UNDERGRADUATE LAW REVIEW AT AUBURN UNIVERSITY

CONTENTS

MASTHEAD

OUR MISSION

The Undergraduate Law Review at Auburn University strives to foster intellectual curiosity, critical thinking, and scholarly discourse among Auburn students interested in the field of law. We aim to provide a platform for aspiring law students to engage in legal research and writing while contributing to meaningful scholarship.

We are committed to promoting diversity, equity, and inclusion within our publication, ensuring that a wide range of perspectives and voices are represented. Through our editorial process, we aim to uphold the highest standards of academic integrity and excellence, while also providing valuable opportunities for students to gain practical experience in legal research, writing, and editing.

Furthermore, we seek to serve as a bridge between undergraduate students and the broader legal community, fostering connections and collaborations that enrich both academic and professional development.

In pursuit of these goals, the Undergraduate Law Review at Auburn University is dedicated to publishing high-quality, thought-provoking pieces that advance understanding of the law and its impact on society.

Letter from the Editor

Dear Reader,

It is with great honor and humility that I present the fifth issue of the Undergraduate Law Review at Auburn University. As Editor-in-Chief, I am appreciative of the support as our organization has continued to expand both on Auburn University's campus and beyond.

Our Law Review focuses on compelling legal issues and cases in which pre-law undergraduate students discuss at length in their classes. My ultimate aspiration is for our readers to see the passion behind the legal research while expanding their knowledge on current and historical legal precedents.

I would like to thank my managing editor, Emily Pouder, along with our exceptional executive team and associate editors, who have worked tirelessly this semester to bring this publication to life. I would also like to thank our faculty advisor Dr. Steven Brown, who continues to serve as a wonderful mentor and the life behind our program. Finally, none of this would be possible without our amazing authors' contributions. Their hard work and dedication to continuously serve the pre-law community is invaluable and appreciated beyond words.

We hope that this issue serves as a source of knowledge and intellectual curiosity for years to come. It has been an honor to serve as Editor-in-Chief, and I look forward to continue watching how the Undergraduate Law Review community flourishes.

Sincerely,

Avery Hillman
Editor-in-Chief
Undergraduate Law Review at Auburn University

Association for Molecular Pathology v. Myriad Genetics

Authored by

Ava Hoffman

Advances in biotechnology have challenged the boundaries of intellectual property law and ownership of genetic material. These developments, specifically in genetic testing and research, have created complex legal questions surrounding discoveries and control of human genomes. *Association for Molecular Pathology v. Myriad Genetics* is a landmark Supreme Court intellectual property law case in which Myriad Genetics obtained patents to the BRCA1 and BRCA2 gene sequences.[1] These patents gave Myriad Genetics exclusive rights to research and test the naturally occurring BRCA gene sequences. Other companies and medical groups sued Myriad Genetics because they believed naturally occurring gene sequences should not be patentable. The U.S. Supreme Court agreed with the Association for Molecular Pathology and declared that naturally occurring DNA is not patent-eligible, while cDNA is patent-eligible. The case *Association for Molecular Pathology v. Myriad Genetics* (2013) is significant because it advanced scientific research by expanding access to genetic information and reshaped intellectual property law by restricting patents on naturally occurring DNA.[2] This essay will provide background on the scientific context and legal holding of the case, then analyze the positive and negative consequences of the ruling, and finally explore the growing relationship between law and the biosciences.

First, the genetic background of this case includes the BRCA1 and BRCA2 genes. These tumor-suppressor gene sequences help prevent cancer by repairing damaged DNA. When there is an inherited mutation in either of these genes, there is an increased risk of breast, ovarian, prostate, and pancreatic cancer. Myriad Genetics, a molecular diagnostic testing and precision medicine company, identified and isolated these gene sequences. Myriad Genetics then patented

---

[1] *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 133 S. Ct. 2107, 186 L. Ed. 2d 124 (2013).
[2] Ibid.

these gene sequences and was the only company with the ability to test for mutations. Testing for these mutations is vital, as people with a mutation, and therefore an increased risk, can take preventive measures such as increased screening, medication, and risk-reducing surgeries. Next, a central factor in this case was the patent eligibility of DNA, with the key argument focusing on whether DNA is a product of nature or a human-made molecule. Deoxyribonucleic acid, or DNA, is a naturally occurring molecule that carries genetic information for all living organisms. Composite DNA, or cDNA, is synthesized in a laboratory and does not exist in nature. Understanding the importance of the BRCA gene sequences, Myriad Genetics, and the differences between DNA and cDNA is essential to understanding the legal context of *Myriad Genetics*.[3] Intellectual property law is a type of law that protects creations of the mind, and patent law is a specialized field of IP law that grants exclusive rights to an invention. The foundation of patent law falls under 35 U.S.C. § 101, which says "whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title."[4] Patents encourage new inventions by offering financial rewards and exclusive ownership to the inventor. Finally, when Myriad Genetics isolated the BRCA1 and BRCA2 gene sequences and obtained patents to those sequences, it created legal challenges over the patentability of genetic material. The parties in *Myriad Genetics* are the Association for Molecular Pathology, the plaintiffs, and Myriad Genetics, the patent holder. Procedurally, the Federal District Court originally decided that Myriad Genetics's patents were not eligible because they are products of nature, but on appeal, "the Court of Appeals for the Federal Circuit reversed the lower court, holding that both isolated DNA strands and cDNA may be patented."[5]

---

[3] Ibid.

[4] The United States Patent and Trademark Office, uspto.gov, Oct. 28, 2025, https://www.uspto.gov/web/offices/pac/mpep/s2104.html

[5] Cartwright-Smith, Lara (2014), Patenting Genes: What Does Association for Molecular Pathology v. Myriad Genetics Mean for Genetic Testing and Research? https://doi.org/10.1177/003335491412900311

The petitioners then appealed to the U.S. Supreme Court, where the Court unanimously held that the gene sequences were a product of nature and therefore not patent eligible. However, The Court ruled that "cDNA which removed codes for anything other than amino acids was not a product of nature and was patent eligible since the removal of the unwanted codes unquestionably created something new." [6]Overall, the scientific and legal background, along with the procedural history and ruling, are essential to understanding related cases, implications of this ruling, and the relationship between law and biosciences.

To fully understand the impact of *Myriad Genetics*, it is crucial to examine how the Court addressed similar cases. Long before Myriad, there was a comparable case, *Diamond v. Chakrabarty* (1980).[7] In this case, a scientist combined multiple bacterial forms to create one organism that could break down components of oil. He then filed for ownership of the process to make the organism and the organism itself. The scientist, Dr. Ananda Mohan Chakrabarty, was granted ownership, and "the court rejected the argument of the patent office board of appeals that 35 U.S.C.S. § 101 was not intended to cover living things such as laboratory-created micro-organisms."[8] The Court believed the "micro-organism constituted a "manufacture" or a "composition of matter"...and thus qualified as patentable subject matter."[9] This decision was the first time that a living organism was deemed patentable and created a broad interpretation of what is patentable under U.S. law. *Diamond v. Chakrabarty* set the initial precedent for patenting biological inventions, which continued to evolve as technology advanced until it reached *Myriad Genetics*, where some key boundaries were defined. After *Myriad Genetics* came another related case, *Ariosa Diagnostics v. Sequenom* (2015).[10] The context behind this case is that scientists at Sequenom, a molecular diagnostic company, discovered that pregnant women's blood contained

[6] *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576-591 (Fed. Cir. 2013).
[7] *Diamond v. Chakrabarty*, 447 U.S. 303-318 (U.S. Court of Customs and Patent Appeals 1980).
[8] Ibid.
[9] Ibid.
[10] *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1375-1380 (Fed. Cir. 2015).

