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LETTER FROM EDITOR IN CHIEF

Dear Readers,

It is a privilege to present the UTampa Undergraduate Law Review's second volume. I am honored to continue the purpose that my co-founder, Elizabeth, and I originally envisioned. What started as a daring idea has developed into a significant platform for undergraduate legal scholarship. This publication reflects the efforts of our writers as well as the passion of a community that is steadfastly dedicated to analyzing the function of law in society with conviction, clarity, and curiosity.

This year's edition comes at a time when politics and the law are still changing on a national and international level. There is a greater need than ever for careful, well-informed legal analysis as issues of individual rights, institutional responsibility, and the limits of governmental power urgently enter the public domain. Essays that address these issues are included on these pages, reflecting the complexity of our day by referencing a variety of viewpoints and academic fields.

My faith in the ability of academic research to develop not only future legal professionals but also active, critical thinkers has been strengthened by the process of starting this journal. Numerous hours have been dedicated by our editorial team to evaluating contributions, discussing concepts, and maintaining the highest standards of academic integrity. Every well-written line and referenced source in this work is the silent result of their dedication to excellence.

We also thank the faculty who have helped guide, inspire, and support us throughout the year. Their guidance has helped us refine our arguments, expand our horizons, and believe in our voices. To everyone at the university who has supported this project from its very conception: thank you for underscoring the importance of student-led legal scholarship.

It's been a privilege as Editor-in-Chief to guide this amazing team. But more than that, it’s been a pleasure to see the kind of passion for justice and critical thinking that has kept our authors, editors, and readers coming back here. If this publication does anything at all, let it simply remind people that undergraduates have valuable ideas to offer the legal system, and that we are poised to rise to the occasion.

We invite you to read deeply, reflect critically, and, most importantly, join the conversation.

Sincerely,
Aaliyah Cornelio
Editor-in-Chief
University of Tampa Undergraduate Law Review

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Silencing Diversity in Higher Education

Aaliyah Cornelio

INTRODUCTION

Florida is enacting laws to curtail the effects of diversity, equity, and inclusion (DEI) programs as national conversations about them intensify. Senator Nick DiCeglie has filed Senate Bill 1710 (SB 1710) for the 2025 legislative session, the latest legislative attack on public universities and state colleges seeking to cut funding for DEI programs.[1] It would also require anyone seeking state money or contracts to disclose their ideology and prohibit the use of public funding for DEI offices in state agencies and medical institutes at institutions of higher education.[2] SB 1710, which is scheduled to go into effect on July 1, 2025, is presented as an effort to promote ideological neutrality in government-funded healthcare and education.[3]

Beyond its declared objectives, nevertheless, the law presents serious constitutional and policy issues. Despite proponents' claims that it restores merit-based governance and prevents political prejudice, the bill essentially enforces a state-sanctioned worldview.[4] This occurs all while penalizing institutions that support DEI activities. By limiting funding for DEI activities and requiring financial support to be conditional on ideological neutrality, SB 1710 threatens to exacerbate healthcare and educational gaps, undermine institutional autonomy, and violate federal anti-discrimination laws.[5]

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[1] S.B. 1710, 2025 Leg., Reg. Sess. (Fla. 2025). (pending)
[2] Ibid.
[3] Ibid.
[4] Russell-Brown, Katheryn. "The Stop WOKE Act: HB 7, Race, and Florida's 21st Century Anti-Literacy Campaign." *N.Y.U. Review of Law & Social Change*, 2023. https://socialchangenyu.com/review/the-stop-woke-act-hb-7-race-and-floridas-21st-century-anti-literacy-campaign/
[5] U.S. Supreme Court. *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). https://www.law.cornell.edu/supremecourt/text/385/589.; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.

LEGISLATIVE BACKGROUND AND LEGAL HISTORY

SB 1710 expands on a larger legislative attempt to limit DEI programs in Florida. The Stop W.O.K.E. Act (HB 7) was signed into law by Governor Ron DeSantis in 2022. It limited conversations about sex, race, and historical injustice in the workplace and schools.[6] In *Pernell v. Florida Board of Governors*, academicians contended that HB 7's ambiguity and discriminatory viewpoints violated the First and Fourteenth Amendments.[7] The law was swiftly challenged in federal court. Citing issues of academic freedom and free expression, courts banned important parts of the bill.[8]

Florida passed SB 266 in 2023, prohibiting public colleges and universities from funding DEI projects or social justice advocacy using federal or state cash.[9] However, SB 1710 goes beyond these initiatives. It extends prohibitions into healthcare and forces organizations to exhibit ideological neutrality before obtaining public support. Although DEI programs are legally necessary for federal compliance, this forces hospitals and institutions to stop their efforts.

SB 1710 is anticipated to be subject to intense legal scrutiny on several constitutional grounds, given that comparable acts have already prompted litigation. It targets programs linked to particular opinions. This includes those that address social justice and systemic inequalities. Because of this, it is susceptible to First Amendment objections. The bill has clashes with Title VI of the Civil Rights Act of 1964. Title VI forbids racial, ethnic, or national origin discrimination in programs and activities that receive funding from the federal government.[10]

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[6] CS/HB 7, 2022 Leg., Reg. Sess. (Fla. 2022) (codified at Fla. Stat. § 115.89)
[7] Pernell v. Florida Board of Governors of the State University System, No. 4:22-cv-00304 (N.D. Fla. 2022).
[8] Ventura, Tyler. "Federal Court Stops the 'Stop WOKE' Act on First Amendment Grounds – Twice." *First Amendment Law Review*, December 5, 2022. https://journals.law.unc.edu/firstamendmentlawreview/federal-court-stops-the-stop-woke-act-on-first-amendment-grounds-twice/.
[9] CS/CS/CS/SB 266, 2023 Fla. Laws, 2023-82.
[10] Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7

Due to its direct conflict with institutional obligations under Title VI of the Civil Rights Act of 1964, the bill may also give rise to federal preemption issues. As a result, SB 1710 will potentially put public colleges and medical schools in the unworkable situation of having to decide between breaking state law and losing federal funding. Furthermore, SB 1710's ambiguous and perhaps capricious enforcement guidelines give rise to due process issues. It leaves institutions unsure of whether affiliations or acts could compromise their eligibility for financing. These legal issues indicate that SB 1710 will not only be vulnerable to court challenge but may even be declared unconstitutional after a thorough judicial assessment.

VIEWPOINT DISCRIMINATION AND THE FIRST AMENDMENT

SB 1710 is another case of one-sided bias. State-funded universities and medical schools are put in the untenable position of needing to compromise equity-inclusive policies or risk financial support through the requirement that state funding must be dependent on a lack of diversity, equity, and inclusion (DEI) programs.[11] Now, SB 1710 punishes corporate entities for having the wrong ideas rather than being neutral. This includes individuals aware of structural injustices or in favor of targeted support for disadvantaged groups. This model represses freedom of expression and obliges institutions to serve the ideological objectives of the state.[12] It makes financing conduits a tool for imposing ideological dogma, forcing organizations to abandon DEI efforts, despite their moral, legal, or educational arguments to the contrary.[13]

This is a dangerous game, constitutionally, to silence the opposition. The Supreme Court held in *Miami Herald Publishing Co. v. Tornillo* that the government can't censor speech based on opinion, nor subsidize one side of a public dispute by engaging in economic or regulatory

[11] Russell-Brown, Katheryn. "The Stop WOKE Act."
[12] Ibid.
[13] Ibid

warfare.[14] SB 1710 punishes organizations that engage in speech or projects disfavored by the state by removing their funds, and that's exactly what it does. Along with sheer censorship, the government is prohibited from erecting conditions that force those expressing themselves to censor, so to speak. SB 1710 is a viewpoint-based regulation subject to strict scrutiny because it focuses on speech that is identified with specific social and political viewpoints. Given that it applies so broadly and there are less restrictive alternatives–namely, a requirement of independent oversight or a reporting requirement–SB 1710 is very unlikely to pass constitutional muster and is still extremely vulnerable to First Amendment attack.[15]

ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY

SB 1710 undermines decades of institutional independence and autonomy by limiting the policies made and implemented by public medical schools and universities. This top-down ideological approach is not about allowing universities to develop employment practices, courses, and support services based on professional expertise, empirical evidence, and the local needs of communities.[16] It effectively replaces evidence-based decision-making with political agendas, particularly in areas like public health and education, where local knowledge matters. And besides, this encroachment on academic freedom also undermines creativity and flexibility that help to make universities adaptable to differences among students and responsive to the dictates of instruction.[17]

Decided legal principles that insulate academic freedom from inappropriate state interference flatly conflict with this sort of aggressive reach. For example, in *Keyishian v. Board*

[14] Miami Herald Publishing Co. v. Tornillo, 287 So. 2d 78 (1974)
[15] U.S. Const. amend. I
[16] Hardy, D. Christopher. "A Precedent Set: Understanding the Florida Assault on Academic Freedom." *Journal of Academic Freedom* 15 (2024): 1–20. https://www.aaup.org/sites/default/files/Hardy_JAF15.pdf
[17] Sun, Jeffrey C., and Heather A. Turner. "Vise Gripping Academic Freedom: Controlling the Learning Movement That Supports Minoritized Voices." *Journal of College and University Law* 49, no. 2 (2024): 177–220. https://www.nacua.org/docs/default-source/jcul-articles/volume49/sun-turner-to-nacua.pdf.

of Regents, the Supreme Court emphasized that academic freedom is a "special concern of the First Amendment" and is essential for a free society to flourish.[18] This notion also supports the basis that SB 1710 is a violation of academic freedom and institutional self-governance under the state Constitution rather than just a policy matter. More recently, in *School Board of Alachua County v. Florida Department of Education*, Florida's courts have acknowledged the importance of preserving educational institutions' operational independence even when the state has wide regulatory authority.[19] The court emphasized that it is vital not to engage in excessive political meddling and allow local educators to exercise professional judgment.[20] SB 1710 breaches core safeguards by making an internal university affair a matter of politics and attempting to force colleges to accept only a narrow, government-sanctioned worldview. In so doing, it not only threatens the collective integrity of the education process itself but also poses the danger of undermining the very autonomy that courts, themselves, have deemed as essential if a productive and constitutionally sound learning environment is to be maintained.

PREEMPTION UNDER FEDERAL CIVIL RIGHTS LAW

Furthermore, SB 1710 violates federal civil rights statutes. They are obligated to work swiftly to prevent discrimination based on race, color, or national origin per Title VI of the Civil Rights Act of 1964.[21] They're not alone. Many DEI programs at public colleges and hospitals are required by federal law to enforce compliance with anti-discrimination laws as a condition of receiving federal funds — it is not a choice.

Florida officials fought to assert state control over education policy in the face of federal desegregation regulations in *Department of Education v. Lewis*.[22] The court said Florida

[18] Keyishian v. Board of Regents, 385 U.S. 589 (1967)
[19] School Bd. of Alachua Cnty. v. Fla. Dep't of Educ., 347 So. 3d 465 (Fla. Dist. Ct. App. 2022)
[20] Ibid.
[21] U.S. Department of Justice. "Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq." https://www.justice.gov/crt/fcs/TitleVI.
[22] Department of Education v. Lewis, 671 F.2d 378 (11th Cir. 1982)

may not adopt laws that are inconsistent with federally mandated anti-bias policies, with federal civil rights protections being superior to state laws.[23] SB 1710 is no different. It places institutions in a legally precarious position by preventing them from practicing DEI work. That leaves them in the situation of having either to violate state law or to risk violating federal regulations, which are often attached to eligibility for crucial funding.[24] This creates an unhealthy tension, in which institutional liability, threat of losing accreditation, and curtailed access for traditionally underserved populations can confine services.

The position has major financial implications. Florida's health and higher education systems rely heavily on federal funding to support everything from public health programs and medical research to student aid, amounting to billions of dollars.[25] Such funds may be withheld or rescinded under SB 1710 if schools are required to discontinue DEI programs needed for Title VI compliance, severely damaging public services. It is a principle of constitutional law that when state policies clash with rights protected by the federal constitution, federal law trumps state rules, a principle that the courts have consistently upheld.[26] SB 1710 clearly could undermine the pillars of public education in Florida. It forces them to pick between state funding and federal law, an untenable legal and fiscal reality. It also invites court challenges.[27]

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[23] Ibid.

[24] Ventura, Tyler. "Federal Court Stops the 'Stop WOKE' Act on First Amendment Grounds – Twice." *First Amendment Law Review*, December 5, 2022. https://journals.law.unc.edu/firstamendmentlawreview/federal-court-stops-the-stop-woke-act-on-first-amendment-grounds-twice/.

[25] S.B. 1710, 2025 Leg., Reg. Sess. (Fla. 2025). (pending)

[26] American Association of University Professors. "Florida's 'Stop WOKE' Act Sabotages Higher Ed." *AAUP*, June 23, 2023.https://www.aaup.org/news/florida%E2%80%99s-stop-woke-act-sabotages-higher-ed.

[27] Peña, Kelly M., Dionysia L. Johnson-Massie, and Alan Persaud. "Escaping the 'Upside Down' – Halting Florida's Stop WOKE Act." *Littler Mendelson P.C.*, August 6, 2024. https://www.littler.com/publication-press/publication/escaping-upside-down-halting-floridas-stop-woke-act.

REFORMING SB 1710: A BALANCED ALTERNATIVE

While some elements may be well-intentioned, these measures cast a wide net and punish as opposed to protect. It could place the state in violation of constitutional guarantees and federal requirements. A more balanced and constitutionally sound reform would aim to keep federal funding eligibility, accountability, and institutional independence while not stifling DEI programming or infringing upon free speech.[28]

First and foremost, any subsequent version of SB 1710 needs to prioritize openness over repression. The state could mandate that public institutions report all expenditures linked to DEI, rather than outright prohibiting the use of public monies for DEI initiatives. These disclosures could be made available for public scrutiny and reported via yearly reporting procedures. Whether such expenditures are in line with the state's primary public service goals might be evaluated by independent oversight panels made up of professionals in the fields of law, medicine, and education.[29] Without penalizing institutions for tackling challenges like health inequalities, educational access, or campus inclusivity, this strategy would enable genuine responsibility.[30]

The bill should also explicitly exempt DEI projects that are required by federal law or that are connected to government financing and certification standards. Many medical and higher education institutions carry out DEI programs in response to government mandates under Title VI of the Civil Rights Act of 1964, or to meet requirements for professional accreditation, research funds, and other compliance-driven activities, rather than because they are politically inclined.[31] Institutions might be compelled to decide between following state law and running the

[28] *Keyishian v. Board of Regents*, 385 U.S. 589 (1967)
[29] School Board of Alachua County v. Florida Department of Education, 347 So. 3d 465 (Fla. Dist. Ct. App. 2022).
[30] U.S. Department of Justice. “Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.”
[31] Ibid.

risk of not complying with federal obligations if there is no carve-out for these legally mandated initiatives. This would compromise both legal integrity and financial stability. Exempting such programs will safeguard vital revenue streams and maintain the constitutional balance between federal authority and state oversight.[32]

DEI's detractors can contend that permitting such programming invites ideological bias in government agencies.[33] Nonetheless, a well-designed structure that prioritizes accountability, transparency, and federal compliance prevents ideological capture while maintaining initiatives required for health and educational justice. Some may argue that federal carve-outs violate state sovereignty, but in practice, the state and its institutions would be vulnerable to expensive legal action and the loss of vital funds if federal civil rights commitments were disregarded, which would ultimately impair public services.[34] A more constrained, data-driven strategy provides a fiscally prudent, constitutionally sound, and publicly defendable course of action.

