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The Hinckley Journal of Politics is published annually by the Hinckley Institute of Politics for students, public officials, university officials, and the public. The opinions expressed herein are not necessarily those of the University of Utah, the Hinckley Institute of Politics, the Student Media Council, or the editorial board. Please direct your correspondence to the Journal Editors, Hinckley Institute of Politics, 260 S. Central Campus Drive, Gardner Commons, Room 2018, Salt Lake City, Utah 84112, (801) 581-8501, or email: info@hinckley.utah.edu.

Hinckley Journal of Politics — 2024 editorial board

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A WORD FROM THE DIRECTOR

As director of the *Hinckley Institute of Politics*, it is my honor to present the 2024 Hinckley Journal of Politics. This marks the 25th edition of the Journal, showcasing the Hinckley Institute's continued pursuit of publishing exceptional academic research papers written by students at the University of Utah.

The *Hinckley Journal of Politics* was established in 1998 with the intent to share the superior research and writing of Hinckley students with a wider audience. Director Ted Wilson had been reading and grading the intern papers submitted each semester for over a decade, and had been struck by the excellence of the students' research and writing. With the encouragement of colleagues in the Department of Political Science, student leaders were selected to make the *Journal* a reality.

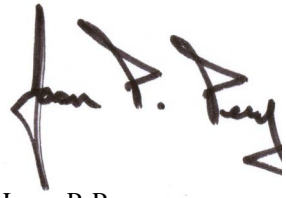
For the past 25 years, the *Hinckley Journal of Politics* has met its missions to "publish scholarly papers of exceptional caliber, promoting the intellectual talents and understanding of University of Utah students." The student papers that first year focused on campaign reform, illegal drugs and addiction, the effectiveness of containment strategy in foreign policy, and how political mobilization leads to change. Even a quarter of a century later, these issues remain timely and the students' work superb. This year, papers range in covering issues facing refugee students, whether ethical violence can exist, the Supreme Court's shadow docket, inflation, and the Great Salt Lake. The excellent research completed by our students highlights some of the major issues our state and nation are facing.

The *Journal* has always included contributions from community leaders as well. Each edition provides officials an avenue to highlight the policies and research they are focused on. This edition features an article written by Kim Shelley, executive director of the Department of Environmental Quality, focusing on the Great Salt Lake. Also included is an article about juvenile justice penned by Nubia Peña, director of the Utah Division of Multicultural Affairs (UDMA), and Claudia Loayza, planning policy and engagement coordinator also with the UDMA. We are grateful to Ms. Shelley, Ms. Peña, and Ms. Loayza for their thoughtful contributions and impactful work.

This publication was made possible through the diligence of the 2024 Journal co-editors Emalee Carrol and Mason Moore and their student editorial board members. We also recognize the University of Utah Political Science Department and the important contributions of our faculty editors and advisors Professor Phil Singer and Professor Michael Dichio. I would also like to express my gratitude to the dedicated staff of the Hinckley Institute, particularly Alex Macfarlane, program coordinator, Brooke Doner, director of marketing, and Morgan Lyon Cotti, associate director, for their commitment and supervision of the publication.

Through the Hinckley Institute of Politics, University of Utah students are able to apply the practical politics they learn in the classroom to real world experiences. To date, the Hinckley Institute has placed and supported over 9,000 interns in offices throughout Utah, in Washington, D.C., and throughout the world.

Sincerely,



Jason P. Perry
Director, Hinckley Institute of Politics
Vice President, Government Relations

A LETTER FROM THE EDITORS

Dear Reader,

We are excited to carry on a two decade long legacy in our publication of the 25th Volume of the *Hinckley Journal of Politics*. Throughout the past academic school year, we spent a great deal of time reflecting on the shape the journal should take in light of our regional, national, and global context: flashpoints in growing conflicts around the world, disruptive technological development, and increasing strain on our environment driven by anthropogenic climate change. As editors of this journal have observed for the past 25 years, students are rarely idle in their engagement with the biggest questions we as a society face. That has never been more true than at this turning point in history.

In light of this moment and our 25th anniversary, we felt it necessary to expand our ambition for what student writing and research can be. Our vision for this year was to craft a journal that challenges traditional perspectives, is unique in argumentation and thought, and relevant to a modern Utah-based audience while not being limited to Utah in scope. With the help of our editorial board, we are excited to present five papers in the 25th Volume exploring topics including saving the Great Salt Lake, whether there is such a thing as ethical violence, the Inflation Reduction Act's impact on prescription drug pricing, the Supreme Court's shadow docket, and the challenges facing Utah's refugee students. We are equally excited to present two papers from public officials offering their expertise and perspective on juvenile justice and the Great Salt Lake.

Serving as co-editors of the *Journal* has been a highlight of both of our college careers, but it would not have been possible without the unwavering support and thoughtful insights of the Hinckley Institute staff. Our faculty advisors, Dr. Phillip Singer and Dr. Michael Dichio provided invaluable advice in shaping our journal and facilitating the growth of ourselves and our team. The many student authors we work with, including those who were not ultimately published, should be commended for their tenacity and openness to change through the editing process. Finally, we would like to thank our editorial board for their boundless dedication, remarkable passion, and willingness to put up with our late evening meeting schedule throughout the marketing, selection, editing, and publishing process.

Many of the most profound and formative lessons we have learned over our four years as students at the University of Utah have come from simple conversation with our peers both in and outside of the classroom. We are proud to have crafted a journal that reflects the diverse perspectives of our campus that have proved so instrumental in our own academic journeys. As you read, our hope and only request is that you hold your opinions open to change and reflection. If we can achieve that open-mindedness together, then we feel confident that the research, argumentation, and perspectives present in this journal have real potential to provoke thoughtful discussions, self-reflection, and informed policy action.

Sincerely,

Emalee Carrol
Co-Editor

Mason Moore
Co-Editor

EDITORS' NOTES

HINCKLEY JOURNAL OF POLITICS MISSION STATEMENT

The *Hinckley Journal of Politics* is one of the only undergraduate-run journals of politics in the nation and strives to publish scholarly papers of exceptional caliber from University of Utah students in the fields of politics and public policy as well as opinion essays from local, state, and national public officials. Contributing research articles and opinion essays should address relevant issues by explaining key problems and potential solutions. Student research papers should adhere to the highest standards of research and analysis. The *Journal* covers local, national, and global issues and embraces diverse political perspectives. With this publication, the Hinckley Institute hopes to encourage reader involvement in the world of politics.

STUDENT RESEARCH PAPER SUBMISSION GUIDELINES

The *Hinckley Journal of Politics* welcomes research paper submissions from University of Utah students of all academic disciplines, as well as opinion essays from Utah's public officials. Any political topic is acceptable. The scope can range from University issues to international issues. Research papers should adhere to submission guidelines found on the *Hinckley Journal* website: hinckley.utah.edu/journal.

STUDENT RESEARCH PAPER REVIEW AND NOTIFICATION PROCEDURES

Research paper submissions will be reviewed by the *Journal* editors, members of the editorial board, and faculty advisors. Submission of a research paper does not guarantee publication. Papers that do not adhere to submission and style guidelines will not be considered for publication. Acceptance to the *Journal* is competitive. The co-editors will notify potential authors when the decision has been made regarding which papers have been selected for publication.

SUBMISSION GUIDELINES FOR PUBLIC OFFICIAL OPINION ESSAYS

The *Journal* will consider for publication opinion essays written by national, state, and local public officials and community leaders. The opinions expressed by public officials are not necessarily those of the University of Utah, the Hinckley Institute of Politics, the Student Media Council, the editors, faculty advisor, or the Editorial Board. Officials should contact the *Journal* editors for additional information.

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ABOUT THE HINCKLEY INSTITUTE OF POLITICS

The Hinckley Institute of Politics at the University of Utah is a nonpartisan institute dedicated to engaging students in governmental, civic, and political processes; promoting a better understanding and appreciation of politics; and training ethical and visionary students for service in the political system. Robert H. Hinckley founded the Hinckley Institute of Politics in 1965 with the vision to "teach students respect for practical politics and the principle of citizen involvement in government." Since its founding, the Hinckley Institute has provided a wide range of programs for students, public school teachers, and the general public including: internships, courses, forums, scholarships, and mentoring. The Hinckley Institute places emphasis on providing opportunities for practical experience in politics.

INTERNSHIP PROGRAM

A nationally recognized program and the heart of the Hinckley Institute, the Hinckley internship program places more than 300 students every year in government offices, non-profits, campaigns, and businesses. The Institute provides internships opportunities to students from all majors for academic credit in Utah, Washington, D.C., and in more than 50 countries.

CAMPAIGN MANAGEMENT MINOR

The Hinckley Institute of Politics is proud to offer one of the nation's only minors in Campaign Management. The program is designed to provide undergraduate students the opportunity to learn the theory and practices that will allow them to be effective participants in election and advocacy campaigns. Students are required to complete a political internship and an interdisciplinary series of courses in areas such as campaign management, interest groups, lobbying, voting, elections, and public opinion, media, and other practical politics.

PUBLIC FORUMS AND EVENTS

The Hinckley Institute hosts weekly Hinckley Forums where politicians, policy makers, activists, academics, and influencers address public audiences in the Hinckley Caucus Room. Hinckley Forums enable students, faculty, and community members to gain insight into and discuss a broad range of concepts on local, national, and international levels. Past guests include Presidents Bill Clinton and Gerald Ford; Senators Orrin Hatch, John McCain, Harry Reid, and Mitt Romney; Utah Governors Jon Huntsman, Jr., and Gary Herbert; Nobel Peace Prize Winner Suzi Snyder; Civil Rights Activist Dolores Huerta, and many other notable politicians and professionals. The forums are reaired on KCPW 88.3 FM and video recordings are archived on the Hinckley Institute website.

SCHOLARSHIPS

The Hinckley Institute provides more than $600,000 in financial support to students annually. The Hinckley Institute is also the University of Utah's representative for the Harry S. Truman Congressional Scholarship – one of America's most prestigious scholarships.

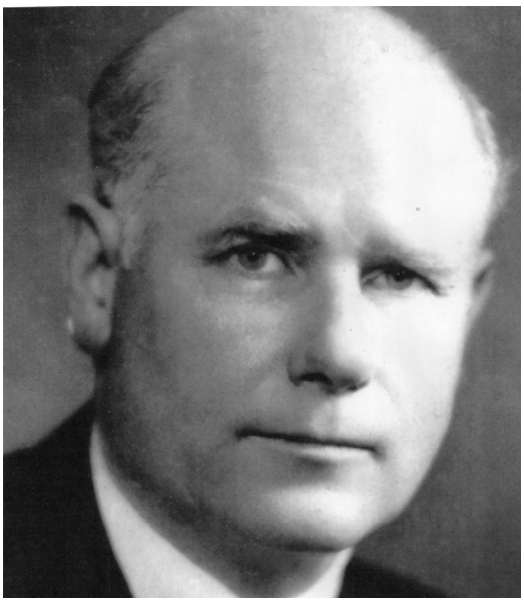
HUNTSMAN SEMINAR FOR TEACHERS

The Huntsman Seminar in Constitutional Government for Teachers is a week-long seminar sponsored by the Huntsman Corporation. The primary focus of the seminar is to improve the quality of civic education in Utah schools by bringing Utah educators together with political experts and visiting politicians to discuss current events in Utah and American politics. The Huntsman Seminar is truly a unique opportunity for teachers to gain an in-depth understanding of local and national political issues.

DEPARTMENT OF POLITICAL SCIENCE

The Hinckley Institute values its relationship with the Department of Political Science. The Institute's programs provide students the opportunity to enrich their academic studies with experiences in practical politics, which complement the academic offerings of the Political Science Department. Courses are available in five subfields of the discipline: American Politics, International Relations, Comparative Politics, Political Theory, and Public Administration. If you have questions about the Department and its programs, please visit poli-sci.utah.edu or call (801) 581-7031.

ROBERT H. HINCKLEY



A man of vision and foresight, a 20th-century pioneer, a philanthropist, an entrepreneur, and an untiring champion of education and of the American political system—all are apt descriptions of Robert H. Hinckley, a Utah native and tireless public servant. Robert H. Hinckley began his political career as a state legislator from Sanpete County and a mayor of Mount Pleasant. Hinckley then rose to serve as the Utah director for the New Deal program under President Franklin D. Roosevelt.

Hinckley went on to serve in various capacities in Washington, DC, from 1938 to 1946 and again in 1948. During those years he established and directed the Civilian Pilot Training Program, served as Assistant Secretary of Commerce for Air, and directed the Office of Contract Settlement after WWII. In these positions, Hinckley proved to be, as one of his colleagues stated, "One of the real heroes of the Second World War." Also in 1946, Hinckley and Edward Noble jointly founded the American Broadcasting Company (ABC), and over the next two decades helped to build this company into the major television network it is today.

Spurred by the adverse political climate of the '40s, '50s, and '60s, Hinckley recognized the need to demonstrate that politics was "honorable, decent, and necessary," and to encourage young people to get involved in the political process. After viewing programs at Harvard, Rutgers, and the University of Mississippi, Hinckley believed the time was right for an institute of politics at the University of Utah. So in 1965, through a major contribution of his own and a generous bequest from the Noble Foundation, Robert H. Hinckley established the Hinckley Institute of Politics to promote respect for practical politics and to teach the principle of citizen involvement in government.

Hinckley's dream was to make "Every student a politician." The Hinckley Institute of Politics strives to fulfill that dream by sponsoring internships, scholarships, forums, mentoring, and a minor in Campaign Management. Today, nearly 60 years later, Hinckley's dream is a reality. More than 9,400 students have participated in programs he made possible through the Hinckley Institute of Politics. Many of these students have gone on to serve as legislators, members of Congress, government staffers, local officials, and judges. All participants have, in some measure, become informed, active citizens. Reflecting on all of his accomplishments, Robert H. Hinckley said, "The Hinckley Institute is one of the most important things I will have ever done."

STUDENT RESEARCH PAPERS

Utah Refugee Students: An Examination of Challenges and the Imperative for Support

By Ben J. Carson
University of Utah

Abstract:

Though Utah policy makers have made efforts to improve and standardize education programs for refugee students, the quality of education is still largely dependent on the district or school boundaries they are randomly assigned to live in. This results in some refugees being met by robust onboarding and support programs, while others are largely left on their own. This study employs literature review and six research interviews with individuals involved in refugee education to discern the nature of the refugee experience for newly-arriving students in Utah. It finds that these students often encounter four central problems - lack of effective intervention for English Language Learners, social isolation, cultural suppression, and lack of orientation and counseling services. While this paper does not propose specific policy interventions, it advocates for increased action from state, district, and school leaders to address these problems.

