AMERICAN CONSTITUTION SOCIETY

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Authoritarian Threats to Securing a Multiracial Democracy

Democracy will not come
Today, this year
Nor ever
Through compromise and fear.
-- Langston Hughes, Democracy

Authoritarianism is on the rise once again in America. As part of a broader global recession of democratic institutions and the rule of law, the United States has been labeled as a backsliding democracy by several leading global think tanks. This slide is what Professors Aziz Huq and Tom Ginsburg refer to as constitutional retrogression, "a more subtle, incremental erosion" of democracy as compared to a rapid collapse.

This is not an aberration but rather a part of the country's history. *New York Times* columnist Jamelle Bouie has observed that authoritarianism in America is "a reflection of the fact that American notions of freedom and liberty are deeply informed by both the experience of slaveholding and the drive to seize land and expel its previous inhabitants." While this tension is not new, the January 6, 2021, insurrection and flurry of antidemocratic policies pursued by entrenched state legislatures and a conservative supermajority of the packed Supreme Court have brought these issues to the fore. Less than two years ago, the nation experienced the most significant attack on the peaceful transition of power since the Civil War--an assault that was planned and executed with significant involvement from white nationalist groups.

There has been some progress, with the World Justice Project reporting a small course correction in American democracy's backslide in 2022. The past few years have also brought hard-fought victories for those pursuing a truly multiracial democracy, like the elevation of Justice Ketanji Brown Jackson to the Supreme Court and the election of the most racially and ethnically diverse Congress in our history. But we are still far from fulfilling the promise of a multiracial democracy and this moment calls for collective action.

This Program Guide explores several ongoing threats to democracy and expands on the 2022 Program Guide, "Democracy's Moment of Truth," which featured an in-depth examination of election subversion, accountability for the January 6th insurrection, and threats to voting rights.

This Program Guide is divided into four parts. First, it explores the rise of white nationalism and the legal structures that have enabled the recent resurgence of hate speech and violence. Second, it examines increased attacks on bodily autonomy, with a focus on reproductive rights and gender-affirming care. Third, it delves into the lack of police accountability and the consequences of unchecked police power. Finally, it briefly reviews recent voting rights decisions issued by the Supreme Court. The Program Guide also contains an appendix identifying scholars and advocates from across the ACS network who may be available to speak at chapter events about one or more of these topics.

I. The Heightened Threat of White Nationalism

White supremacy has been a defining characteristic of American society since European colonists arrived on this land. In her 1989 article, *Stirring the Ashes: Race, Class, and the Future of Civil Rights Scholarship*, Professor Frances Lee Ansley defined white supremacy as "a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings." While the term "white supremacy" has been hotly debated in recent years, it cannot be denied that concepts of white dominance and the subordination of all other races were enshrined in our founding documents and remain pervasive in our legal structures.

White supremacy was explicitly written into the Constitution. As Professor Nancy Leong observed, it is a document "written exclusively by white people, to reflect the interests of white people, to protect the rights of white people, and to create a government run by white people." Further, "the United States Constitution is a document that, during every era, has helped further white supremacy," according to Professor Ruth Colker. It took a Civil War, and the subsequent passage of the Reconstruction Amendments, for the founding failure of slavery to be nationally outlawed, with the exception of its continued permitted use as punishment for a crime; and it would take the Civil Rights Movement for the legal structures upholding the period of authoritarian rule known as Jim Crow to begin to be addressed and dismantled. The project of a multiracial democracy in America is a very new and unfinished endeavor.

Historically, racial progress has often been met by a white backlash. The successes of Reconstruction were followed by the retrenchment of Redemption. The gains of the Civil Rights Movement were met with the Southern Strategy and the war on drugs. Author Wesley Lowrey has detailed how the response to the election of the nation's first Black president, Barack Obama, has led to a "whitelash" that includes a surge of violent white nationalism and authoritarianism. The backdrop to this pattern of hard-won progress followed by retreat is a steady trend toward racial and ethnic diversity. The 2020 Census not only showed that America is more racially and ethnically diverse than ever, with growth in Hispanic and Asian

communities fueling most of the country's population increase, but also recorded the first decline of America's non-Hispanic white population.

Media reports of white Americans becoming a permanent racial minority have elicited critique from academics and advocates that such simplistic toplines are not only misleading but also can cause significant damage. As Professors Dowell Myers and Morris Levy have found, such coverage, as opposed to presenting the same demographic data with a framing of growing diversity or an enduring white majority based on a more expansive definition of whiteness, leads to "[m]uch higher levels of anxiety or anger, especially among Republicans." Professors Christopher Sebastian Parker and Christopher Towler undertook a survey of authoritarianism in American history through modern day, and found "authoritarianism in the United States is raced: It belongs to white people. . . . Indeed as long as racial threat remains a fixture in American life, the specter of authoritarianism will continue haunting American democracy." And no one is keeping "racial threat" prevalent more than white supremacists and white nationalists.

Terminology for the far-right, racially motivated, violent movement is an ongoing conversation among activists and academics. The labels of white nationalists, white Christian nationalists, white supremacists, alt-right, and radical right have all been used to describe various factions of the growing movement. For the purposes of this guide, white nationalists will be used to describe individuals and groups who advocate for and work toward the explicit domination of non-white peoples, often through violence and other authoritarian tools, in pursuit of power for white people, and particularly white, cisgender, straight men. The white supremacist philosophy embraced by white nationalist groups often view racial, ethnic, and religious minorities, as well as women, the LGBTQ+ community, and immigrants, as the "other," and as writer Erin Aubry Kaplan posits, as an existential threat to their desired way of life.

The Southern Poverty Law Center (SPLC) found there were 109 white nationalist group chapters active in 2022. White nationalist networks reached historic highs during the Trump presidency and while these groups have "not been able to mobilize grassroot networks to the same degree" since 2021, their numbers have stabilized and white nationalist beliefs, including the great replacement theory, xenophobia, and other racist rhetoric, have become deeply embedded in the political right-wing movement.

A. White Nationalism and Social Media

White nationalists were key actors in the January 6, 2021, insurrection and were frequently the subject of hearings held by the U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol. According to the Committee's final report, white nationalist groups played a significant role in the violence that occurred during the insurrection as both "the first rioters to enter the U.S. Capitol," and inciters who fueled the crowd by utilizing social media to organize and promote the attack. The Committee found that "[s]ocial media played a prominent role in amplifying erroneous claims of election fraud. . . . [that]

echoed President Trump's premature declaration of victory, asserting that he won the election, the Democrats stole it from him, and it was the responsibility of American 'patriots' to combat this supposed injustice." More than two years after January 6th—in which time scores of people have been indicted and convicted for their role in the insurrection, including former President Trump—violent extremists continue to spread conspiracy theories and make violent threats online.

In his article *Dignity and Speech: The Regulation of Hate Speech in a Democracy*, Professor Alexander Tsesis argues that hate speech threatens the promise of a multiracial democracy because white supremacist ideology denies that marginalized communities have the right to equal civil treatment and advocates against their participation in a democratic society. Tsesis states that although the spread of white supremacist hate speech does not always lead to discriminatory violence, it establishes the rationale for attacking certain groups. Even in instances where hate speech does not directly lead to an act of violence, United Nations Secretary-General António Guterres has observed that "[h]ate speech is, in itself, an attack on tolerance, inclusion, diversity and the very essence of our human rights norms and principles."