CONCLUSION

While some voters may choose to support SB 1710's objective to seek transparency and prevent what could be perceived as bias at our state-funded schools, the broad reach/scope of the restrictions and the punishment they call for may infringe on our citizens' constitutional rights and potentially block state compliance with federal decree. A more reasonable and Constitutionally-sound reform would focus on ways to preserve eligibility for federal funding, promote accountability, and protect institutional autonomy without infringing on First Amendment rights and jeopardizing public health and educational outcomes, rather than simply banning DEI programs altogether.

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[32] Ibid.
[33] Swidriski, Edward. "Legal Watch: Stopping the 'Stop WOKE' Act." *American Association of University Professors*, June 23, 2023.https://www.aaup.org/article/legal-watch-stopping-stop-woke-act.
[34] Massaro, Mark. "Florida's 'Stop Woke Act' Turns Education Into Indoctrination." *Newsweek*, March 3, 2023. https://www.newsweek.com/floridas-stop-woke-act-turns-education-indoctrination-opinion-1784498

SB 1710 has societal and reputational costs in addition to financial ones. This law conveys the idea that inclusion is a liability at a time when academic institutions and public health organizations are striving to rectify historical inequalities and enhance access for underserved groups. It politicizes healthcare and academic governance, making it harder for institutions to create and carry out evidence-based policies that are sensitive to the many needs of Florida's communities.

Targeted reform is a more publicly advantageous and constitutionally sound course than broad suppression. Requirements for transparency, protections for legally required DEI programming, and evidence-based oversight procedures could guarantee prudent use of public monies while upholding institutional independence and defending legitimate, inclusive projects. While avoiding the practical and legal problems of ideological excess, reform that strikes a balance between flexibility and oversight would enable Florida to maintain federal support, honor its legal duties, and cultivate trust in its institutions.

SB 1710 is an ideologically driven restriction that jeopardizes the fundamental principles of academic freedom, equal protection, and institutional independence rather than a neutral change in policy. Florida must pursue policy through constitutional fidelity rather than force if it is to maintain its position as a leader in healthcare and education. The only long-term solution is reform, not repression.

The Overwhelming Lack of Accountability for Corrupt Government Officials

Sarah Pekusic

INTRODUCTION

The core mission of the United States government, as outlined in the Preamble of the Constitution, is to "form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."[35] The government was formed in 1776 to protect us from the injustices the original US colonists faced: the failure of the British Government to protect them and their needs. In theory, this system should be perfect; however, that is not the case today. Recent scandals indicate that democratic principles are still being undermined by government corruption. Elected officials have repeatedly committed acts of corruption, and many escape the consequences, as seen in the dismissal of federal charges against New York City Mayor Eric Adams and Virginia Governor Robert F. McDonnell. The outcomes of these cases reveal the systemic failures within justice departments to hold these officials accountable. Stronger legal standards must be put in place to ensure corrupt officials face consequences for their crimes, prevent future misconduct, and restore public trust.

BACKGROUND

The legal dictionary defines corruption as: "dishonest or fraudulent conduct by those in power, typically involving bribery."[36] Early cases of government corruption date back to the 19th century, specifically the infamous historical example of Tammany Hall: a political organization founded in 1786 that essentially controlled New York politics through bribery, manipulation, and vote-buying. Tammany Hall's massive influence continued until 1938, when New York City

[35] U.S. Const. pmbl.
[36] *Corruption, Oxford Languages,* (2025)

mayor Fiorello La Guardia cleaned up the city's government.[37] As a result of La Guardia's efforts, Tammany Hall eventually collapsed, indicating a turn in the right direction for New York City politics.[38] However, despite these efforts, New York City and many other cities across the United States still face the issue of corrupt officials exploiting their power for their personal gain. Tammany Hall set a lasting precedent of manipulating democratic systems for political gain, a pattern still seen today as judiciaries often favor elected officials who make illicit deals behind closed doors.

Current media regularly discuss controversies involving public figures. Like Tammany Hall, there are countless cases today of elected officials using their power for their own agenda, no matter what the harmful effects may be on others. The normalization of corrupt practices committed by elected officials has plagued our governmental entities.

THE INDICTMENT OF ERIC ADAMS

A recent instance of government corruption, which was the leading inspiration for this paper, is the September 2024 indictment of New York City mayor Eric Adams, who was charged with bribery, receiving campaign contributions from a foreign national, and conspiracy to commit wire fraud.[39] Adams was found to have close ties with Turkish officials, who showered him with gifts in exchange for his political protection, which included more than $10 million in campaign funds from these foreign officials. These same officials funded his travels to countries such as Ghana, Turkey, and France.[40] The mayor returned the favor in 2021 by pushing for the approval of a fire inspection for a newly built Turkish diplomatic tower in Manhattan, which was

[37] Ray, M. (ed.) (2024) *Tammany Hall*, *Encyclopedia Britannica*. Available at: https://www.britannica.com/topic/Tammany-Hall
[38] Ibid.
[39] Sisak, M.R. (2024) *A look inside the indictment accusing New York City's mayor of taking bribes*, *AP News*. Available at: https://apnews.com/article/eric-adams-indictment-51121005f6fcc209d62279ed1d3522eb
[40] Ibid.

certain to fail.[41] The duration of Adams' relationship with Turkey was a long one, and one Turkish official described him as a "true friend of Turkey," to which Adams responded, "You are my brother." After his indictment, the Justice Department ordered the case to be dropped without prejudice. Acting Deputy Attorney General Emil Bove ordered that the case be reviewed by the new U.S. Attorney General after the mayoral election.[42] However, in early April, U.S. District Judge Dale Ho reasoned that pursuing the case would prevent the mayor from enforcing President Trump's immigration policies. The case was dismissed *with* prejudice, closing it once and for all, and essentially allowing Adams to walk free.

Members of the legal community have voiced their concerns about the questionable circumstances surrounding the dismissal. Many view it as a *quid pro quo* disguised as prosecutorial discretion. The permanent closure of the case exculpated Adams, and he faced no fines, no probation, and no trial. This outcome is not only a betrayal of the trust of the American people but appears to be yet another instance of political manipulation. After Emil Bove's issuance of Adams' dismissal, seven DOJ prosecutors resigned, most notably, Danielle Sassoon. Sassoon's office oversaw the indictment, and instead of following Bove's orders to dismiss the case, she wrote an 8-page letter of resignation explaining why she would not comply and how she knew for a fact Adams committed the crimes with which he was charged. Sassoon truly believed he was guilty. It was not a political choice— she is a member of the conservative legal group The Federalist Society— but a refusal to compromise her commitment to legal integrity

[41] U.S. Attorney's Office, S.D.N.Y., New York City Mayor Eric Adams Charged With Bribery And Campaign Finance Offenses (Sept. 26, 2024), https://www.justice.gov/usao-sdny/pr/new-york-city-mayor-eric-adams-charged-bribery-and-campaign-finance-offenses

[42] *United States V. Eric Adams,* No. 1:24-cr-00556-DEH, at *Rule 48 Opinion and Order* (U.S. Dist. Ct. S.D.N.Y. Apr. 2, 2025) (Doc. 177), https://www.nysd.uscourts.gov/sites/default/files/2025-04/24cr556%20Rule%2048%20Opinion%20and%20Order%20-%20Docketed%204.2.25.pdf

and an unwillingness to turn a blind eye to corrupt politics.[43] Her resignation, alongside the six other DOJ prosecutors, indicates a concurrence and raises questions about whether prosecutorial decisions are being driven by justice or political exploitation. The Trump Administration DOJ's bailout of Adams, in exchange for his assistance in enforcing Trump's new immigration initiative and policies, reflects a clear agreement between the two parties. The outcome of this case raises serious concerns about federal legal decisions. Is the current administration truly aiming to help the American people? Or is it just using its power to come to the aid of corrupt officials and use them as a mechanism to further its agenda? The result of this case raises more general questions about whether prosecutorial discretion is being utilized to protect politically advantageous officials or to further justice.

MCDONNELL V. UNITED STATES AND ITS IMPACT

In 2014, Virginia Governor Robert F. McDonnell and his wife were indicted on corruption charges, specifically honest services fraud and Hobbs Act extortion charges.[44] They had accepted gifts from Jonnie Williams Sr., a Richmond businessman who was seeking out favorable treatment from the state government.[45] The prosecution argued that McDonnell agreed to commit "official acts" in return for these gifts.[46] The Hobbs Act (18 U.S.C. § 1951) prohibits public officials from gaining property from others through extortion "under color of official right."[47] The honest services fraud statute (18 U.S.C § 1346) criminalizes "scheme[s] to defraud another of the intangible right to honest services using a scheme to violate a fiduciary duty by

[43] Fleisher, G. (2025) *The Thursday Night Massacre: Why Top Prosecutors resigned rather than drop this case*, *The Preamble*. Available at: https://thepreamble.com/p/the-thursday-night-massacre-why-top
[44] McDonnell v. United States, 579 U.S. 1 (2016)
[45] Helderman, R.S., Leonnig, C.D. and Horwitz, S. (2014) *Former Va. Gov. McDonnell and wife charged in gifts case*, *The Washington Post*. Available at: https://www.washingtonpost.com/local/virginia-politics/former-va-gov-mcdonnell-and-wife-charged-in-gifts-case/2014/01/21/1ed704d2-82cb-11e3-9dd4-e7278db80d86_story.html
[46] McDonnell v. United States, 579 U.S. 1 (2016)
[47] 9-131.000 - The Hobbs Act - 18 U.S.C. § 1951

bribery or kickbacks."[48] However, the Hobbs Act and honest services fraud statute themselves do not directly define "official acts." Thus, the prosecution and defense agreed to borrow the definition of "official act" from the federal bribery statute (18 U.S.C. § 201) to guide the jury. Although McDonnell was not charged under the bribery statute, the court relied on its language to frame the central issue of the case and instructed the jury that an "official act" consists of "acts that a public official customarily performs," which are used "in furtherance of longer-term goals."[49] The outcome of the case ultimately depended on this key distinction, as it was used to help interpret what McDonnell allegedly promised in return for the gifts he received, resulting in his conviction. On appeal, McDonnell argued that the borrowed definition given to the jury was incorrect, as merely arranging a meeting or hosting a standalone event is not an "official act." He also argued that there was insufficient evidence for his conviction and that the honest services fraud and Hobbs Act were unconstitutionally vague.[50] The District Court denied the motions, and the Fourth Circuit affirmed. However, Supreme Court Chief Justice John Roberts authored the unanimous opinion that the definition of "official act" *was* vague and used incorrectly, thus vacating McDonnell's conviction.

Following the Supreme Court's ruling, the definition of "official act" under the federal bribery statute was significantly narrowed, making it more challenging for prosecutors to distinguish between corrupt conduct and the routine functions of public office. The ruling has appeared to "open the floodgates" for the reversals of high-profile corruption cases on similar grounds, including former Louisiana congressman William Jefferson, former New York State Assembly Speaker Sheldon Silver, former majority leader of the New York State Senate Dean

[48] Eisner Gorin LLP, Honest Services Fraud Eisner Gorin LLP Federal (2025), https://www.thefederalcriminalattorneys.com/honest-services-fraud (last visited May 9, 2025).
[49] McDonnell v. United States, 579 U.S. 1 (2016)
[50] Ibid.

Skelos, and his son Adam Skelos.[51] In the wake of McDonnell, prosecutors have faced greater difficulty in proving that public officials acted with corrupt intent, rather than merely carrying out their standard duties, such as arranging a meeting or event. Legal scholars have expressed concern that this narrowed definition may shield public officials from accountability unless there is explicit evidence of a *quid pro quo* arrangement with a formal government decision involved.[52] By requiring such specific details, the court could potentially characterize a corrupt act as routine political access, thus undermining the trust of the public and narrowing the application of anti-corruption laws. The Supreme Court has essentially legalized corruption, making it easier for corrupt officials to get away with their actions without any repercussions.

REFORM PROPOSALS

There have been attempts in the past to strengthen existing anti-corruption laws, most notably H.R. 9029, the Anti-Corruption and Public Integrity Act. The act was introduced in 2020 and sought to strengthen existing anti-corruption laws and prevent corruption in the government that stemmed from money. The bill had multiple provisions, including banning senior government officials from holding individual stocks and serving on corporate boards, instituting a lifetime lobbying ban for past congress members, creating a new anti-corruption agency, and more.[53] Its primary objective was to restore the public trust in the government by addressing the influence of money and special interests in politics. The bill was introduced to multiple committees; however, it did not make it past this stage. The passage of this bill would have been a critical step toward preventing government corruption at the highest level. However, proposing

[51] David Voreacos & Neil Weinberg, Menendez Judge Suggests He May Dismiss Senator's Bribe Counts Bloomberg (2017), https://www.bloomberg.com/politics/articles/2017-10-11/menendez-prosecutors-finish-case-as-senator-opens-defense (last visited May 10, 2025).
[52] Randall Eliason, Response, McDonnell v. United States: *A Cramped Vision of Public Corruption*, Geo. Wash. L. Rev. On the Docket (July 4, 2016), http://www.gwlr.org/mcdonnell-v-united-states-a-cramped-vision-of-public-corruption/.
[53] H.R.9029 - 116th Congress (2019-2020): Anti-Corruption and Public Integrity Act, H.R.9029, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/9029.

reform legislation to the very people it seeks to regulate represents a significant challenge for the anti-corruption effort.

The failure of the Anti-Corruption and Public Integrity Act and the limitations of existing laws indicate the need for improvement in future anti-corruption efforts. Implementing reforms with a focus on increasing transparency would help ensure that public officials' actions are subject to public scrutiny. This could include measures such as mandatory disclosures of meetings between government officials and lobbyists. In addition, stricter financial disclosure requirements would prevent conflicts of interest from remaining hidden. Disclosing financial ties to private entities would increase transparency, accountability, and reveal potential sources of undue influence. Reducing undisclosed lobbying, one of the main forms of corruption, would prevent lawmakers from participating in behind-the-scenes deals that remain hidden from the public eye. Targeted reforms like these would be less likely to face immediate resistance from members of Congress and would put standards in place to prevent corrupt acts before they are committed. With a focus on transparency and accountability, they set a more positive tone rather than criminalizing members of Congress before they have even committed anything. These measures are more preventive, aiming to stop corrupt acts before they even happen. Ultimately, these reforms would create a more effective and transparent government that is less susceptible to the influence of money and individual interests, thereby restoring public trust.