Introduction

In Utah, despite efforts to improve education for refugee students and an evident demand for more programs that provide them more aid and specialized attention, there is a lack of funding and initiatives focused on assisting them. Refugee students originate from diverse cultural backgrounds, have experienced drastically varying pedagogical approaches and curriculums, and often speak different languages. However, many Utah schools exhibit a "sink or swim" education style, expecting them to independently adapt to this new system without adequate assistance. This involves learning completely new variants of school, language, and culture while keeping pace with their classmates. While school programs to address this have been implemented in some regions of Salt Lake County, they do not exist in others. This leaves whether refugee students will be met by robust support largely up to the area where they are randomly placed to live. The Utah State Legislature has attempted to create more encompassing laws to ensure that refugees in any district will receive the necessary support, but they do not cover enough of the issues refugees face, nor do they seem to be being fully implemented. Learning plans, school programs, and their associated budgets need to be expanded to help these students navigate the significant educational obstacles inherent to their situation. Not doing so completely contradicts the Utah legislature's policy to "identify students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation" (Utah State Legislature, 2023). It is necessary that the Utah Legislature, the Utah State Board of Education, and Utah districts take action, expanding resources, performing further research, and implementing comprehensive policies to address these challenges.

This paper begins with an overview of the general refugee population in Utah, moves into a brief discussion on conducted research and current data pertaining to Utah refugee students, then dives into insights gained from interviews with 6 professionals who work in refugee education. These interviews are

bolstered with findings from other studies about refugee student conditions nationwide. While specific solutions are not provided in this paper, it strongly advocates for increased research attention to these issues and calls for proactive responses from policymakers.

Refugees in Utah

Utah's refugee community is quite sizable, with a continuously increasing population. In 2017, Utah had a recorded refugee population of roughly 60,000 individuals and has resettled 3,891 more since then (Gardner Policy Institute, 2017; Utah Dept of HHS, 2023). This would mean refugees currently constitute around 1.89% of the state's population, or about 1 in 53 people (US Census, 2022). In the last 10 years, Utah ranked 11th in refugee acceptance per capita among all states, underscoring its notably open and welcoming refugee reception policies (Kallick, 2023). From 1998 to 2022, the state accepted close to 1000 refugees per year on average (HHS, 2023). These individuals came from a wide range of backgrounds, with the largest portions coming from Africa, followed by South and Central Asia; the Near East; and East Asia and the Pacific, respectively.

Table 1

Refugee Arrivals by Region (2005 – 2022)

Region	Number	Percent
Africa	6,712	38.12%
East Asia and Pacific	2,840	16.13%
Europe and Eurasia	657	3.73%
Near East (N. Africa/Middle East)	3,050	17.32%
South and Central Asia	3,423	19.44%
Latin America	924	5.25%
TOTAL	17606	100%

From the Utah Department of Human & Health Services

Each of these regions encompass a vast array of countries, with each country housing numerous languages, cultures, and ethnic groups. While some may categorize refugees as a singular population, it is crucial to recognize that each case is uniquely different and requires an individualized understanding and response.

Upon arriving, refugees are initially assisted by resettlement agencies, but are expected to become monetarily self-sufficient within a few months. At the International Rescue Committee (IRC), one of Utah's two main resettlement agencies, adult refugees are expected to find employment within three months of their arrival. They often do this through the Department of workforce Services, who cited that the average wage of their refugee clients is $15.84/hour, or $32,947 a year (DWS, 2022, pg.11). This is far below the state-wide median income of $79,133 and Salt Lake County's median income of $82,206, where virtually all refugees are initially housed (DWS, 2023). It is almost exactly equivalent to the "Extremely Low Income" line for a household of 4 in SLC, which is $31,800 (Salt Lake County, 2023). This is particularly noteworthy as numerous families arrive with multiple children — many arriving with 5 to 10 — to support (IRC SLC, 2023).

A significant portion of refugees are youth, highlighting the profound impact that public schools can have on refugee success. Of the refugees that have arrived since 2015, 46 percent of them have been under 18, meaning they are either public school age or on the brink of it (Utah Dept of HHS, 2023). In 2022, this meant that close to 622 refugee youth were added to the school system. Virtually all refugees are placed in Salt Lake County, and they are more concentrated in the regions directly surrounding Salt Lake City. This means that 5 school districts receive every new refugee student and that the three districts surrounding SLC, Salt Lake, Granite, and Murray Districts, receive a majority of them (IRC SLC, 2023).

Current Refugee Policies and Programs

In Utah there have been efforts on the state, district, and school level to assist refugee students in their adjustment to Utah's school system. On the state level, in response to concerns for "newcomer" students (new refugees or immigrants), two 2022 bills were passed to assist them. These bills were campaigned and advocated for by refugee organizations and were designed in response to many of the issues that refugee students, specifically, face (IRC SLC, 2022). The first bill, H.B. 230, outlined required actions for registering newcomers into the school system. Firstly, it mandates the Utah State Board of Education (USBE) to create a repository to store newcomers' transcripts. The goal of this is for schools to be able to coordinate how transcripts from various countries are processed and entered into the school system (Refugee Advocacy Lab, 2022). This method is meant to facilitate uniformity in translation of grades from the student's home system to the US grading system, decreasing the burden on school administrations to make individualized protocols for each country. Secondly, because many newcomers' ages are recorded incorrectly on their birth certificates, H.B. 230 allows them to present an affidavit to correct their age in the school system. This ensures they can be placed in the correct grade for their age group. This bill also allows refugee students, specifically, to go to school for thirty days while they are waiting for their vaccinations. This is on the grounds that they were tested for communicable

diseases before arriving.

The second bill was H.B. 302, or the "Educational Language Services Amendments" bill. It introduced several policies aimed at improving school experiences for students learning English. Firstly, it requires local school boards to create policies to facilitate more consistent communication between parents, teachers, and administrators, especially for English as a Second Language (ESL) students. In line with this, Local Education Agencies (LEA) are to adopt a plan for how they will provide interpreters for communication between parents and teachers, in classrooms, for office visits, for fee-waiver processes, and for other school-related activities. The bill also initiates the formation of a state Educational Interpretation and Translation Services Procurement Advisory Council, which determine the language access needs of ESL students. This council is meant to collect information on the interpretation needs of students and what interpreting services are available to educators, then provide this information to LEAs. However, the bill includes a sunset clause that mandates the council to start providing these reports at the end of the year 2024, but then subsequently dissolves the council on July 1, 2025, if no further legislation is enacted.

On the district level, the most significant program assisting Utah refugees is the Tumaini Welcome and Transition program, run by Granite School District. This program started in 2014 with the aim of helping refugee students adjust to school in the district. Tumaini did this by running 10-day orientation classes for refugees at Granite Park Junior High. These classes taught important English phrases, how the school system and classes worked, cultural norms, class rules, and other essential skills and knowledge for their schooling. Due to an overwhelming amount of refugees arriving in the district, and possible lack of funding, this version of the program was dismantled in 2022 and replaced with Tumaini On the Go! Under this new rendition of the program, professional refugee liaisons travel to the students to help them transition to their new schools. They assist them from the beginning of their first day, helping them catch the bus, register for classes, move between classes, explain various rules, and introduce them to student ambassadors. The student ambassadors are volunteer students in Granite School District who act as a “buddy” to the newcomers as they navigate their new school. The liaisons usually provide two or three days of intensive help before transitioning into providing weekly services. The students and their families are given the liaisons contact for when they have concerns or need assistance. Although refugees in Granite School District still face difficulties, Tumaini on the Go! plays a significant part in alleviating these struggles.

Outside of Granite School District, it is difficult to find programs directed at helping refugees adjust and find success. However, Hillcrest High School, in the Canyons District, took initiative in creating its own school-wide program. This program is called ROAR, or Resource Opportunities Access for Refugees. ROAR mostly centers around educating refugee students about college opportunities and career prospects through immersive learning. It has done this by going on field trips to colleges to learn about their programs and to be exposed to professionals in various fields. ROAR also helps run cultural events that allow students from any origin to share their food, dance, and culture with their peers.

Both Tumaini and ROAR showcase the positive outcomes possible when schools and districts take the initiative to ensure refugees are provided with care and resources. Although refugees in Granite School District and at Hillcrest High still face numerous challenges, these barriers are lessened by the efforts of most educators at Utah schools make efforts to assist refugee students, they are not always given the resources to be able to do this. It was in response to this problem, that the state legislature enacted bills mandating plans to assist ESL students. While progress has been made on this front, refugees continue to encounter numerous obstacles, particularly in regions lacking such specialized programs. Indeed, evidence indicates that many Utah refugees are still facing substantial difficulties upon entering Utah's educational system.

Refugee Problems in Utah Schools – Existing Data

Before discussing information provided by interviews with refugee stakeholders, it is important to gain a grasp of the issue through available data. Though data on Utah refugee academic outcomes is not publicly available, many groups that refugees frequently belong to show significantly lower standardized test scores, including ESL and low-income students (USB State Board of Education, 2023). While this does not mean that refugees invariably have lower test scores, it shows that they frequently belong to groups that do. Of course, lower test scores among these demographics are not due to differences in innate intelligence, but because they face more barriers to academic success than their counterparts. This indicates that because refugee students belong to more than one of these groups, they are encountering a greater number of barriers compared to typical students. Then, for every obstacle that lacks a specific support program, coping becomes more difficult.

This concept of experiencing multiple forms of stress and marginalization is encapsulated by the term "intersectionality." This term describes the effects of overlapping identities and social groups. Individuals belonging to multiple disadvantaged groups frequently grapple with the combined effects of each, navigating a complex landscape of challenges that arise from their various affiliations (Crenshaw, 2017). In practice, applying this theory to Utah refugees would mean that inadequate ELL

programs and programs to assist low-income students would force refugees belonging to these categories to deal with the struggles of both. Applying the idea of intersectionality to refugees is supported by other literature which discusses how the intersection of race, class, and other factors create a much harder school environment for them (Roxas & Roy, 2012). The policy implications behind this are that bolstering programs for low-income students and English Language Learners would assist much of the refugee population.

Available Quantitative Data

Additional qualitative evidence supports the substantial barriers faced by refugee students in Utah and discerns what issues may be causing lower academic performance. However, the only academic paper readily available on this subject was published in 2009 and is an assessment of 21 Burmese refugees in Granite School District (Tandon, 2009). While ideas for interventions can be gleaned from this paper, it is important to note that many existing programs to support newcomer students did not exist in 2009. The students studied for this paper encountered numerous challenges, including language barriers and cultural adjustments. Limited English proficiency hindered their comprehension of instructions and impeded effective communication with peers and teachers, leading to frustrations and perceptions of unfair grading based more on language understanding than subject matter grasp. Beyond language difficulties, the students grappled with the impact of inadequate education in Burma and Thai refugee camps, where access to education beyond high school was non-existent. The struggle to adapt to modern technology, essential in Utah's educational system, further compounded their challenges. Financial struggles, stemming from unemployment and unstable income, left families unable to meet basic needs, emphasizing the interdependence of economic challenges and educational success. Participants highlighted the inadequacy of existing financial aid programs and the crucial role of financial stability to enable a focus on education. Additionally, students stressed the importance of positive interactions with teachers, especially those that celebrated their cultural heritage.

However, this study is outdated, necessitating more current qualitative studies be conducted to discern the issues refugees face in Utah. This would involve meeting with a significant number of refugees to discern their challenges, utilizing classroom observation to identify their constraints, and leveraging homework, tests, and teacher feedback to pinpoint any additional areas where assistance may be necessary. Employing these techniques would allow Utah schools to best identify where refugees need remediation.

Current Refugee Policies and Programs

To Gain deeper insights into the current experiences of refugee students in Utah, I conducted six interviews with individuals actively engaged in initiatives and programs that assist refugee students. These interviews were with two professionals assisting newcomer students at the school level, two doing the same at the district level, and two others were in educational programs at refugee resettlement organizations. Because so many newcomers entering Salt Lake County schools and districts are refugees, much of the experience of the school- and district-level professionals has been with refugee students. The interviewees, collectively assisting over 500 refugee students, offer a condensed summary of prevalent challenges facing refugees in Utah. While direct interviews with refugee students would have provided more detailed evidence, the extensive nature of such interviews is beyond this project's scope. Instead, individuals who have interacted with numerous refugee students were selected. Though they likely omit important information because they are secondhand accounts, these interviews serve as a starting point for understanding contemporary refugee issues in the state.

Interviews in this study were semi-structured in nature, employing open-ended questioning to discern the interviewees perception of the refugee experience in Utah schools. The same six questions were asked to each individual and are listed in the appendix. Subsequent questions were then asked based on their answers to clarify, understand, and expand on them as needed. Interviews were then uploaded into a transcribing software. The written content was divided and placed into different categories. The most frequently discussed issues refugees face were then discerned. (Charmaz & Belgrave, 2012).

It is important to note that five out of six interviewees discussed seeing lower grades among refugee students they assist. This information was not asked for but freely given, showing how prominent of an issue it is for these students. While the idea that refugee students often struggle can be easily discerned from the interviews, this backs up the claim that they are also academically suffering as a result of non-adaptive school programs. Interviewees attributed this discrepancy, as well as other consequences of non-adaptive school programs, to many causes.

Overall, four prominent issues refugees face in school emerged from the interviews – English Language Learning (ELL) program deficiencies, social isolation, cultural suppression, and an absence of orientation/school counseling. In this section, we will systematically examine each of these issues by analyzing the insights provided by interviewees and then delve into a comprehensive analysis of these concepts, drawing upon contemporary literature to enhance our understanding of the matters at hand. It is important to note that the issues

discussed here are not the case for all students and in all LEAs and schools. However, because numerous Utah refugee students do consistently face these problems, they are vital to understand.

English Learning Deficiencies

Low-quality ELL programs for refugees were a prominent theme in 5/6 interviews. Each of these interviewees discussed how the current system for most schools is to place newly arrived refugee students directly into one ELL period and multiple normal classes concurrently, expecting them to learn subjects and perform like typical students. This is despite the fact that a significant number of refugees arrive with little knowledge of English. Expecting them to grasp complex concepts in mathematics, science, and history while still in the early stages of learning the language defies logic. They are essentially being tasked with mastering two challenging subjects simultaneously: English and another discipline, with the expectation of achieving full proficiency in both. Interviews discussed how classes are difficult for ESL refugees of all ages, but the effects of this are more prominent among secondary school students. In secondary school, classes explore more advanced, detailed, and abstract topics, making them more challenging to navigate with basic English proficiency. Additionally, many high school-aged refugee students are coming from camps, where they are often at a lower grade level than their US peers. It is then very difficult to make up for years of missed material. The idea that school is more difficult for High School ESL students is supported by their 2023 standard test outcomes, which can be seen in Table 2. There was an evident drop in proficiency rates between Primary and Secondary school. This entailed an average decrease of 11.7% – 9% in English language arts, 12.3% in mathematics, and 13.8% in science. For high school students, the lower rates were particularly low in mathematics and science, potentially attributable to the earlier-discussed challenge of simultaneously mastering two intricate disciplines at once. Enrolling students in these classes, particularly secondary school students, without sufficient preparation, poses a significant problem. Despite the aforementioned efforts by lawmakers to implement interventions for ESL students, this system is currently failing to adapt to their needs, setting them up for academic struggles.