tiny pieces of their baby's DNA (cffDNA). This discovery was revolutionary, leading to the development and patenting of a noninvasive prenatal test. Another company, Ariosa Diagnostics, made its own, similar version of the prenatal test, and Sequenom sued them for patent infringement. The Court decided that Sequenom cannot have ownership of cffDNA because it is a natural phenomenon, nor can they have rights to the discovery method as the "steps of amplifying and detecting, were well-understood, routine, or conventional activity when the application for the patent was filed."[11] The principal idea that "natural phenomenon must include additional features to ensure that the claim is more than a drafting effort designed to monopolize the abstract idea" and that "the process steps are the additional features that must be new and useful"[12] was strongly utilized in this case's ruling. The ruling of *Ariosa Diagnostics v. Sequenom* showcases how strict patent eligibility has become on inventions based on natural biological materials since *Myriad Genetics*.[13] This ruling severely hurt companies that create genetic tests, as the new precedent is that discovery in nature is not enough for a patent, unless a new process or tool was used to find that discovery. This ruling maintains the idea that natural DNA sequences should remain for public knowledge and research, but also limits companies from being able to protect and profit from their work. In summary, both *Diamond v. Chakrabarty* (1980) and *Ariosa Diagnostics v. Sequenom* (2015) demonstrate the evolution of patent law before and after *Association for Molecular Pathology v. Myriad Genetics*.[14]

Now that a complete understanding of the scientific and legal background has been set, along with awareness of similar cases, this essay will analyze both the positive and negative impact *Myriad Genetics* had on genetic research, public health, and innovation in the biotechnology industry.[15] First, this ruling created positive public health effects by offering

---

[11] Ibid.
[12] *Ariosa Diagnostics*, 1377.
[13] *Ariosa Diagnostics. Myriad Genetics.*
[14] *Diamond. Ariosa Diagnostics. Myriad Genetics.*
[15] *Myriad Genetics.*

immediate and inexpensive BRCA testing. By invalidating Myriad Genetics patents on the BRCA1 and 2 genes, more companies were able to offer genetic testing and evaluate patients' potential cancer risk. By increasing competition between laboratories, testing became less expensive and offered more immediate results. This consequently improved public health through greater access to early detection and preventive care. Along with laboratories being able to offer genetic testing, they also gained the ability to test and research the BRCA genes and other genetic sequences. "Patents on genes have been shown to inhibit genetic research in the past" and Myriad's ruling concerning naturally occurring DNA will allow laboratories to research without barriers or fear of patent infringement.[16] The more accessible genetic research is, the more advanced it will become with new testing techniques and innovation in bioinformatics. Not allowing ownership will also permit companies to share discoveries and utilize advances in information to further public health. This ruling sets a moral standard opposing ownership of natural science, improving healthcare policy, and maintaining ethical standards in genetic testing and research.

On the other hand, some are concerned that by restricting gene patents, there are fewer incentives to invest in gene discovery research and limited profit opportunities. This case holding "leaned more towards morality than economics," and because "research and development companies rely heavily on investors," there is concern that the very argument of the petitioners to promote the progress of science could ultimately produce counterproductive results.[17] Without the ability to have ownership of one's discovery, there is reduced motivation to invest and pursue genetic research. The opinions for the ruling on cDNA being eligible for patents are very split due to the nature of cDNA sitting on the boundary between nature and

---

[16] Cartwright-Smith, Lara (2014), Patenting Genes: What Does Association for Molecular Pathology v. Myriad Genetics Mean for Genetic Testing and Research? https://doi.org/10.1177/003335491412900311

[17] Hagan, Sarah Elizabeth, DNA Real Estate: The Myriad Genetics Case and the Implications DNA Real Estate: The Myriad Genetics Case and the Implications of Granting Patent Eligibility to Complimentary DNA of Granting Patent Eligibility to Complimentary DNA 35 Nor. IL. L. Rev. 205–238 (2014).

invention. One perspective is that “the Myriad ruling did give biotech companies a fractional victory by not precluding cDNA from patent eligibility” and “biotech companies [have] an avenue to alter and construe the components of their research so that there still remains an option for patent awards with respect to human genome exploration.”[18] This perspective is in support of cDNA patenting to encourage investment and exploration in genetic research because of the foundational belief that cDNA is not naturally occurring, and there are discovery methods that can be patented as well. This perspective does not come without criticism, as arguments concerning the boundary of synthetic and naturally occurring DNA remain heavily debated. Another viewpoint regarding the patentability of cDNA again concerns stifling the future of genetic research and the ongoing uncertainty this ruling caused. For example, Megan Krench, a successful researcher, raises concerns saying, “What if we were to discover that some company has patented the cDNA for the disease we're studying? Would all of our research suddenly be shut down, unless the company agreed to license the cDNA (that my laboratory created, which we already use)?”[19] This concern about future gene patents affecting ongoing genetic research and limiting scientists’ ability to work freely and have access to knowledge is valid in the sense of wanting to promote the progress of science.

Finally, this leads into the overall analysis of *Association for Molecular Pathology v. Myriad Genetics* (2013) and the balance between innovation and access to scientific knowledge.[20] The ultimate goal that the Court sought was to promote innovation while ensuring access to

fundamental scientific knowledge. Overall, the Court's ruling appropriately protected public natural genetic information “so that individuals are not denied access to the ever-growing

---

[18] Ibid.

[19] Cartwright-Smith, Lara (2014), Patenting Genes: What Does Association for Molecular Pathology v. Myriad Genetics Mean for Genetic Testing and Research? https://doi.org/10.1177/003335491412900311.

[20] Cartwright-Smith, Lara (2014), Patenting Genes: What Does Association for Molecular Pathology v. Myriad Genetics Mean for Genetic Testing and Research? https://doi.org/10.1177/003335491412900311.

knowledge of genetics and their particular sequence; the human genome has now essentially been deemed public domain."[21] This unanimous ruling preserved genetic testing, scientific research, and minimized monopolies in biotech corporations. This ruling also remained consistent with the product of nature doctrine, a legal principle that naturally occurring substances are ineligible patentable subject matter because they are not man-made inventions. The Court claimed that isolating a gene does not qualify as a human invention because the genetic material remains unchanged. The second part of this ruling of allowing cDNA to be patent eligible, encourages gene discovery research, yet it also introduces uncertainty and invites differing interpretations regarding the boundaries of patent law. Without the ability to secure patent protection for their discoveries, researchers and investors have limited motivation to fund and pursue advancements in genetic research. The Court attempted to balance this issue with its cDNA ruling, and in doing so, created debate within the legal and scientific community. The Court left "too much room for misinterpretation and possible economic abuse by not establishing a more concrete method for determining the distinction of patentable genetic components."[22] The lack of clarity is the ruling's key weakness, as it does not provide enough guidance for future issues that may arise. The uncertainty will complicate future patent applications and discourage research due to the fear of litigation, ultimately hindering scientific progress. Critics argue that Justice Thomas's reasoning for his ruling is flawed because he dismisses the differences in isolated and natural DNA, but believed the missing introns in cDNA are meaningful. Since both isolated DNA and cDNA contain the same genetic information, distinguishing one as patentable while excluding the other is logically inconsistent.[23] This

[21] Hagan, Sarah Elizabeth, DNA Real Estate: The Myriad Genetics Case and the Implications DNA Real Estate: The Myriad Genetics Case and the Implications of Granting Patent Eligibility to Complimentary DNA of Granting Patent Eligibility to Complimentary DNA 35 Nor. IL. L. Rev. 205–238 (2014).

[22] Ibid.

[23] Jorge L. Contreras, "Association for Molecular Pathology v. Myriad Genetics: A Critical Reassessment,"

well-articulated explanation highlights the logical inconsistencies in the ruling and how the genetic information remains the same in both situations. Yet, a change in each situation makes it either patent eligible or ineligible. This criticism is why both naturally occurring DNA and synthetic DNA should not be patent-eligible. Although cDNA is created in a laboratory, it contains the same information and has the same function as naturally occurring DNA. This technicality still allows researchers to obtain patents over naturally occurring genetic sequences, violating the product of nature doctrine and hurting the advancement of genetic discoveries. While the Court made an effort to balance innovation and scientific knowledge, it ultimately did not come to the correct conclusion regarding cDNA.