CONCLUSION

We are fortunate to have a great government system that is designed to serve the people and their interests. It has become a pillar of democracy and has worked well for decades, but its integrity has become increasingly undermined by corrupt officials using their power for their own benefit. It is a shame that the abuse of power by officials not only tarnishes our system of

government and compromises the integrity of our institutions but also damages public confidence and causes the American people to lose faith and trust in every institution meant to uphold justice and fairness. However, with reform initiatives focused on transparency and honesty, we can stop corruption before it even starts. We will never be able to eliminate every bad actor, but with a system that encourages accountability, corrupt practices such as bribery and undue influence will be exposed and eliminated at the source, thus restoring the people's faith in their government.

The Evolving Landscape of Consumer Data and the Need for Reform

Ashley Johnson

INTRODUCTION

In recent years, the digital environment has undergone significant changes through recent advancements in artificial intelligence, particularly machine learning models, which now transform methods of data collection, analysis, linking, and utilization. With the proliferation of artificial intelligence and machine learning technologies, data scraping has evolved from a tool used in controversial data gathering activities, historically viewed as non-invasive, to a powerful instrument of user surveillance and behavior prediction.[54] These technologies extract and analyze massive datasets, often from publicly accessible sources, enabling the reidentification of individuals, behavioral profiling, and the prediction of sensitive attributes, all with minimal oversight.[55] The data protection laws of Florida include statute 501.171 (on security breaches) and 688 (on trade secret law), which were created before modern data collection methods became possible.[56] The functional data protection offered by Florida Statutes 501.171 and 688 against unauthorized disclosure and misappropriation of data does not provide sufficient protection against the complexities of AI-driven data scraping and analytical technologies. The rapid advancement of AI, which tracks individuals through profiling, requires statutory updates to protect consumers from the unmonitored collection and misuse of their data. This advancement calls for a modernized legal approach that imposes proactive data handling responsibilities and adapts to the realities of AI-enhanced surveillance to protect user privacy, autonomy, and trust in the digital environment.

[54] The Great Scrape: The Clashing Between Scraping and Privacy https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4885&context=faculty_scholarship
[55] What is Artifical Intelligence https://builtin.com/artificial-intelligence#:~:text=Artificial%20intelligence%20refers%20to%20computer,speech%20and%20generating%20natural%20language.
[56] Fla. Stat.. § 501.171 (2024); Fla. Stat. § 688.002 (2024)

BACKGROUND

Artificial Intelligence refers to computer systems designed to perform tasks that traditionally require human intelligence, such as prediction, image recognition, speech interpretation, and natural language generation.[57] These capabilities stem from AI systems' ability to process vast quantities of data and identify patterns that inform future decision-making. AI operates primarily through algorithms that analyze datasets using statistical or mathematical models.[58] The process of all AI systems begins with training them. These systems use algorithms, where large volumes of historical or real-time data are fed into models that "learn" by identifying correlations and outcomes.[59] This is what producers of AI systems call training of the algorithms.

Machine learning functions as a particular AI model that uses statistical methods to adapt algorithmic behavior and improve performance over time.[60] AI tools improve their outputs by continuous data adaptation, which leads to better predictive accuracy. AI uses this functionality to both generalize behavioral data collection and perform individual user re-identification with high precision from personal data. The increasing complexity of AI models leads to enhanced capabilities for behavioral analysis, metadata, cross-referencing, and user action prediction, which creates substantial privacy risks and surveillance possibilities.

[57] What is Artifical Intelligence https://builtin.com/artificial-intelligence#:~:text=Artificial%20intelligence%20refers%20to%20computer,speech%20and%20generating%20natural%20language.
[58] Ibid.
[59] Ibid.
[60] Ibid.

Data scraping, often called web scraping, is a technique used to extract large volumes of data from websites or online platforms.[61] Web scraping functions as a method to obtain internet data, which includes public information and semi-restricted content for large-scale processing.[62] Businesses, along with researchers and AI developers, depend on scraped data to train models and conduct analysis and power various applications, including targeted advertising, trend prediction, and consumer profiling. Data scraping has become a subject of legal and ethical disputes because it raises questions about information ownership and control after scraping. The most prominent examples of scraping are social media platforms, most notably LinkedIn and Facebook.[63] The data belongs to users who maintain copyright rights to their content and proprietary rights to aggregated user data. Yet, they enforce their Terms of Service to prevent third-party access. The dispute emerges from conflicting interests between user rights, corporate interests, and public data accessibility. The Computer Fraud and Abuse Act is a federal statute that fights unauthorized access activities because its primary function addresses hacking and cybersecurity breaches.[64] This Act receives different judicial interpretations about scraping activities, which produce ambiguous and shifting definitions of unauthorized access. Many companies that prevent scraping on their websites continue to scrape data from alternative sources, indicating an unstable regulatory system.[65] The inconsistent regulatory framework creates problems with fairness and competition as well as user autonomy issues.

FLORIDA STATUTE 501.171

[61] Web Scraping for Me, But Not for Thee
https://blog.ericgoldman.org/archives/2023/08/web-scraping-for-me-but-not-for-thee-guest-blog-post.htm
[62] Ibid.
[63] Ibid.
[64] 18 U.S.C. § 1030 (2024)
[65] Brown, Megan, Andrew Gruen, Gable Maldoff, Solomon Messing, Zeve Sanderson, and Michael Zimmer. 2024. "Web Scraping for Research: Legal, Ethical, Institutional, and Scientific Considerations." Arxiv - Cornell University. https://arxiv.org/abs/2410.23432.

Florida's statute 501.171 requires covered entities to disclose security breaches involving personal information to the affected individuals so they can take protective measures.[66] However, the current restrictions in this statute indicate that consumer protection needs improvement through legislative reforms. The main problem arises from Section 501.17(1)(a), which excludes "good faith access, by an employee or agent of the entity for business purposes" from being considered a breach unless the information is misused.[67] This exemption creates a security gap. The interpretation of "faith" and "misuse" remains quite subjective and challenging to demonstrate in real-world situations. This allows companies to avoid the disclosure requirement, even if they have accessed data without explicit permission, which contradicts the transparency goals of the law in this area. The notification period for affected individuals and the Department of Legal Affairs remains unclear because the statute requires prompt disclosure without specifying any unnecessary delays.[68] The European Union's General Data Protection Regulation, for example, is much stricter than Florida's. It mandates that organizations notify the relevant supervisory authority of a data breach "without undue delay and where feasible, no later than 72 hours."[69] Furthermore, the notice should contain better information, and the notification process needs improvement to build consumer confidence and understanding.

FLORIDA'S UNIFORM TRADE SECRETS ACT

The Florida Uniform Trade Secrets Act (commonly referred to as Florida statute 688) was primarily created to protect businesses' information. Still, it has raised concerns about consumer rights, particularly regarding data scraping and the unauthorized harvesting of personal

[66] § 501.171 (2024)
[67] Fla. Stat. § 501.171 (1)(a) (2024)
[68] Fla. Dep't of Legal Aff
[69] Article 33 GDPR https://gdpr-info.eu/art-33-gdpr/

data on a large scale.[70] By defining "trade secret" and altering other civil solutions available for legal recourse, in certain situations, the Act might unintentionally shield organizations that unlawfully gather and exploit consumer information.[71] Typically, personal details may not meet the criteria for a "trade secret" owned by the consumer. Except that the collections and interpretations extracted from this information by businesses are often regarded as trade secrets by commercial establishments.[72] This gives room for companies involved in data collection to claim that the combined and analyzed data forms a trade secret, which could restrict consumer options under legal frameworks because of the Florida Uniform Trade Secrets Act preemption clause.[73] The Florida Uniform Trade Secrets Act outlines the concept of "means" for obtaining trade secrets, such as theft or bribery.[74] Includes actions such as misrepresentation, breach of confidence, and espionage within its definition. Data scraping that bypasses restrictions and breaches terms of service may be considered as falling under "means," but the legal situation regarding the validity of different data scraping methods is intricate and tends to lean towards favoring the entity collecting the data. This uncertainty undermines safeguards for consumers' access to their information.

FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

The Florida Deceptive and Unfair Trade Practices Act aims to maintain consistency with the Federal Trade Commission Act. However, Florida has not implemented the modernized data privacy and security standards of the Federal Trade Commission Act as unfair or deceptive trade

[70] Xiao, Geoffrey. 2023. "Data Misappropriation: A Trade Secret Cause of Action for Data Scraping and a New Paradigm for Database Protection". *Science and Technology Law Review* 24 (1):125-72. https://doi.org/10.52214/stlr.v24i1.10456.
[71] § 501.171 (a) (2024)
[72] Winning Trade Secrets Claims: When and How The Preemption Provision of Florida's Uniform Trade Secrets Act Applies
https://www.floridabar.org/the-florida-bar-journal/winning-trade-secrets-claims-when-and-how-the-preemption-provision-of-floridas-uniform-trade-secrets-act-applies/
[73] Ibid.
[74] Fla. Stat. § 688.002 (2024)

practices. The Federal Trade Commission Act has taken enforcement actions against companies that lack proper data security measures or present misleading privacy policies because such practices cause substantial harm to consumers. Florida's Deceptive and Unfair Trade Practices Act should adopt an active enforcement approach similar to the Federal Trade Commission. The Florida Deceptive and Unfair Trade Practices Act includes a social media subsection that focuses solely on censorship, shadow banning, and deplatforming issues, while ignoring major consumer privacy concerns related to social media data collection and usage.[75] The limited scope of this focus allows major corporations to avoid accountability for their deceptive data policies and unfair data utilization practices, which may violate consumer privacy rights.

REFORM PROPOSAL

A comprehensive legislative transformation for Florida's digital environment requires immediate action to establish consumer data autonomy as a fundamental right. This should modify current laws to reflect modern realities of data collection. The "good faith access" loophole in Florida Statute 501.171 needs to be replaced with a new standard of access that requires proof of no consumer harm, along with rapid notification systems that help people protect themselves from potential harm. The Florida Uniform Trade Secrets Act threatens consumer autonomy through its current definition of "trade secret," which requires the immediate exclusion of consumer data and an expanded definition of "improper means" that includes explicit data scraping methods, thereby violating user privacy. The Florida Deceptive and Unfair Trade Practices Act requires strategic enhancement as its current form remains valuable for consumer protection.[76] The law should explicitly require social media companies and other entities to develop clear data governance systems prioritizing user privacy. The statute requires

[75] Fla. Stat. § 501.2041 (2024)
[76] Ibid.

clear privacy policies and direct, informed consent for data processing operations, as well as strong consumer rights to access, delete, and transfer data between services. The statute should maintain these rights as absolute provisions instead of allowing companies to decide their implementation through their discretion. The General Data Protection Regulation has several articles on transparency and direct informed consent. Article 12 outlines organizational requirements to communicate with individuals about their data through clear and user-friendly communication.[77] In addition to Article 12, Article 6 establishes data processing legal foundations which require organizations to meet specific requirements from this article for lawful data processing.[78] Using the existing rights within the General Data Protection Regulation to create a comprehensive legislative framework is vital from both moral and economic standpoints, helping to ensure trust in the digital marketplace and protect the privacy of Florida citizens in the 21st century.

CONCLUSION

The current data protection laws in Florida establish minimum requirements for security breaches and the misappropriation of confidential information, including trade secrets. Yet, they fail to address modern AI systems' complex data collection and analytical capabilities. The insufficient protection against data misuse results from three main areas: The “good faith access” exemption in Florida statute 501.171 creates ambiguity about what constitutes a breach. At the same time, the Florida Uniform Trade Secrets Act may protect against the misuse of scraped data by classifying it as a trade secret. However, the Florida Deceptive and Unfair Trade Practices Act fails to address modern data exploitation by social media companies, as it focuses narrowly on specific data privacy issues. The combined problems indicate a fundamental requirement for

[77] Article 12 GDPR
[78] Article 6 GDPR

legislative change, which supports the argument that AI development requires updates to the statutory protections to safeguard consumer privacy from unmonitored data collection and exploitation. The evolving digital environment requires Florida to create new legislation that defends consumer rights through data autonomy measures, active data handler responsibilities, and individual control tools for personal information. The reform should focus on three main elements, which include modifying Florida Statutes 501.171 to establish more stringent data access standards and adding specific trade secret law restrictions to the Florida Uniform Trade Secrets Act to stop it from protecting stolen data and enhancing the Florida Deceptive and Unfair Trade practices Act to address modern date practices in the AI era.

When the Law Fails the Voiceless: Reforming Animal Cruelty Legislation in Florida

Writer: Celeste Nola

Editor: Ashley Johnson

INTRODUCTION

Florida Statute 828.12, which addresses cruelty to animals, criminalizes a range of abusive actions. Including, but not limited to, torture, neglect, physical harm, and killing.[79] The statute categorizes offenses as either misdemeanors or felonies depending on the severity and intent of the act. It outlines penalties, including fines, imprisonment, mandatory counseling, and restrictions on future animal ownership.[80] While the law appears comprehensive, its practical application reveals significant shortcomings. The limited financial penalties often result in lenient outcomes that fail to deter future abuse. Although Florida Statute 828.12 provides a legal framework for addressing animal cruelty, its current enforcement and punishment structure do not go far enough in preventing repeat offenses or ensuring accountability.

BACKGROUND

Section 828.12 of Florida law, originally vague, solely penalized harming an animal one did not own. The first anti-cruelty law to be passed in the state of Florida was Fla. Stat. §828.13 in 1889, defining "animal" as "every living dumb creature."[81] However, the legislature solely sought to control property damage, it was not necessarily concerned with the infliction of pain upon an animal as much as its economic value.

A shift toward recognizing animal welfare emerged with the passage of Amendment 10 of the Florida Constitution in November 2002, which was approved through a citizens' popular

[79] Fla. Stat. § 828.12 (2025)
[80] Ibid.
[81] Fla. Stat. §828.13 (2024)

vote.[82] This law prohibited the confinement in any manner of pregnant pigs, for fear that the stress faced by the pig may negatively affect her pregnancy.[83] This reflects a growing concern for the physical and psychological well-being of animals beyond their economic function.[84]

Under Governor Charlie Crist, Florida passed amendments to its animal cruelty laws in 2010 that strengthened safeguards for all animal owners and clarified the differences between misdemeanor and felony offenses. Before this change, animal cruelty was punishable in theory, but the laws were ineffective and rarely enforced. To increase the number of prosecutions, harsher punishments and more precise definitions were added.