Table 2

2023 Proficiency Rates

Grades	Subject Area	ELS Student Proficiency
3 - 8	English Language Arts	16.3%
	Mathematics	16.3%
4 - 8	Science	19.9%
Average		17.5%
9 - 10	English Language Arts	7.3%
	Mathematics	4.0%
	Science	6.1%
Average		5.8%

From the Utah State Board of Education

Despite its failings, the practice of placing ESL students in classes without enough preparation is common nationwide. It is commonly referred to as English immersion. While English immersion can help students learn the language quickly, it needs to be paired with other robust programs to help them succeed. Otherwise, "immersion" is only a lack of meaningful action. Using immersion techniques, it takes the average ESL student in U.S. schools about 4 years to become proficient in English, a period far too long for the demands placed on refugee students concurrently (Motemedi, 2015).

Refugees, specifically, have been shown to receive lower grades due to their lack of English ability, which puts them in danger of dropping out or not being able to attend college (Davila, 2012). Many refugees have also expressed frustration with their teachers for grading them poorly in other subjects due to their beginner-level English. One study showed how miscommunications arising from language difficulties led to frustrations among students, who felt unfairly graded due to their challenges in understanding English instructions. The students urged teachers to recognize their language limitations and provide additional assistance to bridge these communication gaps (Tandon, 2016). However, students should not need to push for accommodations; school programs should already be in place to ensure this happens.

Not only are such rigid, non-adaptive, classrooms ineffective, but are in defiance of the federal Equal Opportunities Act. The Equal Educational Opportunities Act states that, "No State shall deny equal educational opportunity…by— failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." (US Code, 1974). Regarding this act, in a statement after the Lau V. Nicholas trial, the Supreme Court stated, "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any

meaningful education." (US Department of Justice, 2017). The federal government has not provided explicit guidelines on the implementation of this process but emphasizes the need for demonstrated effectiveness in the techniques employed. While the state legislature's efforts to improve ESL programs were well-intended and show significant steps to helping refugee students, they are not as-of-yet effective. Thus, according to federal law, further policy needs to be implemented to ensure ESL students are provided with enough support.

Cultural Suppression

The entire resettlement system is centered around assimilation, encouraging kids to shed the layers of their old culture in favor of American culture. However, this process can be emotionally painful and confusing, as culture itself is part of our biological makeup and integrated into our psyche (Barret et. Al, 2009). Thus, when an individual enters a new society and their culture is invalidated, many parts of themself and their identity can become invalidated.

Interviewees discussed how this shift permeated every part of students' lives from the way people joke, to their peers' musical taste, to what is served at lunch. This can cause varied issues. For instance, two of the interviewees discussed how some kids would not get the nutrition they needed because they hated the lunch schools provided and would throw them away. Furthermore, there is a noticeable lack of accommodation for religious dietary restrictions, such as the Muslim rules for Ramadan. Additionally, while Utah schools are supposed to provide prayer rooms and class-time accommodation for Muslim prayer, such facilities are uncommon, making it difficult for Muslim students to fully practice their faith. However, the most prominent issue discussed surrounding this was a smothering of cultural identity. Many children faced challenges in expressing their familial and cultural heritage, leading to a gradual relinquishment of these significant aspects of their identity. Whether this happens in Utah is highly dependent on the school in which refugees are placed. For instance, there are a few apartment complexes that refugees are frequently housed by refugee-resettlement agencies. Refugee students living in one of these complexes are often surrounded by a community of other refugees, often from their own country, making their new environment much easier to culturally adapt to. Many of their refugee peers will attend the school they go to, further helping them find a place to express themselves confidently. Many others, however, are placed in random homes across Salt Lake County, making them less likely to find peers who can share their cultural values.

When cultural suppression does occur, it can create an effect that leads students to perceive their culture and language as inferior. In Decolonizing the Mind, acclaimed author Ngugi wa Thiong'o discusses this concept in more detail (Thiong'o, 1986). He discusses how many of the practices used in schools today are a form "neo-colonialism" which repeats many of the methodologies of the colonialist era. It imposes a uniform culture on all students, creating a microcosmic form of colonialism that socially compels individuals to give up internalized attitudes and beliefs. In discussing language as a weapon, Thiong'o says, "In Colonial conquest, language did to the mind what the sword did to the bodies of the colonized." Whether happening consciously or not, ignoring the languages and cultures of students and their families can send a message to them: that their heritage is not valuable. It is to be discarded in favor of a dominant culture and language. This experience has been expressed by numerous refugee students. Some have discussed how they learned to view their accent as "something wrong with them" with others talking about how even their sense of humor was not appreciated or understood by other students (Uptin et al., 2012). In response, many decided they needed to "get better" (i.e. give up their culture) to enable them to make friends.

This not only demoralizes students but also forfeits the opportunity for them to contribute to schools with their diverse experiences, and utilize their cultural background in the learning process. Culture plays an integral part of how people learn, with a child's home culture being the lens through which they learn best, rather than that of another culture (Rogoff, 2007). To learn most effectively it is important to assist refugees in conceptualizing and understanding how their home culture is important and has made contributions to humanity for them to best process information (Bousalis et al., 2021). Refugees are shown to be more academically successful when they feel "strongly anchored in the identities of their families, communities, and peers" and when they are supported in engaging in, "selective or additive acculturation" (Nykiel-Herbert, 2010). Selective acculturation is when an individual can consciously decide which parts of the dominant culture to accept or reject and are able to continue to confidently exist within their own culture. Additive acculturation is similar, consisting of retaining their own culture while adding insights and elements from a host culture (Gibson, 2001). These patterns of acculturation are healthier for students, as they allow them to find success in American schools and society, while also preserving and valuing their heritage. Additionally, cultural retention contributes to the entire school community, with strong evidence showing ethnically diverse schools can benefit all students. (Siegel-Hawley, 2012).

Social Isolation

Entering a new culture with no understanding of its social rules or language can be very isolating for students. This is

again quite dependent on the locality refugees are placed in. For those in schools without many refugee peers, interviewees discussed the perceived separation from peers that many refugee students experience. Not only was assimilating to the classroom difficult but, "the social aspect of making friends, being on the playground, it's really, really hard. They're traumatized and don't always understand how to navigate that." Many refugees feel extremely alone in the first year as they learn to navigate the social system in a new environment. For districts and schools with no student ambassador or liaison programs, this can also be extremely disorienting. One interviewee discussed a student's experience when she arrived at school, saying that when they asked her questions, "She would say 'Yes. No, Yes. No.' Because that was those only words that she knew." The student felt lost and alone, without a program or peer to offer her instructions on making friends and basic English interactions. Such social isolation also stemmed from playground bullying, with interviewees discussing frequent instances of bullying among refugees they worked with. Students were often bullied for acting up in class, speaking English differently, or acting in other ways that made them different.

This experience of social isolation for refugees is common across the United States, with refugees often reporting "feelings of fear and disorientation" (Beirens et al., 2007, p. 223). Often, so many social rules can be placed on students that their reaction is to stay quiet and complacent. One student, interviewed for another paper, said, "Teachers think I am good because I don't get out of my seat and get loud [like other students]. I sit and stay quiet, but I don't do so good at school" (Davila, 2012, p. 140). Even though this student had prominent academic struggles, their fear of acting out or being reprimanded kept them from seeking help. In some cases, the social exclusion of refugees can "place them at particular risk for developing marginalized or oppositional identities". For example, one study shows refugee students sometimes gravitate towards truant peers or harbor resentment towards school, highlighting the need for early positive peer connections (Uptin, 2012).

Lack of Counseling, Orientation or College Planning

For the typical, non-immigrant, Utah student, the intricacies of the school system are built into their intuition from kindergarten. They learn little things like class rules, etiquette, and bell schedules (classroom procedures) while also gaining an understanding of broader concepts like grade structures, graduation requirements, and scholarship and college application procedures (systematic procedures). Five of six interviewees discussed how all these things could be confusing for refugee students in the state, and how they rarely received orientation on them. One interviewee discussed the story of a student regarding high school graduation requirements:

> "He's so great at school - he got all As last year. And he's doing well this year as well. But he doesn't speak any English. And this year, when I was looking at his credits, he's only sitting at nine credits, and he's a senior, and you need 24 credits to graduate high school. And so then I went to go talk to him. I asked him if his counselors are helping him to create a plan, and he doesn't even know who his counselor is. And so, he's been at the school for a year and a half now, and nobody has reached out to help him… some kids, they try so hard, but no one's out there to help them."

Not only was this student not given orientation by any of his counselors, but he did not know who his counselor was. This put him in danger of not being able to graduate, even though he was a hard-working and dedicated student. Another interviewee, who works in case management, expressed how the high school counselors were not able to provide sufficient career and college preparation advice to refugee students. Refugees were often still confused after these sessions because they failed to adapt the information to make them understandable to someone coming from outside the system.

In terms of the intricacies of classroom rules, most interviewees spoke extensively about how children lacked awareness of protocols such as raising hands to go to the bathroom, discerning the end of class, and navigating their schedules. Many were simply placed in classes without knowledge of what was going on. With no understanding of the language, this was exceptionally confusing for them, and caused significant anxiety for students. In one case, a refugee student did not know how to excuse herself to use the restroom and was forced to wait for hours. One interviewee called these "survival questions", and they are essential for refugees to understand.

Methodological studies of the effects of no school or systematic orientation for refugees are limited, but evidence suggests it can have far-reaching negative consequences. Not orienting them to requirements for college or high school could have very negative effects, with refugees facing an underrepresentation in higher education institutions as well as elevated higher school dropout rates (Moinolnolki, 2017). Some attribute these phenomena to the lack of guidance from school counselors. (Wit. Et al, 2020, p. 103). As far as classroom procedures, many refugees have reported that within their first few days, "the large size of the schools [was] overwhelming and the structure overall as puzzling" (Lozano & Friesen, 2011, p. 4). Literature discussing the long-term effects of this is limited, but this lack of orientation is one more unnecessary stressor placed on these students. Further study and experimentation should be conducted to see how providing more robust counseling and orientation can improve refugees academic and emotional state.

The Utah Mandate of Educational Equity

The Utah State Board of Education (USBE) has designated educational equity as its central mission, emphasizing the imperative for Utah to actively provide targeted support for refugees. As found in the board's current strategic plan, the USBE's mission is to, "…[lead] by creating equitable conditions for student success: advocating for necessary resources, developing policy, and providing effective oversight and support" (USBE, 2022). This mission statement places educational equity at its center, underlining the clear contradiction of Utah's inadequate support for refugees. As a clarification, considering new laws inhibiting DEI offices in Utah's public institutions, it is important to note that equity goes far beyond racial lines, but extends into making sure students of all socioeconomic positions are given essential resources. Equity as a concept extends beyond ensuring every student meets basic requirements; it involves creating tailored responses that address the unique needs of each student (Edgar, 2022). Rather than meeting a quota of support, this involves providing additional assistance to students who face more extensive disadvantages.

The USBE has given a similar definition in its strategic plan, defining educational equity as, "...the distribution of resources to provide equal opportunities based upon the needs of each individual student." The board is emphasizing that Utah schools should not be providing uniform support to students but should be identifying and targeting students in need of remediation. They further clarify the details of this idea by stating that such support can take the form of "funding, programs, policies, initiatives, and support systems that acknowledge the distinct backgrounds of each student." (USBE, 2022) This list of what should be done to assist disadvantaged students is extensive, including many broad ideas of what resources should be employed to achieve amelioration.

It is important to note that on Jan 30, 2024, the Utah government passed a bill that banned DEI practices in public institutions, including public schools. This significantly impacts the environment for accommodations in schools. However, this bill only limits remediation based on, "race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender identity." While one might assume that accommodations for refugee students would be eliminated, the bill makes no mention of language, income level, past education experience, mental health struggles, or other attributes regarding general socioeconomic status. Most refugee students will need accommodations in one, more, or all of these categories. This implies that public schools can still offer support programs to refugees who require assistance due to characteristics unrelated to identity, provided there is necessary data to demonstrate their need for such help. For instance, as discussed earlier, federal laws still exist mandating accommodations for language learners, requiring that resources are allocated to ensure they can succeed. Hence, despite the increased challenges imposed by the Utah legislature in assisting these students in need, the school system still has avenues to invest in refugee success.

Additionally, it has already been codified by the Utah State Legislature that school boards should engineer responses to the many difficulties students face. In discussing its powers and duties, Utah Code states that school boards shall use assessments to "identify students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation." (Utah State Legislature, 2023) The legislature is emphasizing the imperative to systematically ensure educational equity. However, the state's commitment seems to be more rhetorical than substantive, as they have not provided the essential financial support to do such intensive targeted interventions. Allocating state resources to the public school system is a responsibility of the legislature, yet Utah has ranked the lowest state in education spending by pupil for the last decade (NCES, 2022).

While the consequences of this low budget are likely minimized due to the stability of a significant number of Utah households and communities, they are not for refugees and other marginalized groups. Utah has the lowest percentage of child poverty, single-parent homes, and 42% percent of Utahns identify as members of the Church of Jesus Christ of Latter-day Saints, which can act as a strong community network (USDA, 2023; US Census, 2022; Cargon et. al, 2023). Though these statistics are not definitive tellers of financial and familial stability, these serve as proxy statistics to reflect strong support networks and families that many Utah school-age adolescents experience outside of school. As a result, even with smaller school programs and limited funding, the average Utah student has access to sufficient resources to succeed academically without heavily relying on district support. However, this lack of funding for essential programs has a much larger impact on marginalized communities, especially refugee students. In juxtaposition to their peers, refugees lack strong support networks, usually come from lower-income backgrounds, have limited resources, and are inexperienced with the U.S. school system. They necessitate extra resources but are being neglected due to an education system that is inherently designed and funded to educate students with pre-existing support networks.

The educational landscape in Utah, while expressing a commitment to remediation, is tangibly deficient in its support of refugee students. Despite articulated missions by the USBE and legislative acknowledgment, efforts made to ensure their success are not enough. The reasons for this are highly nuanced, between the state failing to provide the proper funding and parties within the school system failing to create and execute comprehensive refugee remediation strategies. Assisting refugee students will demand more actions. It necessitates

substantial investments and intricate planning and execution to ensure every individual receives the support they need to thrive.

Conclusion

This analysis of the challenges confronted by refugee students in Utah emphasizes the immediate necessity for an increase in cohesive and impactful interventions. Insights gleaned from interviews with key stakeholders underscore prevalent issues such as inadequacies in English Language Learning programs, cultural assimilation pressures, social isolation, and a lack of sufficient counseling and college planning. The discord between Utah's commitment to provide remediation and the tangible support available reveals a crucial gap that demands bridging. A concerted effort is required to align rhetoric with action. Utah must translate its commitment into tangible initiatives, allocating resources effectively to both research refugee student struggles and empower refugee students for success. Utah’s state song sings “this is the place”, but it will not feel this way for all refugee students until proper action is taken.

