcement officers. While the state legislator's intent may be to promote reasonable guidelines by which a law enforcement officer must act, there is no doubt that the vagueness in these statutes' language calls for abuse by those with less-than-desirable moral standards.

Thomas v. City of Harrisburg recently illustrated how qualified immunity may apply in different situations.[24] This case provides an example of whether a law was previously established, according to the standard set forth in *Harlow.* [25] In *Thomas*, officers were both granted and denied qualified immunity. Terelle Thomas, relative of the Plaintiff Sherelle Thomas, had ingested what was

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[19] *Id.* at 819, 102 S. Ct. at 2740 (citing *Pierson v. Ray*, 386 U.S. 547 554, 87 S. Ct. 1213, 1217, 18 L. Ed. 2d 288 (1967)).
[20] 18 PA. STAT. AND CONS. STAT. ANN. § 508 (West 2007).
[21] 42 PA. STAT. AND CONS. STAT. ANN. § 8340.2 (West 2011).
[22] 18 Pa. C.S.A., *supra*, § 508.
[23] *Id.*
[24] *Thomas v. City of Harrisburg,* 88 F. 4th 275 (3d Cir. 2023).
[25] *See Harlow*, *supra*, at 818, 102 S. Ct. at 2738.

discovered to be crack cocaine. Instead of transporting Terelle Thomas to a medical facility, which would be acting in accordance with Harrisburg Police Department policy, he was brought to the Dauphin County Booking Center to be processed. Upon arrival, the onsite medical staff (PrimeCare) also neglected to send Thomas to receive medical attention at a more-equipped hospital. While in his holding cell, Terelle Thomas fell backwards, hit his head, and went into cardiac arrest; he passed away three days later, and his cause of death was determined to be "cocaine and fentanyl toxicity."[26]

The officers' claim of qualified immunity regarding their failure to render medical care was denied because there is a clearly established duty to take reasonable steps to give medical care if an arrestee is thought to have ingested such a large amount of narcotics that it would pose a health risk.[27] The claim for qualified immunity regarding the officers' failure to intervene, however, was upheld.[28] This was because, while there are precedential decisions regarding a government actor's obligation to intervene when witnessing "excessive force or sexual assault of a person in custody or detention," there was no precedent regarding a right to intervene in other situations—e.g., an intervention to give medical care.[29] The courts continuously tread this fine line when determining whether the defense of qualified immunity can be upheld.

V. Common Issues with Qualified Immunity

1. *Clearly Established Law is not Always so Clear*

Whether a law was clearly established before the time of the defendant's actions is the determining factor when trying to raise the defense of qualified immunity. As in *Ashcroft v. al-Kidd*, the Supreme Court held that clearly established law does not need to be exact: "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate."[30] Opposite to *Ashcroft*, some case law wanders from this reasoning.

One tragic case that displays the failure of the "clearly established law" measure is *Latits v. Philips*.[31] In *Latits*, Laszlo Latits led police officers on a several-minutes-long police chase after fleeing

[26] *Thomas*, *supra*, at 280.
[27] *Id.* at 285.
[28] *Id.* at 286.
[29] *Id.* at 285–86.
[30] *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 2083, 179 L. Ed. 2d 1149 (2011) (citing *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987); *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986)).
[31] *Latits v. Philips,* 878 F. 3d 541 (6th Cir. 2017).

from a traffic stop. Latits' vehicle was eventually rammed by defendant officer Phillips, which caused Latits to spin out of control. Phillips exited his vehicle, approached Latits, who was still inside his vehicle, and shot Latits in his chest and abdomen; Latits passed away from his wounds several hours later.[32]

The Court upheld officer Phillips' qualified immunity defense, stating that "The Plaintiff has not identified any caselaw where an officer under sufficiently similar circumstances was held to have violated the Fourth Amendment, and neither have we."[33] The plaintiff presented two cases to argue that the violation was clearly established: *Sigley v. City of Parma Heights*[34] and *Smith v. Cupp.*[35] The Court, however, rejected this claim because of one key difference—Sigley and Cupp, "involved officers confronting a car in a parking lot and shooting the non-violent driver as he attempted to initiate flight."[36]

In *Latits*, the Plaintiff was already fleeing. Any reasonable person can tell that Phillips' actions were unwarranted, yet the Court rejected that Phillips' actions were unconstitutional and already clearly established; this is only one example of how the inconsistent nature of this measure has failed and caused undue harm to our society.[37]

2. *The Technical Application of Qualified Immunity Further Injures Injured Parties.*

The stringent application of qualified immunity further injures those who have already been injured by defendant officials. In *Jessop v. City of Fresno*, officers, with a search warrant, investigated three of the Plaintiff's properties in search of illegal gambling machines.[38] The search warrant was for these illegal gambling machines and any related monies:

> seiz[ure] [of] all monies, negotiable instruments, securities, or things of value furnished or intended to be furnished by any person in connection to illegal gambling or money laundering that may be found on the premises ... [and] [m]onies and records of said monies derived from the sale and or control of said machines.[39]

[32] *Id.*
[33] *Id.* at 553.
[34] *Sigley v. City of Parma Heights*, 437 F. 3d 527 (6th Cir. 2006).
[35] *Smith v. Cupp*, 430 F. 3d 766 (6th Cir. 2005).
[36] *See Latits*, *supra*, at 553.
[37] *Id.*
[38] *Jessop v. City of Fresno*, 936 F. 3d 937 (9th Cir. 2019).
[39] *Id.* at 939.