The adoption of the federal Preventing Animal Cruelty and Torture Act ("PACT") in 2019 made some forms of animal cruelty illegal at the federal level and prompted more stringent state enforcement measures.[85] The issue gained even more national attention, as part of a continuous increase in protections under state law. Florida most recently revised Section 828.12 in 2025 to make the knowing and deliberate transfer of infectious diseases to animals illegal.[86]

STATE V. MORIVAL (2011)

In the case of *State v. Morival* (2011), Mr. Morival's two dogs were found severely malnourished, and a veterinarian was able to conclude that the malnourishment had occurred over time.[87] In this case, the ambiguity in Section 828.12 is brought into focus. The court had to decide whether prolonged animal malnourishment constituted a misdemeanor or a felony.[88] The statute does not clearly define what separates "unnecessary deprivation" from "intentional

[82] Fla. Const. amend. X (2018)
[83] Ibid.
[84] Shields, Sara, Paul Shapiro, and Andrew Rowan. 2017. "A Decade of Progress Toward Ending the Intensive Confinement of Farm Animals in the United States." *Animals* 7, no. 5: 40. https://www.mdpi.com/2076-2615/7/5/40
[85] H.R.724-PACT ACT
[86] Fla. Stat. § 828.12 (2025)
[87] *State v. Morival*, 75 So. 3d 810 (Fla. Dist. Ct. App. 2011)
[88] Ibid.

cruelty," and the ruling relied heavily on the judge's discretion.[89] Judge Pomponio chose to interpret the actions as intentional and repetitive, applying a felony charge. However, another judge could have classified the same behavior as a misdemeanor.[90] This case illustrates how the vagueness of the law can lead to widely varying outcomes, undermining consistent enforcement and weakening its deterrent effect.

BROWN V. STATE (2015)

In the case of *Brown v. State* (2015), Ms. Brown's dog was found by an animal control officer in a severe condition of malnourishment with multiple infections, a tumor hanging from its neck, and immobility.[91] Ms. Brown claimed that she had no idea that he was in such bad condition, because the neighbors typically fed him and described him as "happy."[92] She argued to the court that there was insufficient evidence to support the claim that she had neglected the dog, and the dog technically belonged to her ex-boyfriend, who had left it with her since 2009. The dog had been left outside for years, according to a veterinarian.[93] Section 828.12 includes "a person who owns or has custody or control of any animal," which is applicable here as the dog was left in her custody.[94] She knowingly accepted this responsibility by not surrendering him to animal services at any time in the six years. Using the *State v. Morival* judgement, the jury found that Ms. Brown was indeed guilty of felony animal cruelty.[95]

This case illustrates the statute's failure to ensure consistent accountability for all individuals involved in sustained animal cruelty. While Ms. Brown was found legally responsible, other actors who contributed to or witnessed the prolonged abuse were not held

[89] Ibid.
[90] Ibid.
[91] *Brown v. State*, 166 So. 3d 817 (Fla. Dist. Ct. App. 2015
[92] Ibid.
[93] Ibid.
[94] Fla. Stat. .§ 828.12 (2025)
[95] Brown, 166 So. 3d 817

liable, exposing a gap in the law's scope. Additionally, the court's reliance on interpretation, rather than clear statutory guidance, highlights the discretionary nature of enforcement under Section 828.12. This results not only in inconsistent sentencing but also in missed opportunities for prevention, as the statute does not require bystanders to report animal neglect in the way other Florida statutes do for vulnerable populations.[96] The case thus reinforces the argument that while the law appears comprehensive, its enforcement structure is flawed, underinclusive, and ultimately ineffective in deterring future abuse.[97]

REFORM PROPOSAL

Statute 828.12 must be updated to properly ensure the safety, protection, and respect of all animals. A progressive penalty system, where fines are scaled based on the amount of profit made from illegal activities involving animal cruelty, is a possible solution. For example, if an offender profits between $10,000 and $20,000 from cruel activities, they should face a fine of $5,000. If their profits are between $21,000 and $35,000, the fine should increase to $10,000, and so on. This system displays a punishment that is much more reflective of the severity of the crime. A system influenced by crime severity will also serve as a more effective deterrent for repeat offenders and those who may consider animal cruelty to be a profitable activity.[98] Surrendering large sums of their profits may deter potential offenders by reducing the perceived financial gain from these crimes.

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[96] Brochu, Nicole J., "Integrated Animal Court: A Better Fit for Animal Law Cases in Florida," *The Florida Bar Journal* 94, no. 9 (November 2020): 16–21. https://www.floridabar.org/the-florida-bar-journal/integrated-animal-court-a-better-fit-for-animal-law-cases-in-florida/

[97] Favre, David, "Crimes Against Nonhuman Animals and Florida's Courts: 1889–2001," *The Florida Bar Journal* 75, no. 2 (February 2001): 46–50. https://www.floridabar.org/the-florida-bar-journal/crimes-against-nonhuman-animals-and-floridas-courts-1889-2001/

[98] Shields, Sara, Paul Shapiro, and Andrew Rowan. "A Rational Approach to Sentencing Offenders for Animal Cruelty." *South Carolina Law Review* 74, no. 3 (2023): 567–600. https://sclawreview.org/article/a-rational-approach-to-sentencing-offenders-for-animal-cruelty-a-normative-and-scientific-analysis-underpinning-proportionate-penalties-for-animal-cruelty-offenders/

Due to potential difficulty in demonstrating the amount of money made from animal cruelty activities (such as animal fighting rings and illicit breeding operations), this proposed system would need to be carefully enforced. More reliable techniques for monitoring profits and making sure criminals are held responsible for the entire amount of their illicit income may need to be developed. This can entail conducting financial audits or requiring criminals to disclose the money they earn from these kinds of operations. Courts can issue subpoenas and conduct financial investigations in collaboration with financial experts.

This would enable the appropriate punishment of offenders based on the profits they made, serving as a deterrent for those who conduct such activities for perceived financial gain.[99] Although it may not be feasible to achieve complete accuracy in these financial investigations, the offender is likely to receive a punishment that is more proportionate to the crime committed under this proposed system compared to the current system established by Statute 828.12.[100] This greater deterrent effect will potentially reduce repeat offenses and set a future example that the legal system will not tolerate such crimes with little to no consequences.

COUNTER ARGUMENTS

One popular counterargument proposed by legal analysts is that animal cruelty legislation often doesn't "stick."[101] Therefore, it is a waste of time and resources to explore a section of law that won't have a lasting impact. Some may argue that implementing progressive punishments, in which the fine or jail term is based on the profits an offender has gained, may be challenging to

[99] Baker, Sarah. "Animal Welfare Underenforcement as a Rule of Law Problem." *Journal of Animal Law and Ethics* 11, no. 2 (2022): 123–145. https://pmc.ncbi.nlm.nih.gov/articles/PMC9179835/

[100] Animal Legal Defense Fund. "Sentencing for Animal Cruelty Crimes: Position Statement." *Animal Legal Defense Fund*, September 2019. https://aldf.org/wp-content/uploads/2019/09/Sentencing-for-Animal-Cruelty-Crimes-Position-Statement.pdf

[101] Rodriguez Ferrere, Marcelo. "Animal Welfare Underenforcement as a Rule of Law Problem." *Journal of Animal Law and Ethics* 11, no. 2 (2022): 123–145. https://pmc.ncbi.nlm.nih.gov/articles/PMC9179835/.

implement in reality.[102] The progressive fine structure reflects the proportionality principle often used in criminal sentencing, which ensures that the punishment corresponds to the severity of the crime and the harm caused.[103] Experts at the South Carolina Law Review propose a similar system in Volume 72, Issue 2, which uses a system based on the proportionality principle to address animal crimes.[104] Their review highlights a wide range of studies which confirm animals experience pain in nearly the same manner as humans do, thus justifying the rationale that animal cruelty should be punished in the same way crimes against humans are. Ten states in the United States already apply the proportionality principle in all areas of legal sentencing, and the principle heavily influences the Federal Sentencing Guidelines.[105] This shows that progressive punishments are commonplace and not as challenging to implement as many may believe.

CONCLUSION

Upon reviewing Florida Statute 818.12, it is clear that the statute has many shortcomings, which cause it to fail in deterring offenders from committing the crime and sentencing offenders to a punishment that correlates to the crime. The statute often results in inconsistent sentencing and lenient punishments for crimes that are typically severe. Statute 828.12, therefore, must be reviewed and updated for greater consistency and more progressive punishments that serve as a deterrent for future animal crimes, while also ensuring that offenders are properly punished based on the severity of their crimes. There are many routes that the court can take to update the

[102] Escamilla-Castillo, M. "Explaining the Gap Between the Ambitious Goals and Practical Reality of Animal Welfare Law Enforcement: A Review of the Enforcement Gap in Australia." Animals 10, no. 3 (2020): 482. https://www.mdpi.com/2076-2615/10/3/482

[103] The Meaning of Proportionality in Sentencing https://search.informit.org/doi/10.3316/agis_archive.19944517

[104] A Rational Approach to Sentencing Offenders for Animal Cruelty: A Normative and Scientific Analysis Underpinning Proportionate Penalties for Animal Cruelty Offenders (https://www.sclawreview.org/article/a-rational-approach-to-sentencing-offenders-for-animal-cruelty-a-normative-and-scientific-analysis-underpinning-proportionate-penalties-for-animal-cruelty-offenders/)

[105] National Institute of Justice. "Sentencing Guidelines: Reflections on the Future." *National Institute of Justice*, 1999. https://www.ojp.gov/pdffiles1/nij/186480.pdf.

statute properly. In addition, many of the proposed methods are already used in other sections of the state's law, demonstrating that the court can update this statute for stricter enforcement.

Disney, Districts, and Dissolution

Writer: Kaitlyn Anglim

Editor: Margaux Robert

REEDY CREEK IMPROVEMENT ACT OF 1967

In 1967, the Florida legislature passed the Reedy Creek Improvement Act, which established the Reedy Creek Improvement District, also known as the RCID. The Act granted the Walt Disney World company quasi-governmental control in Central Florida.[106] Disney retained this land until 2023, when it was dissolved by Florida Governor Ron DeSantis. The history of the RCID exemplifies the unique challenges of corporate-controlled special districts. It also highlights the legal tensions between private governance, state oversight, and public accountability in special tax districts. Although this agreement with the Florida government benefited Disney for many years, the RCID's repeal was justified as a necessary check on corporate autonomy and regulatory fairness.

LEGAL FOUNDATION

In the mid-1960s, the Walt Disney World company sought to expand its theme park enterprise beyond California. The company was envisioning an immersive theme park experience, free from encroaching development, which was a stark contrast to its Disneyland park in Anaheim, California.[107] Chapter 298 of Florida Statutes was the legal foundation for Disney's initial land management efforts.[108] Originally, in 1966, the Walt Disney Company petitioned to position its land within a special district under this chapter, called the Reedy Creek

[106] "Central Florida's Reedy Creek Improvement District Has Wide-Ranging Authority: Report No. 04-81," *Office of Program Policy Analysis and Government Accountability (OPPAGA)* (December 2004), https://oppaga.fl.gov/Products/ReportDetail?rn=04-81.
[107] "Florida Frontiers 'Walt Disney's World,'" *The Florida Historical Society* (February 23, 2016), https://myfloridahistory.org/frontiers/article/107?utm_source.
[108] Fla. Stat. § 298.01 (2018)

Drainage District.[109] This chapter governs special districts that manage land and water resources. Allowing Disney this special district enabled them to begin infrastructure planning on the undeveloped Florida land. While this special district was important to the initial plans that Disney had for its park, that authority was significantly expanded in 1967 when the drainage district was transformed into the RCID.

RCID STRUCTURE AND POWERS

. The district's main design was to grant the company broad governmental authority, allowing it to control land use, issue bonds, and manage infrastructure without reliance on local or county governments. This arrangement was essential to Disney's vision of a self-governing, self-sustaining resort. In addition, the company was given autonomy over zoning, emergency services, utilities, and other municipal functions.[110] This created a mutually beneficial relationship for the Walt Disney World Company and the state of Florida. Florida benefited from the jobs and infrastructure that were being brought to the state, increasing economic growth. While data from the early years following the RCID's creation are limited, more recent economic reports reflect the district's long-term impact. For example, in 2022, the West Orange Chamber of Commerce found that Disney contributed approximately $40.3 billion to Florida's economy, supporting over 263,000 direct and indirect jobs.[111] Although these figures are decades removed from the Act's passage, they underscore the lasting economic influence of the special district's arrangement. Additionally, it helped establish Florida as a major tourism hub on the east coast.

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[109] "Reedy Creek Improvement District Chapter 67-764," *Chapter 298 Florida Statutes,* https://www.oversightdistrict.org//wp-content/uploads/2015/10/RCID-Charter.pdf.
[110] Ibid.
[111] "New Study: Disney Generates $40 Billion in Annual Economic Impact in Florida and Over Quarter of a Million Jobs," *West Orange Chamber of Commerce* (November 14, 2023), https://wochamber.com/new-study-disney-generates-40-billion-in-annual-economic-impact-in-florida-and-over-quarter-of-a-million-jobs/.

The RCID was originally governed by Chapter 67-764 of the Laws of Florida (1967).[112] Since it was legally structured as an independent special district, the RCID was granted powers similar to other municipalities, except for greater flexibility and autonomy. The district was governed by a board of supervisors, who were elected by landowners within the district; this is denoted in Section 4 of the RCID Chapter 67-764. This passage reads "At all elections of supervisors, each landowner shall be entitled to one vote…for every acre of land and every major fraction of an acre owned by him in the District."[113] Because the Walt Disney Company owned most of the land, this system allowed them to maintain full control. This unique model of government enabled the RCID to operate effectively and independently from the surrounding Florida counties. This electoral structure reveals an inherent imbalance in democratic representation. The district exercised broad powers, most notably its unprecedented control over land use and infrastructure. From a financial standpoint, the RCID had the power to levy taxes and to issue tax-exempt bonds to fund major infrastructure projects within the district. It also held the power of eminent domain. This allowed it to acquire land for public use as it deemed necessary.[114]

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

In 2023, Florida dissolved the RCID and replaced it with the Central Florida Tourism Oversight District, or the CFTOD. Under these new laws, governance shifted from corporate landowners to state-appointed board members, with appointments made by the governor and confirmed by the Senate.[115] While the CFTOD retained many of the district's operational powers, key decisions are now subject to state oversight.[116] This reform was framed as necessary to

[112] "Reedy Creek Improvement District Chapter 67-764," *Chapter 298 Florida Statutes,* https://www.oversightdistrict.org//wp-content/uploads/2015/10/RCID-Charter.pdf.
[113] Id. at, 22.
[114] Ibid.
[115] Ch. 2023-5, Laws of Fla. (2023D)
[116] Ibid.

promote corporate accountability, eliminate favoritism, and ensure that municipal authority serves public, not private, interests. The new legislation established a more transparent and democratic system of governance that prioritizes public interest over corporate governance.