All in all, *Association for Molecular Pathology v. Myriad Genetics* had lasting impacts on the relationship between law and the biosciences.[24] This case illustrates how the courts, through the common law, take on the difficult role of resolving complex scientific questions and setting precedents that guide future cases. Jorge L. Contreras, a legal scholar who specializes in intellectual property law and the law and policy of human genomics, analyzes this relationship thoroughly. He says that "the legal system offers a framework grounded in notions of fair play, justice and public welfare that is flexible enough to adapt to the breathtaking pace of scientific advancement" and how "the law will inevitably adapt, though not without its fits and delays. And in many cases, the end result will not be perfect."[25] Essentially, while the legal system provides a fair structure through common law to handle scientific situations, it has yet to catch up to the pace of scientific progress and is not perfect. The *Myriad Genetics* case is a prime example of how the Court made a strong effort to balance its decision, but in doing so, left unresolved questions.[26] He also makes the point that "for better or worse, generalist judges are

27 Michigan Technology Law Review 1-54 (2020).

[24] *Myriad Genetics.*

[25] Jorge L. Contreras, "Association for Molecular Pathology v. Myriad Genetics: A Critical Reassessment," 27 Michigan Technology Law Review 1-54 (2020).

[26] *Myriad Genetics*.

required to decide cases involving these new technologies. They don't always get it right. They might not understand all of the nuances of the particular technologies before them. Nevertheless, it is a hallmark of our democratic system that legal decisions, even those concerning the most complex technologies, are tried to lay juries and judges."[27] This showcases the complex relationship between the law system and biosciences. It is not reasonable to conclude that a judge or jury can fully understand a particular component of scientific technology when deciding cases. This is proven in *Myriad Genetics,* with the controversy surrounding Justice Thomas's inconsistent reasoning in his ruling.[28] Ultimately, the challenge between law and bioscience is that science advances faster than the Court can adapt, and it is difficult for the Court to constantly redefine the law to remain fair, protect innovation, and public knowledge. It is necessary to bridge the gap between scientific knowledge and legal reasoning for future rulings to help ensure accurate and just decisions.

In conclusion, the 2013 Supreme Court case *Association for Molecular Pathology v. Myriad Genetics* was crucial in advancing scientific research and redefining intellectual property law by expanding access to genetic information and restricting patents on naturally occurring DNA.[29] The case focused on whether DNA and cDNA were products of nature, and whether it was patent-eligible under the current foundations of intellectual property law and patent law. Examining the preceding and subsequent cases helps to understand the impact of the ruling *Myriad Genetics* had on the development of biotechnology patent law.[30] Then, analyzing how the ruling kept DNA public knowledge for research and improved access to testing, but also raised concerns over unclear boundaries and little incentive for research, shows the profound impact. Finally, analyzing the evolving relationship between law and biosciences, and how the

---

[27] Jorge L. Contreras, "Association for Molecular Pathology v. Myriad Genetics: A Critical Reassessment," 27 Michigan Technology Law Review 1-54 (2020).
[28] *Myriad Genetics*.
[29] Ibid.
[30] Ibid.

Court struggles to keep up with scientific advancement and balance ethics and innovation, displays the broader significance of this case. As biotechnology and genetic research continue to advance, *Myriad Genetics* helped define the patent law boundary to balance innovation and ethics, but reminds us that the law must evolve alongside science to ensure innovation and public interest.[31]

[31] Ibid.

From Rehabilitation to Revenue: The Devolution and Ethical Erosion of Work Release Programs in America's Prisons

Authored by

Luci C. Miller

Many prisons across the United States offer work release programs to inmates who meet certain eligibility criteria. These programs allow prisoners to leave their correctional facilities to work for private companies, promoting rehabilitation and offering opportunities to earn income while still incarcerated. Over time, however, these programs have devolved and strayed from their original goals. While work release programs are still presented as beneficial for prisoners, when considering the history and ethics involved, it is clear that powerful reforms must be made for the institution to achieve its original goals.

When the Thirteenth Amendment was ratified in 1865, the common belief was that slavery had been made illegal. However, the Amendment contains an infamous loophole that permits slavery and involuntary servitude as punishment for crime. This loophole has shaped the way our prison system functions by allowing forced labor to be a standard part of the prison experience. "Prisoner of the State" is a common phrase that refers to prisoners who are at the mercy of the state and can be forced into government-approved labor. When prisoners are enrolled in private work release programs, do they become prisoners of the private corporation? The concept of the state essentially leasing prisoners to private corporations for labor seems difficult to justify, but the Thirteenth Amendment protects it, because the Amendment does not specify that the labor must be for a public or state organization. This lacking language means the Thirteenth Amendment protects slave labor even for private corporations, so long as that labor is by prisoners.[32]

While private work release programs are protected by the Thirteenth Amendment, the Eighth and Fourteenth Amendments limit them. The Eighth Amendment protects against "cruel and unusual punishment," a fantastically vague standard by which prison labor can be judged.[33] Prison labor and work release programs frequently tiptoe the line of cruel and unusual

[32] U.S. Const. amend. XIII, § 1.
[33] U.S. Const. amend. VIII.

punishment, with unsafe work conditions resulting in injury as a common issue. Furthermore, while persons at liberty could file a complaint about a similarly dangerous environment, prisoners are not protected under OSHA laws, and prison staff can easily threaten inmates for complaining about unsafe conditions.[34] Work release programs can also easily violate the Fourteenth Amendment's Equal Protection Clause, as employers know that the prisoners cannot leave work without approval or quit without potentially severe consequences. These incarcerated employees can be subject to worse treatment and fewer protections than their nonincarcerated coworkers.[35]

Prisoners exist in a bizarre legal state in which they are not protected from being subjected to slavery but are protected by the Bill of Rights. In 1964, the Supreme Court ruled in *Cooper v. Pate* that prisoners can sue in federal court to address their grievances.[36] This ruling seems progressive; however, its power is dulled by the fact that prisoners still lack so many legal protections. Despite the ongoing limitations on prisoners' legal rights, states have begun experimenting over the past century on ways to balance punishment with self-improvement, creating and expanding rehabilitative programs.

Work release began with the Wisconsin Huber Law of 1913, which was the first law that enabled misdemeanor offenders to leave prison during the day in order to work.[37] Additionally, the law permitted prisoners to leave for school, church, Alcoholics Anonymous meetings, and even union meetings.[38] The main objectives of the program were to assist the prisoners with rehabilitation, allow them to financially contribute to their families, and protect them from falling into poverty. The program also benefited the state by allowing reduced

---

[34] *An Examination of Prison Labor in America: Hearing Before the Subcomm. on Crim. Just. & Counterterrorism on the Judiciary*, 118 Cong. (2024) (statement of Jennifer Turner, Am. Civ. Liberties Union).
[35] U.S. Const. amend. XIV, § 1.
[36] *Cooper v. Pate*, 378 U.S. 546 (1964).
[37] Wisconsin State Statute § 303.08 (1913).
[38] Ibid.

spending on prisons, since the prisoners being off the premises for the majority of the day greatly reduces the costs of operation. For these advantages to the state and public good, Wisconsin implemented this law, with several states following suit after seeing its success.[39]

After the concept of work release had proven valuable when granted to misdemeanor offenders, the state of North Carolina expanded work release to prisoners convicted of felonies in 1959. This was further proven as a success, with the state saving millions a year on the costs of both incarceration and welfare.[40] Over the next several decades, the slow expansion of work release programs continued, and these programs are now present, in some fashion, in the majority of states in the United States. More recently, in 2018, the First Step Act was passed, further expanding funding for rehabilitation programs, including work release.[41] Work release programs have continued to prove effective, with a 2025 study finding that participation in these programs reduced reincarceration by 36.9% and rearrest by 15.5%.[42]As states continue to grapple with overcrowded prisons and relatively high recidivism rates, work release programs remain a useful tool to combat these struggles.