Upon conclusion of the search, officers gave plaintiffs "an inventory sheet stating that they seized approximately $50,000 from the properties."[40] However, Plaintiffs allege that the officers, "actually seized $151,380 in cash and another $125,000 in rare coins."[41] The plaintiffs brought a § 1983 claim against the officers, but the officers' motion for summary judgment was granted based on the officers' qualified immunity. The lower court's holding was affirmed on appeal because, "The lack of 'any cases of controlling authority' or a 'consensus of cases of persuasive authority' on the constitutional question compels the conclusion that the law was not clearly established at the time of the incident."[42]

The plaintiffs in this case were refused a solution to their injuries because, "the theft of property covered by the terms of a search warrant, and seized pursuant to that warrant," was never addressed.[43] Had this issue been brought to this Court before, the plaintiffs in the instant case may have received judgment in their favor; however, because of this technical application of the "clearly established law" measure, the plaintiffs had to accept that the officers' qualified immunity would apply. Any reasonable person would draw the same conclusion—these officers committed a legal theft under the guise of qualified immunity.

The decision in *Jessop* has been met with well-deserved scrutiny. "This case is yet another illustration of the absurdity and injustice of the 'clearly established law' standard that characterizes modern qualified immunity doctrine," says Jay Schweikert and Clark Neily.[44] Whether an individual's rights have been violated, or if an officer acted in good faith does not matter. The most concerning factor used to justify the success of the qualified immunity defense is simply whether that jurisdiction has already handled similar cases.[45] If the unconstitutionality of the officers' actions was discussed, then *Jessop* could have been used as precedent in the Ninth Circuit if this type of misconduct happens again. *Jessop* would have been the clearly established law that is required to thwart such claims. Still, the

[40] *Id.*
[41] *Id.* at 940.
[42] *Id.* at 942 (citing *Wilson v. Layne*, 526 U.S. 603, 617, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999).
[43] *Id.* at 941.
[44] Jay Schweikert holds a JD from Harvard Law School. He litigated civil and criminal cases for four years before joining the Cato Institute. Before joining the Cato Institute, Clark Neily graduated from the University of Texas with a law degree, and he held a position as senior attorney at the Institute for Justice. Now, he serves as the senior vice president for legal studies at the Cato Institute.
Jay Schweikert & Clark Neily, *Jessop v. City of Fresno,* THE CATO INST., at para. 3. (Mar. 9, 2020) (https://www.cato.org/publications/legal-briefs/jessop-v-city-fresno-scotus).
[45] *Id.*

Jessop court refused to do so, leaving the door open for similar police actions in the future.

VI. Common Myths Regarding Qualified Immunity

1. *Police Officers will be Open to Frivolous Lawsuits Without Qualified Immunity.*

Qualified immunity protects police officers from civil liability and the court system from an overload of cases that could come via frivolous lawsuits. This defense only works when an individual's constitutional rights have been clearly violated in a way that was not clearly established.[46] So, if there is an obviously unreasonable constitutional violation, but there is no available case to serve as precedent to guide the decision, the officers are free from liability.[47] Anybody can be subjected to frivolous lawsuits, but it is up to attorneys, judges, and the overall court system to quash these suits.

For example, if an attorney files a motion to dismiss because the plaintiff has not stated a cause of action, and the judge finds in favor of the moving party, the suit is then dismissed.[48] This motion protected the defendant from undue civil liability, and the case is now removed from the court system, allowing other cases to move. At no point was the qualified immunity defense required to protect the defendant from a lawsuit with no legal basis

2. *Police Officers Need Qualified Immunity to do Their Jobs Effectively*

Qualified immunity protects police officers who otherwise would have to face civil suits for breaking the law. This defense is not only protecting those who are truly acting in good faith; rather, it mainly protects those who are lucky enough not to have to answer to any relevant precedent. Understandably, police officers will sometimes need to commit acts that are illegal to effect an arrest—e.g., commit battery on someone who is resisting arrest.[49] The success of this defense can unjustly stem from a lack of precedent alone; the intent of an officer's actions can be completely immoral and full of malice, but that will not be enough to protect an innocent plaintiff who is seeking legal resolution:

> [T]he case law reveals that [qualified immunity] frequently is used to shield defendants who commit egregious misconduct—especially unnecessary and

[46] *See Harlow, supra.*
[47] *See Latits* and *Jessop, supra.*
[48] *See* Fed. R. Civ. P. 12(b)(6).
[49] *Wheeler v. City of Philadelphia*, 367 F. Supp. 2d. 737 (2005) (emphasis added).