COMPARISON TO UNIVERSAL STUDIOS' SHINGLE CREEK DISTRICT

Common arguments in favor of the RCID tend to focus on the economic benefits within the district; however, looking at other tourism and theme park companies in Orlando proves this point to be arbitrary. Specifically, Universal Pictures operated under the standard jurisdiction of Orange County and the city of Orlando. Unlike the extensive self-governing powers that Disney possessed, Universal had no special district status until 2023. Chapter 190 of Florida Statutes outlines the framework for establishing a community development district to manage infrastructure and services within a defined area.[117] This chapter was used to create the Shingle Creek District, which encompasses the land for Universal's most recent theme park addition. This allows Universal Pictures to finance and manage infrastructure improvement through tax-exempt bonds.[118] However, unlike the RCID, this district is limited in power, focusing on specific infrastructure and transit-related projects without giving broad self-governing powers.[119] The Shingle Creek District is a clear example of how special districting can be done responsibly without providing unchecked corporate autonomy. It also stands to prove that even with the dissolution of the RCID, the Walt Disney Company can still work with the state government to facilitate project-based collaboration.

[117] Fla. Stat. § 190.005 (2023)
[118] Ashley Carter, "Orange County Approves Special District Tied to Universal's Epic Universe, Proposed SunRail Expansion," *Spectrum News 13* (October 11, 2023), https://mynews13.com/fl/orlando/news/2023/10/11/orange-county-approves-special-district-tied-to-universal-s-epic-universe.
[119] Ibid.

REFORM

To prevent these situations with special districting in the future, Florida and other states can provide an array of policies and legislative action to avert RCID-like arrangements. One solution may potentially be the enactment of statutory guidelines for special districts. By proposing that states adopt a standardized statute that limits the powers of corporate-controlled special districts, a clearer foundation of oversight requirements can be achieved. Additionally, it could include a review board that reevaluates and renews the powers given to a special district after a given period. Along with this, recommending legislation that ensures no single corporation can hold a majority of land or voting rights in a special district further regulates and protects the separation of corporations and public interest.

CONCLUSION

While the Reedy Creek Improvement Act was instrumental in positioning the Walt Disney Company as one of the most popular theme parks in the country, its dissolution does not mean the end of the potential growth of the parks. As seen through Universal Studios, a successful theme park and the ability to bring in tourism does not rely entirely on special districting agreements. Under the CFTOD, Disney can operate through regulatory fairness and responsible corporate oversight. The RCID, while beneficial to Disney for many years, illustrates the legal and ethical tensions between public and private entities. This discussion of private governance and public accountability serves as a reminder that unchecked corporate autonomy can threaten democratic representation. The dissolution of the RCID was productive in upholding these ideas and hopefully ensures that future arrangements with special districting serve the public good.

Justice and the Felony Murder Rule

Writer: Francessca Messina

Editor: Autumn Dodd

INTRODUCTION

Ryan Holle, a 21-year-old in 2003, lent his friend the keys to his car and went to sleep. While sleeping, Holle's friends robbed and murdered an individual. Holle was then sentenced to life in prison without parole in Florida due to the Felony Murder Rule.[120] The Felony Murder Rule, as outlined in *Fla. Stat.* § 782.04, governs felony murder and does not require an intent to kill.[121] Unlike other Florida statutes that address murder, such as Statute 782.04 (1)(a)(1) on first-degree murder, Statute 777.04 on attempted first-degree murder, and Statute 782.04 (2) on second-degree murder, the latter involves a different standard.[122] It requires intent to knowingly participate in an act dangerous to another.[123]

This rule is one of the most widely debated issues in the justice system, highlighting that an individual involved in a felony, but not murder, can be found guilty even if the individual was not on the scene at the time the murder was committed.[124] The Felony Murder Rule originates from English Common Law in 1786, which declared that any individual involved in a felony can

[120] McGivern, Kylie. 2024. "Man released after being sentenced to life under Florida's felony murder rule." ABC Action News. https://www.abcactionnews.com/news/local-news/i-team-investigates/man-sentenced-to-life-under-floridas-felony-murder-rule-released-from-prison-after-rare-commutation-of-sentence.
[121] *Fla. Stat.* § 782.04(1)(a)(2) (2024).
[122] *Fla. Stat.* § 782.04(1)(a)(1); *Fla. Stat.* § 777.04; *Fla. Stat.* § 782.04(2) (2024).
[123] Mahadev, Shobha, and Steven Drizin. 2021. "Felony Murder, Explained." The Appeal. https://theappeal.org/the-lab/explainers/felony-murder-explained/#:~:text=Felony%20murder%20is%20not%20a,for%20those%20consequences%20to%20occur.
[124] Scott, Sierra. 2025. "What is Felony Murder?" Equal Justice USA. https://ejusa.org/what-is-felony-murder/.

be charged with murder if death occurs as a result of that felony.[125] The law also asserts that this murder charge applies regardless of whether there was intent to kill.[126]

By applying this rule to multiple felonies in Florida, the rule fails to account for varying degrees of individual culpability. The lack of consideration for an individual's level of culpability results in those who intended to murder and those who did not being grouped with the same punishment, such as life without parole.[127] This disproportionate grouping results in an imbalanced system that disproportionately affects minority groups and minors.[128] The rule weakens a core principle of criminal law, which states that individuals should be charged for crimes they committed, not crimes they did not commit.[129] Florida's Felony Murder Rule disproportionately punishes individuals without intent, fails to deter crime, and contradicts principles of proportional culpability, calling for urgent reform.

BACKGROUND

According to the roots of English Common Law, any death that occurs during a felony is subject to murder charges under the Felony Murder Rule, even if the offender did not plan or directly cause the death.[130] Although the rule was repealed in England in 1957, Florida still maintains and uses it extensively under Statute 782.04 (2024). The statute is one of the most comprehensive in the country, covering a wide range of felonies, such as robbery, abduction, and

[125] "Public School Investment Reduces Adult Crime, Study Shows." 2022. The Record - University of Michigan. https://record.umich.edu/articles/public-school-investment-reduces-adult-crime-study-shows/.
[126] Mahadev, Shobha, and Steven Drizin. 2021. "Felony Murder, Explained." The Appeal. https://theappeal.org/the-lab/explainers/felony-murder-explained/#:~:text=Felony%20murder%20is%20not%20a,for%20those%20consequences%20to%20occur.
[127] Ghandnoosh, Nazgol, Emma Stammen, Connie Budaci, and Nicole D. Porter. 2022. "Felony Murder: An On-Ramp for Extreme Sentencing – The Sentencing Project." The Sentencing Project. https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/.
[128] Felony Murder Reporting Project. 2023. "Data Florida." Felony Murder Reporting Project. https://felonymurderreporting.org/states/fl/#:~:text=In%20total%2C%20there%20are%20at,46%20are%20sentenced%20to%20death.&text=The%20median%20quantified%20sentence%20for%20felony%20murder%20is%2020%20years%20in%20prison.
[129] Model Penal Code (Am. L. Inst. 1985).
[130] "Public School Investment Reduces Adult Crime, Study Shows." 2022. The Record - University of Michigan. https://record.umich.edu/articles/public-school-investment-reduces-adult-crime-study-shows/.

arson. Still, it also encompasses charges including acts of terrorism and violently resisting arrest.[131]

This broad approach has severe repercussions. In Florida, 61% of the 1,751 individuals convicted for felony murder as of 2025 are Black, although making up only 17% of the state's total population.[132] At the time of their offense, more than two hundred of these people were underage. Forty-six are facing the death penalty, while almost 1,000 have been given life sentences.[133]

ENMUND v. FLORIDA (1982)

Earl Enmund and two other individuals were found guilty of felony murder and robbery of an elderly couple. Enmund was the getaway driver and was not present during the robbery, and was unaware that any individuals would be killed.[134] Enmund argued that he had no intent to kill, so the death penalty was cruel and unusual under the Eighth Amendment.[135] The dissent contended that participation in a dangerous felony justified severe punishment, even without intent.[136] Although the Supreme Court of Florida sentenced all three to death, the United States Supreme Court reversed in a 5-4 decision, holding that imposing the death penalty on an individual who did not kill or attempt to kill violates the Eighth Amendment's prohibition on cruel and unusual punishment.[137] The Court emphasized proportional punishment, stating that the sentence must reflect the crime committed, the individual's culpability, and mental state.[138] This

[131] § 782.04(1)(a)(2)
[132] Felony Murder Reporting Project. 2023. "Data Florida." Felony Murder Reporting Project. https://felonymurderreporting.org/states/fl/#:~:text=In%20total%2C%20there%20are%20at,46%20are%20sentenced%20to%20death.&text=The%20median%20quantified%20sentence%20for%20felony%20murder%20is%2020%20years%20in%20prison.
[133] Ibid.
[134] Enmund v. Florida, 458 U.S. 782 (1982)
[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid.

case is crucial in arguments against the Felony Murder Rule, which restricts the death penalty for individuals who played minor roles in felony murders.

TISON v. ARIZONA (1987)

Ricky and Raymond Tison helped their father, Gary, and his cellmate Randy escape prison. During a car theft, Gary and Randy shot the family who owned the car multiple times; the brothers were not at the scene.[139] The brothers did nothing to save the family and fled with Gary and Randy. Both brothers and Randy faced four counts of felony murder, and all three received the death penalty.[140] The Court ruled that the brothers conspired with known killers and showed reckless indifference to human life.[141] The United States Supreme Court held that anticipation of lethal force alone is insufficient to satisfy the intent requirement for the death penalty. Still, reckless indifference to human life may suffice.[142] This case established that a defendant can be sentenced to death if they were a major participant in the felony and showed reckless indifference to human life, regardless of intent to kill.

MENS REA

Mens rea, or the mental state of the offender, is a foundational concept in criminal law, yet Florida's Felony Murder Rule largely violates it Model Penal Code (Am. Law Inst. 1985). The rule disregards a defendant's mindset at the time of the crime, requiring no evidence that the individual acted with intent or clear disregard for human life.[143] While Florida has not formally implemented the Model Penal Code (MPC), its structure has influenced various aspects of state law. The MPC outlines distinct levels of culpability, each centered on the offender's state of mind: purposely, knowingly, recklessly, and negligently.[144] However, Florida's application of the

[139] Tison v. Arizona, 481 U.S. 137 (1987)
[140] Ibid
[141] Ibid
[142] Ibid
[143] Scott, Sierra. 2025. "What is Felony Murder?" Equal Justice USA. https://ejusa.org/what-is-felony-murder/.
[144] Model Penal Code (Am. L. Inst. 1985).

Felony Murder Rule ignores these distinctions, treating all participants in a felony equally, regardless of their role or awareness that death might occur.[145] As a result, even individuals who were not present at the crime scene can be charged with murder simply because they were involved in the underlying felony.[146]

REFORM PROPOSAL

The Felony Murder Rule's core flaw is that it conflates participation in a felony with moral culpability for murder, ignoring the foundational mens rea principle that guilt must involve both a wrongful act and a guilty mind.[147] To address this, Florida should reform its sentencing practices to reflect individual culpability. Currently, defendants who played minor roles can receive the same life sentences as those who committed the killing.[148] A reformed approach would tailor punishment based on intent, involvement, and the foreseeability of harm, ensuring proportionate sentencing and a more equitable criminal justice system.

To ensure individuals are not disproportionately punished, the Felony Murder Rule in Florida should be abolished. Eliminating this rule would ensure that people are held accountable only for actions they intended to commit or played a significant role in.[149] It would also create a more just legal system, one that avoids punishing individuals with life sentences for outcomes they neither intended nor caused.

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[145] § 782.04(1)(a)(2) (2024)
[146] Appealman, Avery. n.d. "The Felony Murder Rule: Ryan Holle Case." Appealman Law Firm LLC. https://aacriminallaw.com/felony-murder-rule-ryan-holle-case/.
[147] Model Penal Code (Am. L. Inst. 1985).
[148] Felony Murder Reporting Project. 2023. "Data Florida." Felony Murder Reporting Project. https://felonymurderreporting.org/states/fl/#:~:text=In%20total%2C%20there%20are%20at,46%20are%20sentenced%20to%20death.&text=The%20median%20quantified%20sentence%20for%20felony%20murder%20is%2020%20years%20in%20prison.
[149] Ghandnoosh, Nazgol, Emma Stammen, Connie Budaci, and Nicole D. Porter. 2022. "Felony Murder: An On-Ramp for Extreme Sentencing – The Sentencing Project." The Sentencing Project. https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/.

If abolition is not politically feasible, the rule should be narrowed to apply only to defendants who killed someone directly, aided in the killing with intent, or acted with reckless disregard for human life during a violent felony.[150] Violent felonies might include offenses such as armed robbery, arson, kidnapping, and sex crimes. This narrowed approach would prevent overreach and allow courts to differentiate between major participants and those peripherally involved.

COUNTERS AND REBUTTALS

Critics may argue that the Felony Murder Rule deters crime. This viewpoint lacks empirical support, as no statistics demonstrate that the rule deters felony murders.[151] For instance, it has not been demonstrated that the death penalty, the harshest penalty, deters felony murderers.[152] Although most people are not aware of the rule's wide application, deterrence must be effective.[153] Taxpayer dollars could be used to support violence prevention tactics, rehabilitation programs that have been shown to lower crime rates, and education about violent crimes in schools, rather than lengthening sentences for an effective deterrent. Second, critics may argue that criminals are held accountable for their acts under the Felony Murder Rule. Although accountability is essential, the rule goes too far in punishing people who did not intend to kill or who were ignorant of their peers' behavior.[154] The rule treats all felony participants

[150] Ibid.
[151] Ibid.
[152] Liebman, James. 2006. "Capital Punishment and Capital Murder: Market Share and the Deterrent Effects of the Death Penalty." Scholarship Archive. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2425&context=faculty_scholarship.
[153] Scott, Sierra. 2025. "What is Felony Murder?" Equal Justice USA. https://ejusa.org/what-is-felony-murder/.
[154] Appealman, Avery. n.d. "The Felony Murder Rule: Ryan Holle Case." Appealman Law Firm LLC. https://aacriminallaw.com/felony-murder-rule-ryan-holle-case/.

equally, disregarding unanticipated deaths and failing to take into consideration the degree of involvement, which leads to disproportionate sentencing.[155]

CONCLUSION

The Felony Murder Rule reveals systemic flaws in Florida's criminal law framework. Under *Fla. Stat.* § 782.04(1)(a)(2) (2024), individuals face murder charges and life without parole for murders they did not commit or intend.[156] The rule disproportionately punishes those with minor roles, contradicting the fundamental principle of criminal justice that punishment must align with the individual's mental state and actions.[157] The outcomes of the Felony Murder Rule urge reforms to both the rule and its sentencing principles. Florida lawmakers must reserve severe punishments for individuals who were involved in the act of killing or had the intent to kill.