States continue to advertise work release programs today as a way to promote rehabilitation for prisoners and give them an avenue to support their families while incarcerated. By being granted the ability to be in the public world and work at a typical job, prisoners are able to gain exposure to the world outside of prison and begin re-adjusting to life after release. The ability for inmates to make higher wages than they would from typical job assignments within the prison grounds (which can be as little as nothing at all) serves as an opportunity for prisoners to either send their earnings home to their dependents or save up and give themselves

---

[39] Stanley E. Grupp, *Work Release in the United States*, 54 Nw. U. L. Rev. 267 (1963).
[40] Ann D. Witte, *Work Release in North Carolina—A Program That Works!*, 41 Duke L.J. 230 (1977).
[41] Molly Gill, *Threading the Needle: The FIRST STEP Act, Sentencing Reform, and the Future of Criminal Justice Reform Advocacy*, 31 Fed. Sent'g Rep. 107 (2018).
[42] Jessica Reichert et al., *Recidivism Outcomes of Illinois Prison Work Release Program Participants*, 64 Just., Opportunities, & Rehab. 400 (2025).

a head start when they get released from prison.[43] Work release programs also frequently come with an additional benefit: housing in a separate facility with increased safety compared to the regular prison housing. For inmates held at especially dangerous prisons, this serves as a strong motivation to participate in and stay in work release programs, even if they are facing abusive circumstances within the program.

With work release programs providing so many advantages to both the state's incarceration budget and the general public, one could argue that the contribution incarcerated participants make to the overall good of the public outweighs any detriments to their mental and physical well-being caused by the operation of these programs. With pushes for "tough on crime" initiatives returning to popularity in recent years, many Americans may feel that as long as prisoners' constitutional rights are not technically violated, unfair and harmful conditions in prisons and work release programs are permissible. However, one must consider more than legality when evaluating any issue, as laws are meant to adapt to society's evolving social and ethical standards.

Although the original goals of work release programs were mainly to benefit the prisoners and their families, benefits to the state have become the top priority in some districts. One of the most notable and severe examples of this is in Alabama in the case *Council v. Ivey*, where state prisons were alleged to coerce Black inmates specifically into working for little to no pay.[44] It was found that the prisons take a 40% cut of inmates' paychecks to assist in funding the inmates' incarceration, regardless of how much the cost actually was or how much the inmates' paychecks were.[45] In another recent and similar case, *Stanley v. Ivey*, prisoners sued Alabama officials for violating the state's own constitution, which was ratified in 2022 to remove the Exception Clause from the Thirteenth Amendment

---

[43] *An Examination of Prison Labor in America*, at 5.
[44] *Council v. Ivey*, 771 F.Supp.3d 1208, 1221 (2025).
[45] Ibid.

in order to ban forced labor for prisoners.[46] The plaintiffs claimed coercion was used to force them to work, among other claims of mistreatment in work release programs, which were in exact alignment with the claims in *Council*. While most of the charges in *Council* were ordered to be re-stated for failure to state a claim, and the claims in *Stanley* were dismissed under sovereign immunity, the claims in these suits were not found to be false. In fact, the Department of Justice itself published a report a few years prior in 2020, which found that the conditions in Alabama men's state prisons were so egregious that they violated prisoners' constitutional protection against cruel and unusual punishment.[47] These injustices found in Alabama's prison system should not be viewed in isolation; rather, they reflect the nation's long history of using the justice system as a means to abuse and exploit racial minorities.

The racial component of this topic cannot be ignored. There is no state in the U.S. with a majority Black population, yet twelve states (Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia) have prison populations with more than 50% of inmates being Black.[48] With Black Americans facing incarceration rates at nearly five times that of White Americans, it is impossible to ignore the connection to the country's history of racial inequality. Not only is the percentage of Black Americans in prison already disproportionately high, but in instances such as *Council*, Black inmates are also disproportionately selected for work release programs with lower wages and unsafe work conditions. Organizations such as The Sentencing Project have long worked to educate the public on racial disparities that are present at every level of America's prison systems, with clear evidence of Black Americans being targeted by the justice system and not

---

[46] Stanley v. Ivey, No. SC-2025-0058, 2025 WL 2553699 (Ala. Sept. 5, 2025).
[47] U.S. Dep't of Just. C.R. Div., *Investigation of Alabama's State Prisons for Men* (2020), https://www.justice.gov/crt/case-document/file/1297031/dl.
[48] Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (2021), https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf.

receiving equal treatment under the law as their White counterparts.[49]

Work release programs are often riddled with unfair and unsafe conditions, sometimes with consequences one would expect to hear of from the industrial revolution era rather than the modern day. In Louisiana, a prisoner claimed that he was being undercompensated for his labor in his work release program. He claimed that he was given the responsibilities of an order puller, which was a position that paid $16 an hour or more for non-work release employees, while he was only being compensated at $9 an hour.[50] The law states that prisoners in work release programs must be compensated "an amount which is not less than paid for work of a similar nature in the locality in which the work was performed."[51] The court determined that his employer was not violating the law because his official job position was not an order puller, but rather he had several responsibilities, which included "assisting order pullers."[52] While it may be true that the plaintiff's job title was not an order puller and therefore was not required to be compensated for that position, with the fact that the plaintiff felt he was carrying out the duties of an order puller enough to qualify as one, it could be assumed that had he been a non-work release employee, he may have received a promotion to order puller instead of being tasked with performing the duties of an order puller for lower pay. Additionally, in Arizona, prisoners working at an egg farm reported injuries including a broken leg, a hand caught in a machine that lacked safety guards, and a mutilated finger.[53] Not only were each of these injuries preventable by common safety measures, but not all of the prisoners even received adequate medical attention after sustaining such severe injuries. The man whose hand was caught in a machine was taken back to the prison facility instead of directly to a hospital, and ended up losing

---

[49] Ibid.
[50] *Strattman v. Matrana's Produce, Inc.*, 413 So. 3d 1142, 1146 (La. Ct. App. 2025).
[51] 18 U.S.C. § 1761(c).
[52] *Strattman* 1142, 1146.
[53] Elizabeth Whitman, *More Arizona Inmates Report Serious Injuries While Working at Hickman's Egg Farm*, Phoenix New Times (2019), https://www.phoenixnewtimes.com/news/arizona-inmates-report-serious-injuries-hickmans-egg-farm-osha-11367976.

function in his hand and fingers.[54] These instances show that work release programs are not benefiting prisoners as much as they claim to.

No one benefits from work release programs more than the states and private corporations that participate in them. Prisons are allowed to deduct up to 80% of inmates' paychecks for fees to offset the costs of their incarceration, while at the same time receiving the same amount of taxpayer funding as they would without deducting from inmates' paychecks.[55] This essentially allows prison systems to take away money from both prisoners and taxpayers, while benefiting only themselves. Private corporations hiring incarcerated workers are also eligible for the Work Opportunity Tax Credit.[56] This means that not only are private corporations hiring incarcerated workers easily able to get away with underpaying and mistreating the workers, but they also get a tax credit from them as well. These benefits give prison systems and corporations incentives to continue to expand work release programs and keep inmates working in the programs to reap the benefits for as long as possible. Due to the benefits of work release programs, there are several instances of prisoners being denied parole and told they are still too dangerous to be out in public, while they are accepted into work release programs where they are in public, working with others for many hours a day.[57] Taking these facts into consideration, it is difficult to justify modern prison labor from an ethical standpoint.

Due to the ethical issues that arise from modern-day work release programs, discussion of possible remedies has increased. Dr. Heather Ann Thompson, a Pulitzer Prize-winning historian, claims that the American public's general apathy and lack of access to knowledge about prison conditions are the most remediable causes of abuse within the prison system. She argues that a societal shift in which prisoners are considered members of society rather than

---

[54] Ibid.
[55] 18 U.S.C. § 1761(c).
[56] Sarah Payne, *The Economic Impact of Prison Labor for Incarcerated Individuals and Taxpayers*, 2 Prin.L.J. 19 (2023).
[57] *Investigation of Alabama's State Prisons for Men*.

simply dangerous convicts is the first step to reform in these institutions. She encourages the public to demand access to information on correctional facilities in order to advocate for prisoners.[58] Other researchers, Dr. Yvonne Braun and Kaelyn Polick-Kirkpatrick, agree that advocacy by the general public for better prison labor conditions is necessary to reunite work-release programs with their original goals. Braun and Pollock-Kirkpatrick further discuss the need for prison laborers to have the right to unionize, which they are currently denied.[59] The Principal Human Rights Researcher for the American Civil Liberties Union testified that "basic labor protections and meaningful access to redress when their rights are violated should be the minimum standard…" in prison labor systems to meet basic international human rights laws.[60]