The internet and, more specifically, social media have become one of the primary tools white nationalists use to recruit new members and spread their agenda. According to Professor Sophie Bjork-James, the internet has made white supremacist hate speech far worse, more visible, and accessible. Between 2012 and 2016, major white nationalist movements saw a 600% increase in Twitter followers. The Tech Transparency Project found that of 221 white nationalist groups designated as hate groups by SPLC and the Anti-Defamation League, more than half had a presence on Facebook despite the company's claims that the platform bans hate organizations. While social media platforms like Facebook and Instagram have made concrete efforts to ban white nationalist accounts with mixed results, other platforms like Twitter have recently reinstated the accounts of members of the white nationalist community under a new policy to grant "amnesty" to previously removed users who had "not broken the law or engaged in egregious spam." Today, white nationalists' accounts also find audiences on platforms such as Instagram, TikTok, Reddit, and YouTube by using coded language to evade basic moderation filters. Social media not only allows white nationalists across the globe to interact but allows people separated by geography to create a camaraderie rooted in their shared white rage.

As Professors Richard Ashby Wilson and Molly K. Land have noted, "governments are no longer the primary regulators of speech." Instead, social media companies are now the de facto regulators of speech with responsibility for monitoring 3.7 billion active social media users, according to a 2019 statistic. With social media fueling white nationalism and domestic terrorism, President Biden, along with academics and advocates for families impacted by mass shootings committed by white nationalists have argued that Section 230 of the federal Communications Decency Act (47 U.S.C. § 230(c)), which currently provides immunity from liability for internet computer services with respect to third-party content generated by its users,

should be amended to create liability for social media companies that allow harmful rhetoric that leads to violent acts committed by their users. The Lawyers' Committee for Civil Rights Under Law and other civil rights organizations have cautioned that "limiting Section 230 immunity could lead to greater censorship of diverse voices online." The Supreme Court heard two cases in 2023 that could have resulted in changes to how courts apply Section 230 immunity, *Twitter v. Taamneh* and *Google v. Gonzalez*, but declined to tackle the question head on. Current law prohibits interactive computer services from being treated as publishers or speakers of information that is provided by another person or entity, making it difficult to hold them responsible for the content that is posted on their sites. The very purpose of Section 230 is to free online services from civil liability for the harmful effects that stem from the content published by users of the services they host. There are some exceptions to Section 230, found in subsection (e), which include criminal law, intellectual property law, communications privacy law, or sex trafficking law; however, there is no exception for hate speech. Creating platform liability is not the only reform currently put forward by progressives. For example, other groups, such as Color of Change, have advocated for regulating optimization algorithms and utilizing antitrust tools to limit the spread of white nationalism.

B. White Nationalism and Mass Shootings in America

Charleston, South Carolina; Pittsburgh, Pennsylvania; Santa Fe; El Paso, and Allen, Texas; Buffalo, New York; Colorado Springs, Colorado; and Jacksonville, Florida are all cities that have, within the past decade, suffered mass shootings committed by men with ties to white supremacist groups and/or beliefs. White extremist ideology has been linked to some of the deadliest mass shootings in the United States. According to a report by the Anti-Defamation League (ADL), right-wing extremists who embraced white supremacist, "accelerationist" propaganda have been responsible for most of the mass killings that have occurred over the past twelve years. Accelerationism is defined by the ADL as "a white supremacist concept arguing for the use of extreme violence to destroy societal structures so that a white ethno-state can be built from their ashes." The ADL report also found that right-wing extremists committed every ideologically-driven mass killing in 2022, with an "unusually high" proportion attributed to white supremacists. Federal law enforcement agencies have warned that white supremacists and other far-right-wing extremists pose a "significant domestic terrorism threat." The combination of litigation that has created legal uncertainty about gun violence prevention regulations (most notably the 2022 Supreme Court decision in *New York State Rifle and Pistol v. Bruen*), efforts in some states to reduce or eliminate barriers to gun ownership, and the active online community of white nationalists who encourage and celebrate these attacks, means that it is likely these race-based mass shootings will continue.

White nationalism is explicitly authoritarian, encouraging and perpetrating acts of violence against those perceived as a threat to white power structures. Recent examples of this exercise of authoritarianism include the mass shootings in Pittsburgh, El Paso, and Buffalo, where each shooter pointed to the great replacement theory as a motivation for their violence against their

victims. According to experts, the accessibility to guns in America has made racially-motivated attacks deadlier. Mass shootings have become the primary method by which right-wing extremists exercise racially-motivated violence.

The epidemic of mass shootings inspired by white nationalist ideology are part of a larger, troubling spike in hate crimes throughout the U.S. The Center for Strategic and International Studies (CSIS) found that white supremacist terrorism, including mass shootings, accounted for two-thirds of terrorist attacks in 2019 and 90% of attacks in the first half of 2020. At nearly the same time, FBI crime statistics indicate that hate crimes, including racially motivated crimes, have also risen in recent years. As President of the National Urban League Marc Morial has stated, the radicalization of white supremacists is a movement of hate-motivated violence and is a "clear and present danger" not only to human life but to a multiracial American democracy.

Gun culture in America, which is unique in the world, finds its greatest support among white men living in rural areas, who also comprise the largest percentage of gun owners in the country. With the aid and encouragement of the gun lobby, which is largely underwritten by gun manufacturers, a largely white and largely male contingent has opposed gun violence prevention legislation, including restrictions on firearms, based on an insurrectionist construction of the Second Amendment. Proponents of this belief system assert that the Second Amendment was designed not only to permit but to empower individuals to use force against the "tyrannical government" when they believe the government threatens individual rights, most importantly the right to bear arms. This approach was adopted by Justice Scalia in his 2008 opinion for the Court in *District of Columbia v. Heller*, claiming a historical understanding that "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny" and a need for a "citizen's militia" to "safeguard against tyranny." Studies have found that gun deaths have increased in the wake of *Heller*, as states with higher rates of gun ownership and weaker laws have experienced the highest overall gun death rates in the nation.

Second Amendment extremism also implicitly presumes that the right to bear arms only belongs to white people, not people of color. The fear of Black and Brown people, rooted less in concern for personal safety then in a fear that marginalized communities will assert their right to full participation in government and society, is one of the driving forces of Second Amendment extremism. In spite of growing bipartisan public support for stricter gun control laws in the wake of a decade of mass shootings, Pew Research has found that white men are consistently the least supportive of gun control measures and are least likely of any demographic to identify gun violence as a problem in the country. Second Amendment extremism is an exercise of white supremacy and has been partially legitimized by the Supreme Court. In 2022, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Court expanded the constitutional right to bear arms outside the home, and stated that in order for a gun control regulation to be upheld, the government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation," as interpreted by the Court in

Heller and *Breun*. As critics have noted, the historical understanding test centers the perspectives of early governments who brutalized Native Americans, enslaved Black people, and oppressed women. Furthermore, today's weapons allow shooters to murder multiple people in 90 seconds or less. As Justice Breyer noted in dissent, "as technological progress pushes our society ever further beyond the bounds of the Framers' imaginations, attempts at 'analogical reasoning' will become increasingly tortured.'"

Bruen promotes Second Amendment extremism because it now allows gun lobbyists like the National Rifle Association to go to court to oppose common sense gun regulations across the country and continue to arm radicalized white men at the expense of the safety of people of color. The decision in *Breun* has already led to gun control opponents advancing even more extreme theories before the Court. In *United States v. Rahimi*, the justices will weigh the constitutionality of Extreme Risk Protection Orders after the Fifth Circuit struck down a federal ban on the possession of a firearm by anyone who is the subject of a domestic violence restraining order, citing *Breun* to reach this result.

Second Amendment extremism not only emboldens white supremacists, but threatens democracy and public safety. Experts recommend gun control as a response to the violent extremism that is perpetrated by white nationalists. CSIS President Seth Jones identified white nationalism as a "deep-seated challenge in the United States, particularly in a culture where individuals have such easy access to guns." Jones argues that there is a stark difference "between U.S. and Europe . . . which also has a significant white supremacist challenge in Germany, the U.K. [and] several Nordic countries. What they don't have, though, is easy access to guns." The United States is an outlier in comparison to other countries — Japan, Australia, the U.K., Germany, and Canada all have gun laws that "require limits on ownership, training with firearms, prohibitions of assault rifles and detailed background checks," according to Dr. Michael Kryzanek.