[155] Mahadev, Shobha, and Steven Drizin. 2021. "Felony Murder, Explained." The Appeal. https://theappeal.org/the-lab/explainers/felony-murder-explained/#:~:text=Felony%20murder%20is%20not%20a,for%20those%20consequences%20to%20occur.
[156] Felony Murder Reporting Project. 2023. "Data Florida." Felony Murder Reporting Project. https://felonymurderreporting.org/states/fl/#:~:text=In%20total%2C%20there%20are%20at,46%20are%20sentenced%20to%20death.&text=The%20median%20quantified%20sentence%20for%20felony%20murder%20is%2020%20years%20in%20prison.
[157] Model Penal Code (Am. L. Inst. 1985).

Protecting Children, Policing Speech: The Constitutional Flaws of HB 3

Writer: Gabrielle Carmanica

Editor: Kevin Bailey

INTRODUCTION

In recent years, a growing number of U.S. states have moved to restrict minors' access to sexually explicit material online. As concerns over the potential harm of unregulated internet use among young people have intensified, legislators have introduced various measures to curb their access to adult content. Florida's recent passage of House Bill 3 (HB 3) is one of the most prominent examples of this trend. Under HB 3, children under the age of 14 are prohibited from creating social media accounts, while those between the ages of 14 and 15 must obtain parental consent to access websites and applications that contain sexually explicit material that may be deemed harmful to minors.[158] The law also mandates strict age-verification protocols for sites that host substantial amounts of such content.[159] In response, many adult content websites have ceased operations in Florida, unwilling or unable to comply with the law's age-verification requirements.

While the goal of protecting minors from potentially harmful content is certainly valid, the methods prescribed by HB 3 are both overburdensome and unnecessary. The law relies on stringent measures that impose significant barriers to access for adults, creating unnecessary complications for online users and platforms. Moreover, similar efforts at regulating access to sexually explicit material have historically proven unsuccessful, especially when subjected to strict scrutiny. Given the failures of past attempts, such as the Communications Decency Act (CDA) and the Child Online Protection Act (COPA), it seems unlikely that HB 3 will withstand

[158] CS/CS/H.B. 3, 2024 Leg., Reg. Sess. (Fla. 2024).
[159] Ibid.

constitutional challenges. This essay will explore the history of content-based bans on online content and the legal and practical issues surrounding HB 3, and discuss alternatives to age verification.

Florida's HB 3 and similar state-level laws aimed at restricting minors' access to sexually explicit material are overly burdensome, unduly restrictive, and likely to face significant legal challenges. These laws fail to adequately address the issue of online safety for minors without infringing on First Amendment rights and imposing excessive restrictions on adults. Alternative measures, such as enhanced parental controls and more privacy-conscious age verification methods, offer a less invasive and more effective solution.

HISTORY OF HB3

The Communications Decency Act (CDA) of 1996 marked the first attempt by Congress to limit minors' access to sexually explicit material on the Internet. As internet access became more common across all levels of society, concerns regarding children's exposure to illicit or pornographic content began to emerge. The Act criminalized the sharing of "obscene or indecent" messages as well as the intentional presentation of "patently offensive" media to persons under 18 years of age.[160] Websites were incentivized to moderate and remove harmful content. Under Section 230, immunity could be provided to sites that agreed to actively screen for offensive or indecent media. It also allowed websites to edit or moderate the content posted to their sites without being liable for what they did or did not edit/moderate.[161] The CDA applied rhetoric from the Miller Test for Obscenity, which was used to determine whether something was obscene and therefore unprotected by the First Amendment. Specifically, CDA borrowed the

[160] Zeigler, Sara L. 2023. "Communications Decency Act and Section 230 (1996) | The First Amendment Encyclopedia." Free Speech Center. https://firstamendment.mtsu.edu/article/communications-decency-act-and-section-230/.
[161] U.S. Department of Justice. n.d. "DEPARTMENT OF JUSTICE'S REVIEW OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996." Department of Justice. https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996.

"contemporary community standard" as the metric for assessing whether media on the internet qualified as "patently offensive."

Only a year after CDA was originally passed, the Supreme Court struck down the criminalization of obscene, indecent, and patently offensive information to people under 18. The decision in *Reno v. ACLU* (1977) reflected notions that the Act was overbroad and infringed on First Amendment rights.[162] The Court took issue with the language of CDA, as the terms "indecent" and "patently offensive" extended to anatomical or educational materials regarding sexual functioning and health.[163] Concerns were raised about the effect that such a law could have on the dissemination of healthcare information, especially regarding the ongoing AIDS crisis.[164] This outcome indicates how attempts to curb pornography availability can inadvertently prevent access to other forms of media that are inherently sexually explicit, from birth control or infection prevention methods to diagrams of bodily anatomy.

The Child Online Protection Act (COPA) of 1998 was enacted in response to the decision in *Reno v. ACLU*. COPA criminalized communication of media to persons under the age of 17 that could be deemed harmful using the Miller test for obscenity.[165] The Act gave affirmative defenses to websites that required credit card usage or otherwise endeavored to verify the ages of their users. Further legislation was enacted during the turn of the century. The Children's Internet Protection Act (CIPA) of 2000 mandated that schools and libraries receiving federal funding through the E-rate program, which provides discounts on internet access or devices, block access to obscene/explicit material while on that organization's internet.[166] Additional requirements

[162] *Reno v. ACLU*, 521 U.S 844 (1977)
[163] Ibid.
[164] Columbia University. n.d. "Reno v. ACLU." Global Freedom of Expression. https://globalfreedomofexpression.columbia.edu/cases/reno-v-aclu-2/.
[165] 47 U.S.C. § 231 (2024)
[166] Federal Communications Commission. 2024. "Children's Internet Protection Act (CIPA)." Federal Communications Commission. https://www.fcc.gov/consumers/guides/childrens-internet-protection-act.

include, but are not limited to, monitoring internet use and educating students about online safety and media literacy.[167]

Florida's HB3 addresses similar material as COPA, COPPA, and CIPA. Efforts to protect the data collected from minors were reflected in the Bill, which instructed social media sites to not only terminate accounts created by minors under the age of 14, but also permanently delete all personal information and data related to such accounts. This also extends to individuals ages 14-15 who do not have parental consent.[168] Concerns regarding personal information collection were also incorporated in HB3's mandated age verification, which requires the deletion of any information used to verify age.[169] Moreover, while COPA did not specifically address sexually explicit material in its consideration of harmful content, both CIPA and HB3 endeavor to restrict minors from accessing such media.

RELEVANT CASE LAW

Ultimately, COPA was struck down in *Ashcroft v. ACLU (2004)*. The court found that, after applying strict scrutiny analysis, COPA was unconstitutional and violated the First Amendment provision of free speech. Research demonstrated that filtering and blocking software available for personal download was as effective at regulating minors' access to harmful material as COPA, further evidence that the law was overly burdensome.[170] Indeed, COPA was not the least restrictive means of protecting the interests of minors, and it failed the strict scrutiny test by not being narrowly tailored to employ the least restrictive means.[171] This finding is important

[167] Ibid.
[168] Judiciary Committee, Regulatory Reform & Economic Development Subcommittee, Tramont, Overdorf, Sirois, McFarland, and Rayner. 2024. "CS/CS/HB 3 — Online Protections for Minors." The Florida Senate. https://www.flsenate.gov/Committees/billsummaries/2024/html/3354.
[169] Ibid.
[170] Ashcroft v. ACLU, 542 U.S. 656 (2004)
[171] Cornell University. n.d. "ASHCROFT V. AMERICAN CIVIL LIBERTIES UNION (03-218) 542 U.S. 656 (2004)." Legal Information Institute. https://www.law.cornell.edu/supct/html/03-218.ZS.html.; Ward, Artemus. 2021. "Ashcroft v. American Civil Liberties Union (2002, 2004) | The First Amendment Encyclopedia." Free Speech Center. https://firstamendment.mtsu.edu/article/ashcroft-v-american-civil-liberties-union/.

when anticipating how HB 3 and similar content-based bans or burdens may be regarded by courts.

Similar attempts by other conservative states to limit minors' access to social media and internet websites in this way have garnered pushback from various organizations. The future of Florida's HB3 is unknown in the face of an ongoing Supreme Court case, *Free Speech Coalition v. Paxton*, which challenges a Bill akin to Florida's HB3. Since going into effect in September of 2023, Texas's House Bill 1181 (HB 1181) has required websites with sexually explicit material comprising one-third or more of their overall published content to age-verify users and display health warnings.[172] The two Bills share common features: in HB 3, the metric for a "substantial portion" is 33.3%.[173] Both rely on the language of the Miller test and specifically outline the types of content prohibited, providing examples and definitions.[174] Plaintiff Free Speech Coalition, Inc. (Coalition) argues that HB 1181's age-verification requirement should be subject to strict scrutiny due to its content-based restriction on free speech.[175] Such content-based regulations impinge on First Amendment rights and have historically been subject to strict scrutiny, as in *Ashcroft II*.[176] Coalition further takes issue with using the proportion of a platform's content that is sexually explicit as a metric for determining whether the site must conduct mandatory age verifications.[177] Such content-based bans or burdens have historically been subject to consideration under strict scrutiny.[178] Indeed, the United States District Court for

[172] H.B. 1181, 88th Leg., Reg. Sess. (Tex. 2023) (House Comm. Rep. version)
[173] H.B. 3, 2024 Leg., Reg. Sess. (Fla. 2024) (as filed), https://www.flsenate.gov/Session/Bill/2024/3/BillText/Filed/PDF.
[174] Ibid.; H.B. 1181 (Tex. 2023)
[175] Cornell Law School. 2025. "Free Speech Coalition, Inc. v. Paxton." Legal Information Institute. https://www.law.cornell.edu/supct/cert/23-1122#:~:text=Free%20Speech%20Coalition%20(%E2%80%9CCoalition%E2%80%9D,Court%20has%20applied%20strict%20scrutiny.
[176] "Overview of Content-Based and Content-Neutral Regulation of Speech." n.d. Constitution Annotated. 1https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695/.
[177] Ibid.
[178] Ibid.

the Western District of Texas found that Texas' HB1181 violated First Amendment rights when conducting a strict scrutiny review.[179] Additionally, the district court contended that HB 1181 may be preempted by Section 230 of CDA.[180] Accordingly, the district court granted the Coalition a preliminary injunction preventing HB 1181 from going into effect. These decisions were ultimately vacated by the Court of Appeals for the Fifth Circuit, which held that content-based bans or burdens are to be held to rational basis review, a provision that went unchallenged in *Ashcroft II*.[181]

At present, the question remains as to whether HB 1181 and similar content-based bans or burdens, as in Florida's HB 3, engender the application of strict scrutiny. Precedents set by *Ashcroft II*, which was evaluated under strict scrutiny, suggest that HB 1181 will share the same fate. Due to the similarities between COPA and HB 1181 (e.g., use of the Miller test, provision of age verification), the Coalition maintains that the same level of review should be applied in HB 1181. These common features are also shared by HB 3. Laws that aim to restrict particular types of speech based on its content are subject to strict scrutiny and review, and efforts to criminalize internet materials deemed "harmful to minors" are often struck down based on strict scrutiny.[182]

MILLER TEST & STRICT SCRUTINY TEST

Of pertinence to an examination of laws like HB 3 and HB 1181 is the Miller Test, used to decide whether material can be characterized as obscene.[183] The three prongs ask whether the material "appeals to prurient interests" in light of sociocultural norms, portrays sexual conduct in a "patently offensive way", and "lacks serious literary, artistic, political, or scientific value."[184] If

[179] Ibid.
[180] Ibid.
[181] Ibid.
[182] Holmes, Eric. 2022. "Children and the Internet: Legal Considerations in Restricting Access to Content." Congress.gov. https://www.congress.gov/crs-product/R47049.
[183] Department of Justice. 2023. "Citizen's Guide To U.S. Federal Law On Obscenity." Department of Justice. https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-obscenity.
[184] Cornell Law School. n.d. "obscenity." Legal Information Institute. https://www.law.cornell.edu/wex/obscenity.

content satisfies the criteria outlined above, it may be deemed obscene and consequently unprotected by the First Amendment, a decision made in *Miller v California (1972)*.[185] Many of the laws discussed in this paper, from CDA to HB 3, borrow the language of the Miller test, an effort to more readily restrict certain content.

The strict scrutiny test is a form of judicial review that courts use in determining whether government actions that burden fundamental rights are constitutional.[186] This is the highest standard of review to consider the constitutionality of government actions. Importantly, this analysis entails a presumption of unconstitutionality in regards to the law in question. The burden of proof is shifted to the government, tasked with proving its actions were "narrowly tailored" in the interest of advancing a "compelling government interest" using the "least restrictive means". To be "narrowly tailored" and use the "least restrictive means" are distinct. The concept of being "narrowly tailored" necessitates that "the means chosen are not substantially broader than necessary to achieve the government's interest."[187]

CRITIQUE & REFORM PROPOSAL

The question of whether Florida's HB3 is "narrowly tailored" is magnified when considering existing protections for young users of the internet. The Computer & Communications Industry Association (CCIA) has filed a lawsuit against Florida's HB 3, challenging its constitutionality and requesting an injunction against the bill.[188] CCIA asserts that methods for restricting and monitoring minors' access to online material already exist for

[185] U.S. Department of Justice. 2023. "Citizen's Guide To U.S. Federal Law On Obscenity." Department of Justice. https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-obscenity.; Miller v. California, 413 U.S. 15 (1973)
[186] Cornell Law School. n.d. "strict scrutiny." Legal Information Institute. https://www.law.cornell.edu/wex/strict_scrutiny.
[187] Legal Information Institute. "Strict Scrutiny." *Wex*, Cornell Law School. Last reviewed September 2024. https://www.law.cornell.edu/wex/strict_scrutiny
[188] CCIA. 2024. "CCIA Challenges Constitutionality of Florida's Social Media Rationing Law - CCIA." Computer & Communications Industry Association. https://ccianet.org/news/2024/10/ccia-challenges-constitutionality-of-floridas-social-media-rationing-law/.

specific devices, network providers, internet browsers, and applications.[189] Indeed, parents can program tablets or phones to prevent or restrict access to certain apps or websites.[190] Cell carriers and internet providers offer options for parents to block certain apps or websites, monitor contacts, and restrict screen time on their children's devices.[191] Most major browsers, like Google Chrome and Microsoft Edge, provide parents with options to restrict or monitor the internet activity of children.[192] Moreover, many popular social media apps like Instagram and Snapchat have settings for family members to review and restrict their children's activity, friends, and communication.[193] Notably, HB 3 distinguishes certain social media platforms like Snapchat and Facebook as having addictive features (i.e., infinite scrolling, push notifications, auto-play, live-streaming) that are indivisible from the content such features produce.[194] Interestingly, while HB3 targets platforms with "addictive features," streaming and gaming services like Disney+ and Roblox that share common features, such as infinite scrolling, are not subject to restrictions from HB3.[195] This sort of contradiction suggests that HB 3 does target certain companies based not on their features but their content- a finding that would subject the Bill to strict scrutiny.