With ethical issues and a lack of enforcement of current legal protections for prisoners at every level of work release programs, one must question whether this system can truly be reformed in a meaningful way or if the current-day system has become too corrupt for remedy. The largest contributor, by far, to the problems within work release programs is caused by the exceptions clause of the Thirteenth Amendment. It is for this reason that scholars agree that the exceptions clause must be repealed for true and meaningful reform of work release programs.[61] In addition, there are many other policy changes that can be made to improve conditions for inmates. Scholars strongly recommend ending discriminatory allocation of jobs, guaranteeing prisoners standard labor protections, eliminating arbitrary wage deductions, and providing protection from workplace hazards and injuries as opportunities to improve conditions in work release systems.[62] Addressing these issues would likely improve the morale and efficiency of

---

[58] Heather Ann Thompson, *What's Hidden Behind the Walls of America's Prisons*, N.Y. Observer (2017), https://observer.com/2017/06/whats-hidden-behind-the-walls-of-americas-prisons/.
[59] Yvonne A. Braun et al., *Mass Incarceration and The Problem of Prison Labor*, Bristol Univ. Press (2023) https://www.jstor.org/content/oa_chapter_edited/jj.5590542.9?seq=1.
[60] *An Examination of Prison Labor in America* at 18.
[61] *Mass Incarceration and The Problem of Prison Labor*.
[62] *An Examination of Prison Labor in America.*

incarcerated workers, allowing work release programs to even more effectively benefit both the incarcerated and the public.

Work release programs were originally created to promote rehabilitation and growth for incarcerated individuals. Over time, however, these programs have strayed from their initial goals and become exploitative, profit-driven systems that worsen racial inequality. Protected by the Thirteenth Amendment and sovereign immunity, the programs prioritize state and corporate profit over both prisoner and taxpayer benefits. Unsafe working conditions and the use of coercion reveal how far this institution has strayed from its original purpose. While the likelihood of a constitutional repeal in today's America is unfortunately minuscule, that does not mean that advocacy for repeal is not necessary. As long as prisoners are not legally protected from unfair labor conditions and slavery, work release programs cannot truly benefit prisoners and society to their full potential.

Modern Shifts in Establishment Clause Jurisprudence in the Face of Rising Christian Nationalism

Authored by

Olivia Hillburn

The constitution grants one of the most fundamental rights to the American People: the freedom to practice or or refrain from practicing any religion of their choosing. As the First Amendment and the Free Exercise and Establishment Clauses therein establish, all American citizens possess this right to a freedom of religion without governmental interference; such governmental interference including the establishment of a national religion or the favoring of one religion over another. These protections are vital to the religious rights of the American people, yet they often raise controversial issues within the legal and political sphere. A recent rise in Christian nationalism within the country has led to increasing attempts at infiltrating government with religion, especially by means of the public school system. The Constitution does not exclude students, including impressionable youth, from these religious freedoms outlined in the First Amendment. Yet there have been increasing attempts at asserting Christian ideology and practices into the public school system and into the minds of these children. This intersection of Establishment Clause jurisprudence and the education system has been an area of strong contention for decades, with an abundance of case law setting various precedents for the issue. However, in recent years, with an extreme rise in conservatism and Christian nationalist sentiment, the courts' have shifted their perspectives and rulings on cases relating to religious activity and promotion within schools have shifted to overrule previous precedent and reflect a new understanding of law and society, which has started the American legal system down a potentially dangerous path for our democracy. The Establishment Clause, crafted within the First Amendment to the United States Constitution, states that "Congress shall make no law respecting an establishment of religion."[63] Although the clause is brief, it carries significant importance and weight in relation to the rights of the American people. By order of this clause, the Constitution prohibits the United States government from passing any law that would

[63] U.S. Const. amend. I

establish a state-sponsored religion. The clause also imposes restrictions on government actions that may involve an establishment of religion throughout various fields, one of which being education. Establishment clause jurisprudence within the field of education has long been a prominent and divisive issue, as American citizens have a tendency to crave and demand protection over the impressionable minds of their young kids. Although this protective mindset may be valid, it can become a very complex issue when discussing schooling procedures and ways the government may or may not interfere.

The Court first examined the issue of Establishment Clause jurisprudence within the education system in *Everson v. Board of Education* in 1947.[64] This case, although not directly related to religious practices within a school, laid the groundwork for a precedent of Jeffersonian "church and state" separation and Madisonian neutrality in these types of cases. The case involved the constitutionality of a New Jersey statute that allowed the Board of Education to reimburse parents for transportation costs to bus their children to school, including but not limited to parochial schools. Some taxpayers in the area felt that this reimbursement should qualify as promotion of religion, as it supported students taking the bus to Catholic parochial schools and therefore should constitute a violation of the First Amendment.[65] Although the court ultimately ruled that this New Jersey statute did not violate the First Amendment because it applied equally to all students in the area, both secular and religious, the Court established a practice of applying the Establishment Clause at both the state and federal levels and reaffirmed the use of the Jeffersonian theory of separation of church and state.[66] While *Everson* served as the first case of applying the Establishment Clause to the educational sector, which set a standard for religious neutrality by the state and federal governments, there were a multitude of

---

[64] *Everson v. Board of Education,* 330 U.S. 1 (1947).
[65] U.S. Const. amend. I.
[66] Cooley, Amanda Harmon. *Framers' Fidelity and Thicket Theory in Educational Establishment Clause Jurisprudence,* 58 San Diego L. Rev. 1 (Section III.A.) (2021).

cases in the decades following that have both supported this precedent and opposed it in their rulings.[67]

While there have been an innumerable number of cases examined by the courts regarding the issue of religious practices in the classroom, three landmark cases stand apart in early applications of this jurisprudence: *Engel v. Vitale, Abington School District v. Schempp, and Lemon v. Kurtzman.*[68] These three landmark Supreme Court cases represent a series of decisions throughout the 1960s and 1970s that touched on Establishment Clause jurisprudence and its relation to education.

Firstly, *Engel* refers to a dispute regarding the recitation of prayer in the classroom.[69] In 1962, the State of New York's Board of Education composed and implemented a non-denominational "Regents' Prayer" to be voluntarily recited in the classroom daily. Some students and parents felt that this violated their religious freedom as Jehovah's Witnesses and brought the issue to the courts as a violation of the Establishment Clause. The Supreme Court decided in this case that the compulsion to recite this prayer in New York schools was unconstitutional because it violated the First Amendment on the grounds of an anti-divisiveness and anti-corruption rationale. The government's composition and encouragement of this prayer being recited in the classroom, voluntary or not, would imply the promotion and corruption of a specific religion by the government and fuel divisiveness amongst the students. This led the Court to strike down the use of the prayer and enforcing the Establishment Clause jurisprudence of separating government and religion.[70]

In the year following the *Engel* decision, another case arose out of Pennsylvania which

---

[67] *Everson*.
[68] *Engel v. Vital*, 370 U.S. 421 (1962).; *Abington School District v. Schempp*, 374 U.S. 203 (1963).; *Lemon v Kurtzman*, 403 U.S. 602 (1971).
[69] *Engel*.
[70] Marshall, William P. *Article: The Constitutionality Of School Prayer: Or Why Engel v. Vitale May Have Had It Right All Along,* 46 Cap. U.L. Rev. 339 (Section I. A.) (2018)

involved Bible readings in the classroom.[71] The Abington School District in Pennsylvania had established a practice of daily Bible readings and recitation of the Lord's prayer, although students were allowed to leave the room during these practices if they individually chose to do so. The question in *Abington School District v. Schempp* then became: were these allowances to opt out of participation enough to avoid an Establishment Clause violation?[72] The Court's answer was no; the Establishment Clause is triggered anytime the government's neutrality toward religion is threatened, and Abington School District's requirement of daily Bible readings, although optional, was a clear breach of neutrality. The *Schempp* decision was also the first to assert that "a government action must have a valid secular purpose" in order to avoid Establishment Clause scrutiny, which the Court argued this Bible reading did not achieve because it was an inherently religious practice.[73] The *Engel* and *Schempp* decisions served as early examples of the Court's reasoning for determining if a statute violated the Establishment Clause within a school system.[74] However, these cases did not cite any significant, specific test for this determination - this test would come about in the *Lemon v. Kurtzman* case of 1971.[75]