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Reevaluating Utah's Agricultural Practices And Water Consumption to Protect the Great Salt Lake

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Abstract:

Utah's Great Salt Lake is rapidly losing water as a result of anthropogenic climate change and overuse. Human settlement from the 19th century onward resulted in river diversions to support growing populations, leading to decreased water availability. Those water diversions are expected to continue, especially as the state's population soars in Utah's arid landscape. Most of these diversions are the result of agricultural endeavors. Farmers, who are trapped under the use-it-or-lose-it system of water appropriation, are incentivized to use more water than their crops require to retain their water rights. Correcting water policy to a pay-per-use system may rectify this overconsumption by allowing farmers to pay for the water they need, without risk of losing existing water rights. Alternative agriculture is another potential method of correction, as it sustains Utah's natural environment rather than contributing to its overall demise. Without corrections like these, Utah's ever-growing population will become more susceptible to the toxic carcinogens lying at the bottom of the Great Salt Lake. As lake levels continue to fall the number of Utahns, and particularly those Utahns along the Wasatch Front, inflicted with these carcinogens will rise tremendously. To prevent a regional epidemic, communities and individuals should advocate for sustainable water usage through local and political tactics. It is only through consistent communal effort that Utah's water will be preserved and its Great Salt Lake saved.

Introduction

The Great Salt Lake, one of the most recognizable geographic features in the Intermountain West, one of Utah's most crucial ecological and economic sites, and a landmark easily visible even from space, is in grave danger of utter collapse. Dwindling water levels as a consequence of historic droughts, coupled with human development, have now brought the lake to a breaking point, threatening it and the ways of life of the thousands of species and millions of people that rely on it. The wetlands that surround it are ecologically vital for their role housing hundreds of migratory bird populations each year, a critical link in the migratory network between North and South America known as the Pacific Flyway. The lake also plays host to unique species like the brine shrimp, whose populations are collapsing as lake levels fall. Aside from its environmental importance, the lake directly and indirectly supports a broad swath of Utah's economy. For example, Utah's skiing and winter tourism industry, one of the state's most lucrative, relies on the "lake effect" acting on the climate of the Wasatch Front to provide sufficient snow. The lake itself also supports a multimillion-dollar brine shrimp industry, minerals extraction, and myriad recreation opportunities. In short, the Great Salt Lake is indispensable, both economically and ecologically, for the continuation of society as we know it along the Wasatch Front (State of Utah, 2024).

The lake has been gradually draining since the mid-19th century due to both natural forces and human activity. Vital runoff streams that direct water towards the lake undergo natural and piecemeal erosion. This erosion is worsened by wind that degrades the natural landscape in and around the lake (Christian et. al, 2023). Concurrently, settlement and urbanization of the Wasatch Front have required growing diversions of water from the lake and its tributaries to support ongoing

development (Seltenrich, 2023). Although natural climatic fluctuations have historically oscillated the lake's levels between overfilled and deserted, today's declining levels are unique because of the role humans played in shaping that outcome. Water overconsumption, both in agricultural and urban contexts, combined with the rising temperatures from climate change endanger this fragile ecosystem. Consequently, Utah's agricultural system must be transitioned towards more biologically diverse and less water-intensive practices. This transition requires reconsidering Utah's system of water allocation, as well as reckoning with consumption in the agricultural and urban realms.

Utah's Water Landscape

Four primary rivers feed into the Great Salt Lake: the Bear, Jordan, Ogden, and Weber Rivers. These four rivers, known as feeder rivers, are the primary targets for water diversions when agricultural and urban water needs exceed the existing supply in local water sources. Less pertinent, but still tangentially related to the lake, are the Green and Colorado Rivers. Interstate agreements such as the Colorado Compact impact how much freshwater is available for Utahns to access from water sources outside the state. If the population requires more water than allotted through those compacts, farmers and citizens will resort to feeder rivers for their water, hence drawing from the sources that ultimately feed into the Great Salt Lake (O'Donoghue, 2023). With less water reaching the lake, the remaining water becomes more susceptible to evaporation from rising temperatures, reinforcing the lowering of lake levels (Learn Genetics, 2022). These complex river systems and water dependencies exacerbate the dire conditions of declining lake levels. Thus, Utah's agricultural industry is one of the primary actors responsible for decreasing lake levels by diverting water from its tributaries.

Current Water Rights and Water Consumption

The most pressing issue surrounding modern agricultural practices is the excessive water applied by farmers. In our current water rights system, farmers will pay a flat rate for a given amount of water. If they do not use that average allocation of water over a given number of growing seasons, they jeopardize their right to that water allocation in following growing seasons. This has fittingly been described as the use it or lose it system because farmers are incentivized to use more water than their crops need to ensure they may retain their future water rights.

Utah has a seven-year period of evaluation for agriculturalists; if a farmer does not use the entirety of their water rights consistently throughout the seven-year period, they risk losing rights to the unused portion (Utah Division of Water Rights, 2024). Cantor et al. (2022) studied this concept of water rights and confirmed that "even in a severe meteorological drought, [agriculturalists] continue to get their full allocation of surface water. This water rights structure disincentivizes conservation practices such as crop shifting or fallowing for senior water rights holders" (p. 638). The researchers criticize the system that encourages agriculturists to consume the entirety of the water allocated to them, arguing it seems counterintuitive in an age where the planet is actively facing drastic climatic changes. Preventing this rapid overconsumption requires changes to the water rights system.

Most states west of the Mississippi River rely on similar appropriative water rights, whereas eastern states base their water rates on riparianism, or having the right to use whatever water is on your property (Abrams, 1989). Riparianism is also problematic, as a landowner may not need all the water that runs through their property, whereas a nearby farmer might require more water than they have immediate access to. That is one reason the use it or lose it approach has become popularized in the West, yet it has also created the overconsumption tendencies seen today. The water rights system should be reimagined so that instead of encouraging farmers to pay a flat rate for a set amount of water that might go unused, they would pay for how much water they actually require. This would incentivize water conservation through pay-per prices, as farmers who use less water could be paying less than they would through a flat rate.

Water rights and consumption are not solely an intrastate issue, however. The Colorado Compact, for example, is an interstate agreement between Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California that handles water allotments between the seven states served by the Colorado River. The compact stemmed from concerns regarding water scarcity and found that the water, which includes notable reservoirs such as Lake Powell and Lake Mead, should be divided equally between two basins: the Upper Basin (Colorado, Wyoming, Utah, and New Mexico) and the Lower Basin (Nevada, Arizona, and California). Of the four Upper Basin states, Utah receives only 23% of the water allocations, yet that percentage will not be sufficient as the state's population grows. Utah will reach a population of approximately six million people in the next 40 years and will require more water than is currently supplied through its own water as well as the Compact. (Utah Department of Natural Resources, 2022). Authors Baxter and Butler affirm that "population growth projections for the State of Utah indicate a doubling by 2065. Most of this growth will occur in the urban areas in the watershed of the Great Salt Lake. Thus, it is expected to encounter more pressure to divert freshwater for anthropogenic uses" (Baxter & Butler, 2020, p. 32). Going forward, there will be increasing pressure on the interstate river compact to supply freshwater to Utah's swelling

population. The state already obtains 27% of its net water from the Colorado Compact, so if that compact fails to address Utah's growing needs, there will be a greater strain on the four feeder rivers that ultimately reach the Great Salt Lake, hence endangering the water volume within the lake (Utah Division of Water Resources, 2024). To avoid water allocation concerns, legislative policy must be enacted that redesigns water charges, preventing the aforementioned diversions and preserving the greater Utah ecosystem.

Correcting Water Policy

Some Utah legislators are working to create and pass bills that stray from the traditional use-it-or-lose-it system. To amend the currently flawed water rights system, for example, Representative Joel Ferry and Senator Scott Sandall sponsored H.B. 33 during the 2022 Utah general legislative session. This bill aims to allow agriculturists to use only portions of their water without risking a loss of their water rights. They are no longer incentivized to use the entirety of their water allocation as farmers are allowed to keep that allotment despite only partial usage (H.B. 33, 2022). Senator Sandall, a farmer himself, was inspired to protect and extend water rights to preserve in-stream water flow to preserve the integrity of Utah ecosystems (Bammes, 2022). The bill was signed into effect on May 4, 2022. Although this push towards a pay-per-use system is a step in the right direction, there is still a need for a further incentive for agriculturalists to reduce their water consumption overall. Senator Scott Sandall and Representative Casey Snider sponsored S.B. 18 in the 2024 Utah General Session which strives to clarify and codify water modifications (S.B. 18, 2024) and it was signed into effect on March 13 by Governor Cox after a unanimous vote in its favor. This bill allows farmers who have already implemented water-conserving methods to either sell their unused water or keep it flowing downstream without fear of losing that allocation. This serves as an extra peace of mind to agriculturists who are worried about losing their allocations (Winslow, 2024). It concurrently works to rectify the use-it-or-lose-it system and indirectly redirects unused water towards the Great Salt Lake. With enough water conservation from multiple water rights holders, there is potential to see a significant reduction in diversions from the feeder rivers that reach the Great Salt Lake, hence retaining the lake's overall water levels.

There are a number of ongoing projects throughout the state of Utah that aim to reduce excessive water consumption. One of these is titled the Price River Water Bank Pilot Project, which leases unused water back to the state to benefit the surrounding ecosystem (Utah Department of Natural Resources, 2024). As the Price River continues to decrease in volume each year, it is essential that actions like the Water Bank Pilot Project be taken to conserve the remaining supply. The project successfully approved the Carbon Canal Company Water Bank, the first water bank in the State of Utah, that leases unused water. This "voluntary and compensated" program grants agriculturists the flexibility of using the water in years to come without the risks associated with the use-it-or-lose-it system. If projects similar to the Price River Water Bank project are implemented, particularly closer to the Great Salt Lake, Utah might see fewer diversions from the rivers that feed into the lake preventing low lake levels in years to come.

Traditional vs. Alternative Agriculture

Another indispensable tool in rectifying the state of the Great Salt Lake is investment in alternative agricultural practices, as opposed to traditional ones, to reduce water consumption. Alternative agriculture transitions away from harmful ecological practices, such as monocropping, to more organic methods of farming. These methods include diverse crop rotation within a single field to retain soil nutrients, avoiding tilling to preserve the integrity of underground roots, and planting natural pest repellants to avoid the overapplication of chemical pesticides (Boeringa, 1980, p. 12). While initially more time-consuming and costly, alternative agriculture may prove to be part of the solution the Great Salt Lake desperately needs to sustain itself in the years to come.

In contrast to these environmentally-conscious alternative agriculture methods, modern agriculture is commonly referred to as a "resource extraction industry" (Lichtenberg, 2005). The current agricultural norm in the United States praises the practice of monocropping because of its short-term high yields. It is also relatively easier than organic methods of agriculture because it simply requires agriculturalists to grow the same type of plant on repeated plots of land each year, hence the one (mono) crop that holds the farmer's focus (Jacques, 2012). However, these yields can only be sustained for so long: after years of growing the same crop, the fertility of the host land degrades significantly. Each crop requires a unique mixture of nutrients from the top soil, so as a plant is monocropped, it repeatedly absorbs repetitive nutrients. Over time, as the host land degrades, it produces low nutrient-dense crops, harming both the land and the crop's consumers (Scheer & Moss, 2024).

Monocropping is harmful to water supplies because as the land degrades over time, its soil becomes particularly vulnerable to adverse environmental effects. Unhealthy soil is generally less retentive, allowing water to slip through easily. When it rains, degraded soil cannot take in most of the water that seeps into the ground, which wastes the natural source of water and therefore requires farmers to apply more groundwater to make up for the lack of natural absorption (Nichols, 2015). This then results in the overconsumption of water for an

industry that already uses so much of the state's water supply, thus exacerbating the dire conditions of the Great Salt Lake's water loss.

Alfalfa as a Threat to Water Consumption

There are approximately 7,380 alfalfa farms scattered throughout the state of Utah, many of which contribute to environmental degradation by monocropping the plant (Peterson, 2022). There is great potential to incorporate alternative agricultural methods into the state's alfalfa farming to be more environmentally-conscious, and experts have already established a myriad of benefits associated with implementing those methods. For example, six researchers in Southeastern Kazakhstan, after studying the potential ecological benefits of alfalfa discovered that through proper crop rotation, green manure, and a mixture amongst biologically diverse crops, the plant has several positive ecological effects. "[Alfalfa] can increase the productivity of arable land, create conditions for maintaining and enhancing soil fertility, and obtaining high crop yields" (Bastaubayeva, 2023, p. 129). The researchers praise the potential that alfalfa carries and encourage their audience to integrate alfalfa into a more ecologically diverse setting, rather than monocropping the plant for some quick cash.

Although conducted in a different region, this study is incredibly relevant to Utah and the Great Salt Lake, as alfalfa has long been a subject of controversy when discussing Utah agriculture. The crop has historically used about 70% of the state's agricultural water diversions while only contributing to about 0.2% of its GDP (Williams, 2023). While cutting alfalfa farming altogether may be a quick fix, this proves politically difficult as powerful Utah politicians have personal connections to alfalfa farms that ultimately export their crops for a profit. Governor Cox, for example, owns a farm in Fairview that primarily farms alfalfa for export (Reif, 2023). As a result, it is highly unlikely that Utah will separate itself from alfalfa farming. What is needed, then, is to utilize alfalfa's potential rather than wasting invaluable resources on the plant that barely contributes to the state's GDP.

Establishing alfalfa as a rotational crop would combat the adverse soil consequences, and therefore greater water needs, associated with Utah's alfalfa monocropping. Because it is unlikely that alfalfa could be completely eliminated as a crop in Utah's agricultural landscape, the second-best option would be to sustainably grow the plant so that the soil integrity of Utah farmlands may be protected and their water consumption regulated. This could most effectively be accomplished through collaboration between lawmakers and agriculturists to ensure farmers are properly incentivized to implement water-reduction methods. There is cooperation already underway through the passage of aforementioned bills like H.B. 33 and S.B. 18, but water demand continues to grow in tandem with the state's population.

Population Growth and Water Consumption

As Utah's urban centers continue to develop, demand for the state's already-strained water resources will only continue to grow. The Division of Water Resources found that Utah's average daily water use is 321 gallons per capita. With a population around 3.4 million, Utah's daily water usage equals approximately 1,091,400 gallons. In 2065, with a population projected of around six million, the daily water usage will surge to approximately 1,926,000 gallons, assuming water requirements remain on par with current rates (City of Washington Terrace, 2021).

With a doubling in population comes a doubling in water usage that the state cannot afford to supply given existing strains on the Great Salt Lake and its feeders. One of these extenuating circumstances is the rate of evaporation from the Great Salt Lake: it already loses approximately 2.6 billion gallons of water daily to evaporation from increased temperatures (Learn Genetics, 2022). Using precious, limited water on harmful agricultural endeavors, such as monocropped alfalfa, only damages the state of the lake. In outlining these water expenditures, researchers find that "the underlying problem threatening Great Salt Lake, Lake Urmia [in Iran], and most saline lakes is unsustainable population growth that increases demand for irrigated agriculture and urban water supplies" (Wurtsbaugh & Sima, 2020, p.10). The pair warn that population growth correlates with higher water demands, meaning Utah's population, especially those specialized in development, must be extra vigilant to curb water-intensive infrastructure and practices, which will ultimately protect what remains of the Great Salt Lake.

