

2024

## Editor-in-Chief's Forward

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### Recommended Citation

Zoë Grimaldi, *Editor-in-Chief's Forward*, 51 HASTINGS CONST. L.Q. 173 (2024).

Available at: [https://repository.uclawsf.edu/hastings\\_constitutional\\_law\\_quaterly/vol51/iss2/2](https://repository.uclawsf.edu/hastings_constitutional_law_quaterly/vol51/iss2/2)

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## Editor-in-Chief's Forward

To the chagrin of my friends and family, I've restarted my election year habit of keeping track of how many days it is until the general election. How the legal community discusses the pressing issues of our time grows even more important to me and our journal as Tuesday, November 5, 2024 inches closer and closer. Every word, every article presents an opportunity to contribute to a national conversation and make an impact on how we think, strategize, and fight for the causes that we care about most. This Issue—featuring humor when things seem bleak, renewed calls for intersectional racial justice, questions about the fate of precedent in American jurisprudence, and gender-affirming care as a protected right—represents one of CLQ's contributions to this conversation.

Of course, no matter what year it is, our journal is always looking for new ways to present cutting-edge legal analysis. More than two years after the Court decided *Dobbs*, we continue to see scholarship on how this case will affect reproductive freedom, but our team wanted a distinct, creative take. *Domestic Supply: A Feminist Proposal*, a satirical essay by Professor Jennifer Hendricks, is truly a breath of fresh air. She artfully plays on arguments defending men's reproductive rights in a way that reminds me of the infamous 1729 essay, *A Modest Proposal*.<sup>1</sup> I hope you too will enjoy how Professor Hendricks's humor turns sexist ideas on their head and goes to the heart of the social, cultural, and legal quagmires that this decision has created in our lives. We need not look further than the Alabama supreme court's decision in *LePage v. Center for Reproductive Medicine*, which held that embryos are now children,<sup>2</sup> to see why advocates for bodily autonomy need essays like this one now more than ever. We need joy so we can return to the fight.

There is perhaps no greater source of joy than belonging to a supportive community. As the lunar new year comes to a close, I've been reflecting on how the amazingly diverse Asian American community, which accounts for

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1. Dr. Jonathan Swift, *A Modest Proposal: For preventing the children of poor people in Ireland, from being a burden on their parents or country, and for making them beneficial to the publick*, THE PROJECT GUTENBERG (David Widger et al. trans., The Project Gutenberg ed., Oct. 17, 2019), <https://www.gutenberg.org/files/1080/1080-h/1080-h.htm> (last visited Jan. 2, 2024).

2. No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024).

more than 37% of San Francisco's population, brings so much joy to my hometown.<sup>3</sup> You'll hear people speaking languages ranging from Cantonese to Tagalog in almost every neighborhood. My husband and I can treat ourselves to authentic Burmese cuisine by walking just a few blocks from our apartment. The world-renowned Asian Art Museum is across the street from UC Law. And yet, our friends and neighbors must continue to fight for acceptance in our city, state, and nation. Hate crimes targeting Asian Americans peaked in 2021 and have since declined by more than 80% according to San Francisco Police Department data released earlier this month.<sup>4</sup> However, all crime statistics suffer from underreporting. And these numbers don't account for the everyday discrimination Asian Americans face simply because of who they are. Mr. Harvey Gee, a fellow San Franciscan, asserts that the most recent Supreme Court case on affirmative action—*Students for Fair Admission v. Harvard*—capitalized on this discrimination as part of an ongoing conservative effort to leverage the experiences of Asian American students for the benefit of White people. His article—*Unprecedented: Exploiting the Asian-American Community to Strike Down Affirmative Action*—documents how the litigants in this case feigned sympathy and exploited stereotypes to dismantle this hallmark achievement of the Civil Rights Movement. After explaining the stereotypes about Asian Americans that haunt racial justice conversations, Mr. Gee walks us through the decades long fight to undermine efforts by higher education admissions programs to promote racial equity. He provides an in-depth analysis to show how the Court discarded precedent as well as the decision's weaknesses as articulated by the dissenting Justices. While this Court will undoubtedly continue to indulge the fallacy of colorblindness, Mr. Gee offers us hope: interracial solidarity. No racial group will have to choose one color over another to access the powers and privileges of higher education if we band together. We believe Mr. Gee's article will help inspire the legal scholarship community to seek out, welcome, and elevate Asian-American perspectives as we continue to build an intersectional racial justice movement in the law and politics.

As I wrote in our last Issue, CLQ remains confident in our ability to curb and one day reverse this Court's erosion of civil rights by publishing as much as we can about how and why this new Court makes its decisions. Professor Russell A. Miller offers us a detailed history of how the Court has bent the doctrine of *stare decisis* in his article: The Purpose and Practice of

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3. U.S. CENSUS, QUICKFACTS: SAN FRANCISCO COUNTY, CALIFORNIA (July 1, 2022), <https://www.census.gov/quickfacts/fact/table/sanfranciscocountycalifornia/PST045222>.