There is no single, simple solution to address the epidemic of gun violence in America, but Congress and the states have many tools at their disposal to implement gun control measures that can save lives. In 2022, Congress passed the first significant federal gun safety legislation in nearly three decades, but fell short of embracing the types of measures that advocates believe will lead to greatest change. Meanwhile, at the state level, 21 states and the District of Columbia passed life-saving gun safety measures.

The Center for American Progress has proposed that Congress respond to the crisis of violent domestic extremism with the following measures: (1) setting a requirement for a permit-to-purchase firearms; (2) reinstating the federal assault weapons ban; (3) enacting federal Extreme Risk Protection Order (ERPO) laws; (4) restricting individuals convicted of hate crimes from buying guns; (5) and increased Congressional oversight of the gun control industry. Giffords Law Center proposes similar measures, which can also be implemented at the state level. As the

threat of domestic terrorism by white nationalists continues to grow, so does the urgency of action from Congress and the states.

Discussion Questions

1. *Is the proposal for Congress to amend 47 U.S.C. § 230(c) to allow for civil liability consistent with First Amendment principles?*
2. *Social media companies monitor billions of user accounts; would allowing civil liability under 47 U.S.C. § 230(c) for harmful content be too burdensome or impractical for these companies?*
3. *Lawmakers have increasingly responded to the violence perpetrated by white nationalists as both "domestic" and "international" terrorism. Should Congress pass legislation like the Domestic Terrorism Act to make domestic terrorism a federal crime? Or would this contribute to the issue of overcriminalization in America?*
4. *There are significant numbers of Black leaders from Ida. B Wells to the Black Panthers who have highlighted access to guns as a key bulwark against white supremacy. How do we reconcile those arguments with the push against the white supremacist reading of the Second Amendment? Relatedly, what steps might be taken to address the gun violence epidemic in the United States without exacerbating existing racial disparities in the criminal legal system?*
5. *It could take years for Congress to pass common-sense gun reform. Should greater focus be placed on advocating for federal gun control legislation or is there greater promise in pursuing state and local regulation? What are the benefits and drawbacks of each approach? Gun right proponents have found success in challenging gun regulations through litigation (e.g., Heller, Bruen). Are there litigation strategies that gun violence prevention and anti-racist advocates can pursue to address gun violence perpetrated by white nationalists?*

For More Information

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II. Bodily Autonomy

With authoritarianism on the rise globally, experts and advocates have been ringing the alarm over the ways in which gender and sexual identity are weaponized to promote increased state control over bodily autonomy. This exercise of control is done to "polic[e] gender expression and relations" to promote a "hegemonic racial, religious or national identity," according to Professors Zoe Marks and Erica Chenoweth. In the United States, authoritarians have aggressively focused on two areas of relatively recent social progress in their efforts to police bodily autonomy: reproductive rights and gender-affirming healthcare. "Attacks on LGBTQIA+ people and attacks on abortion care are really inextricably linked. They're both attacks on bodily autonomy and the right to take care of our own health, families and future," according to the National Women's Law Center's Heather Shumaker. Even beyond shared values and stakes, experts from both the reproductive rights space as well as the trans advocacy space have observed that the playbook is nearly identical: the same tactics and same hateful rhetoric are being used to advance the same cynical ploy to further marginalize communities for political gain while endangering lives through denial of often life-saving health care. Moira Donegan, writer for *The Guardian*, has noted, "[b]oth abortion bans and transition care bans further the same goal: to transform the social category of gender into an enforceable legal status, linked to the sexed body at birth and to prescribe a narrow and claustrophobic view of what that gender status must mean." This rise in concerted attacks on people who are marginalized by their gender identity and/or sexual orientation while America and other countries experience a rising wave of authoritarianism is no coincidence.

A. Reproductive Justice

In issuing its 2022 decision in *Dobbs v. Jackson Women's Health Org.*, the Supreme Court for the first time in its history took away a constitutional right it had once recognized, eliminating the federal constitutional right to abortion. More than a year after the Court overruled *Roe v. Wade* and *Planned Parenthood of Se. Pa. v. Casey*, it is clear that its decision in *Dobbs* has created a public health and human rights crisis. Currently, fifteen states have implemented near-total abortion bans with two additional states banning abortion at six weeks. The National Partnership for Women and Families has found that more than 36 million women of reproductive age, including 15.4 million reproductive-age women of color, live in states that have or are likely to ban abortion. Women have almost died due to pregnancy complications after being denied medically necessary abortions, have been murdered after traveling out-of-state for an abortion, and are facing million-dollar lawsuits for helping their friends obtain abortion medication. Anti-abortion activists, unsatisfied with their victory in the decades-long mission to overturn *Roe*, and thereby allow states ban abortions, have now set their sights on abortion medication and a nationwide abortion ban.

People of color, immigrants, low-income individuals, youth, people with disabilities, and LGBTQ+ folks have felt and will continue to feel the greatest impact of these abortion restrictions. As Professors Allison M. Whelan and Michelle Goodwin have explained,

"reproductive rights, the policing of reproductive bodies and identities, bodily autonomy, and freedom of 'choice' cannot be fully understood without appreciating peoples' lived experiences and the spectrum of subordination that redounds on the lives of vulnerable people." A report from the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD) found that people of color "have been denied access to the rights and resources that many white women are able to leverage to prevent unwanted pregnancies and overcome abortion barriers." This disparate impact is in some cases an anticipated result of enacted restrictions. The report finds that due to systemic racism, "the political bodies creating these barriers to abortion care are disproportionately white, male, and do not reflect the diversity of the people they represent."

While abortion has often been front-and-center in the national political discourse regarding reproductive rights, it is not the only reproductive right to be targeted by authoritarian forces as a means of control. The United States has also historically engaged in reproductive coercion and forced sterilization against people of color, people with disabilities, and imprisoned individuals. At its core, the debate over reproductive rights has been about regulating sexuality and gender roles, couched in claims of protecting the life and health of fetuses to further this political agenda. As Professor Nancy C. Marcus argues, the Court's decision to eliminate a right fundamental to privacy and personal autonomy is "anathema to the Constitution's promises of liberty that have long stood as the foundation of an ever-evolving and enlightened constitutional democracy."

Advocates and scholars have found that the strength of a nation's democracy and abortion access are interrelated. The International Center for Research on Women (ICRW) and International IDEA have labeled the United States a "backsliding democracy," finding limits on abortion access to be a factor in their determination. The United States' retreat on abortion rights makes it an outlier among nations, but it is not alone in attacking reproductive freedoms. The ICRW found historical links between attacks on reproductive rights and authoritarianism globally as seen in China, Peru, and Iran through reproductive coercion and forced sterilization.

Justice Alito's opinion for the majority in *Dobbs* claimed that the Court was "return[ing] the issue of abortion to the people's representatives" with Justice Kavanaugh in his concurrence adding that the "difficult" issues surrounding abortion policy "will be decided, as the Constitution dictates, by the people and their elected representatives through the constitutional processes of democratic self-government." In response to what Professors Melissa Murray and Kate Shaw describe as "grossly gerrymandered legislatures passing draconian bans" after *Dobbs*, abortion activists have taken the issue to voters in a series of direct democracy measures. In 2022, voters in six states were presented with ballot measures on state protections or limitations to abortion rights. Abortion rights were affirmed by voters in each contest, including states with conservative state leadership, like Kansas.