Health Consequences of Low Lake Levels

As the state's population grows, the potential health impacts of a shrinking Great Salt Lake will become more dire. In an article published in the Environmental Health Perspectives journal, Nate Seltenrich explains the critical roles of terminal lakes in the surrounding environment by highlighting the significance of the impending issues surrounding lake-encased toxic dust and the fundamental need to mitigate unnecessary water diversion. He found that "the presence of arsenic in the expanding lakebed from both natural sources and human activity has led to widespread concern that residents of Salt Lake City and nearby communities may be breathing harmful levels of [arsenic]" (Seltenrich, 2023, p. 3). In addition, current projections estimate the lake to completely dry by 2029 if severe initiatives are not implemented quickly (Ramirez, 2023). A

fully exposed lakebed would wreak havoc on Salt Lake Valley's public health because of the toxic dust and its accompanying health effects (Sutherland & Chakrabarti, 2024).

Although scientists cannot definitively state what health consequences will result from the lake's degradation, they are confident that at least some particulates will be carcinogenic or otherwise have potential to trigger the development of fatal diseases. With that in mind, Utahns should be vigilant in reducing human-triggered effects on the Great Salt Lake for the protection of residents in the lake's vicinity, especially considering the state's ever-growing population. These warnings urge environmentalists, medical providers, and policymakers alike to find a compromise between comfortable water usage and sufficient water preservation in order to mitigate human health effects of depleting Great Salt Lake levels. The state of Utah already spends approximately $1.9 million annually to combat the consequences of environmental-related health issues across the state (Errigo, 2020). Instead of waiting for that budget to rise as the lake continues to lower, residents of diverse backgrounds should be proactive in acting against the degradation of the lake.

Individual Solutions

Though it will take more than individual efforts to solve this problem, Utah residents can still play a part in water conservation efforts. Environmentalists such as Utah's Sierra Club chapter urge residents to be more conscious of their personal water usage through actions like limiting lawn watering, xeriscaping private property (using native plants and nonliving objects, such as rocks, as an alternative to traditional grass lawns), and taking shorter showers (Utah Sierra Club, 2024). These efforts surely contribute to the overall decrease in consumption of water, particularly on an individual level, but it is naive to expect individuals to foster the greatest change at an institutional level. Michael Maniates, in *Global Environmental Politics,* asserts that while individual actions may prove beneficial on a local scale, they shift the narrative of water conservation toward individuals and accordingly limit the pressure placed on larger, more influential powers, such as state legislators, to enact wide-ranging policies that ultimately have more power to instate noticeable change (Maniates, 2001). With this in mind, Utahns should collectively be placing more pressure on their legislators to enact these types of policies, especially the ones mentioned earlier in this analysis. This may be accomplished through various methods of civil engagement, including, but not limited to, voting for active legislators, calling or emailing their representatives, and attending protests in support of environmentally-conscious practices. These are practices that contribute to the solution of lake-related issues and can be done fairly easily on an individual scale.

Conclusion

The fight for the Great Salt Lake is no longer the exclusive domain of the environmentalists. A great number of lives are at stake because of the impending health consequences of the lake's degradation. Due to outstanding environmental health disparities within the state of Utah, some demographics such as low-income communities and communities of color, particularly around West Valley City, will be far more prone to health consequences than their high-income and primarily white counterparts. These communities generally don't have the resources, whether monetary or otherwise, to pack up and evacuate quickly at the sight of danger. The oncoming health perils, although threatening to all populations, will have greater adverse effects on those who cannot escape, but this does not make their counterparts immune.

Although a daunting task, protecting the health of the lake is not impossible. Utah's politicians are working to pass legislation that combats outdated systems of agricultural water consumption, which will inspire a new generation of farmers to be more environmentally conscientious. Small towns like Price and Vernal are already creating and supporting notable organizations, such as the aforementioned Price River Bank Water Project, that are gaining momentum by the day. They aim to work hand-in-hand with local populations to instate genuine change on a realistic timeline, a feat that cannot be taken for granted with the lake's ebbing life. Researchers are advocating for alternative agriculture within the state because of its long-term ecological benefits, including highly-effective water conservation. Public health officials are bringing to light the potentially fatal effects of the lakebed dust and are accordingly calling the state's growing population to action.

It is human action and human practices that have exacerbated the dire conditions the Great Salt Lake faces today. While it is possible to rectify the distressing situation of the lake and its water levels, what Utah needs is collective action by everybody: politicians, medical professionals, businesspeople, and ordinary citizens alike (Paul, 2021). Going forward, as the life expectancy of this invaluable lake continues to dwindle, Utahns need to be willing to make compromises and quickly implement change to protect the Great Salt Lake.

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The Inflation Reduction Act: A Champion for United States Drug Pricing Reform

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Abstract:

The Inflation Reduction Act (IRA) of 2022, which passed during the second year of the Biden Administration, includes monumental provisions that are reshaping prescription drug pricing in the United States. This analysis explores the successes and shortcomings of the IRA in the context of the US healthcare system and pharmaceutical drug economy. The successes discussed are that Medicare has a newfound ability to negotiate drug prices with manufacturers, Medicare can require rebates on inflated prices for chemical drugs and biologics, and Medicare Part D prescription coverage is redesigned. The shortcomings discussed are the failure to firmly address pharmacy benefit managers and the exclusivity of its provisions, which only directly target Medicare beneficiaries. Despite its shortcomings, the IRA is an overall positive addition to U.S. legislation.

Introduction

The Inflation Reduction Act (IRA), signed into law on August 16, 2022, by President Biden, is the most significant legislation for healthcare policy since the 2010 Affordable Care Act. It reflects elements of the first two years of the administration's legislative framework—the "Build Back Better" plan. The administration specifically crafted it to tackle the economic challenges following the COVID-19 pandemic and Eastern European energy crisis, both of which contributed to rising costs for American families. Pharmaceutical drugs were identified by the federal government as a contributor to financial strain and were subsequently addressed in the IRA.

Prescription drugs have become increasingly expensive in the United States. According to a recent report from the Office of the Assistant Secretary for Planning and Evaluation (ASPE) at The United States Department of Health and Human Services (HHS), annual spending on prescription drugs is more than $1,500 per capita, signaling that prices are roughly 2.5 times higher than those in countries of similarly high income (Finegold et al., 2022). The rising cost of research and development, expenses for marketing and distribution, complexity of the drug supply chain, and absence of effective price regulation in the market contribute to this unaffordability problem.

High costs affect millions of people, particularly seniors and disabled people on Medicare who live on fixed incomes. Estimates show more than 5 million people with Medicare struggled to afford their prescriptions in the last year (Finegold et al., 2022). Life-sustaining medications are non-negotiable needs for many people, making unaffordability a danger to public health. Addressing unaffordability is important to protect consumers and ensure health equity for the most vulnerable populations for whom healthcare services and products are too expensive.

The IRA's three main pillars—each their own piece to be celebrated—are significant and represent milestone reform. They work to allow Medicare to negotiate the price of drugs, instate a rebate to Medicare Parts B and D for price increases above the inflation rate, and restructure cost-sharing for Part D beneficiaries to cap out-of-pocket (OOP) spending at $2,000 annually and at $35 per month for insulin. Though there are reforms needed in the future that were unaddressed in this legislation, the three main elements represent an unprecedented achievement of drug pricing revision goals that will benefit American families for years to come.

Background

Medicare is a voluntary federal health insurance program primarily designed for US citizens aged 65 years and older, or who have disabilities or end-stage renal disease. The Centers for Medicare and Medicaid Services (CMS) is the administrative division under the US Department of Health and Human Services (HHS) responsible for all such insurance programs. CMS was established under President Lyndon Johnson and the Social Security Administration in 1965 and is funded through premiums, payroll taxes, and general government revenue (CMS, 2023).

Medicare covers various healthcare services according to which insurance package, or "Part", someone is enrolled in. These payment coverages include hospital care (Part A), outpatient and preventive care (Part B), and prescription drugs (Part D). Oftentimes, patients are enrolled in Part A and B, meaning Medicare will pay for their hospital and clinic visits. Part C is primarily a network of private insurers that manage patients' enrollment in the other packages, whose programs are commonly referred to as "advantage plans" (CMS, 2023). Put simply, Part C includes managed care approaches to Parts A and B.

Part D was an expansion in 2003 under the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), which became effective in 2006. It is composed of private insurance companies that contract with CMS to offer plans specifically for prescription drugs administered outside of a medical facility. Those drugs administered within a medical facility or inpatient hospitalization would be covered under Part A or B. These Part D plans vary in terms of premiums, cost-sharing, and formularies—the lists of drugs offered by cost coverage tiers. The MMA authorized private plans to negotiate with pharmaceutical companies but prohibited Medicare from directly negotiating drug prices (Megellas, 2006).

Though many drugs have increased in price, only a small number of them account for the highest spending. The majority (80%) of prescriptions that Americans fill are generic, but 80% of expenditures in both retail and non-retail settings are for brand-name or specialty drugs (Parasrampuria & Murphy, 2022). The monopoly power of pharmaceutical companies is especially potent, whether through intellectual property advantages or because of the lack of biosimilar competition.

Further, the cause of spending growth on pharmaceuticals in a retail setting (applicable to Medicare Part D plans) was increased from the unit cost per prescription, not from increased utilization. And, from July 2021 to July 2022, over 1,200 drugs had price hikes averaging 31.6%, far exceeding the rate of inflation for that time period (Parasrampuria & Murphy, 2022).

Public opinion trends indicate that people are ready for reform. Since Medicare Part D's creation in 2003 it has undergone restructuring to improve its functionality, with barriers to accessibility regularly evolving: efforts to adjust cost-sharing, update formularies, and promote drug affordability are ongoing. Constituents' call to the 117th Congress indicate, however, that these concerns remain current. Nine of ten people questioned in a Kaiser Family Foundation poll said they are concerned about increases in health care costs for individuals, with about six in those ten reporting they are "very concerned." About fifty percent of those polled indicated they were concerned about increasing costs for the nation as a whole (Schumacher et al., 2022). Half of respondents reporting consciousness of US industrial healthcare spending is significant enough, but 90% reporting concern about themselves and their families, personally, shows even more exigence.

The affordability issue is recognized as a bipartisan concern. Generally, Republicans favor market-based approaches, limited government intervention, and patent protections. In 2019, Republicans introduced H.R. 19- Lower Costs, More Cures Act, which aimed to lower prices by streamlining the drug approval process and incentivizing innovation for stronger competition (H.R.19, 2019). Another bill, S.2534- Prescription Drug Pricing Reduction Act of 2019, proposed capping out-of-pocket costs for Medicare beneficiaries and implementing financial penalties for manufacturers increasing prices above inflation (S.2534, 2019).

Democrats generally favor government negotiation, price transparency, and importation competition. H.R.3- Elijah E. Cummings Lower Drug Costs Now Act, introduced by Democrats in 2021, would allow Medicare to negotiate drug prices and import lower-cost drugs from other countries. Another Democrat-sponsored bill, H.R.4811- Medicare Negotiation and Competitive Licensing Act of 2021, aimed to leverage the purchasing power of Medicare by authorizing the Secretary of HHS to act on behalf of CMS and Medicare.

None of these drafts have moved past introduction in their respective chambers in their original forms because they coalesced into the provisions of the final version of the IRA in 2022, H.R.5376- Inflation Reduction Act of 2022. Regardless, the drug pricing provisions have been in the pipeline for years

and are favored across the American political ideology spectrum. The IRA represents in its incorporation of these ideas bipartisan collaboration, and is a milestone step for change.

Medicare Drug Price Negotiation

One of the most positive healthcare policy provisions in the IRA is that the Secretary of the US Department of Health and Human Services now has the authority to negotiate drug prices with pharmaceutical manufacturing companies for the Medicare program. This was explicitly prohibited under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Because of the IRA, the Secretary is required to negotiate Maximum Fair Prices (MFPs), acting as a check on monopolies in the private sector.

However, not all costly drugs are eligible for negotiation; only "single source" drugs in Medicare Part B and Part D are eligible. The "single source" designation refers to pharmaceuticals that do not have FDA-approved small-molecule generics or biosimilars competing with them (Cornell Law School, n.d.). For example, the FDA grants a "period of exclusivity" to a drug company for about six months after their patents expire so that they can produce a generic form of the brand name and still have sole access to the market before another company can produce its own form of the generic.

Because the IRA prioritizes natural economic competition amongst generics and biosimilars as a strategy to lower prices, only 10 drugs will enter the negotiation program in the first year (2026) followed by another 15 in 2027 and incremental increases in the following years. By 2030, HHS will negotiate lower prices for 80 medications and biologics—drugs produced using a living system, such as a plant or animal microorganism, as opposed to a pure chemical derivative (FDA, 2018).

Congressional Research Service studies report that generic competition lowers drug prices consistently (CRS, 2023), so it is appropriate for the provision to leave these unaddressed. In fact, if there is a drug that will likely have a competitor in two years, it is not eligible for negotiation. Additionally, it has to have been on the market for 7 to 11 years, depending on whether it is a chemical drug or biologic, giving time for a competitor to develop before the government can interfere (117th Congress, § 1195, 2022). The time limitation also permits companies to recoup their investments from research and development expenses. This rule will not stifle manufacturing innovation. If manufacturers choose not to participate in negotiations, they may withdraw their products from the Medicare and Medicaid programs or pay a fine for noncompliance.

The provision targets drugs with market failure, which themselves account for the majority of spending because of their monopoly advantages. The 250 top-selling drugs in Medicare Part D with one manufacturer and no generic or biosimilar accounted for "60% of net total Part D spending" in 2019 and "0.3% of all covered products but 16% of net total Part D spending" (Cubanski & Neuman, 2021). The 10-drug limitation in 2026 still leaves ample space for the law to achieve considerable savings.

A perfect example of this is Humira. It is a biologic, which means that it cannot be mass-produced in the same way that generics of a certain chemical compound can be because it has to be grown in cultured, living cells. Biosimilars of biologic treatments tend to catch up slowly to the market share of competitors because of the unique nature of the medical technology. The Chicago-based company AbbVie recently lost its monopoly of adalimumab, the monoclonal antibody for the brand name "Humira," to California-based Amgen in January 2023, when Amgen released Amjevita. For 20 years, Humira dominated the market, generating $200 billion in revenue. It was ranked as the best-selling drug in the world several times (Dunleavy & Sagonowsky, 2022). Before Amjevita, Humira would be a prime candidate for negotiation under the IRA provisions. Similar drugs will be subject to the full force of Medicare's newfound negotiation authority, which, because of its size and enrollment, has power for good that private insurance companies do not.