In *Lemon v. Kurtzman*, the issue of parochial school aid from the government arises once again.[76] This case combined government funding issues in both Rhode Island and Pennsylvania to assess if the aid being provided for religious school teachers and educational materials passed an Establishment Clause examination.[77] The Supreme Court decided in this case that these financial aid regulations were unconstitutional under the Establishment Clause, and in explaining their rationale they produced the "Lemon test" standard for jurisprudence in this area of law. The Lemon test included three prongs for assessing government actions

---

71 *Engel*.
72 *Schempp*.
73 Marshall, William P. *Article: The Constitutionality Of School Prayer: Or Why Engel v. Vitale May Have Had It Right All Along,* 46 Cap. U.L. Rev. 339 (Section I. A.) (2018)
74 *Engel; Schempp*.
75 *Lemon*.
76 Ibid.
77 Ibid.

relating to religion, those three prongs being: (1) the action must have a “secular legislative purpose”, (2) "its principal or primary effect must be one that neither advances nor inhibits religion, (3) “and it must not foster an excessive government entanglement with religion”.[78] This test would prove extremely significant as it would become the standard test used for these types of disputes for decades following the *Lemon* case.[79] The use of this test contributed to the courts’ efforts at assessing these cases with the goal of government neutrality in regards to religion.

The three preceding Supreme Court decisions share the common foundational principle of government neutrality under the Establishment Clause of the First Amendment. However, some scholars argue that government and religion are inherently intertwined, and that attempting to completely dissociate one from the other is folly. Paul Waldron writes for the Brigham Young University Education and Law Journal, that “if the United States Supreme Court's First Amendment analysis of religion in the public schools is pushed to its logical conclusion, the curricula of public schools may well be outside the realm of government control altogether”, due to the deep and unavoidable entanglement of government and religion that already exists.[80] Despite efforts to build a wall of separation between church and state, religious sentiments are embedded into the structure of our government and into the daily lives of American citizens across the country, an attempt to completely erase all religious influence from governmental decisions and actions would be unreasonable and likely unachievable. Waldron goes so far as to say that the Court itself is guilty of breaching the third prong of the *Lemon* test restricting “excessive government entanglement with religion,” because it has established “a policy of continual interference in the form of case-by-case line drawing” when

---

[78] Ibid.
[79] Ibid.
[80] Waldron, Paul. *Comments and Notes: Religion in Our Public Schools: Has the Supreme Court's Treatment of Religion Made Government Intervention in Education Unconstitutional?,* 1996 BYU Educ. & L. J. 96 (Section I) (1996).

deciding matters of Establishment Clause jurisprudence.[81] This government action, in Waldron's eyes, ultimately means that "the Supreme Court has turned the historical non-interventionist stance into a continuing intervention stance by giving to the religion clauses an interpretation that is repugnant to the intent of those who originally framed the amendment's language to protect all religions from government intrusion".[82] In other words, Waldron argues that by inserting itself into these disputes, the Court has already excessively entangled government with religion. By this logic, the separation of church and state cannot truly exist because the government has already enmeshed itself with religion through its very nature and structure.

Also important to note, this impression of religion on the structure and function of our society and judicial system changes over time. Throughout United States history, ideas and opinions about religion have shifted significantly. In recent years, there has been a national shift in the collective understanding of religion's relationship to government and the school system. Growing over recent decades, the country has seen a significant rise in Christian nationalism, with increasing attempts at pushing Christian ideologies and teachings into the classroom. This expanding conservative, Christian movement has had serious ramifications within the legal and educational realms of the American government. In the past decade, states have made efforts to require the Bible be present in all classrooms, at requiring the Ten Commandments be displayed prominently in each classroom, or even by reinstating daily prayer practices within public schools.[83] These efforts serve as clear examples of increasingly bold attempts at entanglement of government with religion and expansion of Christian nationalist thought through the public school system. This shift in religious understanding under the law has not only affected the

---

[81] Ibid. (Section V).
[82] Ibid.

[83] Fisher, Joe. *President Trump's school prayer proposal advances religious showdown.* United Press International (2025).

general public but also influenced the Court's decisions in Establishment Clause matters.

A major shift in First Amendment jurisprudence occurred in the 2022 Supreme Court case *Kennedy v. Bremerton School District*.[84] In *Kennedy*, the Court was asked to evaluate the constitutionality of the Bremerton School District in relation to high school football coach Joseph Kennedy.[85] Kennedy regularly prayed on the fifty-yard line after football games, for which he was reprimanded by the Bremerton school district, and his contract was not renewed. Kennedy argued that this action by the school district violated his right to freely exercise his religion, and the Supreme Court agreed. After applying the *Lemon* test to determine all Establishment Clause cases since 1971, the Court officially disregarded the *Lemon* test as a means to assess the religious/governmental conflict and set a new procedure for evaluating such disputes based on "historical practices and understandings".[86] This significant transition from a total neutrality approach formed by the three-prong *Lemon* test to the "historical" approach used in the Kennedy decision, emphasizing the individual's right to freely exercise even as a public school official on school grounds, shows a clear change in the mindset and practice of the Supreme Court Justices today, likely influenced by the same Christian nationalist sentiment that is concurrently influencing large portions of the general population.

Furthermore, in the states of Louisiana and Oklahoma, legislatures have attempted to require the display of the Ten Commandments and the provision of Bibles in all classrooms, respectively. Although these legislations have quickly been shut down and deemed unconstitutional in accordance with the Establishment Clause by the lower courts, these attempts at such extremely religious legislation being implemented within the school system is a frightening reminder of the shifts occurring within our social, political, and legal system. As George Washington School of Law Professor, Ira Lupu puts it: "the Christian Nationalists

---

[84] *Kennedy v. Bremerton Sch. Dist.,* 597 U.S. 507 (Supreme Court of the United States, 2022).
[85] Ibid.
[86] Ibid.

among us, and among the justices, must be thrilled. For those of us who know and fear the consequences of a state dominated by a single faith, the court's trajectory is chilling".[1287] Exactly as she said, the court's trajectory is chilling; decades of precedent in regards to religious establishment and interference is being altered and overlooked in more recent cases. The Supreme Court's decisions in recent years display a reflection of this growing Christian nationalism that is affecting the entire nation at present. However, it is crucial to the success of our democracy that the Court remember the reasoning used in previous relevant cases like *Engel, Schempp,* and *Lemon*, and recall the need for governmental neutrality on issues of religion in order to avoid division and corruption.[88]

The United States' justice system was founded on certain equalities and freedoms vital to the American dream. All citizens are entitled to practice or refrain from any religion of their choosing, and are also free to do so without any government interference. Such sentiments were affirmed in Supreme Court decisions such as *Engel v. Vitale, Abington School District v. Schempp,* and *Lemon v. Kurtzman*, however in recent years the Court's judgements have shifted away from the trends seen in these landmark cases.[89] Decisions on issues of religious practices in schools have shifted from a rationale of unity and freedom to a rationale of historical understanding and individual liberties. This shift in First Amendment, and specifically Establishment Clause jurisprudence betrays the precedent established in earlier caselaw and reflects a shift seen throughout the nation leaning towards a growing Christian nationalist movement, which could potentially threaten the fabric of our democracy founded on the separation of church and state. It is essential to the endurance of our nation that the rapidly growing entanglement of government and religion occurring at present is checked and

---

[87] New Jersey Law Journal, '*The Christian Nationalists Must Be Thrilled': Court to Rehear School Religion Lawsuit Under Shifting 'Kennedy' Standard* (2022).
[88] *Engel. Schempp. Lemon*.
[89] Ibid.

reevaluated before the damage is irreparable and one of the core principles of our nation laid forth by the Founders is lost.