These efforts have been met with a number of antidemocratic measures from antiabortion activists, aimed at preventing voters from making their voice heard on abortion rights. For example, in Ohio, conservative lawmakers sought to thwart a proposed constitutional amendment enshrining reproductive rights in the state constitution by changing the requirements for an amendment to be put before the voters and approved. Ohio voters rejected this attempt to change the rules. As of June 21, the Ballot Initiative Strategy Center was tracking fifty measures that would "impact or weaken the ballot initiative process" in fourteen states, with 90% of those measures coming from state legislatures, not voters. In Wisconsin, Judge Janet Protasiewicz, who openly supported abortion rights during her campaign, won a seat on the State Supreme Court, shifting the ideological balance of the court in favor of progressives. In response, conservative state legislators began threatening impeachment proceedings before she'd even been sworn in.

Advocates have found some success in defeating abortion bans in state courts by arguing for protection under state constitutions. The composition of state courts continues to be critical to the recognition of constitutional protections of reproductive rights. Interest groups from all sides have poured resources and attention into state judicial elections, which the Brennan Center for Justice has found to have "reshaped" the political landscape for these offices. Despite this newfound focus on state judicial election, many judges continue to be elected with little opposition.

At the federal level, many progressives have been calling on Congress to codify *Roe* through the Women's Health Protection Act (WHPA). Although, the House of Representatives passed the WHPA twice in September 2021 and July 2022, the bill has yet to pass the Senate.

B. Attack on Gender-Affirming Care

Conservatives have not only set their sights on rolling back reproductive rights, but have also engaged in coordinated legislative attacks on transgender individuals at the state level, including through measures to restrict access to gender-affirming health care for people under 18. In 2021, Arkansas was the first state to enact such a ban, with four states following suit through the end of 2022. In 2023 alone, at least 130 bills restricting gender-affirming health care were proposed by thirty states. As of this writing, twenty-one states have now enacted bans on gender-affirming care for young people, with seven additional states considering bans through legislation or executive action. According to the Human Rights Campaign, of the roughly 300,000 people aged 13 to 17 who identify as transgender in the U.S., more than 35% live in states that have passed bans on gender-affirming care for people under 18, with another 10% at risk of losing access to that care in states considering similar bans. And while the majority of bans have focused on minors, some states have begun targeting gender-affirming care for transgender adults, with several states proposing bans through age 26 or restricting care for patients of all ages.

Federal district court judges have halted enforcement of gender-affirming care bans in Arkansas, Florida, Indiana, Kentucky, and Tennessee citing violation of the U.S. Constitution's Equal Protection Clause. Two lawsuits, in Montana and Georgia, are currently pending, and parties in a suit challenging Oklahoma's ban have agreed to set aside the law until the case is heard before the court. In Alabama, the Eleventh Circuit held that the state could likely make it a felony for any individual to prescribe or administer hormone therapy. A state court judge in Missouri denied a request to put a gender-affirming care ban on hold. The Sixth Circuit is set to hear oral arguments based on the bans in Tennessee and Kentucky.

Gender-affirming care is medically necessary for the health and overall wellbeing of transgender and non-binary people, including youth, who experience gender dysphoria or distress that stems from having one's gender identity not match the sex they were assigned at birth. Though it has gained more attention in recent years — in part because of conservative attacks — gender-affirming care has been supported by decades of research. Study after study demonstrates that gender-affirming care reduces depression and suicide rates among transgender children. These findings confirm that bans on gender-affirming care have detrimental consequences on the health of transgender youth. The most credible child health and welfare groups, as well as the majority of Americans, oppose bans on gender-affirming care.

The attacks on gender-affirming care by state governments are not only harmful to the health of transgender youth, but are anti-democratic at their core. As Davis J. Villano states, "the act of Republican-controlled state legislatures of enacting anti-trans legislation reflects both a disregard for serious governing and participation in a modern liberal democracy, as well as a clear shift to the basest level of 'us vs. them' politics." As discussed in the previous section, taking away rights rooted in personal autonomy in our most intimate life choices goes against the promise of liberty that is a part of the foundation of a constitutional democracy.

The government's interference in transgender individuals' ability to make deeply personal decisions about their bodies is also an act of authoritarianism, enforcing the theocratic agenda of the Christian Right. The bodily autonomy of transgender individuals, similar to autonomy for people who can become pregnant, is a threat to "traditional" power structures the Christian Right supports. It is no surprise, then, that the Christian Right has led the charge in both the current attacks on gender-affirming care and the decades-long attacks reproductive rights in America. As ACS President Russ Feingold notes, "[the] multifaceted assault on trans and nonbinary people is part of a broader, white supremacist power play. Part of the same political ploy, driven by the same political forces that fought so hard and so long to overturn *Roe*, that support voter suppression and gerrymandering, and that fearmonger about immigrants crossing our Southern border. Put together, it is an organized resistance to and assault on diverse, multiracial democracy."

The Christian Right's efforts to further marginalize and silence the transgender and non-binary community are even more harmful given that community's historic vulnerability. Medical and sociological literature has demonstrated that social stigma "has resulted in high rates of intimate partner violence, physical abuse, rejection by family of origin, police violence, and negative prejudicial attitudes from service and health care providers." This stigma and its consequences also lead to higher rates of economic precarity, including housing and employment instability. These negative outcomes are even more pronounced for transgender women of color. The ensuing mental health challenges also make transgender individuals more susceptible to suicide and self-harm. Targeting transgender youth and their bodies for political purposes only serves to fuel stigma and its negative consequences. Put simply, bans on gender-affirming health care are not about "protecting children"; instead, they are about maintaining power and resisting the idea of a pluralistic democracy in which sexual minorities, including transgender and non-binary individuals, have the opportunity to full participate as their authentic selves.

In addition to challenging gender-affirming health care bans as violating equal protection, clarifying and strengthening federal laws and regulations can help combat these bans. One solution is to strengthen the legal protections of Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination, including on the basis of sex, by any healthcare program that receives federal financial assistance. In July 2022, the United States Department of Health and Human Services (HHS) proposed a new rule which would revise the interpretation of the ACA to strengthen the antidiscrimination provisions for transgender individuals and other LGBTQ+ individuals to be consistent with the Supreme Court's decision in *Bostock v. Clayton County* decision. *Bostock* held that Title VII's protection against sex discrimination in employment included discrimination on the basis of sexual orientation and gender identity. HHS's proposed rule is currently on hold due to a ruling from controversial federal Judge Matthew Kacsmaryk in *Neese v. Becerra* that *Bostock* does not apply to Section 1557 of the ACA.

The Equality Act is a legislative avenue to achieve similar results. The Equality Act would codify the Supreme Court's decision in *Bostock* and aim to ensure that the Court's reasoning in that case is carried into other federal civil rights laws including public accommodation (Title II) and in federally funded programs (Title VI), as well as the Fair Housing Act, and the Equal Credit Opportunity Act. Most importantly for purposes of protecting the availability of gender-affirming health care, is the amendment to Title VI to include sex, sexual orientation, and gender identity. This change would provide non-discrimination protection for LGBTQ+ individuals in healthcare facilities that receive federal funding. The amendment to Title II of the Civil Rights Act to add an "establishment that provides health care" among the definition of "public accommodation" could also be significant in protecting the right to gender-affirming care by preventing healthcare providers from denying services to transgender patients.

The inclusion of public accommodation could potentially fill the gap left by Section 1557 of the ACA, and the *Bostock* decision. As Sarah Clemens discusses, despite Section 1557 and broad interpretation of *Bostock* by judges outside of the employment context, there is a lack of sufficient protections at the federal level against sex and gender discrimination. Clemens further explains that "[t]he lack of federal laws addressing transgender discrimination results in a 'patchwork' of civil rights protections, where some states recognize transgender discrimination while others do not. As such, transgender people are subject to discrimination in many areas of their lives, including employment, housing, and healthcare, and have few avenues of recourse." Although the Equality Act would assist in remedying the attacks to bodily autonomy and gender-affirming care by states, similar to the Women's Health Protection Act, the legislation is unlikely to pass anytime soon given the composition of and the institutional barriers, including the filibuster, within the Senate.