Punitive Rebates to Medicare for Price Rises Above the Rate of Inflation

CMS has commonly used rebates, or demands for retrospective refunds for overcharging, as part of its price negotiation power. Now, its goal is to discourage pharmaceutical manufacturing companies from raising their prices for Medicare Part B and Part D above the rate of inflation, because if they do so, they will be required to pay a rebate of the difference back to the Medicare program. This follows the aforementioned H.R. 3 structure.

Nearly identical inflationary rebate provisions exist in Medicaid with the Medicaid Prescription Drug Rebate Program (MDRP), created from the 1990 Omnibus Reconciliation Act and the 340B drug pricing program. A 2012 example highlights the beneficial effect for CMS when inflation is high: more than half of the rebates owed to Medicaid in that year were for brand-name price hikes higher than the inflation rate. Because of that, Medicaid expenditures were significantly lower—roughly $30.8 billion lower—than Medicare's. This analysis indicates that over 50% of the price gap between Medicare and Medicaid for the same medications can be attributable to Medicaid's ability to take advantage of these inflation-related rebates (OIG, 2015). The Congressional Budget Office estimates that the prescription drug inflation rebates alone will lower direct Medicare spending by roughly $28 billion by 2026

and $72 billion by 2031 (CBO, 2022).

There is valid concern that if companies cannot greatly raise their prices after market release, the initial launch prices will be higher to offset future revenue missed from the slower price growth. However, this is not a guaranteed consequence because CMS cannot project how the private stakeholders will strategically respond. The concern is a premature assessment because estimates rooted in this thinking, though possible, are uncertain.

Assuming that drug prices will be lower, the Medicaid program will lose part of its revenue from inflationary rebates to Medicare. Medicaid is therefore estimated to spend roughly $3 billion by 2026 which it otherwise would not have if it were collecting those rebates itself. This is evidence of the fact that drug prices will, indeed, decrease. The $3 billion increase for Medicaid is also not cause for concern, because with the $28 billion savings for Medicare, CMS at large is still projected to save a significant $25 billion (Cubanski et al.., 2023).The very act of monitoring costs against inflation will discourage price hikes.

Medicare Part D Redesign

The final pillar of the Inflation Reduction Act includes the headlining, bipartisan elements of the legislation—an annual out-of-pocket spending cap at $2,000 starting in 2025, and a $35 per month insulin cap in 2023 for Medicare beneficiaries.

Currently, Medicare bears 80% of costs in the "catastrophic phase," with plans covering 15% and manufacturers having no responsibility. The catastrophic phase is a designation threshold for Part D plans that provides increased financial protections for those with high-cost medication expenses. All OOP payments including co-payments, co-insurance, and deductibles count towards reaching the catastrophic threshold. Once entered, the cost-share for beneficiaries drops to a much lower percentage.

Under the newly designed Part D, Medicare's responsibility will decrease to 20%, shifting allocation to 60% for plans and 20% for manufacturers. The shift is expected to incentivize plans to pursue stronger negotiations, potentially curbing price growth in Part D (Cubanski et al., 2023). By restructuring the Medicare cost-sharing divisions, the IRA eliminates 5% cost-sharing for beneficiaries who have reached the catastrophic coverage phase. Even 5% coinsurance in the catastrophic phase can total thousands of dollars yearly for patients. For seniors on a fixed income, this can be devastating. With this 5% eliminated thanks to the IRA, payment responsibility falls on the private Part D plan and on Medicare.

Additionally, the $2,000 annual cap designates responsibility back to the insurance plans (117th Congress, 2022). Not only is the cap important for Part D enrollees who have incurred spending into the catastrophic coverage phase, but also for those who spend high amounts and are unable to reach the threshold as is, leaving them stuck with a higher percentage of co-payment. In 2022, the catastrophic threshold for OOP spending was roughly $3,100 after manufacturer discounts, still creating a coverage gap under the $7,000 set threshold. Now, enrollees can meet the threshold sooner.

Another important cap is for insulin. Insulin is an inflexible good; without taking it, those with diabetes universally find themselves in emergency rooms suffering from ketoacidosis. For these patients, budgeting for insulin is ongoing and non-negotiable, which can be a major stress for lower-income families. Because of the new provision in the IRA, insulin is now limited to no more than $35 per month OOP spending for beneficiaries of both Part D and Part B Medicare, alleviating some of the financial stress on fixed-income households. In 2020, 3.3 million Part D enrollees used insulin. This number could be an undercount of who is now or soon will be taking insulin, as the Endocrine Society and CDC estimate that 33% of the United States' 55.8 million people aged 65 and older have diabetes (Manrique et al., 2022). In other words, roughly the same number of people as the population of Los Angeles, California will be positively affected by the $35 per month insulin cap.

The Senate Committee on Finance opened an investigation in 2019 into prominent pharmaceutical companies' increases in insulin pricing. The committee found that Eli Lilly's Humalog price had increased by 585% between 2001-2015, Novo Nordisk's Novolog by 87% between 2013-2019, and Sanofi's Lantus by 77% between 2013-2019 (Senate Committee on Finance, 2019). The differences are part of why insulin has become a symbol of high drug costs in the United States. These price augmentations cost CMS programs (and by extension, taxpayers) hundreds of millions of dollars and inflict immense financial strain on patients.

The cost of insulin will also be affected by the first two IRA provisions discussed, which will save the federal government money as the provisions allow the federal government to cover higher shares of expense for Medicare beneficiaries. Regardless, the extra protection for individuals with Part D redesign as it relates to the damage done by insulin costs and other high-price medications is monumental.

Absence of Pharmacy Benefit Manager Regulation

The Inflation Reduction Act provisions already discussed are substantially positive, but with a legislative package so dense and a Congress so diverse in viewpoints, parts of the Act

were removed prior to its passage. Revisions of legislation are common, and that often means compromising on certain provisions where necessary. The IRA's passage was no different, in this case in regards to requiring compromise with entities known as pharmacy benefit managers (PBMs). Democrats and Republicans have danced around the topic of PBMs, but because of how robust their power is, reform on their role is difficult. Unfortunately, the IRA did not address this problem for the United States pharmaceutical drug industry.

PBMs are third-party administrators that health insurance companies contract to negotiate lower drug prices from pharmaceutical manufacturers. They are often referred to as the "middlemen" of the pharmaceutical industry. Similar to how there are predominantly three large credit reporting agencies for all banking in the United States, there are three large pharmacy benefit management companies in the United States pharmaceutical market: CVS/Caremark of CVS Health, Express Scripts of Cigna, and OptumRx of UnitedHealth Group. Their history began in the 1960s, when insurance companies started offering prescription drug benefits in health plans. PBMs have since developed the power to organize formularies and adjudicate medication claims in the negotiation process.

Currently, the HHS Office of the Inspector General presents a series of safe harbor exceptions for PBMs to operate outside the guidelines for transactions in other types of business. The federal Anti-Kickback Statute (AKS) prohibits "the exchange of anything in value, in an effort to induce the referral of business reimbursable by federal healthcare programs" (USC § 1320a-7b). It is typically cited to prohibit physician self-referral, but would also apply to PBMs if they did not have statutory protections via safe harbors.

In exchange for lower average wholesale prices (AWPs) for the insurance companies they consult on behalf of, PBMs offer the manufacturers preferred product placement in the formularies (tiered lists of drugs offered at designated co-pays) they develop and take a large commission (noted as a rebate) in the process. This has resulted in their controversial reputation, as the lack of transparency in commission and "administrative service fees" can lead to distorted drug prices and limit access to affordable medications whose manufacturers do not offer the same rebates. The financial interest for certain drugs to be placed on formulary tiers based on rebate incentives rather than on cost-effectiveness for patient outcomes is a major conflict of interest and an evident perverse incentive for insurance companies.

PBMs also contract directly with individual pharmacies and set pharmacy reimbursement rates. This puts financial pressure on small, local pharmacies that do not have the same purchasing power as large retail distributors like Walmart or the Medicare program. The industry is inaccessible for players independent from Caremark, Express Scripts, or OptumRx. Small business drugstores are dissatisfied with the unfairly low reimbursement rates that PBMs set, exclusion from preferred networks, complex contracts, and expensive administrative burdens.

This has a major impact on rural healthcare access. In 2019 alone, rural pharmacies were hit with over $9 billion in unavoidable PBM administrative fees because the supply chain does not wholesale directly with the medication manufacturers (Fein, 2020). University of Iowa's Rural Policy Research Institute discovered that "1,231 of the nation's 7,624 independent rural pharmacies closed" from 2003 to 2018 after being squeezed out by the PBMs of large pharmacy retail companies. Ultimately, the 630 vulnerable rural communities left with no drugstores highlight the harmful role PBMs play in the marketplace (Salako et al., 2018).

The presence of PBMs in the pharmaceutical supply chain also makes medication launch prices significantly higher than their manufacturing costs. By the time the price is negotiated down to retail level, insurance companies perceive that they have reached a good deal and make a profit. The price markdown is much less of a markdown, and more so a difference of an unnecessary expense funneled to a third party.

Humalog, drug maker Eli Lilly's insulin brand, raised its price from $391 in 2014 to $594 in 2018. This was a 51.9% increase. Contrary to popular belief, the intent of this price gouge from Eli Lilly was not to greedily increase profit. Rather, it was to protect sales from the demands of higher rebates to PBMs in the current supply chain system. Evidence of this effect, Eli Lilly's average revenue, noted as the net price, dropped from $147 in 2014 to $135 in 2018—an 8.1% loss—in that same time frame (Lovelace, 2019). Research and development operatives bemoan the pharmacy benefit management and insurer industries—a demonstration of division in the complex industry.

Rising list prices affect patients at the point-of-sale. In the current system, rebates are typically paid to the PBM after the sale of the drug to the patient, which means that they are not passed on to the patient. As a result, the cost-sharing obligations of Part D patients are generally determined using the artificially high list price of the drug, rather than the lower negotiated net price. Patients are exposed to inflated OOP expenses as well.

In January 2019, Trump Administration Secretary of HHS Alex Azar released a proposed rule that would remove the safe harbors granted to PBM operation, allowing all AKS prohibitions to apply. It eliminated rebates from pharmaceutical manufacturing companies to PBMs in Medicare Part D plans and Medicaid, but instituted two new, narrower protections directly at the pharmacy-counter level. The rule, in essence, tackled the practice of funneling money away from patients and to PBM companies. It was drafted in 2018 but had its implementation withheld in 2019 due to stated fears that it

would increase insurance premiums. Because of estimates that "beneficiary cost sharing would decrease, and premiums would increase," and that "the decrease in total beneficiary cost sharing would offset the total increase in premiums across all beneficiaries," it was reimplemented in 2020 (84 FR 2340, 2019). On the whole, the financial benefits for patients with high OOP costs were expected to exceed the financial burden of premium increases, and Medicare would have fronted the bill.

The Inflation Reduction Act delayed the implementation of this rule until 2027. The Pharmaceutical Research and Manufacturers Association (PhRMA) lobbied in July of 2021 to avert the delay of the Trump Administration's rule in the IRA, while pharmacy benefit management and insurer industries lobbied to nix it altogether. For the sake of financing the rest of the package, delaying the rule was a good decision. Medicare benefits from the same rebate operations that insurance companies like CVS Health, UnitedHealth Group, Blue Cross Blue Shield, and Cigna benefit from, and the revenue generated is appreciable.

Funds generated by postponing the elimination of the safe harbor and permitting Medicare to collect PBM rebates will be allocated towards raising Medicare's increased cost-sharing from the 2025 Part D redesign. PBMs collect a lot of profit, and in the case of Medicare, that is helpful for the next three years. In the case of private middlemen, where the rebates are not redirected into health insurance coverage plans as they are in Part D, that is a drain on CMS.

The IRA's failure to address PBM transparency reform was a serious missed opportunity for achieving long term drug pricing reform. Measures to tackle the issues of transparency gaps, perverse incentives, obstacles for non-retail pharmacies, and undisclosed practices that impede competition are still needed in future drug reform to empower consumers and pharmaceutical developers to make informed decisions that are both cost-effective and clinically suitable.

Smaller Impact for Non-Medicare-Eligible Patients

Because of the political process through which the IRA was passed, the initial extensions of the $35 per month insulin cap to the private market were cut. The provisions touted in the IRA—including drug caps, out-of-pocket spending caps, and inflationary rebates—are only officially instituted for the Medicare program.

Still, the IRA does provide a powerful roadmap for private insurers, businesses, employers, and states to extend savings to their constituents and clients. Because the private market prices factor into how the Medicare inflationary rebates are calculated, drug companies are disincentivized from universally raising prices. There is hope that those differences will translate to the commercial market.

A predictable pattern for the commercial market is that Medicare and the private industry often work in tandem. One example of this is the implementation of the Part C program in Medicare: Medicare Advantage plans. These are traditional private health insurance plans established in the Balanced Budget Act of 1997. They combine supplemental insurance with managing care networks of the rest of the benefits offered by Medicare. Medicare has also embraced value-based payment models, mirroring the private market's shift towards care that culturally prioritizes quality outcomes over a capitation payment system. An example of the private market following a trend set by Medicare is the adoption of electronic health records (EHRs) to improve patient coordination. Another is the expansion of and emphasis on preventive care services. The first of these examples is of lesser financial consequence, but both highlight the private market remaining competitive to meet the needs of evolving consumer expectations.

Drug company Eli Lilly reduced its insulin brands to $35 copay caps per month following the passage of the IRA, pressuring its biggest competitors, Novo Nordisk, and Sanofi, to do the same. This marks a 70% reduction in list price, aimed at disrupting insulin prices throughout the market. Lilly's Chair and CEO, David A. Ricks said, "While the current healthcare system provides access to insulin for most people with diabetes, it still does not provide affordable insulin for everyone and that needs to change" (Eli Lilly and Company, 2023). The company adjusted to stay competitive, relevant, and in good standing with public opinion of a shifting culture.

However, it is uncertain whether commercial health insurance plans will still follow the federal government's lead in negotiating other lower drug prices with manufacturers, or if they would be able to. It is concerning that expensive drugs are not guaranteed to be on the list of HHS-negotiable medications in 2026, especially for stakeholder groups like cancer patients (CardinalHealth, 2022).

Because the provisions laid out in the IRA only officially target Medicare beneficiaries, large employers will have to exert their own leverage to demand discounts reflecting the rates that Medicare can negotiate. Governors and legislators will have to implement their states' own Medicare mimicry laws to reap similar benefits. Considering that 10 of the 50 states still have not adopted and expanded Medicaid under the 2013 update to the Affordable Care Act, and that those that have expanded Medicaid did so reluctantly and only recently, it is reasonable to assume a similar outcome for states authorizing themselves to negotiate prices for their citizens.

It is also unpredictable whether manufacturers will raise prices in the commercial health plans market to compensate

for their losses to Medicare price negotiations, as well as how manufacturers and health plans will respond to increased financial responsibility in the redesigned Medicare Part D program.