There are several alternative approaches to mandated age verification in preventing minors from accessing pornographic or sexually explicit material. One such avenue could be advancing parental controls. Much like what the courts found in *Ashcroft II*, HB 3 and HB 1181 alike will likely fail to demonstrate a need for such restriction on internet access if subject to a review under strict scrutiny, especially with how many parental controls are currently available.

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[189] Ibid.
[190] Ibid.
[191] Ibid.
[192] Ibid.
[193] Ibid.
[194] Ibid.
[195] Memorandum in Support of Renewed Motion for Preliminary Injunction at 1, Computer & Commc'ns Indus. Ass'n v. Uthmeier, No. 4:24-cv-00438-MW-MAF (N.D. Fla. Mar. 28, 2025), https://ccianet.org/library/ccia-et-al-v-uthmeier-nd-fla-mem-in-support-of-renewed-motion-for-preliminary-injunction/.

CCIA is arguing the same in their lawsuit challenging HB 3, highlighting the plethora of restrictions already built into most major internet sites and applications. Following in line with this, efforts to prevent minors from accessing harmful content may focus on adding additional mechanisms through which parents can monitor and manage their children's online behavior, or raise greater awareness about these controls through public service announcements or parent information sessions at public schools.

Better age-verification methods may make compliance with these laws less burdensome. Presently, Florida state requires that websites with a "substantial" amount of pornographic media must verify the age of those accessing the site. Such websites are required to offer at least one means through which users can anonymously verify their age, with options like providing government identification or biometric scans. The service responsible for age verification is to be a third party and unaffiliated with the government. In Louisiana, which has passed age-verification laws of its own, individuals with driver's licenses can access this identification virtually via an app available on IOS and Android called LA Wallet.[196] With this application on one's phone, users can establish their age on a given web browser when searching from that same device, but at the expense of revealing the user's identity. While Louisiana has a promising model, privacy concerns need to be addressed before something like this could be used in wider implications, and access to such applications should be expanded beyond IOS and Android platforms.

These challenges underscore the complexities of implementing a uniform national age verification law. A federal approach would need to address constitutional protections, privacy

[196] Cummiskey, Hailey. "HB 142's Age Verification Requirements for Accessing Porn Online Raise Privacy Concerns." *Louisiana Law Review*, May 30, 2023. https://lawreview.law.lsu.edu/2023/05/30/hb-142s-age-verification-requirements-for-accessing-porn-online-raise-privacy-concerns/.

concerns, and the technical feasibility of enforcing such measures across diverse websites and applications. Without meticulous thought and planning, a national law could face similar legal challenges and practical difficulties as those encountered at the state level.

CONCLUSION

While the intention behind Florida's HB 3 and similar state laws to restrict minors' access to harmful or explicit content is rooted in legitimate concerns for the safety of young users, these laws are fraught with legal, constitutional, and practical challenges. As demonstrated by previous legislation such as the Communications Decency Act and the Child Online Protection Act, attempts to regulate access to sexually explicit material on the internet have often failed under constitutional scrutiny. Florida's HB 3, much like its predecessors, raises serious issues regarding the potential infringement on First Amendment rights and the overbreadth of its measures, which target content rather than behavior. Furthermore, the law's approach to mandatory age verification and the collection of sensitive user data adds to its burdensome nature, highlighting the need for more privacy-focused and less intrusive methods.

Moreover, alternatives such as enhanced parental controls and better age-verification technologies provide viable solutions that are less likely to infringe upon fundamental rights. Parental controls already widely available through devices, internet browsers, and social media platforms suggest that there are less restrictive means to achieve the same goals. These tools can empower parents to monitor and regulate their children's online experiences without the need for overarching governmental mandates that place significant burdens on content creators and internet platforms.

As legal challenges to HB 3 and similar laws continue to evolve, it is essential to consider the lessons of past attempts at regulating online content. The need for any such laws to pass strict

scrutiny, ensuring they are narrowly tailored and serve a compelling government interest, remains paramount. Legislative solutions must not only protect minors but also respect the constitutional rights that are integral to the foundation of the internet. Moving forward, a more comprehensive and less invasive federal solution may provide a more effective and balanced approach to addressing the issues of online safety, privacy, and free speech.

Behind the Screens: How Big Tech Monopolies Control the Digital Market

Writer: Kelsey Hughes

Editor: Keira Anderson

INTRODUCTION

As far back as the 1800s, the United States has put laws in place to protect individuals and corporations against monopolization. While some efforts have been made at both the federal and state levels, current legislative measures have not kept pace with the complexities of the digital economy. Florida's antitrust laws, which are outlined in Chapter 542 of the Florida Statutes, are designed to encourage competition and stop anticompetitive behavior.[197] Contracts, alliances, or plots to impede trade or commerce are forbidden by these statutes.[198] Additionally, they forbid exclusivity, oligarchy efforts, and monopolization combinations or conspiracies.[199] Restricting prohibitions allows more competition to penetrate the market, therefore preventing any single company from dominating the market. These laws were successful in preventing traditional forms of monopolization. Unfortunately, they are unable to handle the particular and changing problems that IT giants and digital platforms present. Existing statutes fail to address monopolistic practices in the digital economy, thus, antitrust laws must be modernized for effective regulation of large technology corporations to combat their monopolization.

HISTORICAL FOUNDATIONS OF ANTITRUST LAWS

When antitrust laws were made, large companies in the oil and steel industries were forming monopolies and price fixing to diminish competition and benefit themselves. Actions like these were why antitrust laws were created: to stop a company from having so much power

[197] Fla. Stat. ch. 542 (2024)
[198] Ibid.
[199] Ibid.

in said market that it can set its own rules and pricing standards for that market. Many laws have since been created to help combat these issues.

The Sherman Act was created in 1890 by Congress to promote economic competitiveness and fairness in markets while still regulating interstate commerce.[200] The first section of the Sherman Act prohibits restraint on trade by outlawing any form of contract, conspiracy, or combination that restrains trade or commerce among the states or with other foreign nations.[201] This includes agreements to fix prices, market division, or boycotts with the intent to restrict trade.[202] The line of whether or not a restraint is illegal is a tough one to find, as not all restraints are illegal as long as they are not unreasonable. Secondly, the Sherman Act prohibits monopolization, which includes the act of corporate control, attempt, or conspiracy to monopolize.[203] This is to prevent a single firm from gaining so much power that it can then leverage all aspects of the market, including trade and pricing. However, there is a need for more investigation into how courts interpret and apply these statutes in digital markets. This is because many of these contemporary platforms use sophisticated algorithms, data control, and a worldwide reach that were not yet known in 1890.

The Clayton Act of 1914 closed loopholes in the Sherman Act and built on it to create more rigorous barriers to ensure that a single company could not gather too much power. It makes illegal "price discrimination," or charging different people differently for the same thing, to hurt competition.[204] For mergers and acquisitions, it prohibits any mergers that substantially reduce competition and would allow any market to remain competitive, and not encourage

[200] Sherman Antitrust Act of 1890, ch. 647, 26 Stat. 209 (codified as amended at 15 U.S.C. §§ 1–7)
[201] Ibid.
[202] Ibid.
[203] Ibid.
[204] Clayton Antitrust Act of 1914, ch. 323, 38 Stat. 730 (codified as amended at 15 U.S.C. §§ 12–27, 29 U.S.C. §§ 52–53)

monopolies to form.[205] Tying contracts are also illegal because they restrict the options of consumers, which in turn undermines competition.[206] This would cover arrangements between a seller and a buyer under which the seller compels the buyer to buy another product to complete the purchase.[207] Also, labor unions are exempt under the Act, so they ignore it.[208]It enables labor unions to collectively bargain for higher wages, better benefits, and improved working conditions.. They are also able to conduct strikes and other tactics without facing any antitrust charges.[209] However, if a labor union is combined with a non-union organization, it must be acting in its self-interest, not that of the non-union; otherwise, the exception does not apply.[210] Although these regulations were first created for markets in the industrial age, it is still a developing topic that merits further investigation into how courts modify and apply them in digital platform environments.

While both of these acts include important legislation, they do not do enough to combat contemporary issues with big tech companies. The Robinson-Patman Act, which was enacted in 1936, applies antitrust laws to limit the power of large digital companies.[211] It also concentrates on price discrimination to help small businesses that ban a seller from selling the same good to one buyer at a different price from the price offered to another buyer.[212] This results in the buyer receiving the best price available on the market. This cycle is bad for small businesses because they are the ones who usually get overcharged, as opposed to national companies such as Amazon or department stores, which can absorb this cost. Digital firms, on the other hand, function differently, dominating markets through data collection, network effects, and strategic

[205] Ibid.
[206] Ibid.
[207] Ibid.
[208] Ibid.
[209] Ibid.
[210] Ibid.
[211] Robinson-Patman Act, 15 U.S.C. §§ 13–13b, 21a (2022)
[212] Ibid.

acquisitions that defy conventional notions of monopolies.[213] Network effects and data accumulation serve as barriers to entry from smaller companies due to large digital companies owning and collecting exclusive data.[214] It is difficult for new competitors to penetrate the market. Although the Robinson-Patman Act intended its regulations to deter monopolistic activity, they mostly target established industries where supply control and price-fixing are used to gauge market strength.

CASE STUDIES

In *FTC v. Meta Platforms, Inc.*, the FTC claimed that Facebook was acquiring and blocking competitors with the intent to become a monopoly.[215] This forced consumers to either use Facebook itself or a Facebook-owned site, since that is all that's left available for them in the market. The case applied sections two of the Sherman Act, however, the law's initial creation could not take large tech companies into account. The law is now being twisted to apply to the complex market and dynamics of digital platforms, indicating a need for reform.[216] There is an urgent need to update antitrust laws to effectively regulate the unprecedented market dominance of digital platforms. By demonstrating how antitrust laws are being stretched, this case addresses behaviors that were not conceivable when the laws were written.

Additionally, the Sherman Act was employed in *In re Google Play Store Antitrust Litigation* to challenge Google's anti-competitive behavior in the Android app distribution market.[217] It was part of a multistate lawsuit, and the U.S. District Court found that

[213] Khan, L. M. (2018). The separation of platforms and commerce. *Columbia Law Review*, 119(4), 973–1098. https://columbialawreview.org/content/the-separation-of-platforms-and-commerce/
[214] Farrell, J., & Klemperer, P. (2007). Coordination and lock-in: Competition with switching costs and network effects. *Handbook of Industrial Organization*, 3, 1967–2072. https://doi.org/10.1016/S1573-448X(06)03031-7
[215] Federal Trade Commission v. Meta Platforms, Inc., No. 1:2020cv03590 - Document 384 (D.D.C. 2024)
[216] OECD. (2021). *The role of competition policy in promoting economic recovery*. Organisation for Economic Co-operation and Development. https://www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economic-recovery-2021.pdf
[217] In re Google Play Store Antitrust Litigation, No. 3:21-md-02981-JD (N.D. Cal. filed Feb. 5, 2021).

Google had engaged in monopolistic conduct with its digital advertising markets.[218] Ultimately, Google faced a settlement of $630 million in restitution for consumers hurt by the company's anticompetitive behavior, on top of a $70 million settlement to resolve claims brought by states suing the company.[219] These included search bias, ad tech dominance, and exclusion of competitors. Due to the massive nature of Google and other companies like it, antitrust laws must be adapted to handle today's dynamic market conditions to prevent the concentration of power of these companies. This case reveals the need for modern antitrust laws that take into account the complexities of digital ecosystems. This includes the dominance that is derived via anti-competitive acquisitions, platform control, and data monopolization. Additionally, there should be more conventional methods, like price-fixing and supply control.

RECOMMENDATIONS

If we wish to preserve a digital marketplace that is genuinely fair and competitive, many reforms still need to be implemented. The ban on self-preferencing is among the most important reforms. Self-preferring is the practice of a dominating business in a market favoring its own goods or services above those of its rivals, which may have anti-competitive consequences.[220] This happens when major online marketplaces, such as Amazon or Google, prioritize their goods and services over those of independent vendors.[221] Despite its seeming subtlety, this has a significant impact on how firms function and expand. Tech giants deprive smaller firms of equitable visibility when they prioritize their listings in search results or grant themselves better

[218] Ibid.
[219] Ibid.
[220] Rustichelli, R. (n.d.). *Self-Preference*. Concurrences. Retrieved May 22, 2025, from https://www.concurrences.com/en/dictionary/self-preference-111802
[221] Khan, L. M. (2017). Amazon's antitrust paradox. *Yale Law Journal*, 126(3), 710–805. https://www.yalelawjournal.org/note/amazons-antitrust-paradox

access to data.[222] Consumers frequently don't realize that the first option they see isn't always the best one; instead, it's the product of biased algorithms run by the platform.

The competition would change if self-preferencing were prohibited. Newer, smaller, and independent enterprises would be able to flourish, and there would be room for real competition. Since these companies frequently lack the resources or contacts to advertise extensively, digital platforms end up being their only chance to gain attention.[223] They lose their chance to succeed when that visibility is altered. Customers would be able to make decisions based on price and quality rather than what the platform wants them to see if big businesses were forced to treat all sellers fairly.[224] This would help bring the digital economy back into balance and level the playing field.

Stricter rules for mergers and acquisitions are another important improvement. Because of the lax present regulations, powerful tech firms can snuff off prospective rivals before they have a chance to expand. Big businesses frequently buy out smaller firms to remove competitors from their market share.[225] In the tech industry, where fresh ideas may scale quickly, this is particularly prevalent. After being purchased, these businesses are either shut down or merged into the larger company, eliminating them as separate rivals.