> unlawful police shootings. Defendants in these cases are not excused from liability because they were reasonably acting in good faith, but *just because there did not happen to be a particular prior case in the relevant jurisdiction with functionally similar facts.*[50]

Qualified immunity cannot be an available defense to a police officer simply because there is no controlling precedent available; it spits in the face of justice as a quick and easy way for police officers to avoid accountability for their actions. Qualified immunity does not allow police officers to do their jobs; rather, it may allow them to do their jobs improperly without fear of punishment and accountability.[51]

3. *Without Qualified Immunity, Police Officers will Become Bankrupt*

This argument is simply untrue. Indemnification can be defined as, "compensating a person for damages or losses they have incurred or will incur related to a specific accident, incident, or event."[52] Even in the absence of qualified immunity, police officers enjoy indemnification by their relevant jurisdiction. According to one study, which spanned across eighty-one different police agencies, police are virtually always afforded indemnification for their actions:

> Between 2006 and 2011, in forty-four of the seventy largest law enforcement agencies across the country, officers paid just .02% of the dollars awarded to plaintiffs in police misconduct suits. In thirty-seven small and mid-sized law enforcement agencies, officers never contributed to settlements or judgments. No officer in any of the eighty-one jurisdictions satisfied a punitive damages judgment entered against him. Officers did not contribute to settlements and judgments even when indemnification was prohibited by statute or policy. And officers were

[50] Jay. R. Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, Policy Analysis no. 901, THE CATO INST., (Sept. 14, 2020), https://www.cato.org/sites/cato.org/files/2020-09/PA%20901_1.pdf. (emphasis added).

[51] *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 3039–40, 97 L. Ed. 2d 523 (1987). (the defendant's defense of qualified immunity was upheld after he committed a warrantless search of the plaintiffs' residence because he acted in a way he *reasonably believed* to be lawful).

[52] *Indemnify*, Legal Information Institute, https://www.law.cornell.edu/wex/indemnify (last updated Mar. 2023).

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> indemnified even when they were disciplined, terminated, or prosecuted for their misconduct... My findings therefore at least support the presumption that officers across the country, in departments large and small, are virtually always indemnified.[53]

Bankruptcy is not a threat valid enough to argue for qualified immunity because police officers are going to be indemnified for their actions. If any police officers truly fear that they will not be indemnified for their actions, they can purchase police professional liability insurance.[54] This insurance will give the officers extra protection so that any form of malpractice that is not protected by qualified immunity will be paid for by the officers' insurance. New York is one state that has proposed legislation that will *require* officers to have their own form of malpractice insurance.[55] The legislative intent is that this requirement will: (1) decrease financial strain on local governments because they are the entities that are currently fulfilling judgments that are entered against officers and (2) increase officer accountability for any legal expenses incurred

VII. Potential Remedies for Qualified Immunity

1. *Ratifications to the "Clearly Established Law" Measure*

There are two issues with this measure: (1) the courts have too much power when deciding whether an action violates a clearly established law and (2) absent of a clearly established law, an unreasonable, unconstitutional act is not enough to penetrate an officer's qualified immunity defense. First, the courts are granted too much power when determining whether a law has been clearly established. The United States Supreme Court described the terms by which this measure is to be employed.[56] However, other courts, such as the Sixth Circuit Court of Appeals when it heard *Latits*, reasoned that cases with striking similarities were not factually similar

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[53] Joanna C. Schwartz, *Police Indemnification*, N.Y.U. L. REV., June 2014, at 885, 936–37.

[54] Christine Lacagnina has written thousands of insurance-related articles over the past ten years.

Christine Lacagnina, *Police Professional Liability Insurance*, INSURED BETTER. (June 18, 2025) (https://www.insuredbetter.com/professional-liability-insurance/police-officer/).

[55] Nat'l Police Ass'n, *National Police Association Stands Against New York State Bill Mandating Personal Liability Insurance for Police Officers*, NAT'L POLICE ASS'N. (July 22, 2025) (https://nationalpolice.org/national-police-association-stands-against-new-york-state-bill-mandating-personal-liability-insurance-for-police-officers/).

[56] *See Ashcroft*, *supra*, at 741, 131 S. Ct. at 2083.

enough to defeat the officer's qualified immunity claim.[57] If the United States Supreme Court heard a case similar to *Latits* on appeal, an overturned verdict because of an improperly applied "clearly established law" measure could shift all lower courts' trends when dealing with qualified immunity and any relative case precedent—they will be more likely to allow for the defeat of a qualified immunity claim, even if the cases' facts are not nearly identical.

Second, an upheld claim of qualified immunity *solely because of a lack of precedent*, no matter how unreasonable, unconstitutional, and egregious the act(s), is unjust. For example, when considering *Jessop*, any reasonable person would reach the same conclusion that the officers' actions were wrong; they used a valid search warrant to commit a legal theft of the plaintiffs' property.[58] Further, if the officers' qualified immunity claim in *Jessop* is *only upheld* because of the lack of precedent, then there will still be a lack of precedent if this same issue is brought before the court again. The refusal to use cases such as this to create precedent for future cases is a blatant disregard for an equitable solution. Such violations against citizens cannot not be permitted solely because it is the first occurrence. In cases like *Jessop*, and others unnamed, the Court must be able to hold regardless of the lack of precedent if the defendant's actions truly are unreasonable, unconstitutional, and egregious.