National Republican Senatorial Committee v. Federal Election Commission

Authored by

Alex Duchemin

Opinion of the Court

Plaintiffs–the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), then-senator J.D. Vance, and then-representative Steve Chabot–seek to enjoin the Federal Election Commission (FEC) and its Commissioners from enforcing § 30116 of the Federal Election Campaign Act (FECA), which limits the amount a national committee may spend in coordination with a candidate. Under § 30116, "the National Committee of a political party may not make any [coordinated] expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds 2 cents multiplied by the voting age population of the state or $20,000."[90] As defined in § 109.37, "A political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of any of the foregoing."[91]

According to § 30110 of FECA, "the national committee of any political party, or any individual eligible to vote in any election for the office of President, may institute such actions in the appropriate district court of the United States as may be appropriate to construe the constitutionality of any provision of this Act."[92] The district court judge must then certify all questions of constitutionality before the case is heard by an en banc circuit court of appeals. In this case, the certified question that was given to the 6th Circuit Court of Appeals is "whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with 'party coordinated communications' as defined in 11 C.F.R. § 109.37."[93] This is the question we must answer.

Before we may answer this question, it must be that the plaintiffs have standing to sue.

---

[90] 52 U.S.C. § 30116 (d)(1)-(3).
[91] 11 C.F.R. § 109.37.
[92] 52 U.S.C. § 30110.
[93] Nat'l Republican Senatorial Comm. v. Federal Election Commission, 712 F.Supp.3d 1017, 1029 (S.D.Ohio, 2024).

To establish standing, plaintiffs must first have suffered an injury in fact, which this Court has defined as “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.”[94] Second, there must be a causal connection between the injury and the conduct challenged. “The injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the Court.[95] Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’”[96]

At the time of the suit, it was clear that Sen. Vance “ha[d] expressed intent to run for re-election in 2028 and ha[d] started to raise campaign contributions in support of that run.”[97] Following his appointment as vice president in November 2024, it is unclear whether he still faces a concrete injury in fact. Vice President Vance no longer must “materially change his behavior because of the FECA's coordinated expenditure limits.”[98] Defendants have also raised concerns about whether Rep. Chabot’s claim has been rendered moot. They base this claim on the fact that Rep. Chabot does not plan to run for election again. Any doubts regarding the mootness of Chabot's claim or Vice President Vance’s standing are irrelevant. This Court has previously ruled that “if one appellee will sustain injury, … this is sufficient to confer standing under Article III.”[99] The FECA’s coordinated expenditure limits have forced the NRSC to “[expend] financial resources in excess of what it would otherwise spend on setting up and funding an independent expenditure unit, and [have] directly barred the NRSC from taking actions it otherwise would have taken.”[100] The FEC has the sole power to enforce any provisions within the FECA; therefore, the NRSC’s injury is connected to the FEC and its

94 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992).
95 Ibid.
96 Ibid.
97 Nat'l Republican Senatorial Comm., 1024.
98 Ibid.
99 Bowsher v. Synar, 478 U.S. 714, 721 (1986).
100 Nat'l Republican Senatorial Comm., 1025.

party-coordinated expenditure limits. Furthermore, a ruling in favor of the committee would "permit [the] NRSC to engage in its desired actions that are currently forbidden by § 30116 of FECA."[101] Per the reasoning provided above, the NRSC has established standing under *Lujan*. Therefore, the matter is fit to adjudicate regardless of whether Rep. Chabot or Vice President Vance may establish standing on their own.

Now that we have established that plaintiffs have standing to sue under Article III, we turn to our previous rulings. In *Buckley v. Valeo*, this Court pointed to a difference between independent expenditures and spending in coordination with a candidate or party, arguing that, "by contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication."[102] Our decision in *Buckley* argued that no coordinated spending limits have been shown to have any "dramatic adverse effect on the funding of campaigns and political associations."[103] Following this logic, we concluded that "the transformation of contributions into political debate involves speech by someone other than the contributor," so restrictions on coordinated spending were not a violation of the First Amendment. Independent restrictions, however, "preclude most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association," and are therefore unconstitutional.[104] *Buckley* was followed by *McConnell v. Federal Election Com'n*., in which this Court upheld a Congressional ban on the usage and solicitation of "soft-money contributions" by political parties and candidates.[105]

A claim similar to that of what plaintiffs make has twice been considered before this

[101] Ibid.
[102] Buckley v. Valeo, 424 U.S. 1, 20 (1976).
[103] Ibid.
[104] Buckley, 21-22.
[105] McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003).

Court: First in *Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n* and again in *Fed. Election Comm'n v. Colorado Republican Fed. Campaign Comm*.[106] In the first case, (*Colorado I)*, the court held that "the First Amendment prohibits application of the Party Expenditure Provision to … an expenditure that the political party has made independently, without coordination with any candidate," following precedent established in *Buckley v. Valeo*.[107] In doing so, the Court expressed "we declined to rule on the broader question argued by the Colorado Party: whether, in the special case of political parties, the First Amendment also forbids congressional efforts to limit coordinated expenditures."[108]

That question was resolved in the second case, *Colorado II*, where the court held that, ruling that "a party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of contribution limits."[109] This decision relied upon the argument that a party's direct contributions to a candidate and party-coordinated expenditures were functionally equivalent and "coordinated expenditures of money donated to a party are tailor-made to undermine contribution limits. [Therefore], the choice is between limiting contributions and limiting expenditures whose special value as expenditures is also the source of their power to corrupt. Congress is entitled to its choice."[110]

Since *Colorado II*, this Court has repeatedly struck down restrictions on campaign spending under the First Amendment. In *Citizens United v. FEC*, we overruled *Austin v. Michigan Chamber of Commerce* and part of *McConnell*, finding statutes barring "independent corporate expenditures for electioneering communications" and the "suppressing of political speech [based on] the speaker's corporate identity" to be violations of the First Amendment.[111]

---

[106] Fed. Election Comm'n v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431 (2001).
[107] Colorado Republican Fed. Campaign Comm., 604.
[108] Colorado Republican Fed. Campaign Comm., 605.
[109] Fed. Election Comm'n, 465.
[110] Ibid.
[111] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010); Austin v. Michigan Chamber of Com., 494 U.S. 652 (1990); Citizens United, 365.

Additionally, in *McCutcheon v. FEC*, this Court ruled that aggregate limits, which "restrict how much money a donor may contribute in total to all candidates or committees" to "[prevent] circumvention of the base limits," are unconstitutional because they "do little, if anything, to address that concern, while seriously restricting participation in the democratic process."[112] Lastly, in *FEC v. Cruz*, this Court ruled that "loan-repayment limitations abridge First Amendment rights by burdening candidates who wish to make expenditures on behalf of their own candidacy through personal loans," arguing that they "deter candidates from loaning money to their [own] campaigns."[113]

Plaintiffs use these cases to argue that "the law [has] changed since 2001, making the *Colorado* decision no longer binding on lower courts."[114] Although *Colorado II* may seem like an outlier with respect to more modern precedent, we find that it remains distinguishable from these cases. *Citizens United* overruled restrictions on independent expenditures by corporations or unions, *McCutcheon* overruled aggregate limits on individual contributions, *Colorado I* held that restrictions on independent political party spending were unconstitutional, and *Cruz* overruled loan repayment limits that restricted candidates from recouping personal losses during campaigns.[115] These cases all strike down limits on expenditures that are considered independent, rather than coordinated. In *Colorado II,* this Court recognized the difference between independent and coordinated expenditures and argued that "independent and therefore functionally true expenditures [qualify] for the most demanding First Amendment scrutiny employed in *Buckley*."[116] No argument within *Colorado II* attempts to deny that independent expenditures are protected speech; rather, the decision focuses on restrictions to coordinated

---

[112] McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 193 (2014).
[113] Fed. Election Comm'n v. Cruz, 596 U.S. 289, 291 (2022).
[114] Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n, 117 F.4th 389, 391(2025).
[115] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010); Fed. Election Comm'n v. Cruz, 596 U.S. 289, 291 (2022); Fed. Election Comm'n v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431 (2001); McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 193 (2014).
[116] Fed. Election Comm'n, 463.

expenditures, which this Court has distinguished from independent expenditures. "Limitations on independent expenditures … impose significantly more severe restrictions on protected freedoms of political expression and association," whereas "coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of contribution limits."[117] *Colorado II*, therefore, is distinguishable from *Citizens United*, *Cruz*, *Colorado I*, and *McCutcheon*. Since these cases are distinguishable from *Colorado II*, they are not, by themselves, enough to overturn the precedent set in *Colorado II*.