There is an optimistic possibility that the private health insurance market can also share in the benefits that Medicare is receiving; a rising tide raises all boats. Thanks to the IRA prioritizing its efforts on Part D provisions in drug pricing reform, subsidiaries will more easily follow. But, from a more pessimistic policy perspective, this expectation cannot be prematurely accepted as a rule or ensured as a future occurrence. The private market having its own explicit protection in the IRA for OOP spending caps and rebates to health plans would have been more ideal and must be addressed in future legislation.

Conclusion

The Inflation Reduction Act represents a landmark accomplishment of policy goals that Democrats and Republicans alike have sought for decades. Medicare now has the unprecedented ability to negotiate drug prices, it can require rebates on inflated chemical drug and biologic prices, and its Part D is redesigned. The entire pharmaceutical economy will feel the effects of these changes.

According to the CBO, the prescription drug provisions within the IRA are anticipated to yield substantial savings for the federal government: $286 billion over the next 10 years, with the price negotiation provision alone projected to reduce spending by approximately $102 billion in the same time frame (Peter G. Peterson Foundation, 2023). Medicare beneficiaries, and likely all other Americans, will save thousands of dollars annually on prescription expenses.

The IRA falls short in addressing the inefficiency introduced by pharmacy benefit managers, critical middlemen in the industry. As of now, its provisions primarily benefit only those directly eligible for Medicare, leaving a gap in coverage among individuals who are ineligible. However, where financial constraints and political dynamics have limited the scope of the act, the additional components necessary for comprehensive drug pricing reform can be targeted in separate legislative measures without having to be negotiated through the budget reconciliation process. While there is still work to be done in drug pricing reform, the IRA's success is a crucial step forward that deserves celebration.

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Assessing Paths to Reform the Supreme Court's Shadow Docket

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Abstract:

With its distinct lack of transparent practices, the shadow docket has drawn greater criticism in recent years as government officials including Supreme Court Justices, the Office of the Solicitor General, and state attorneys general have increasingly relied on its use to decide significant disputes. Heightened scrutiny has been accompanied by the accumulation of concerns regarding the ethicality and validity of using the shadow docket, leading to calls for reform. This paper analyzes solutions proposed by legal scholars to remedy the problems that have emerged from the shadow docket's current usage based on how effectively they address the problems that emerge from the actions of individuals and the flaws in the procedures of the shadow docket itself. After assessing the merits of each solution, this paper argues for the adoption of a presumption of nonprecedence for shadow docket cases and the codification of a test for emergency relief.

Introduction

On January 25th, 2024, Kenneth E. Smith was put to death using the experimental method of nitrogen hypoxia. Claiming that using this untested method of execution constituted cruel and unusual punishment under the 8th Amendment, Smith filed a request for emergency relief from the Court, asking for a stay of execution. The Court rejected Smith's request and authorized his execution in just one sentence: "The application for stay of execution of sentence of death presented to JUSTICE THOMAS and by him referred to the Court is denied" (*Smith v. Hamm, 2024*). This decision was made without the Court providing any justification to accompany it. Unexplained rulings like the one that ended Smith's life demonstrate the startling realities of the shadow docket. The shadow docket, also known as the non-merits docket, is a term coined by University of Chicago Law Professor William Baude (2015) that refers to "a range of orders and summary decisions that defy [the Court's] normal procedural regularity" (p. 1). While most of the discourse surrounding the Supreme Court is centered on the decisions of their merits docket, the shadow docket has received greater recognition in recent years, drawing attention to how it proves uniquely problematic to American society and jurisprudence.

Non-merits decisions lack the transparent procedures like explanatory opinions, legal briefings, and oral arguments that characterize the Court's normal proceedings on the merits docket (Waldhauser, 2022, p. 151). The lack of transparent practices has allowed self-interested actors in the political system to abuse the non-merits docket. The Office of the Solicitor General has pursued emergency relief more aggressively in recent years in a manner that Professor Stephen Vladeck has identified as "some of the most overtly political behavior in the 150-year history of [that office]" (2023b, p. 162). Under the Trump Administration, Solicitor General Noel Francisco filed "at least twenty-one applications for stays in the Supreme Court" in less than three years. This is a sharp increase compared to the "total of eight such applications" filed under the Obama and George W. Bush administrations (Vladeck, 2019, p. 125). This trend has continued under the Biden Administration, with Solicitor General Elizabeth Prelogar seeking emergency relief thirteen times in just three years (Vladeck,

2023a, para. 2). In a similar fashion, state attorneys general have also become a force on the shadow docket, with their litigation frequently aiming to advance their own national policy goals (Nolette, 2021, p. 202). Further, the shadow docket has been increasingly used to tackle highly polarizing issues including COVID-19, immigration, and election laws (Lampe, 2021, pp. 3-4). These developments have raised concerns regarding the shadow docket, leading many scholars to conclude reform is necessary to safeguard the institutional legitimacy of the Court. Thus, they beg the question: what forms must potential reforms take to effectively address the problems created by how the shadow docket is presently being used?

While a variety of solutions have been proposed to address the problems posed by the shadow docket, there is little consensus on which would prove most effective. This paper argues that any solution to remedy the ills of the shadow docket must address both the procedures of the docket and how the Supreme Court Justices, the Office of the Solicitor General, and state attorneys general abuse it. Scholars have yet to consider that the threats posed by the shadow docket stem from both of these areas. Thus, they have yet to develop solutions that wholly address the normative concerns regarding the shadow docket, enabling the continued decline of the Court's institutional integrity. This argument is developed by reviewing the relevant literature and exploring the implications of the precedential confusion created by the shadow docket. Next, proposed solutions are evaluated based on how well they address both the procedural and personnel problems posed by the shadow docket. Finally, this paper concludes that the most promising solutions are to limit the precedential effect of non-merits decisions as suggested by Waldhauser in combination with the codification of a test for emergency relief as proposed by Lampe.

Literature Review

While many scholars agree the shadow docket undermines the institutional integrity of the Supreme Court, they diverge on whether they see this threat originating from a lack of transparent procedures or the actions of individuals within the Court. This section will discuss both of these arguments beginning with how the shadow docket's procedural problems undermine the legitimacy of the Court. This section will then shift towards an examination of how misuse of the shadow docket by Supreme Court Justices, the Office of the Solicitor General, and state attorneys general harms the Court's institutional capital.

Procedural Problems

The lack of transparency created by the shadow docket poses a significant threat to the Court's legitimacy. Baude (2015) argues that because "the spotlight is off" of non-merits decision-making, "the Court's decisions seem to deviate from its otherwise high standards of transparency and legal craft" (p. 56). This discrepancy in transparency makes it difficult for the public to trust in non-merits decisions. In their analysis of the Court's use of the shadow docket, Nicholas Conway and Yana Gagloeva (2022) argue that the lack of transparency "will chip away at the previously accumulated 'reservoir of good will'" (p. 726). The ability of the shadow docket to degrade the Court's legitimacy is highly concerning given the role of public legitimacy in enabling the Court to fulfill its crucial responsibility in the maintenance of the rule of law within the United States. As Professor Tara Leigh Grove (2019) states, "when a government institution or organization lacks legitimacy, it may no longer be worthy of respect or obedience" (p. 2240). The perception of the Supreme Court as legitimate depends on the trust people have in it as an independent institution. Thus, the shadow docket possesses the power to contribute to the delegitimization of the Court by diminishing public trust. Public opinion of the Court has reached a historic low, with just 44% of Americans expressing a favorable opinion of the Supreme Court in 2023 (Lin & Doherty, 2023, para. 2). With trust already dwindling, recognizing the role the shadow docket plays in further deteriorating perceptions of the court is all the more important.

The relatively minimal, albeit growing coverage currently devoted to the shadow docket in the mainstream media may be cause to question the impact of its decisions on the public perception of the Court. However, evidence points to the shadow docket posing a significant threat. In a survey experiment where participants were provided a vignette detailing either shadow docket or merits docket proceedings on a particular issue, researcher EmiLee Smart (2023) found that "use of the shadow docket procedure does lead to less support for decisions as well as an increased support for measures of broad court curbing" (pp. 1, 7). This illustrates that enhancing individuals' awareness and understanding of the procedures of the shadow docket can contribute to the development of distrust in the Supreme Court and its decisions (Smart, 2023, p. 12). Smart's findings highlight the significance of transparency in shaping public opinion of the Supreme Court. When transparency is lacking—as is the case on the non-merits docket—the perception of the Court as legitimate is jeopardized. The increased support for measures curbing the power of the Court is especially troubling, given that such actions include removing judges and eliminating the Court (Smart, 2023, p. 6). Heightened interest in this type of radical reform demonstrates a significant decline in trust, encouraging individuals to express a desire to see changes in the functioning and independence of the institution. Vladeck (2023b) echoes concerns regarding public perceptions of the shadow docket, articulating that as the public develops a better understanding of the shadow

docket and its corrosive impact on trust in the Court, "the more ominous the implications of the Court staying this course become" (p. 310). As the shadow docket continues to garner more attention and the public becomes more knowledgeable about its proceedings, distrust and the considerable danger posed by the shadow docket to the Court's legitimacy can only be expected to grow.

Abuse of the Shadow Docket by Supreme Court Justices, the Office of the Solicitor General, and State Attorneys General

Literature suggests that the threat posed by the shadow docket is in part a result of the behavior of the individuals who make use of it. Supreme Court Justices, the Office of the Solicitor General, and state attorneys general increasingly use the shadow docket as a vehicle to advance their political and ideological objectives, constituting a further factor in delegitimization of the Court. James Gibson and Gregory Caldeira (2007) found that "anything that drags the Court into ordinary politics damages the esteem of the institution" (p. 33). For the Court to be perceived as legitimate, it must maintain its status as an apolitical arbiter of law. However, the way the shadow docket is being utilized by the aforementioned actors puts the institutional integrity of the Court at risk.

Benjamin Barton (2022) finds that the Justices currently on the court have an "aptitude for technical legal excellence," making it unsurprising "that these Justices should find new procedural paths" (p. 856). As elites of the legal meritocracy, the current-day Justices can cleverly utilize the procedures of the Court to discreetly advance their own objectives. This behavior is illustrated by Conway and Gagloeva (2022), who in their extension of Dr. Larry Baum's research, found that the more ideologically extreme Justices tend to behave with greater ideological consistency on the shadow docket than on the merits docket (pp. 700-701). Some scholarship challenges the idea that such partisan behavior on the shadow docket is truly problematic. Pablo Das et al. (2023) argue that because Justices behave in an ideologically-charged manner on both non-merits and merits cases, there is nothing particularly "shadowy" about the shadow docket (p. 98). Though true that the ideological voting on the shadow docket is characteristic of a larger pattern within the Supreme Court, its heightened presence on the shadow docket is especially alarming given the lack of transparent procedures to guide the docket's use, allowing savvy Justices to take advantage of ambiguities. The misuse of the shadow docket by individuals characterizes a concerning development toward prioritization of politics over the maintenance of the Court's integrity.

This trend of politicization is also evident in the actions of the Office of the Solicitor General. Vladeck (2019) aptly argues, "the Solicitor General's increased resort to emergency or extraordinary relief may reflect that office's increasing prioritization of the politics of the moment" (p. 160). As the "de facto head of the Court's bar," the Solicitor General has significant formal and informal powers within the Supreme Court. Increasingly, that office has been using these powers more frequently to influence the composition of the Court's shadow docket (Vladeck, 2019, p. 123). The Solicitor General's office is seeking emergency relief with greater frequency, which has been highly effective in achieving their aims. Research by Conway and Gagloeva (2022) reveals the Solicitor General's office has successfully altered the status quo in some respect through shadow docket litigation in 75% of cases (p. 705). Further, the Justices' tolerance of such behavior by the Solicitor General may suggest that the Justices themselves are beginning to prioritize political objectives in a similar manner. (Vladeck, 2019, p. 160). Thus, both the Solicitor General and the Justices are harming the Supreme Court's reputation as a neutral arbiter of law.

Individuals in state office also appear to be taking advantage of the shadow docket. In the book *Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America,* Paul Nolette (2015) argues state attorneys general are increasingly using their office to shape national policy, with their growing partisan involvement "resembl[ing] similar trends in the office of the US solicitor general" (p. 108). Like the Office of the Solicitor General, state attorneys general have pursued an increasingly politicized litigation strategy (Nolette, 2015, p. 109). Michael Solimine (2023) finds that state attorneys general are engaging in forum shopping for high-profile cases, a practice through which they seek to maximize favorable outcomes by filing for preliminary injunctions in districts where they expect the judge will be sympathetic (p. 38, 40). State attorneys general have found great success with this tactic, with Richard Pierce (2021) reporting that district courts have issued an increasing number of nationwide preliminary injunctions. Within the last decade, the average rose from three to eighteen per year (p. 1). This practice impacts the shadow docket because once a preliminary injunction is successfully acquired, the Supreme Court responds to the government's request to stay that injunction on the shadow docket (Pierce, 2021, p. 1). Thus, state attorneys general are playing a significant role in shaping the contents of the shadow docket. Texas's Attorney General Ken Paxton has been repeatedly accused of forum shopping by the Department of Justice. Paxton sued the Biden Administration at least 32 times in "'divisions where they can essentially choose their judge'" (Raymond, 2023, para. 12). The implications of Paxton's forum shopping on the shadow docket can be observed in the 2021 case *Biden v. Texas* (Lampe, 2021, p. 4). When the Biden Administration decided to terminate the Migrant Protection Protocols, a policy that "allowed Customs and Border Protection to require many non-U.S. nationals who arrived at the southern border seeking

asylum or related protections to wait in Mexico while U.S. immigration courts processed their cases," Attorney General Paxton strategically filed suit in the single-judge division of Amarillo (*Texas v. Biden,* 2021). In doing so, Paxton succeeded in getting a preliminary injunction on the action. Once the case reached the shadow docket, the Court denied the federal government's request for a stay on the district court's injunction, signaling a win for Paxton (*Biden v. Texas,* 2021). When state attorneys general engage in forum shopping in the lower courts, they can advance their agendas more effectively on the shadow docket.

The shadow docket is not new, with some of its features having existed since the inception of the Court itself (Barton, 2023, p. 845). However, the Court's heightened reliance on the shadow docket does constitute a relatively new phenomenon. In her dissent in *Barr v. East Bay Sanctuary Covenant*, a case that stayed a lower court injunction on a federal rule restricting asylum, Justice Sonia Sotomayor articulated that whereas the non-merits docket was once reserved for extraordinary circumstances and used rarely, the government now turns to it "reflexively" (*Barr v. East Bay Sanctuary Covenant,* 2019). As individuals have adapted to take advantage of the shadow docket in recent years, its procedural problems have become increasingly apparent. Therefore, it is both the shadow docket as an institutional feature and the behavior of specific individuals that undermine the institutional capital of the Court.