2. *Abolishment of Qualified Immunity*

More radically, there is the idea that Qualified Immunity must be completely abolished.[59] Police officers would not be able to use qualified immunity as a defense in a civil suit, and injured plaintiffs may have a greater chance as being awarded damages in their favor. Without qualified immunity, frivolous lawsuits against police officers will still be thrown out in the early stages of litigation.[60] Further, if the officer is found to be liable to the plaintiff, there is a substantial chance that he will be indemnified for his actions.[61] The plaintiff will receive compensation for his injuries, if his complaint was found to be justifiable, judgment will be entered in his favor, and he will have

[57] *See Latits*, *supra.*
[58] *See Jessop*, *supra.*
[59] Alicia Maule & Keli Young, *What you Need to Know About Qualified Immunity and How it Shields Those Responsible for Wrongful Convictions*, INNOCENCE PROJECT, para. 6 (Apr. 22, 2024) (https://innocenceproject.org/news/what-you-need-to-know-about-qualified-immunity-and-how-it-shields-those-responsible-for-wrongful-convictions/#:~:text=%E2%80%9CEnding%20qualified%20immunity%20is%20a%20critical%20step,their%20rights%20and%20unjustly%20took%20their%20freedom).
[60] John Guzman, *Debunking Myths About Qualified Immunity and Examining its Dangerous Realities*, Legal Def. Fund, para. 8, (Jan. 19, 2023).
[61] *See* Schwartz, *supra*, at 936–37.

succeeded in the only legal action he can initiate against the officer. This will not only benefit the immediate plaintiff, but also anybody else who encounters a similar situation. The case will set forth precedent that will govern the decision of future cases, which will, in turn, benefit society as a whole.

3. *Following Other Countries' Frameworks*

America could model after South Africa and the United Kingdom. In South Africa, individuals are liable for compensation if they, "wrongfully and culpably cause[ ] damage or harm to another."[62] Instances like these see the defendant as an individual, not a police officer. He will not have any special, judicially-created protection, so he can be sued via the tort of negligence by the injured individual. Additionally, the plaintiff may also sue the state for its officials' misconduct. This framework that South Africa uses has led to, "a dramatic increase in both successful claims and remedies awarded to plaintiffs."[63] The United Kingdom operates similarly to South Africa. A police officer may be sued, "like anyone else," so he may be liable for the plaintiff's damages.[64] If the United States abolished qualified immunity and, instead, opted to utilize general tort liability principles instead, then the country may begin to see a shift in police accountability and judgments being entered in plaintiffs' favors.

VIII. CONCLUSION

The Supreme Court of the United States created the doctrine of qualified immunity in 1967 in *Pierson.*[65] Qualified immunity was, and still is, meant to give government officials, pertinent to this article, police officers, protection from liability in a civil suit. The idea behind it is that an officer, who was acting in "good faith," and who has not violated any "clearly established laws," cannot be held liable in court. Qualified immunity is a federal doctrine, and its effect is ever-present in Pennsylvania. Pennsylvania's statutory law already offers great protections to police officers, and the qualified immunity allowed here is anything but dampened; rather, the protection it grants to police officers is quite extensive with a so-called "blanket coverage."[66] But qualified immunity comes with its issues. The standards by which it

[62] Kemiya Nutter, *Shielded from Liability: United States' Doctrine of Qualified Immunity as an International Outlier in Police Accountability Policy*, UNIVERSITY OF DENVER (Apr. 28, 2025) (https://djilp.org/shielded-from-liability-united-states-doctrine-of-qualified-immunity-as-an-international-outlier-in-police-accountability-policy/#:~:text=19%5D%20This%20rule%20extends%20the,citizens%20harmed%20by%20state%20actors).
[63] *Id.* at para. 7.
[64] *Id.*
[65] *See Pierson*, *supra.*
[66] *See* 42 Pa. C.S.A. § (a)(4), *supra.*

may be applied, such as whether a law was "clearly established," can significantly increase the chances of a qualified immunity defense succeeding, namely because this measure is too vague and seemingly ignored by appellate courts.

Those who argue for qualified immunity might state that it is a required protection because it allows police officers to do their jobs effectively, and it prevents them from being subjected to frivolous lawsuits and bankruptcy. Further research proves these claims to be not only untrue, but pure attempts at fearmongering. Even though qualified immunity has denied justice for many, there is hope for the future. Qualified immunity can be remedied, or it can be abolished completely. Several ratifications to the doctrine, such as a more-general, better-followed measure of a "clearly established law" can fix some of the issues that qualified immunity presents. However, abolishing the doctrine would completely eliminate all issues associated with it. The debate regarding qualified immunity is ongoing, and it will always have its supporters, but one thing is for certain—qualified immunity allows unreasonable, unconstitutional, and egregious acts against regular, everyday people to go wholly unpunished, and it will continue to harm society until something changes.

BIAS BY ALGORITHM: Closing the Civil Rights Gap in AI-Driven Hiring

By Ashley O'Donnell *

I. Introduction

The federal government's own civil rights watchdog has raised the alarm: AI-driven hiring tools may systematically penalize applicants with nontraditional work histories—often due to disability, caregiving responsibilities, or other protected characteristics.[1] These gaps, while unrelated to a candidate's qualifications, can trigger automated rejection when systems are designed without consideration for the structural barriers many workers face.[2]

Far from eliminating bias, AI hiring programs often encode and reproduce systemic inequalities found in historical employment data.[3] Employers increasingly rely on vendors' lack of transparency of these systems, often referred to as "black-box" algorithms, means that discriminatory outcomes can go undetected and unchallenged.[4]

This article argues that automated hiring technologies pose significant risks of unlawful bias, particularly under Title VII of the Civil Rights Act[5] and the Americans with Disabilities Act (ADA)[6] that are not adequately addressed under existing legal frameworks.