Moreover, innovation would be preserved if merger restrictions were more stringent. It would guarantee that emerging businesses had an equal chance of survival without being forced out or bought out. In addition to limiting the amount of market power that one corporation can hold, more rules would maintain the openness and diversity of the digital economy.[226] If we

[222] Ibid.
[223] Ibid.
[224] Wu, T. (2018). The curse of bigness: Antitrust in the new gilded age. Columbia Global Reports. https://globalreports.columbia.edu/books/the-curse-of-bigness/
[225] Kamepalli, S. K., Rajan, R. G., & Zingales, L. (2020). Kill zone. *NBER Working Paper No. 27146*. National Bureau of Economic Research. https://doi.org/10.3386/w27146
[226] Id. at 2

don't, we run the risk of a future in which our communication, shopping, searching, and even information access are all dominated by a small number of powerful platforms.

The government's awareness of the issue is demonstrated by the cases of *FTC v. Facebook* and *In re Google Play Store Antitrust Litigation*. Prevention is more important than post-event punishment. This is the reason reform is so crucial. Antitrust rules need to change to meet the particular difficulties facing the tech industry today. If we don't update these policies right away, the same few players will continue to consolidate their influence, giving the already powerful more control and fewer options and innovation.

CONCLUSION

Large digital and technology companies are gaining immense amounts of control and power within their respective markets. This control will likely continue to grow, monopolies will begin to form if no reforms or new laws are created, setting more direct guidelines and rules. Florida is in the right direction, but it needs to dig deeper and fix the laws at the root instead of allowing companies to become too powerful. There is only so much time that can pass until the control of one company is irreversible. Therefore, laws against price discrimination, self-referencing, and mergers and acquisitions need to be formed with a clear focus on digital companies.

A Step Toward Universal Health Coverage?

Aaliyah Cornelio

INTRODUCTION

Imagine being able to visit a doctor without having to worry about premiums, copays, or whether your insurance would pay for the appointment. That is the audacious goal of Florida's House Bill 1603 (HB 1603), a comprehensive plan that seeks to revolutionize access to healthcare by establishing a publicly funded system that is open to all citizens.[227] This measure would provide people the flexibility to select their health care providers and do away with cost-sharing obligations like premiums and deductibles.[228] Proponents claim that it might finally fill the loopholes that prevent millions of Floridians from having health insurance, and they celebrate it as a historic step toward universal coverage. Is it too good to be true, though?

With almost 2.5 million individuals without insurance and many more finding it difficult to pay for medical treatment, Florida is facing an increasingly serious health crisis.[229] The Affordable Care Act aimed to provide health services, protect persons with preexisting illnesses, increase access to health insurance through a federal marketplace, and promote Medicaid expansion to cover those with low incomes.[230] However, due to the state's failure to expand Medicaid under the Affordable Care Act, many low-income people are forced to rely on congested emergency rooms for essential medical care, leaving them in a situation of coverage

[227] H.B. 1603, 2024 Leg., Reg. Sess. (Fla. 2025) (pending).
[228] Ibid.
[229] "Population Uninsured (Aged 0-64 Years) (Census ACS)." *FLHealthCharts*, 2023, https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrpCounts.DataViewer&cid=8733.
[230] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010)

limbo.[231] By providing what seems to be a thorough and fair solution, HB 1603 aims to change that. But underneath its lofty claims are serious weaknesses that could undermine its efficacy.[232]

In the absence of explicit financial support or incentives for medical professionals to take part, the law Bill runs the risk of overloading the current system, which would result in longer wait times, lower-quality care, and, ironically, even more disparities in access. Additionally, the plan might become embroiled in legal disputes before it even becomes law due to possible inconsistencies with both the private insurance market and federal health care rules. A more practical and financially reasonable strategy that strikes a balance between accessibility and long-term viability is required if Florida is serious about growing its healthcare system. Although HB 1603 is a bold step toward Florida's universal health care, it is an unworkable and legally precarious approach that may worsen gaps rather than lessen them due to its lack of a long-term funding mechanism and failure to address provider shortages.

BACKGROUND

As a result, over the years, the health care policy in Florida has evolved dramatically, especially Medicaid and public health programs. Over long-term concerns over costs and budget impact, Florida has previously declined to expand Medicaid under the Affordable Care Act (ACA).[233] So unlike expansion states that now cover people up to 138% of the federal poverty level (FPL), Medicaid coverage in Florida remains more limited, largely to low-income children, pregnant women, seniors, and people with disabilities.[234]

Florida has depended on federally financed programs such as the Low-Income Pool (LIP), which assists hospitals treating uninsured and impoverished patients, to fill coverage gaps

[231] Lyon, Sarah M et al. "Medicaid expansion under the Affordable Care Act. Implications for insurance-related disparities in pulmonary, critical care, and sleep." *Annals of the American Thoracic Society* vol. 11,4 (2014): 661-7.
[232] Ibid.
[233] Patient Protection and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119 (2010)
[234] Leavitt Partners. "Florida Medicaid Expansion: Enrollment & Budget Forecasts." *Common Wealth Fund*, 2019, https://www.commonwealthfund.org/sites/default/files/2024-04/Florida-Medicaid-Expansion_final.pdf.

without extending Medicaid.[235] Through the Medicaid Managed Care program, the state also moved Medicaid beneficiaries into privately managed care plans to enhance service delivery and cost effectiveness.[236] Medicaid expansion often lowers the number of people without insurance and increases access to preventative care, according to studies, including data from the Kaiser Family Foundation.[237] However, Florida has given safety net programs precedence over eligibility expansion.

HB 1603 must abide by federal and state laws about Medicaid and public health. Aside from non-discrimination and requirements for essential health services under the ACA, eligibility, reimbursement, and compliance standards are implemented through federal regulation, primarily under the jurisdiction of the Centers for Medicare & Medicaid Services (CMS).[238] The Florida Agency for Health Care Administration (AHCA) administers state-level Medicaid programs and determines provider participation and managed care rules.[239] HB 1603 is supposed to ensure protection of funding sources and compliance with regulations, regardless of any variance from federal standards.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS v. SEBELIUS

In 2012, the Supreme Court heard a case that questioned whether several of the ACA's most significant provisions were constitutional.[240] This case was known as *National Federation of Independent Business v. Sebelius*.[241] The case centered on the Medicaid expansion that required states to cover more people under the program or risk losing federal funds, and the

[235] Id. at 15
[236] Id. at 16
[237] Kaiser Family Foundation. "Medicaid in Florida." *Medicaid Fact Sheet*, August 2024, https://files.kff.org/attachment/fact-sheet-medicaid-state-FL.
[238] U.S. Centers for Medicare & Medicaid Services, Report on Medicare Spending (U.S. Centers for Medicare & Medicaid Services, 2023), https://www.cms.gov/about-cms/reports/medicare-spending
[239] Florida Agency for Health Care Administration. "Medicaid Policy." Florida Agency for Health Care Administration, https://ahca.myflorida.com/medicaid.
[240] National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)
[241] Ibid.

individual mandate, which requires most Americans to obtain health insurance or pay a penalty.[242] Since the penalty serves as a tax and is well within the taxing power of Congress, the Court saved the individual mandate. It ruled that Congress could provide more Medicaid cash but could not deny states that refused to comply with the Medicaid expansion mandate because it was an unlawful compulsion.[243] This ruling limited federal authority over state Medicaid programs while maintaining a large portion of the Affordable Care Act.[244]

The risks Florida faces in following HB 1603's approach are demonstrated by the Court's conclusion that it was unconstitutionally coercive for the ACA to expand Medicaid as it did. If HB 1603 is an unfunded liability on those providers or the state departments, then HB 1603 likely will be subject to court challenge, in the same way the Court held Congress could not force states to expand Medicaid without adequate financial means to pay for it. Constitutional scrutiny could also be applied due to the absence of any constitutional revenue source for HB 1603, making the measure legally vulnerable and theoretically subject to lawsuits that would effectively stall the bill's implementation.

KING v. BURWELL

The Supreme Court considered that issue in *King v. Burwell*, questioning whether the Affordable Care Act, the law that expanded health insurance to millions of Americans, allowed the government to provide tax breaks to people who purchased health insurance on federally run exchanges.[245] The opponents had argued that while the Affordable Care Act states that subsidies are available to people who are enrolled in exchanges "established by the State," that provision was meant to include everyone who buys insurance on an exchange, including people who

[242] Ibid.
[243] Ibid.
[244] Ibid.
[245] King v. Burwell, 576 U.S. 473 (2015)

purchase it through the federal exchange, in states that use the federal exchange.[246] The Court ruled 6-3 that the subsidies were intended for everyone eligible, regardless of whether that person used the federal government or a state as their exchange.[247] The decision prevented health insurance from becoming unavailable and unaffordable around the nation — the larger goal of the ACA.[248]

Regardless of whether the state makes use of a federally created exchange, the Court upheld the principle that subsidies had to be accessible to all eligible persons. This case demonstrates how important financing sources are to guaranteeing health insurance's accessibility and cost. Similarly, HB 1603 in Florida would encounter major obstacles if the state could not provide a trustworthy long-term funding source. Instead of closing current inequalities in healthcare access, HB 1603 may widen them if the financial framework to sustain affordability is not in place.[249]

REFORM PROPOSALS AND COUNTERARGUMENTS

The long-term fiscal health of Florida's budget comes into question with HB 1603, which is a severe fiscal challenge.[250] A large sum of federal money would flow from Medicaid expansion, but the state would still have to pay some of the costs. To help alleviate the strain on states' budgets, Florida could adopt policies to control costs, like increasing the use of managed-care programs to make services more efficient and reduce administrative costs.[251] Florida could also move away from the traditional fee-for-service method of payment toward a value-based approach, whereby payments to providers are connected to the quality and value of

[246] Ibid.
[247] Ibid.
[248] Ibid.
[249] Edwin Park, "Medicaid Expansion Has Saved States Money," *Center on Budget and Policy Priorities*, August 25, 2020, https://www.cbpp.org/research/health/medicaid-expansion-has-saved-states-money.
[250] Fla. H. Budget Comm., Staff Analysis of H.B. 1603, 2024 Leg., Reg. Sess. (Fla. 2024).
[251] Elizabeth Hinton et al., "10 Things to Know about Medicaid Managed Care," *Kaiser Family Foundation*, June 2023, https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-managed-care/.

care delivered, rather than simply the quantity of services, and use federal waivers (e.g., Medicaid 1115 waivers) to experiment with new methods to contain costs in ways that still ensure access and coverage[252] Yet, there is a concern that expansion of Medicaid would lead to increased state fiscal obligations down the road, that the policies here might not be fully latchproofing future costs.[253]

The intricate web of state and federal health care regulations must be negotiated by HB 1603. Adopting a phased deployment strategy that enables Florida to gradually increase coverage while tracking the financial impact is one way to strike a balance. As Arkansas did by pursuing a private option model that utilized Medicaid dollars to fund private coverage, the state could negotiate with the Centers for Medicare & Medicaid Services (CMS) for greater flexibility to shape Medicaid expansion to its specific needs.[254] Even an incremental path would carry long-term dependence on federal assistance, which is subject to budget cuts and political shifts.

Concerns have been raised by commercial insurers and business associations that Medicaid expansion may cause people to switch from employer-sponsored plans to state-funded coverage, so upending the private insurance market.[255] To bypass this resistance, Florida could adopt a hybrid approach that minimizes the dependence on the private market by relying on Medicaid funds to support private insurance for eligible residents. To keep Medicaid payment rates comparable with private insurance and avoid provider turnover, the state could implement

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[252] Ibid.
[253] Edwin Park, "Medicaid Expansion Has Saved States Money."
[254] Jocelyn Guyer et al., "A Look at the Private Option in Arkansas," *Manatt Health Solutions*, April 2015, https://www.manatt.com/Manatt/media/Media/PDF/Health%20Policy%20Source/PrivateOptionBriefUpdated-April-2015.pdf.
[255] John Holahan et al., "The Impact of the Affordable Care Act on Employer Coverage," *Urban Institute*, October 2016, https://www.urban.org/sites/default/files/publication/84936/2000945-The-Impact-of-the-Affordable-Care-Act-on-Employer-Health-Insurance.pdf.

premium-sharing plans that incentivize enrollees to contribute toward their coverage.[256] This approach would help preserve a certain level of market competitiveness. Even with these steps, insurers argue that Medicaid expansion continues to

create an unfair playing field because it pulls people out of the private insurance market,

potentially making coverage more expensive for those who remain.[257]

Keeping a large enough network of medical professionals ready to take Medicaid patients is a significant obstacle to Medicaid expansion. Low payment rates and administrative constraints are frequently mentioned by doctors as reasons why they choose not to participate.[258] Florida should raise Medicaid reimbursement rates to more closely resemble Medicare rates to promote provider engagement and make it more financially feasible for providers to participate. To facilitate provider participation, the state could also simplify administrative procedures to cut down on paperwork and payment delays, as well as provide loan forgiveness and other financial incentives to medical professionals who treat Medicaid patients, especially in underserved areas.[259]Even with these incentives, opponents warn that Medicaid expansion may put a burden on the state's current provider network, resulting in longer wait times and lower-quality care for participants.

CONCLUSION

[256] Larisa Antonisse et al., "The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review," *Kaiser Family Foundation*, March 28, 2018, https://www.kff.org/medicaid/report/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review/.

[257] Linda J. Blumberg and Matthew Buettgens, "Is ACA Coverage Affordable for Low-Income People? Perspectives from Individuals in Five States," *Urban Institute*, September 2022, https://www.urban.org/research/publication/aca-coverage-affordable-low-income-people-perspectives-individuals-five-states.

[258] Stephen Zuckerman et al., "Physician Participation in Medicaid: Implications for Access to Care," *Urban Institute*, June 2017, https://www.urban.org/research/publication/physician-participation-medicaid-implications-access-care.

[259] Sandra L. Decker, "In 2011 Nearly One-Third of Physicians Said They Would Not Accept New Medicaid Patients," *Health Affairs* 31, no. 8 (2012): 1673–1679, https://doi.org/10.1377/hlthaff.2012.0294.

A great chance to increase access to healthcare in Florida is provided by HB 1603, which would also enhance the state's public health system and fill coverage gaps for those with low incomes. Concerns about the bill's financial viability, possible market disruptions, and the burden on healthcare providers are also raised. The projected expansion needs careful financial planning to prevent undue strain on the state budget, even though it might lower uncompensated care costs and enhance overall health outcomes.

Changes must be made before HB 1603 is fully implemented to ensure its long-term viability. Refining the law will require enhancing provider incentives, obtaining federal waivers for increased state flexibility, and fortifying cost-control mechanisms. Furthermore, with the support of phased implementation and frequent evaluation procedures, Florida might be able to modify the policy as necessary without experiencing abrupt economic shocks.

Legislative changes should ultimately concentrate on preserving financial viability while obtaining extensive coverage and keeping strong medical personnel. To maintain competition in the health care market and increase Medicaid access, policymakers must find a compromise. By tackling these issues, Florida may make progress toward a more sustainable and equitable healthcare system that benefits both providers and patients.