There is no single solution. To protect access to gender-affirming care for transgender and non-binary individuals, including youth, will require a multifaceted approach using litigation based on state and federal constitutional claims, movement efforts to reverse or prevent state legislatively enacted bans, and pressure on Congress and federal agencies to enact laws and regulations that restrict or at least curtail these harmful measures.

Discussion Questions

1. *Is codifying Roe enough to protect the right to abortion care?*
2. *What policy changes can be enacted at the state or federal level to address the racial, gender, and socioeconomic disparities in access to reproductive care as well as eliminating additional barriers experienced by people with disabilities?*
3. *Criminalization of abortion invites increased surveillance and policing of people who have the capacity to become pregnant. What implications does this have for criminal justice reform?*
4. *State bans on gender-affirming care directly interfere with parents' rights to make decisions about their minor children's health care. What role might these challenges play in attacking these bans?*
5. *In many states that have passed gender-affirming care, the use of puberty blockers (the most common gender-affirming care for transgender youth) remains legal for children with other medical needs, such as precious puberty. How might these exceptions provide for attacks of bans based on equal protection?*
6. *In addition to medical intervention, some states have adopted bans on gender-affirming care that prohibit social transitioning, e.g., adoption of new names, pronouns or appearances. What legal attacks might be made against these measures?*
7. *States like Alaska, Illinois, Minnesota, New Mexico, and California have expanded state protections for transgender people. For example, Alaska expanded Medicaid to include gender-affirming care. What other actions can state governments take to protect transgender and non-binary individuals' access to gender-affirming care?*

For More Information

Judson Adams et al., *Transgender Rights and Issues*, 21 GEO. J. GENDER & L. 479 (2020); Kelly Baden & Jennifer Driver, *The State Abortion Policy Landscape One Year Post-Roe*, GUTTMACHER INST. (June 15, 2023); Sarah Clemens, *A Band-Aid Fix: Section 1557 of the Affordable Care Act and the Need for Federal Laws to Protect Transgender People in Healthcare*, 54 SUFFOLK U. L. REV. 31 (2021); David S. Cohen et. al., *The New Abortion Battleground*, 123 COLUM. L. REV. 1 (2023); Kim Eckart, *Rolling Back Abortion Rights is 'Democratic Backsliding,' UW Political Scientist Says*, UW NEWS (May 3, 2022); Erik Fredericksen, *Protecting Transgender Youth After Bostock: Sex Classification, Sex Stereotypes, and the Future of Equal Protection*, 132 YALE L.J. 1149 (2023); Rose Gilroy et. al., *Transgender Rights and Issues*, 22 GEO. J. GENDER & L. 417 (2021); Rachel Eric Johnson, *Discrimination Because of Sex[ual Orientation and Gender Identity]: The Necessity of the Equality Act in the Wake of Bostock v. Clayton County*, 47 B.Y.U. L. REV. 685 (2022); Yvonne Lindgren, *Dobbs v. Jackson Women's Health and the Post-Roe Landscape*, 35 J. OF THE AM. ACAD. MATRIM. L. 235 (2022); Robert A. Marx, *Transgender Youth Are Under Attack in the War on Science*, EDUC. WK. (Mar. 31, 2022); Nicole Scott, *Trans Rights Are Human Rights: Protecting Trans Minors' Right to Gender-Affirming Care*, 14 DREXEL L. REV. 685 (2022); Marc Spindelman, *Trans Sex Equality Rights After Dobbs*, 172 U. PENN. L. REV. ONLINE (2023); Noreen Verini et. al., *Challenges Facing Lgbtq Youth*, 23 GEO. J. GENDER & L. 179 (2022); *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, ACLU (Aug. 4, 2023); *The Women's Health Protection Act Will Help Ensure That Abortion is Available and Accessible in Our Communities*, NAT'L WOMEN'S L. CTR. (May 30, 2023); THE WHITE HOUSE, *FACT SHEET: The Equality Act Will Provide Long Overdue Civil Rights Protections for Millions of Americans* (June 25, 2021).

III. Lack of Policing Accountability

It has been three years since the killing of George Floyd by Minneapolis police officer Derek Chauvin, who kept his knee on Mr. Floyd's neck for an estimated eight minutes and 15 seconds. Despite the COVID pandemic, the devastating video of George Floyd's murder sparked protests in communities throughout the U.S. during the summer of 2020 and beyond and led to some of the largest Black Lives Matter protests in history in countries throughout the world. Floyd's murder by police seemed poised to inspire a "global reckoning" with racism.

Although there has been promise of change in America, including within the very police force responsible for Floyd's death, the past few years suggest that needed reforms have yet to be implemented and that the status quo has persisted. Police killed at least 1,201 people in 2022, more than in any year in the past decade, according to Mapping Police Violence (MPV). Based on the data MPV has collected to date, 2023 will be similar.

Violence involving law enforcement has "disproportionately impacted Black lives" with numerous scholars "analogizing police brutality to lynchings in the past." According to data collected by MPV, Black people are nearly three times as likely to be killed by police as white people. MPV's survey found that 96% of major city police departments murder Black people at

higher rates than white people. Though violence against Black people garners the majority of media and popular attention, according to MPV, other historically marginalized communities face similar disproportionate rates violence from police. Native Hawaiian and Pacific Islanders are four times as likely to be killed by police as their white counterparts, Native Americans more than 1.5 times as likely, and Hispanics 1.3 times as likely.

Police also continue to face little accountability for the murders committed, with 98.1% of police killings from 2013–2022 resulting in zero charges against officers. There has been a small uptick in the number of officers charged in connection with fatal police shootings, particularly in cases with a high-level of media attention, but the number remains low. These recent prosecutions—for example, those of Derek Chauvin, Kim Potter, and five officers who have been charged with Tyre Nichols' death—demonstrate that prosecutors have a path to individual accountability should they find the will to pursue it. These are rare instances and represent only a handful of the over 1000 police killings each year. And, of course, individual accountability must be pursued in conjunction with systemic accountability.

There are a number of systemic issues that enable police violence to go unchecked. For an exploration of several of these issues and potential related reforms, we encourage you to revisit ACS's 2020 Program Guide on Combatting Anti-Black Racism Through Law and Policy. Among these systemic issues, one that has prompted calls for reform from many corners is the qualified immunity doctrine, which significantly limits the ability of victims of police brutality to recover damages for violations of their civil rights. The qualified immunity doctrine was created by the Supreme Court in *Pierson v. Ray* in 1967 and was dramatically expanded in *Harlow v. Fitzgerald* in 1982, under the justification that public officials must be shielded from unnecessary and burdensome litigation. Under the doctrine, a government official can only be held civilly liable if their conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." The Court set out a two-part test on whether a government official is entitled to qualified immunity: (1) whether the facts alleged by the plaintiff amounts to a constitutional violation; and (2) if so, whether the constitutional right was "clearly established" at the time of misconduct. The "clearly established" law standard has led many lower courts to require nearly identical facts in a previous case for a police officer to be held liable for violating an individual's civil rights.

Because no two cases are completely alike, the clearly established standard is often incredibly difficult to meet. For example, the Eleventh Circuit Court of Appeals has distinguished between an officer firing at a dog surrounded by children, hitting and injuring a child, and an officer firing at a truck and hitting a passenger. This leaves victims of police brutality—usually people of color—without a remedy for violation of their constitutional rights. It also reduces the incentive for police departments and municipalities, who often indemnify officers, to redress or prevent constitutional violations. Further exacerbating matters, in 2009 the Supreme Court held that lower courts need not determine if a constitutional violation occurred if they found that the right had not been clearly established. This has the effect of stunting the development of

constitutional jurisprudence, which feeds into the cycle that limits police accountability. Qualified immunity has led to extreme violations of civil rights by the police without punishment. As Justice Sotomayor has stated in several dissents, qualified immunity "provides an absolute shield for law enforcement officers" and "renders the protections of the Fourth Amendment hollow." Because of qualified immunity, some argue that officers have implemented a "shoot first, think later" approach to policing.