Part II of the arcticle charts how AI tools now screen applicants and why opacity and historical data can encode bias. Part III situates those tools under Title VII and the ADA, distinguishing disparate treatment from disparate impact and clarifying employer liability despite vendor use. Part IV surveys emerging enforcement and case law (e.g., *Mobley*, *Gladden*) alongside EEOC guidance.

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[1] U.S. Equal Emp. Opportunity Comm'n, *2023 Annual Performance Report* 36–38 (May 18, 2023) (https://www.eeoc.gov/2023-annual-performance-report.)

[2] Joseph B. Fuller et al., *Hidden Workers: Untapped Talent*, Harv. Bus. Rev. (May–June 2021) (https://hbr.org/2021/05/hidden-workers-untapped-talent.)

[3] Pauline T. Kim, *Data-Driven Discrimination at Work*, 58 Wm. & Mary L. Rev. 857, 869–74 (2017).

[4] *Id.*

[5] Michael D. Thompson, *The Intersection of Artificial Intelligence and Employment Law*, Nat'l L. Rev. (Apr. 8, 2024), https://natlawreview.com/article/intersection-artificial-intelligence-and-employment-law. William T. Carter, Algorithmic Discrimination in the Workplace: Why Existing Laws Fall Short, 33 Cornell J.L. & Pub. Pol'y (Nov. 21, 2024), https://publications.lawschool.cornell.edu/jlpp/2024/11/21/ai-hr-algorithmic-discrimination-in-the-workplace/.

Part V exposes accountability gaps—vendor opacity, discovery hurdles, and causation burdens. Part VI canvasses policy responses and compliance realities, and Part VII proposes reforms to doctrine, discovery, legislation, and governance. Finally, Part VIII concludes with a framework for transparent, audited, and human-overseen AI hiring.

II. AI Enters the Hiring Pipeline.

As AI takes root in hiring practices, the line between innovation and discrimination grows increasingly blurred. Vendors like HireVue and Workday market AI-driven systems that automate résumé screening, assess candidate behavior through video interviews, and score responses using natural language processing and machine learning algorithms.[7] These technologies are often presented as cost-effective solutions for identifying the "best" candidates from large applicant pools. By some estimates, as many as eighty-three percent of employers and up to ninety-nine percent of Fortune 500 companies now use some form of automated tool to screen or rank candidates for hire.[8]

But the push for efficiency often hides serious risks. Many AI hiring tools are trained on historical employment data; data that may reflect longstanding social biases related to race, gender, disability, and caregiving status.[9] As a result, these systems may spread discriminatory patterns rather than eliminate them. For instance, an algorithm trained on prior successful candidates in a male-dominated field may infer that male applicants are more qualified, disadvantaging equally qualified women.[10] Similarly, candidates with résumé gaps, often stemming from disability or family responsibilities, may be penalized by tools designed to reward linear, uninterrupted work histories.[11]

The lack of transparency in algorithmic systems makes accountability more difficult. Employers often use outside companies for AI hiring tools, but how these tools work is usually kept secret. For this reason, applicants are left in the dark when hiring decisions

[7] Danielle Abril, *Your Next Job Interview Could Be Judged by AI. Here's How to Prepare*, Wash. Post (Mar. 27, 2023) (https://www.washingtonpost.com/technology/2023/03/27/ai-assessed-job-interview/).
[8] U.S. Equal Employment Opportunity Commission. (2023, January 31). *Navigating Employment Discrimination in AI and Automated Systems: A New Civil Rights Frontier* [Transcript]. (https://www.eeoc.gov/meetings/meeting-january-31-2023-navigating-employment-discrimination-ai-and-automated-systems-new/transcript.)
[9] *See* Kim, *supra*, at 875.
[10] Nicol Turner Lee et al., *Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms*, Brookings Inst. (May 22, 2021), (https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation/).
[11] Joseph B. Fuller et al., *Hidden Workers: Untapped Talent*, Harv. Bus. Rev. (May–June 2021) (https://hbr.org/2021/05/hidden-workers-untapped-talent).

are made, with no clear explanation or opportunity to challenge adverse outcomes, raising serious concerns about due process and fairness in modern hiring practices.[12]

III. Bias by Proxy: Legal Accountability in Automated Hiring.

Artificial intelligence may be a novel tool in the hiring process, but it is still subject to long-standing principles of anti-discrimination law.[13] Title VII of the Civil Rights Act of 1964 prohibits employment practices that discriminate based on race, color, religion, sex, or national origin.[14] The Supreme Court's decision in *Griggs v. Duke Power Co.* showed that even neutral practices can violate Title VII if they cause unequal outcomes for protected groups and are not clearly job-related or necessary for business.[15] This standard is especially relevant to AI-driven tools that evaluate candidates using proxies for traditional hiring criteria, such as continuous employment or speech patterns, that may correlate with protected characteristics.

The *Griggs* decision established the legal foundation for disparate impact claims, which remain crucial in evaluating modern hiring practices.[16] This concept recognizes that policies can be discriminatory based on their effects, even if there is no intentional bias. In the context of AI, this means employers must examine whether automated tools create barriers that disproportionately affect protected groups.