4. Sergio Quintana, *SF city leaders, community coalition discuss fighting AAPI hate*, NBC NEWS BAY AREA (Feb. 8, 2024, 6:04 PM), <https://www.nbcbayarea.com/news/local/san-francisco/sf-city-leaders-aapi-hate/3448039/>.

Precedent: What the Decade Long Debate Over *Stare Decisis* Teaches Us About the New Roberts Court. Everyone learns in their first year of law school about how we aren't supposed to move forward without building on the past, but according to his research, the understanding and application of that foundational principle started to evolve at the beginning of 2018. We expect new Courts to change how we understand and practice law, but how this new Court overturns precedent—the rate, scope, and incongruity—is extraordinary. By examining six pivotal cases, Professor Miller has uncovered four approaches to how and whether *stare decisis* should play a role in the Court's decision to overturn precedent. The article features not only our Justices' perspectives of course, but also their commentary on each other's analysis. Sadly, this article shows that as the Court drifts away from approaches that largely respect precedent, we have seen a drift from civility as well. But I'll also note that this article makes two things clear: first, these battle lines are not as stagnant as you may think, and second, the battle is far from over as a result. Our journal hopes that Professor Miller's article will offer crucial insights for advocates on how to present arguments that account for and appeal to these approaches.

But I will confess that I am most excited to publish our first student note—*Transgender and Gender Fluid Youths' Fight for Rights: Litigation Under the Americans with Disabilities Act and the Equal Protection Clause May Guarantee Youths' National Access to Gender-Affirming Care*—authored by Sophia Ureta-Fulan, who serves as our Co-Executive Acquisitions Editor. I have been looking forward to sharing this note for many reasons, but the recent news of Nex Benedict's death makes this note's discussion about how to protect transgender and gender fluid youth all the more important. Nex was a 16-year-old from Oklahoma who loved their cat, enjoyed watching the *Walking Dead*, and identified as non-binary.<sup>5</sup> This Owasso High School sophomore died the day after three girls followed them into a bathroom.<sup>6</sup> While we don't have the final results of the investigation at the time of this writing, we do know one way this tragedy has affected the LGBTQ+ community. According to Rainbow Youth Project, a nonprofit organization that operates a crisis call center for LGBTQ+ youth,<sup>7</sup> there has been “a 500% increase in the number of calls it received in the last week,

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5. Jose Soto, *Honoring Nex Benedict, 16-Year-Old Non-Binary High School Student Who Tragically Died After School Beating*, HUM, RTS. CAMPAIGN (Feb. 21, 2024), <https://www.hrc.org/news/honoring-nex-benedict-16-year-old-non-binary-high-school-student-who-tragically-died-after-school-beating>.

6. Bevan Hurley, *Oklahoma banned trans students from bathrooms. Now Nex Benedict is dead after a fight at school*, THE INDEPENDENT (Feb. 20, 2024), <https://www.independent.co.uk/news/world/americas/nex-benedict-dead-oklahoma-b2501844.html>.

7. Rainbow Youth Project USA, *About Us* (2023), <https://www.rainbowyouthproject.org/blank-1> (last visited Feb. 26, 2024).

following the death of Nex Benedict.”<sup>8</sup> Ms. Ureta-Fulan’s note offers litigation strategies that would make gender affirming care a protected right, which would help prevent this violence and distress. As her note will explain, gender-affirming care encompasses a spectrum of treatment options, but unfounded fears stoked by polarization have distorted what this care actually is and what it means to those seeking it. The note features a surprising case, *Williams v. Kincaid*, in which the Fourth Circuit sided with LGBTQ+ advocates. She dives into this case to show how the Americans with Disabilities Act and the Equal Protection Clause can protect access to gender-affirming care for young people. Being a kid is hard enough, so we hope that this note will inspire you to help us protect transgender and gender fluid youth, and prevent tragedies like Nex’s death.<sup>9</sup> We all deserve the opportunity to become our authentic selves in the ways that are best for each of us, which includes celebrating our gender identities.

I want to end this message with my humble thanks. I am grateful for the privilege of serving as Editor-in-Chief for *UC Law Constitutional Quarterly* because of my amazing team and the wonderful authors we work with to create this scholarship. Please enjoy Volume 51’s second issue and thank you for participating in our journal community as a reader (and hopefully one day as a contributor).

Best wishes,



Zoë Grimaldi  
Editor-in-Chief, Volume 51  
*UC Law Constitutional Quarterly*

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8. Solcyré Burga, *Crisis Center Receives 500% Increase in Calls Following Nex Benedict’s Death*, TIME (Feb. 23, 2024, 5:38 PM EST), <https://time.com/6802124/nex-benedict-rainbow-youth-project-crisis-call-increase/>.

9. If you or someone you know may be experiencing a mental-health crisis or contemplating suicide, call or text 988 to reach the National Suicide and Crisis Lifeline. To contact the Rainbow Youth Project, dial (317) 643 4888. In emergencies, call 911, or seek care from a local hospital or mental health provider – You are seen. You matter. You are not alone.