Stare decisis is essential to this Court's function. This Court does not take the overruling of existing precedent lightly, and we have only established specific grounds to overrule precedent in rare circumstances. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31* identifies factors that should be taken into account in deciding whether to overrule a past decision: "the quality of reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision."[118] In distinguishing C*itizens United, Cruz*, *Colorado I*, and *McCutcheon* from *Colorado II*, we have already addressed both consistency with related cases and developments since the decision was handed down, so we will turn to the quality of reasoning in *Colorado II*. The quality of reasoning in *Colorado II* does not meet the low standard described in *Janus*. In *Janus*, existing case precedent was overturned because it involved a blatant misunderstanding of prior case precedent and neglected to give careful consideration to the First Amendment.[119] We do not see this kind of misguided reasoning in *Colorado II*. In *Janus*, the Court referenced impossible unworkability as a primary factor in overturning precedent. *Colorado II* does not meet the unworkability standard used in *Janus*. § 30116 is not an outright ban on all coordinated

---

[117] Buckley, 52; Fed. Election Comm'n, 432.
[118] Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 585 U.S. 878, 917 (2018).
[119] Janus, 917.

party spending; it is a set of limits.[120] These limits do not impose undue burden on parties or candidates. Parties and candidates may work within this limit to establish coordinated and targeted ads. Lastly, in *Janus*, the Court explained that an uncertain status*,* lack of clarity, and short-term nature can prove that case precedent does not carry decisive weight.[121] § 30116 provides clear, measurable limits to coordinated party spending; it has been relied upon for over 20 years, and it has become an essential part of the campaign finance system.[122] *Colorado II* exhibits none of the unreliability described in *Janus*. *Colorado II* does not meet any of the standards described in *Janus*, and the cases plaintiffs argue justify overturning *Colorado II* are distinguishable. Therefore, it is this Court's opinion that *Colorado II* should not be overturned.

Citizens United held that "Laws that burden political speech are 'subject to strict scrutiny,' which requires the government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'"[123] That is not the standard that should be applied here. As *Colorado II* explained, "[this Court] has understood that limits on political expenditures deserve closer scrutiny than restrictions on political contributions."[124] The standards applied in *Colorado II* for measuring the burden caused by coordinate expenditure restrictions should be applied in this case: "whether the restriction is 'closely drawn' to match the 'sufficiently important' government interest in combating political corruption."[125]

In *Colorado II*, the government argued that "if coordinated spending were unlimited, circumvention would increase: because coordinated spending is as effective as direct contributions in supporting a candidate, an increased opportunity for coordinated spending would aggravate the use of a party to funnel money to a candidate from individuals and nonparty groups. If a candidate could arrange for a party committee to foot his bills, to be paid with

[120] 52 U.S.C. § 30116 (d)(1)-(3).
[121] Janus, 917.
[122] 52 U.S.C. § 30116 (d)(1)-(3).
[123] Citizens United, 340.
[124] Fed. Election Comm'n, 440.
[125] Fed. Election Comm'n, 446.

$20,000 contributions to the party by his supporters, the number of donors necessary to raise $1,000,000 could be reduced from 500 (at $2,000 per cycle) to 46 (at $2,000 to the candidate and $20,000 to the party, without regard to donations outside the election year)." While reducing the number of donors through coordination with political parties isn't illegal in itself, this Court accepted the rationale that "[if] every dollar of spending could be coordinated with the candidate, the inducement to circumvent would almost certainly intensify." Substantial monetary donations "turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates."[126]

When *Colorado II* was decided, Congress's anti-circumvention rationale was enough to justify the limit on coordinated party expenditures. In *Buckley*, this Court ruled that "it is unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification."[127] The government does not have to produce empirical evidence detailing the effectiveness of the law; instead, it may rely on the circumvention risk within party-coordinated communications as justification. In *Colorado II*, we accepted the government's argument that party-coordinated communications could function as a means for corruption and that the limits were closely drawn to support that sufficiently important interest.

The constitutionality of the contribution limits in § 30116 does not depend on *Colorado II*, but rather on their current fit with the government's interest in stopping corruption. In *McCutcheon*, we explained that "even when the Court is not applying strict scrutiny, we still require a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is 'in proportion to the interest served,' ... that employs not necessarily the least restrictive means but ... a means narrowly tailored to achieve

[126] Federal Election Com'n, 447; Federal Election Com'n, 460; Federal Election Com'n, 435.
[127] Buckley, 26.

the desired objective."[128] Even when Congress may legislate to circumvent corruption, this Court must evaluate whether the statute remains closely tailored to respond to that risk. We cannot uphold limits whose anticorruption justification has become speculative or differentiates itself from the current statutory system.

In 2014, Congress amended § 30116 of the FECA and created multiple exemptions to party-coordinated spending limits. The amendment allows for "segregated accounts" that can be used to "defray expenses incurred with respect to a presidential nominating convention, ... the construction, purchase, renovation, operation, and furnishing of ... headquarters buildings of the party, ... [or] the preparation for and the conduct of election recounts and contests."[129] In amending § 30116 to include exceptions for coordinated spending limits, Congress has effectively broadened what was once a closely drawn law and created a statutory system different from that in 2001. Now, coordinate spending limits do not apply in certain situations, even if the expenditure fits the government's own definition of coordination. This amendment seems to contradict the government's rationale. If § 30116 is truly tailored to stop all political corruption derived from coordinated spending, why make exceptions when "the inducement to circumvent would almost certainly intensify."[130]

The government provides no argument as to why coordinating expenses in the case of the construction of headquarters, election recounts, legal proceedings, and presidential nominating conventions poses any less risk of corruption than other coordinated expenditures. Presidential nominating conventions, legal proceedings, and election recounts all require some level of coordinated party communication with candidates. Furthermore, legal proceedings for a specific candidate or election recounts for a specific race benefit a single candidate, rather than the party as a whole. "This differential treatment between coordinated expenditures related to

[128] McCutcheon, 218.
[129] National Republican Senatorial Comm., 1028.
[130] Federal Election Com'n, 435.

candidates for political office and coordinated expenditures spent on presidential nominations, election recounts, and a party's brick-and-mortar infrastructure implicates whether such a closely drawn fit exists."[131] As we explained in *McCutcheon*, a statute may fail to satisfy the closely drawn test when there is a "substantial mismatch between the government's stated objective and the means selected to achieve it."[132] Therefore, the government does not meet the test described in *Colorado II*, as the amendments to § 30116 have created a substantial mismatch between the restrictions and the government's stated objective.

We conclude that the plaintiffs have standing to contest § 30116 of the FECA. The NRSC has demonstrated concrete, traceable, and redressable injury; therefore, regardless of the status of the individual claims of Mr. Chabot and Mr. Vance, this Court may adjudicate the question. *Colorado II* remains a valid precedent, as it distinguishes between party-coordinated expenditures and independent expenditures. This Court has consistently recognized limits on independent expenditures as First Amendment violations, while upholding limits on coordinated expenditures because they are not a significant intrusion. *Cruz*, *McCutcheon*, and *Citizens United* are distinguishable from *Colorado II* because they struck down limits on candidate loan repayment or independent expenditures, not party-coordinated expenditures. However, the statutory landscape has evolved since *Colorado II*. Amendments to § 30116, which created exceptions on party-coordinated spending for presidential nominating conventions, election recounts, party infrastructure, and legal issues, have created a substantial mismatch between § 30116 and the government's goal of stopping corruption. Under *McCutcheon*, limits that were once upheld can fail the closely drawn test if newer legislation negatively impacts the relationship between the restriction and its stated objective. As amended, § 30116 is no longer narrowly tailored to its stated objective.

---

[131] National Republican Senatorial Committee, 1028.
[132] McCutcheon, 134.

Accordingly, we uphold the precedent set in *Colorado II* but hold that the current limits set in § 30116 are unconstitutional. The judgment of the 6th Circuit is REVERSED.