It is important to distinguish disparate impact from disparate treatment. While the latter involves intentional discrimination, disparate impact challenges seemingly neutral practices that result in unequal outcomes.[17] AI systems often fall into the disparate impact category, as their results may reflect built-in historical biases, even without any deliberate discriminatory intent.[18]

A critical question emerging in this context is whether employers can escape liability by outsourcing hiring decisions to third-party vendors. EEOC guidance makes clear that employers must remain responsible for the outcomes of AI tools used in hiring, even if those tools are developed externally.[19]

Similarly, the Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities and requires employers to provide reasonable accommodations.[20] AI

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[12] *Id.*
[13] *See* Kim, *supra*, at 862–65.
[14] 42 U.S.C. § 2000e-2.
[15] *Griggs v. Duke Power Co.*, 401 U.S. 424, 431–32 (1971).
[16] *Id.*
[17] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); U.S. Department of Justice, "Title VII Manual" (https://www.justice.gov/crt/fcs/T6Manual7).
[18] 42 U.S.C. § 2000e-2(k) (2022).
[19] *See* EEOC, *supra*, at 38.
[20] 42 U.S.C. § 12112.

systems that automatically screen out applicants due to performance criteria or résumé gaps, without accounting for potential disability-related explanations, may violate the ADA's requirement for individualized assessments.[21] As with Title VII, employers cannot shift liability by relying on vendors.[22] The obligation to avoid discriminatory behavior and consider reasonable accommodations remains with the employer.

IV. From Policy to Precedent: AI Hiring Under Scrutiny.

As AI tools become gatekeepers to opportunity, the law is scrambling to keep up. In 2023, the EEOC released technical guidance affirming that employers are liable for the outcomes of AI-based hiring tools, even if those tools are created and administered by third-party vendors.[23] Employers must ensure that any automated systems they use comply with Title VII and the ADA, including evaluating tools for potential discriminatory outcomes and documenting their assessments.[24] The EEOC's guidance emphasizes the importance of conducting impact analyses, retaining relevant records, and providing accommodations when AI tools present barriers to applicants with disabilities.[25]

Litigation is also beginning to test the legal boundaries of algorithmic hiring. In *Mobley v. Workday, Inc.*, a black, older applicant with a disability alleged that Workday's algorithmic screening tools excluded him from consideration based on protected characteristics.[26] Mobley claimed that the company's software disproportionately filtered out applicants based on data inputs and screening criteria that carried forward existing societal biases.[27] Although the court ultimately dismissed some of the claims for lack of specificity and causation, the case showed an early effort to challenge algorithmic discrimination under Title VII, the ADA, and related laws.[28] As legal scholar Colin Clemente Jones notes, plaintiffs have yet to successfully litigate a Title VII claim centered on algorithmic hiring tools, in part because current doctrine fails to account for the role vendors play in standardizing and spreading bias across employers.[29]

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[21] 42 U.S.C. § 12112(b)(5).
[22] 42 U.S.C. § 2000e-2 (2022).
[23] *See* U.S. Equal Emp. Opportunity Comm'n, *2023 Annual Performance Report*, *supra.*
[24] *Id.*
[25] *Id.*
[26] *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796, 802–04 (N.D. Cal. 2024).
[27] *Id.* at 802–03.
[28] *Id.* at 808–09.
[29] Colin Clemente Jones, *Systematizing Discrimination: AI Vendors & Title VII Enforcement*, 171 U. Pa. L. Rev. 235, 238–39 (2022).

Similarly, in *Gladden v. Bolden*,[30] the court rejected claims of race and age discrimination after NASA's RESUMIX system automatically screened out an African American applicant over fifty years old. Although the plaintiff argued that the system devalued his credentials and operated in a discriminatory fashion, the court found that the algorithm's use of race- and age-neutral inputs, without more, did not establish a prima facie case under Title VII or the ADEA.[31] This shows how current laws can fall short when people try to challenge automated systems that hide bias behind neutral designs.

Mobley and *Gladden* highlight a growing tension where the law demands transparency and accountability, while the technologies in use are often secretive and hard to understand.[32] Scholars and civil rights advocates have noted that the opaque nature of AI systems makes them uniquely resistant to traditional Title VII enforcement. As legal scholar Jenny R. Yang observes, "discriminatory decisions can become magnified and rapidly scaled" through algorithms, often without any opportunity for meaningful human review.[33]

As courts continue to grapple with these challenges, key questions remain unsettled. How can plaintiffs meet the burden of proof without access to the algorithms that harmed them? What duty do employers have to audit or disclose the functioning of third-party tools? When does using algorithms cross the line into illegal discrimination?

V. Bias Without Blame—The Loopholes in Algorithmic Accountability.

Despite growing awareness of the risks associated with algorithmic hiring systems, existing civil rights laws provide limited practical protection for affected applicants. Cases like *Mobley v. Workday* reveal the barriers plaintiffs face when challenging algorithmic discrimination in court.[34] In *Mobley*, the plaintiff struggled to establish causation because he lacked access to the internal workings of Workday's hiring tools, algorithms that were allegedly responsible for the discriminatory screening.[35] The court dismissed several of his claims, noting that without more specific allegations tying his rejection to protected characteristics, the complaint failed to plausibly allege intentional or unequal treatment.[36]

[30] *Gladden v. Bolden*, 802 F. Supp. 2d 209, 214–15 (D.D.C. 2011).
[31] *Id.*
[32] *See Mobley*, *supra*, at 802; *see also Gladden*, *supra*.
[33] Jenny R. Yang, *Adapting Our Anti-Discrimination Laws to Protect Workers' Rights in the Age of Algorithmic Employment Assessments and Evolving Workplace Technology*, 50 U. Balt. L. Rev. 1, 4–5 (2021).
[34] *See Mobley*, *supra*.
[35] *Id.* at 802.
[36] *Id.* at 803–04.