The qualified immunity doctrine not only shields law enforcement from accountability — it is also completely undemocratic. A primary recourse for victims of civil rights abuses is 42 U.S.C. § 1983, which provides that "every person who . . . subject[s], or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Congress drafted Section 1983 with the intent to provide a federal remedy for violation of constitutional rights of Black individuals, yet the Court has "essentially undone the intent of those laws by crafting qualified immunity into an increasingly broad defense from liability that protects even egregious police behavior," according to a student note written by Eva Dickey. As Dickey states, "[e]ven in the midst of a wide reckoning about police misconduct in America, the Court continues to signal its satisfaction with its protective qualified immunity jurisprudence."

The lack of accountability for police misconduct resulting from the qualified immunity doctrine is a threat to American democracy. According to a student note by Hayden Carlos, when the police "are not held accountable for their misdeeds and abuse, they are free to actively terrorize the communities that they swear to protect and serve. When lawlessness, impropriety, and malpractice go unaccounted for and without penalty, improper conduct continues, escalates, and leads to exacerbation and complication of other misdeeds." Although the Supreme Court has tried to modify qualified immunity to "serve" the best interests of the public, "it continues to fail and exacerbates some of the most pressing problems facing a liberal democracy in America" by creating opportunities for police to brutalize and kill people of color without accountability.

In this way, qualified immunity may be considered a tool of authoritarianism. In arguing that the police are not a public good, Professor India Thusi states that police "guard the boundaries of white spaces to maintain white property." White elites are afforded "vigorous protection of property and life," while members of the white poor, working, and middle class are also afforded some sort of lower level of protection. Under Thusi's conception of policing, Black people are viewed as a threat to white interests and are heavily surveilled by law enforcement. Some of this surveillance involves aggressive search and frisk policies, the use of racial profiling, and pretextual traffic stops. In Thusi's reading, it is the role of police to maintain law and order in a white supremacist society by putting Black people in their place, even if that involves brutality. Qualified immunity allows officers to escape any accountability for their violence in serving this role.

Because qualified immunity is judge-made law, the doctrine can be revised or repealed by Congress at any time. The Ending Qualified Immunity Act is one way to achieve this. This bill would:

> Amend Section 1983 to explicitly state that the qualified immunity doctrine invented by the Supreme Court does not provide officials that brutalize or otherwise violate civil rights with defense or immunity from liability for their actions; and,
>
> Clarify Congress' original intent for Section 1983 to allow people to sue state and local officials, including police officers for violations of their constitutional rights, and note the history and necessity of this protection.

Similar language was included in the George Floyd Justice in Policing Act which passed the House in 2020 and 2022, but received heavy opposition from police union leaders and conservative politicians who argue that qualified immunity is not an impediment to legitimate claims and that proposed reforms would lead to frivolous lawsuits against police. Meanwhile, at the state level, activists are pushing to abolish qualified immunity for violations of their state constitutions. Colorado passed landmark legislation ending qualified immunity in state court in 2020 and New Mexico followed suit in 2021. Possibly, these efforts at the state level may help to build momentum for reform of qualified immunity at a national level.

Discussion Questions

1. *Along with the movement against qualified immunity, there is also a movement to abolish the police. To what extent would eradicating qualified immunity remedy the effects of police brutality? How might it build energy towards or detract energy from more holistic reforms, like police abolition?*
2. *President Biden implemented the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, which was supposed to be "the most significant police reform in decades." Yet, the executive order failed to address qualified immunity. While congressional action remains unlikely, how can President Biden address qualified immunity in the meantime?*
3. *Both liberal and conservative justices have traditionally supported qualified immunity, with most decisions being decided 9-0 or 8-1. What accounts for this near unanimity among Supreme Court justices? What would it take to bring the judiciary into greater alignment with everyday Americans on this issue?*

For More Information

David Deerson, *The Case Against Qualified Immunity*, NAT'L REV. (July 13, 2020); Katherine Enright & Amanda Geary, *Qualified Immunity and the Colorblindness Fallacy: Why "Black Lives (Don't) Matter" to the Country's High Court*, 13 GEO. J.L. & MOD. CRITICAL RACE PERSP. 135 (2021); S. Rafe Foreman, *Qualified Immunity: A Legal Fiction That Has Outlived Utility*, 48 OHIO N. UNIV. L. REV. 503 (2022); Natalie T. Frandsen, *Bulletproof Vests & Lawsuit Threats: The Need for Renovation of Law Enforcement Qualified Immunity,* 48 OHIO N. UNIV. L. REV. 341 (2022); John

Guzman, *Debunking Myths About Qualified Immunity and Examining Its Dangerous Realities*, NAACP LEGAL DEF. FUND (Jan. 19, 2023); Laura Pitter & Olivia Ensign, *Killing of Tyre Nichols Shows Structural Problems in US Policing*, HUM. RTS. WATCH (Jan. 27, 2023); *Qualified Immunity*, EQUAL JUST. INITIATIVE (last visited Aug. 17, 2023); *What is Qualified Immunity?*, INST. FOR JUST. (last visited Aug. 17, 2023); *Research and Resources*, MAPPING POLICE VIOLENCE (last visited Aug. 17, 2023); *#Say Their Names* (last visited Aug. 17, 2023).

IV. Democracy and Voting

In a 2021 poll, the World Justice Project found a sharp decline in Americans who believe that people in the U.S. can vote freely, with only 58% agreeing that people can vote without feeling harassed or pressured, down from a high of 91% in 2016. High profile incidents of election subversion and political violence likely account for this loss of faith, and also serve as tools utilized by authoritarian forces to advance the white nationalism movement. For an examination of these issues, please refer to the 2022 Program Guide, "Democracy's Moment of Truth." Since the publication of the 2022 guide, the Supreme Court released two decisions that will have a significant impact on the functioning and responsiveness of our democracy.

In *Allen v. Milligan*, the Supreme Court ruled in favor of Black Alabamian voters who challenged Alabama's 2021 congressional map as a violation of Section 2 of the Voting Rights Act (VRA) by diluting Black political power. In affirming a lower court order and rejecting Alabama's arguments that the Court should adopt a race-neutral approach to racial gerrymandering claims, Chief Justice Roberts wrote that "the heart of these cases is not about the law as it exists. It is about Alabama's attempt to remake our § 2 jurisprudence anew." The Court confirmed that that under Section 2 of the VRA "race can be considered in the redistricting process to remedy discriminatory maps, provide equal opportunities to communities of color, and ensure they are not packed and cracked in a way that wakens their voting strength." Alabama must now redraw the map to include a second congressional district to allow Black voters to have an opportunity to elect candidates of their choice. However, the Alabama state legislature has thus far ignored the Court's requirements, and enacted a new map that once again created only one majority-Black district. As of September 5, 2023, a panel of federal judges once again struck down the state's map and appointed a special master to redraw the map to comply with the Supreme Court's ruling.

In *Moore v. Harper*, the Court rejected a fringe theory born out of the conservative legal movement called the independent state legislature theory (ISLT). In writing for the majority, Chief Justice Roberts found that the "Elections Clause does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections." The Court also stated that "when state legislatures prescribe the rules concerning federal elections, they remain subject to the ordinary exercise of state judicial review." If the Court had adopted a more maximalist version of the ISLT, it would have had detrimental consequences, "upended[ing] centuries of election law and practice" and "supercharg[ing] efforts to sabotage elections and

empower[ing] state legislatures to abuse their election powers," according to the Brennan Center.