A similar pattern emerges in *Gladden v. Bolden*, where the court rejected claims that NASA's automated RESUMIX system discriminated against an older African American applicant.[37] Because the tool used ostensibly neutral factors, without directly considering age or race, the court concluded that the plaintiff failed to show pretext or disparate impact.[38] *Gladden* explains that the law's focus on clear evidence or statistics makes it hard to prove discrimination in systems that hide bias behind seemingly fair rules.[39]

The case highlights a key problem: AI hiring systems are often hidden behind complex technology and company secrecy, making their inner workings hard to see. Without discovery reforms or transparency requirements, plaintiffs are left to make speculative claims without the evidence needed to meet pleading standards.[40] This creates a procedural imbalance, where companies can shield discriminatory practices behind claims of trade secrecy effectively insulating them from legal accountability. As Jenny R. Yang notes, vendors frequently invoke intellectual property protections to block disclosure of their systems' inner workings, even when those systems play a central role in hiring decisions.[41] This tactic compounds the difficulty plaintiffs already face in proving disparate impact and limits the ability of courts to evaluate whether these tools comply with anti-discrimination law.

In addition, current law does not clearly assign liability when discrimination results from third-party vendors. Jones argues that AI vendors, who often develop and license tools that shape employment outcomes at scale, are functionally shielded from Title VII enforcement despite their pivotal role.[42] While the EEOC has clarified that employers remain responsible under Title VII and the ADA regardless of vendor involvement, courts have yet to develop consistent standards for evaluating employer oversight obligations or vendor accountability.[43] Making things worse, there is no federal rule requiring checks or reports on algorithms, steps that could reveal bias before it causes harm

Together, these gaps hinder enforcement and leave applicants with little meaningful recourse. Until the legal system adapts to the unique challenges of AI-driven discrimination, the promise of equal opportunity in employment remains incomplete.

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[37] *See Gladden, supra*, at 131–35.
[38] *Id.*
[39] *Id.* at 135–36
[40] *See* Kim, *supra*, at 869–74.
[41] *See* Yang, *supra*, at 86–87.
[42] *Id.* at 86–87.
[43] *See* U.S. Equal Emp. Opportunity Comm'n, *2023 Annual Performance Report*, *supra*.

VI. Building Guardrails: The Push for AI Transparency and Oversight.

As litigation struggles to keep pace with the rapid adoption of AI in employment, lawmakers and policymakers have begun to propose solutions aimed at increasing transparency and accountability in algorithmic decision-making. At the federal level, the *Algorithmic Accountability Act of 2022* was introduced in the U.S. Senate to require companies to conduct regular impact assessments for high-risk automated systems, including those used in hiring.[44] Although the bill expired in committee without a vote, its provisions signaled growing congressional interest in regulating AI through mandated audits, documentation, and fairness safeguards. Elements of its language were later codified in 15 U.S.C. § 9451, which calls for algorithmic transparency in consumer-facing technologies.[45]

Outside of federal legislation, several jurisdictions have taken more concrete action. For example, New York City's Local Law No. 144 requires employers using automated employment decision tools to conduct annual bias audits and to notify candidates about the use of such tools in advance.[46] This law represents one of the most aggressive local regulatory responses to AI in hiring and has become a model for other municipalities. Enforcement of Local Law 144 began on July 5, 2023, requiring employers and employment agencies to conduct annual bias audits of automated employment decision tools (AEDTs), publish summaries of these audits, and provide advance notice to candidates.[47]

Despite these mandates, early implementation revealed challenges, including limited compliance and questions about audit rigor. A study conducted by researchers at Cornell University found that among 391 employers analyzed, only eighteen had posted audit reports and thirteen had posted transparency notices, highlighting significant gaps in adherence and raising concerns about the law's effectiveness in ensuring algorithmic accountability.[48] On a broader scale, the *European Union's Artificial Intelligence Act* proposes a tiered regulatory framework for AI technologies, classifying employment-related systems as "high-risk" and subjecting them to

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[44] Algorithmic Accountability Act of 2022, S.3572, 117th Cong. (2022) (https://www.congress.gov/bill/117th-congress/senate-bill/3572.

[45] 15 U.S.C. § 9451).

[46] N.Y.C. Local Law No. 144 (2021).

[47] New York City Department of Consumer and Worker Protection, Automated Employment Decision Tools (AEDTs), NYC.gov (https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page).