There is reason for caution in evaluating the implications of *Moore v. Harper* for future elections. Professor Richard Hasen argues that while the Court's rejection of the most-extreme version of the ISLT is worthy of celebration, the Court "has now set itself up, with the assent of the liberal justices, to meddle in future elections, perhaps to even decide the outcome of future presidential elections" as it controversially did in *Bush v. Gore*. Hasen cautions that "the ruling is worded in such a way as to 'give the federal courts, and especially the Supreme Court itself, the last word in election disputes,'" with little guidance from the Court on what the constraints of this newly conferred power will be or even which federal courts may weigh in on state court opinions interpreting state constitutional protections for voters in federal elections. ACS's 2022 Program Guide, "Democracy's Moment of Truth," features an in-depth examination of the background of both cases as well as additional resources and suggested speakers.

Discussion Questions

1. *Chief Justice Roberts noted in* Allen v. Milligan *that Section 2 claims have rarely been successful and experts have predicted that this success rate will continue to decline. What will be the true impact of* Allen v. Milligan *and what reforms can be enacted to ensure greater success rates at ensuring meaningful representation?*
2. *What standards should federal courts use under the new power granted by* Moore v. Harper *when reviewing election law cases arising out of state supreme courts?*

For More Information

Yuvraj Joshi, *Racial Time*, 90 U. CHI. L. REV. __ (forthcoming 2023); Jessica Levinson, *The Worst Part About John Roberts' Celebrated Election Law Ruling*, MSNBC (June 28, 2023); Justin Levitt, *Race, Redistricting, and the Manufactured Conundrum*, 50 LOYOLA L.A. L. REV. 555 (2017), Nicholas Riccardi and David A. Lieb, *Supreme Court Rejects Novel Legislative Theory but Leaves a Door Open for 2024 Election Challenges*, AP (June 28, 2023); Lucille Sherman, *What the Moore v. Harper Decision Means for North Carolina Elections*, AXIOS RALEIGH (June 28, 2023); Mark Joseph Stern, *Hear Ketanji Brown Jackson Use Progressive Originalism to Refute Alabama's Attack on the Voting Rights Act*, CONST. ACCOUNTABILITY CTR. (Oct. 4, 2022); Podcast: Broken Law, *Part Indictment, Part Voting Rights* (June 20, 2023).

Speakers List

The following list includes a variety of scholars, advocates, and litigators you may contact when planning your chapter's events this year. We have provided their title, organization, and the section within this program guide most relevant to their work. The speakers are listed in alphabetical order according to the program guide topic(s) about which they may speak. Please note that these categories are necessarily simplistic. When considering any of the experts listed below for your programming, we encourage you to research the speaker to ensure their specific specialties would be appropriate for your event.

Please note that the potential speakers included in this guide are not an exhaustive list of all possible experts you might consider as you plan your 2023 programming. Instead, this list is intended to provide you with a sampling of the scholars, advocates, institutions, and organizations that work on these issues. When developing your events, we also encourage you to consider local experts and practitioners and to consult law school faculty members, including ACS student chapter faculty advisors, for further suggestions. Additional speakers for the "Democracy and Voting" section of the guide can be found in our 2022 program guide, *Democracy's Moment of Truth*.

Name	Title	Affiliation	State	Relevant Section
Kevin M. Barry	Associate Dean for Academic Affairs and Professor of Law	Quinnipiac University School of Law	CT	Bodily Autonomy
Jess Braverman	Legal Director	Gender Justice	MN	Bodily Autonomy
Teneille Ruth Brown	Professor of Law	University of Utah College of Law	UT	Bodily Autonomy

Name	Title	Affiliation	State	Relevant Section
Naomi R. Cahn	Justice Anthony M. Kennedy Distinguished Professor of Law; Armistead M. Dobie Professor of Law; Co-Director, Family Law Center	University of Virginia School of Law	VA	Bodily Autonomy
Simone Chriss	Director of the Transgender Rights Initiative	Southern Legal Counsel	FL	Bodily Autonomy
Caroline Mala Corbin	Professor of Law	University of Miami School of Law	FL	Bodily Autonomy
Greer Donley	Associate Dean for Research and Faculty Development; John. E Murray Faculty Scholar; Associate Professor of Law	University of Pittsburgh School of Law	PA	Bodily Autonomy
Michele Goodwin	Linda D. & Timothy J. O'Neill Professor of Constitutional Law and Global Health Policy	Georgetown University Law Center	DC	Bodily Autonomy
Jennifer Hendricks	Professor of Law and Co-Director of the Juvenile and Family Law Program	University of Colorado Law School	CO	Bodily Autonomy

Name	Title	Affiliation	State	Relevant Section
Jesse Hill	Judge Ben C. Green Professor of Law; Associate Dean for Research and Faculty Development	Case Western Reserve University School of Law	OH	Bodily Autonomy
Elizabeth R. Kukura	Associate Professor of Law	Drexel University Thomas R. Kline School of Law	PA	Bodily Autonomy
Carla Laroche	Felder-Fayard Associate Professor of Law	Tulane University Law School	LA	Bodily Autonomy
Jill Lens	Robert A. Leflar Professor of Law	University of Arkansas Law School	AR	Bodily Autonomy
Jennifer Levi	Professor of Law	Western New England University	MA	Bodily Autonomy
Leah M. Litman	Professor of Law	Michigan Law	MI	Bodily Autonomy
Richard Luedeman	Associate Clinical Professor of Law	University of Connecticut School of Law	CT	Bodily Autonomy
Robin Maril	Assistant Professor of Law	Willamette University College of Law	OR	Bodily Autonomy
Anya Marino	Director of LGBTQI+ Equality	National Women's Law Center	DC	Bodily Autonomy

Name	Title	Affiliation	State	Relevant Section
Seema Mohapatra	MD Anderson Foundation Endowed Professor in Health Law and Professor of Law	SMU Dedman School of Law	TX	Bodily Autonomy
Melissa Murray	Frederick I. and Grace Stokes Professor of Law; Faculty Director, Birnbaum Women's Leadership Center	NYU Law	NY	Bodily Autonomy
Kimberley Mutcherson	Professor of Law	Rutgers Law	NJ	Bodily Autonomy
Molly Quinn	Executive Director	OUTMemphis	TN	Bodily Autonomy
Victoria Rodríguez-Roldán	State Autism Coordinator	Maryland Department of Disabilities	MD	Bodily Autonomy
Elizabeth Sepper	Professor of Law	UT Austin School of Law	TX	Bodily Autonomy
Marc Spindelman	Isadore and Ida Topper Professor of Law	Ohio State University Moritz College of Law	OH	Bodily Autonomy
Ari Ezra Waldman	Professor of Law	University of California, Irvine School of Law	CA	Bodily Autonomy

Name	Title	Affiliation	State	Relevant Section
Mary Ziegler	Martin Luther King Jr. Professor of Law	UC Davis School of Law	CA	Bodily Autonomy
Quinn Yeargain	Assistant Professor of Law	Widener University Commonwealth Law School	PA	Bodily Autonomy; Democracy and Voting
Darren Hutchinson	Professor of Law and John Lewis Chair for Civil Rights and Social Justice; Director of Community and Inclusion	Emory University School of Law	GA	Bodily Autonomy; Lack of Policing Accountability
Noah Smith-Drelich	Assistant Professor of Law	Chicago-Kent College of Law	IL	Bodily Autonomy; Lack of Policing Accountability
Jordan Blair Woods	Professor of Law	University of Arizona James E. Rogers College of Law	AZ	Bodily Autonomy; Lack of Policing Accountability
Miriam Seifter	Professor of Law; Faculty Co-Director, State Democracy Research Initiative	University of Wisconsin Law School	WI	Democracy and Voting

Name	Title	Affiliation	State	Relevant Section
Nancy Leong	Associate Dean for Faculty Scholarship & Williama M. Beaney Memorial Research Chair; Director, Constitutional Rights and Remedies Program	Denver University Sturm College of Law	CO	Heightened Threat of White Nationalism
Amy Spitalnick	CEO	Jewish Council for Public Affairs	NY	Heightened Threat of White Nationalism
LaShawn Warren	Chief Policy Officer	Southern Poverty Law Center	DC	Heightened Threat of White Nationalism
Vida Johnson	Associate Professor of Law	Georgetown University Law Center	DC	Heightened Threat of White Nationalism; Lack of Policing Accountability
Maryan Ahranjani	Professor of Law; Ronald and Susan Friedman Professor	University of New Mexico School of Law	NM	Lack of Policing Accountability
Kiel Brennan-Marquez	Professor of Law; William T. Golden Scholar; Faculty Director of the Center on Community Safety, Policing and Inequality	University of Connecticut School of Law	CT	Lack of Policing Accountability

Name	Title	Affiliation	State	Relevant Section
Frank Cooper	William S. Boyd Professor of Law; Director, Program on Race, Gender, and Policing	UNLV William S. Boyd School of Law	NV	Lack of Policing Accountability
Andrew Manuel Crespo	Morris Wasserstein Public Interest Professor of Law; Executive Faculty Director, Institute to End Mass Incarceration	Harvard Law School	MA	Lack of Policing Accountability
Ilana Friedman	Assistant Professor of Law	University of Kentucky J. David Rosenberg College of Law	KY	Lack of Policing Accountability
Craig B. Futterman	Clinical Professor of Law	University of Chicago Law School	IL	Lack of Policing Accountability
Alexis J. Hoag-Fordjour	Assistant Professor of Law and Co-Director of the Center for Criminal Justice	Brooklyn Law School	NY; TN	Lack of Policing Accountability
Samuel V. Jones	Associate Dean for SCALES & Inclusive Excellence; Professor of Law	University of Illinois Chicago School of Law	IL	Lack of Policing Accountability
Yannick Wood	Director, Criminal Justice Reform Program	New Jersey Institute for Social Justice	NJ	Lack of Policing Accountability

Name	Title	Affiliation	State	Relevant Section
Ekow Yankah	Thomas M. Cooley Professor of Law	Michigan Law	MI	Lack of Policing Accountability
Allison Anderman	Senior Counsel & Director of Local Policy	Giffords Law Center to Prevent Gun Violence	PA	White Nationalism and Mass Shootings in America
Joseph Blocher	Lanty L. Smith '67 Professor of Law; Senior Associate Dean of Faculty and Research	Duke Law School	NC	White Nationalism and Mass Shootings in America
Jacob Charles	Associate Professor of Law	Pepperdine Caruso School of Law	CA	White Nationalism and Mass Shootings in America
Saul Cornell	Paul and Diane Guenther Chair in American History	Fordham University	NY	White Nationalism and Mass Shootings in America
Margaret Groban	Adjunct Faculty	University of Maine School of Law	ME	White Nationalism and Mass Shootings in America
Daniel Harawa	Associate Professor of Clinical Law	NYU Law	NY	White Nationalism and Mass Shootings in America
Jonathan Lowy	Founder and President	Global Action on Gun Violence	DC	White Nationalism and Mass Shootings in America

Name	Title	Affiliation	State	Relevant Section
Jody Madeira	Richard S. Melvin Professor of Law; Co-Director, Center for Law, Society & Culture	Indiana University Bloomington Maurer School of Law	IN	White Nationalism and Mass Shootings in America
William Merkel	Associate Professor of Law	Charleston School of Law	SC	White Nationalism and Mass Shootings in America
Darrell Miller	Melvin G. Shimm Professor of Law	Duke Law	NC	White Nationalism and Mass Shootings in America
Allen Rostron	William R. Jacques Constitutional Law Scholar; Professor of Law; Associate Dean of Students	University of Missouri-Kansas City School of Law	MO	White Nationalism and Mass Shootings in America
Eric Ruben	Associate Professor of Law	SMU Dedman School of Law	TX	White Nationalism and Mass Shootings in America
Kelly Sampson	Senior Counsel and Director of Racial Justice	Brady Center to Prevent Gun Violence	DC	White Nationalism and Mass Shootings in America
Adam Skaggs	Chief Counsel & Vice President	Giffords Law Center to Prevent Gun Violence	CA	White Nationalism and Mass Shootings in America

Name	Title	Affiliation	State	Relevant Section
Dru Stevenson	Wayne Fisher Research Professor, Professor of Law	South Texas College of Law Houston	TX	White Nationalism and Mass Shootings in America
Megan Walsh	Visiting Clinical Professor of Law	Minnesota Law	MN	White Nationalism and Mass Shootings in America
Nora Benavidez	Senior Counsel and Director of Digital Justice and Civil Rights	Free Press	GA;NY	White Nationalism and Social Media
Khaled Beydoun	Associate Professor of Law	Arizona State University College of Law	AZ	White Nationalism and Social Media
David Brody	Managing Attorney of the Digital Justice Initiative	Lawyers' Committee for Civil Rights Under Law	DC	White Nationalism and Social Media
Anupam Chander	Scott K. Ginsburg Professor of Law and Technology	Georgetown University Law Center	MA	White Nationalism and Social Media
Danielle K. Citron	Jefferson Scholars Foundation Schenck Distinguished Professor in Law and Caddell and Chapman Professor of Law and Director of the LawTech Center	University of Virginia School of Law	VA	White Nationalism and Social Media

Name	Title	Affiliation	State	Relevant Section
Garrett Epps	Professor of Practice	University of Oregon School of Law	OR	White Nationalism and Social Media
Kate Klonick	Associate Professor of Law	St. John's University School of Law	NY	White Nationalism and Social Media
Genevieve Lakier	Professor of Law, Herbert and Marjorie Fried Teaching Scholar	University of Chicago Law School	IL	White Nationalism and Social Media
Orly Lobel	Warren Distinguished Professor of Law; University Professor; Director, Center for Employment and Labor Policy	University of San Diego School of Law	CA	White Nationalism and Social Media
Helen Norton	University Distinguished Professor and Rothgerber Chair in Constitutional Law	University of Colorado Law School	CO	White Nationalism and Social Media
Eric J. Segall	Ashe Family Chair Professor of Law	Georgia State University College of Law	GA	White Nationalism and Social Media

Name	Title	Affiliation	State	Relevant Section
Mary Anne Franks	Professor of Law, Eugene L. and Barbara A. Bernanrd Professor in Intellectual Property, Technology, and Civil Rights Law	George Washington Law School	DC	White Nationalism and Social Media
Richard Delgado	Distinguished Professor	Seattle University School of Law	WA	White Nationalism and Social Media; Lack of Policing Accountability
Greg Magarian	Thomas and Karole Green Professor of Law	Washington University in St. Louis School of Law	MO	White Nationalism and Social Media; White Nationalism and Mass Shootings in America

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The American Constitution Society for Law and Policy (ACS) is a 501(c)3 non-profit, non-partisan legal organization. Through a diverse nationwide network of progressive lawyers, law students, judges, scholars, advocates, and many others, our mission is to support and advocate for laws and legal systems that strengthen our democratic legitimacy, uphold the rule of law, and redress the founding failures of our Constitution and enduring inequities in our laws in pursuit of realized equality.

About the Authors

Lindsay Langholz serves as Senior Director of Policy and Program with the American Constitution Society. Michelle Juma served as the 2022-2023 Law Fellow with the American Constitution Society.