[48] Lucas Wright et al., "Null Compliance: NYC Local Law 144 and the Challenges of Algorithm Accountability," (2024) (https://arxiv.org/abs/2406.01399).

strict pre-deployment obligations, including transparency, risk mitigation, and human oversight.[49]

New Jersey has also emerged as a leader in regulating AI bias at the state level. In 2025, the state issued guidance making clear that the New Jersey Law Against Discrimination (LAD) applies to AI-powered employment decisions and holds employers legally responsible for discriminatory outcomes, even when those outcomes stem from third-party vendors' tools.[50] The guidance requires proactive bias audits and accommodations for disability-related needs, and establishes, a Civil Rights Innovation Lab to monitor compliance and support enforcement.[51]

These initiatives suggest a growing consensus that algorithmic tools should not be allowed to operate unchecked in high-stakes contexts like employment. However, without federal action in the United States, regulatory efforts remain fragmented and inconsistent. A national framework, anchored in civil rights protections and informed by both local experiments and international models, may be necessary to ensure that fairness and accountability do not depend on geography.

VII. Recalibrating Accountability: Legislative and Judicial Paths Forward.

Ensuring fairness in the age of algorithmic hiring will require more than technical fixes, it demands a fundamental shift in how the law understands accountability. The current legal framework leaves significant gaps in protecting job applicants from the discriminatory effects of AI-based hiring systems. As artificial intelligence continues to shape access to employment, legal institutions must adapt to ensure that long-standing civil rights protections are not quietly eroded behind a veil of technical complexity.

Reforms are needed across multiple fronts: judicial interpretation, statutory design, administrative enforcement, and private-sector governance. While each domain has its role to play, all must begin from the premise that automated decisions are not inherently neutral. The design and deployment of algorithmic systems reflect human choices, and those choices must remain subject to legal scrutiny.

First, courts must explicitly apply anti-discrimination doctrines to AI-based hiring systems. The disparate impact framework under

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[49] European Commission, *Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)*, COM (2021) 206 final (https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence).
[50] Sarah Wieselthier, *Top 10 Employer Takeaways as New Jersey Cracks Down on Artificial Intelligence Discrimination*, 51 Employee Rel. L.J. 62 (Summer 2025).
[51] *Id.*

Title VII should be interpreted to cover automated tools, regardless of whether employers develop them internally or contract with third-party vendors. Similarly, the ADA's requirement of individualized assessment should be enforced to prevent algorithms from excluding candidates based solely on disability-related traits or nontraditional employment histories. Complexity alone must not shield discriminatory outcomes from judicial review.

Second, discovery standards should be updated to reflect the realities of algorithmic opacity. Plaintiffs alleging discrimination by AI systems often lack access to the internal workings of the tools that harmed them. Courts must permit targeted discovery, under appropriate confidentiality protections, of training data, model logic, audit records, and documentation where algorithmic tools play a determinative role in hiring. Without procedural flexibility, meritorious claims may go unproven for lack of evidence.

Third, legislative intervention is essential. Congress must enact laws requiring algorithmic impact assessments, bias audits, and transparency reports for automated employment systems. These requirements should apply broadly to any system used in employment decisions, regardless of its origin. Federal enforcement agencies, including the EEOC and Department of Labor, must be equipped with the authority and resources to conduct oversight and impose meaningful penalties for noncompliance. Jones proposes that Congress amend Section 707 of Title VII to allow enforcement actions directly against vendors who develop and distribute discriminatory hiring software.[52] This reform would expand liability beyond employers and reflect the distributed nature of algorithmic harm.

State-level developments already point in this direction. For example, New Jersey's 2025 guidance under the LAD mandates that employers using AI hiring tools conduct bias audits, ensure reasonable accommodations, and remain fully liable for any discriminatory results, regardless of whether a third-party vendor developed the technology.[53] This proactive regulatory model offers a valuable blueprint for federal reform.

Fourth, employers should not wait for regulation to adopt best practices. They should actively evaluate and document the fairness of any automated systems used in hiring, ensure meaningful human oversight, and demand accountability from technology vendors. Vendors, in turn, must support transparency through documentation, audit capabilities, and cooperation with independent review.

Finally, policymakers must explore broader liability frameworks that reflect the distributed nature of algorithmic harm. Examples from product and environmental laws are helpful because

[52] *See Jones*, *supra*, 263–64.
[53] *Id.*

they share responsibility, require checks before use, and include ways to enforce rules beyond just private lawsuits. Such approaches may offer a more realistic foundation for regulating complex, high-impact technologies.

VIII. Conclusion

Artificial intelligence has transformed the hiring process, introducing speed and scale, but also replicating and concealing long-standing patterns of discrimination. While marketed as neutral and efficient, algorithmic systems often reflect the values, assumptions, and biases embedded in historical data and design choices. If not regulated, these systems could unfairly exclude people while appearing neutral.

Existing legal frameworks, particularly Title VII and the ADA, offer a foundation for addressing these risks, but they must be applied rigorously and updated thoughtfully. Legal principles must evolve to reflect the hidden nature of algorithmic decision-making, and court procedures must adapt to give plaintiffs a fair chance to prove discrimination. At the same time, Congress must enact legislation that mandates transparency, fairness audits, and impact assessments for high-risk automated tools.

Employers and vendors also have a role to play. They must implement internal safeguards, document their systems, and remain accountable for the outcomes produced by the technologies they adopt. In the end, we may need a bigger change which involves treating algorithmic systems not just as tools, but as things that should be regulated because of their impact on the public.

The goal is not to halt innovation, but to ensure that technological progress does not come at the expense of equal opportunity. Without meaningful reform, automated hiring may entrench discrimination more deeply than the systems it was meant to improve. The time to act is not when harm becomes widespread, but while the law still has the power to shape the future of work.

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