The Shadow Docket and Problems of Precedent

Increased use of the shadow docket has resulted in confusion on how lower courts should apply these decisions as precedent. This is partially because the Supreme Court provides contradictory advice on how to apply shadow docket decisions. For instance, Alex Badas et al. (2022) points out that although "the Court has advised that shadow docket decisions are not binding precedent," the case *Tandon v. Newsom* featured the Justices criticizing the 9th Circuit for failing to apply the Free Exercise precedent established in the shadow docket case *Roman Catholic Diocese of Brooklyn v. Cuomo* (p. 12; *Tandon v. Newsom*, 2021).

To add to the confusion, "the Justices frequently cite their own shadow docket precedents," with 165 instances of this behavior recorded since 2006 (Badas et al., 2022, p. 12). In *Fulton v. City of Philadelphia*, Philadelphia refused to contract with Catholic Social Services (CSS), a longtime provider of foster care services within the city, "unless CSS agreed to certify same-sex couples as foster parents" (*Fulton v. City of Philadelphia,* 2021). The Supreme Court cited three shadow docket cases as precedent to support their decision that Philadelphia's actions violated the Free Exercise Clause of the First Amendment. This stands in sharp opposition to statements made by Justice Samuel Alito, who in a speech at the University of Notre Dame claimed that rulings on the non-merits docket do not create precedents (Liptak, 2021, para. 15). Evidently, the Court is not opposed to utilizing shadow docket cases as precedent despite contradictory assertions that these decisions are non-binding. Clear procedures delineating precedential conduct are lacking, and inconsistent advice from the Court creates uncertainty for lower courts. This lack of clarity is consistent with the Court's deviation from its typically "high levels of transparency" across shadow docket practices. Precedential confusion thus further perpetuates the delegitimization of the Court.

Not only has the Court created confusion on the precedential value of its decisions, but the decisions lack the necessary clarity to serve as precedent. *Roman Catholic Diocese of Brooklyn v. Cuomo* is an illustrative case; in light of the COVID-19 pandemic, the New York Governor issued an executive order imposing limitations on the size of religious gatherings. After the lower courts declined a church request for an injunction on the executive order, the Supreme Court granted emergency relief to the church on the merits of its First Amendment claims (Waldhauser, 2022, p. 154). With minimal explanation, the Roman Catholic Diocese decision established a sweeping new precedent that applied strict scrutiny under the Free Exercise Clause to state laws that treated secular and religious activities differently, constituting a doctrinal shift that "leaves judges guessing at both its basis and its effect" (Waldhauser, 2022, pp. 161-162). Since then, the case has been cited hundreds of times as precedent despite the Court's admission that "these unsigned orders, stripped of the procedural guardrails of briefing and argument, are… far too hurried and summary to meet the needs of any lower court judge" (Waldhauser, 2022, pp. 154, 161). There remains substantial ambiguity regarding whether non-merits decisions should even have precedential status, and this confusion is further compounded by the absence of essential procedures that would allow shadow docket cases to serve as clear, defensible precedents.

Proposed Solutions: An Evaluation

Defenders of the shadow docket, including Justice Samuel Alito, reject criticisms of the shadow docket as misleading, claiming the term itself is "'catchy and sinister.'" (Solimine, 2023, p. 31). In essence, Justice Alito believes labeling the non-merits docket as shadowy creates a false perception of illegitimacy through the use of inflammatory language. Accepting this rebuttal would debase the arguments made against the shadow docket by framing them as an attempt at sensationalizing the Court's normal procedures. However, as a member of the Court's conservative majority, Justice Alito's staunch defense of the shadow docket may reflect motivations rooted

in the fact that it has allowed for the furtherance of conservative causes. Conway and Gagloeva (2022) note that "the Supreme Court's shadow docket exploits are indeed highly ideological in nature," and by virtue of the conservative justices holding a reliable majority, the causes they champion have been advancing effectively on the shadow docket (pp. 674, 685). Despite arguments similar to Justice Alito's, the literature points to the shadow docket being harmful in many aspects that warrant resolution.

This section analyzes six proposed solutions using a two-pronged evaluation that considers how well each solution addresses the problems posed by individual misuse of the shadow docket, and problems arising from the procedures of the shadow docket itself. The first solution considered in this section is the elimination of the shadow docket altogether. The second solution proposes adjudicating emergency orders to three-judge district courts. The next solution this section evaluates is relying on the Supreme Court itself to change its behavior and procedures on the non-merits docket. Fourth, issue-specific solutions for problems commonly litigated on the shadow docket are discussed. This section then assesses the viability of codifying a test for emergency relief as a solution. Lastly, the merits of adopting a principle of non-precedence for shadow docket decisions are analyzed.

Solution 1: Eliminating the Shadow Docket

Given the many problems with the shadow docket and the overarching threat it poses to the institutional integrity of the Court, abolishing the shadow docket as a whole presents an attractive possibility. By making the shadow docket obsolete, the personnel and procedural problems associated with its use would also become obsolete. However, this solution is not viable because when extenuating circumstances arise, the Court needs to be able to provide emergency relief. Several statutes and rules empower the Court to provide such relief, including 28 U.S.C. § 1254, the All Writs Act, and Supreme Court Rules 11 and 20 (Vladeck, 2019, p. 130). It would be logistically unrealistic to nullify these laws, and their very existence speaks to the importance of the Court's action when extraordinary circumstances arise. The existing literature seems to recognize the implausibility of completely eradicating the non-merits docket. Even Pierce, whose paper purports to call for the Supreme Court to "eliminate its lawless shadow docket," appears to more precisely call for the Court to continue issuing stays, but only under the condition that an explanatory opinion accompanies them (2021, pp. 1, 13). While the shadow docket is deeply flawed, it remains an important fixture in American jurisprudence. Thus, outright elimination of the shadow docket is not a viable solution to address the problems it creates.

Solution 2: Adjudicating Emergency Orders to Three-Judge District Courts

Another solution that was initially proposed by Vladeck and expanded upon by Solimine (2023) is the adjudication of non-merits issues to "three-judge district courts with a direct appeal to the Court" (p. 56). In practice, this solution would bring together three federal judges to respond to requests for emergency relief from federal laws and policies. Then, the decision made by the three judges would be directly appealed to the Supreme Court who would be provided the record and written opinion from the three-judge district court case to assist them in making the final decision (Solimine, 2023, pp. 38, 42). The potential benefits of this solution are plentiful, with Solimine (2023) arguing that the establishment of three-judge district courts to handle non-merits issues would help to mitigate "forum shopping and the frequent lack of explanatory opinions by the Court" (p. 56). By addressing forum shopping this solution would help address state attorneys general misusing the courts to achieve favorable outcomes. Thus, their ability to advance their agendas through the shadow docket would be mitigated.

In terms of the procedural problems associated with the shadow docket, the establishment of three-judge district courts would be accompanied by the creation of a variety of important procedures that shadow docket litigation currently lacks. Requiring explanatory opinions in the three-judge district courts would enhance transparency because written opinions would provide clarity on the reasoning behind non-merits decision-making. Another proposed benefit of this solution is the prospect of enabling the assembly of a full record "to enable better review by the Supreme Court" (Solimine, 2023, p. 53). If this solution delivers on the promise of enabling the Supreme Court to review non-merits issues with greater clarity and efficiency, it would alleviate procedural concerns through increased transparency and the reduction of precedential confusion.

However, whether the proposed benefits of implementing three-judge district courts would be actualized is highly unpredictable. For instance, Solimine (2023) finds that requiring the Court to issue full opinions on appeals from the three-district courts is not promised given that "past practice suggests this may not always happen… The larger number of such cases, the more summary, shadow-docket-like dispositions are probable" (p. 54). As such, it is unclear whether implementing this solution would result in greater transparency, instead contributing to the likelihood that procedural inadequacies would persist. Further, Solimine (2023) finds that in the past, the three-judge district court was too "logistically awkward… to permit full adjudication and assemble a full record," casting doubt as to whether the benefits of a full record to enhancing transparency and precedential clarity would be accrued (p. 53). Because the benefits are not guaranteed, this solution is at best optimistic

and at worst unrealistic. Solimine (2023) goes so far as to concede that "the upsides of a revival of the three-judge district court almost a half-century later may not outweigh the downsides" (p. 57).

A further stipulation for this solution that has been proposed is to treat the District of Columbia as the exclusive venue for a three-judge district court (Lampe, 2021, p. 6; Solimine, 2023, p. 39). This would require the three judges to be drawn from the District of Columbia's federal courts to address requests for emergency relief from federal laws and policies. While implementation of this reform "'will limit or eliminate forum shopping…' it will also deprive the Court of the benefits of percolation" (Solimine, 2023, p. 15). Because there will only be one venue for non-merits issues, state attorneys general would no longer be able to attempt to get their cases heard by the venue with the highest chance of success. However, the absence of percolation could be detrimental as this process enables an issue to be more broadly explored by multiple courts before a final decision is reached in the Supreme Court.

Further, Solimine (2023) argues that "confirmation battles over the federal judges appointed for the District of Columbia may become more contentious if that district is the sole venue for resolution of suits for nationwide injunctions against federal programs" (p. 51). One of the prime concerns that arises from the shadow docket is individuals taking advantage of its procedures. By further politicizing the appointment process, this solution could further perpetuate the problems created when individuals prioritize short-term gains rather than remedying them.

Implementing a three-judge district court, even when the exclusive venue condition is nullified, is accompanied by substantial uncertainty. While it has the potential to deliver a number of benefits, this solution has many drawbacks and may fail to successfully address the concerns elicited by both the procedures of the shadow docket and the individuals who use it. In theory, this solution delivers on concerns relating to both individual behavior and procedures; in practice, it appears likely that it would fail to secure substantial progress in both respects. As a result, a three-judge district court solution falls short of providing the necessary stability to safeguard the long-term legitimacy of the Court.

Solution 3: Court-Initiated Alterations

Legislative attorney Joanna Lampe (2021) presents the option of pursuing remedies that defer to the courts to decide "how to manage their dockets and avoid any possible constitutional issues related to the separation of powers" (p. 6). In essence, this solution would require the Supreme Court to take the initiative to change its practices and rules in such a way as to alleviate concerns related to the shadow docket. However, this solution relies on the Court willingly altering its behavior and procedures. Given Barton's reflections on the savvy nature of the current Justices, it seems unlikely that they make adjustments to a procedural pathway that is serving their ideological objectives. If the Court is unwilling to take action—and they have not been willing to do so thus far—deference to the Justices' judgment fails to be a viable solution. Expecting the Justices themselves to remedy the ills of the shadow docket would likely allow the procedural and personnel problems of the status quo to remain in place.

Solution 4: Issue-Specific Solutions

Lampe (2021) also suggests that Congress target specific categories of cases such as those related to the death penalty and voting rights (p. 6). Issue-specific solutions seek to alleviate problems with categories for which utilization of the shadow docket is considered uniquely concerning. In his written testimony for a hearing before the House of Representatives Committee on the Judiciary, Deputy Director of the MacArthur Justice Center Amir Ali (2021) argues that because death penalty decisions are irreversible, "mishaps and lack of transparency pose greater risks to public confidence in our legal system than in any other context" (p. 5). Solutions aimed at specific categories of cases are appealing given the greater gravity that some consider such decisions to have. However, the Court's behavior is problematic in cases beyond these categories, making such solutions incomplete fixes. For example, while solutions aimed at returning transparency to death penalty cases on the shadow docket might address the procedural problems specifically related to executions, the larger procedural concerns that exist regarding the shadow docket would remain unresolved. Further, although the impact of Justices, the Solicitor General, and state attorneys general on specific issues would be diluted, individual misuse of the shadow docket could persist for other issues. Because issue-specific solutions leave the overarching concerns surrounding the shadow docket in place, they fail to effectively solve personnel and procedural problems in their entirety.

Solution 5: Codification of a Test for Emergency Relief

A final solution identified by Lampe (2021) is the suggestion "that Congress could codify the legal test for emergency relief" (p. 6). This is one of the more promising solutions suggested to address both procedural problems and individuals misusing the procedures of the shadow docket. A test for emergency relief could help return transparency to the Courts' docket selection process by standardizing the method of determining which cases necessitate relief. In doing so, concerns over individuals abusing the shadow docket would be mitigated; the Solicitor General's aggressive pursuit of emergency relief and

the forum shopping practices of state attorneys general would be checked by a test preventing the shadow docket from being used as a vehicle through which actors can prioritize "the politics of the moment." Furthermore, codifying a test for emergency relief could help ensure the shadow docket's use is more aligned with the Court's own rules. Supreme Court Rule 11 requires "a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice" for emergency relief and Rule 20 states that the issuance of extraordinary writs "is not a matter of right, but of discretion sparingly exercised" (Barton, 2022, p. 852). The codification of a test for emergency relief could clarify and standardize the determination of which cases qualify for emergency relief. Consequently, the selection of the Court's docket would benefit from increased transparency. This is a significant advantage because by remedying procedural problems contributing to the current deficit in transparency, the Supreme Court would reap the reciprocal benefit of enhancing public confidence in the institution's legitimacy.

Guidance regarding what a test for emergency relief might look like can be found in the written testimony provided by Stephen Vladeck in a 2021 hearing before the Senate Committee on the Judiciary. In his testimony, Vladeck (2021) contends that Congress should codify "the traditional four-factor test that the Court applies in considering applications for emergency relief" (p. 11). This test, established in the 1987 Supreme Court case *Hilton v. Braunskill,* advises the Court to make several considerations in determinations regarding emergency relief:

> "Whether the stay applicant has made a strong showing that he is likely to succeed on the merits; whether the applicant will be irreparably injured absent a stay; whether issuance of the stay will substantially injure the other parties interested in the proceeding; and where the public interest lies" (*Hilton v. Braunskill*, 1987).

The problem with this test in its current form is that it only exists as a norm, one which the Court is following poorly. Vladeck (2021) argues that the Court is now deciding whether to provide emergency relief based "almost entirely on the merits" with no regard for the other factors, leading to the dilution of the standards for relief (pp. 13-14). For example, in the 2021 case *South Bay United Pentecostal Church v. Newsom,* the Supreme Court granted the church's request for injunctive relief from California's COVID-19-related indoor worship ban, but "none of [the six Justices in the majority] purported to apply the four-factor test the Court traditionally follows," and instead focused entirely on the "merits of the First Amendment dispute" (*South Bay United Pentecostal Church v. Newsom*, 2021; Vladeck, 2021, pp. 13-14). Congress can look to the Court's own norms and legislatively enshrine a test the Justices are already meant to adhere to. In doing so, the standards for relief could be clarified so that situations where the Court fails to comply with the four-factor test for relief—such as that in the South Bay case—can be avoided. The benefits of codifying this four-factor test can also be ascertained by returning to the example of *Smith v. Hamm*. While it is impossible to say that using this test for emergency relief would have changed the result of Smith's application for a stay of his execution, at the very least, the ruling would have been accompanied by greater transparency. Legislatively requiring that the Court follow this test would clarify the considerations used in deciding whether or not to grant Smith's request for relief, and consequently help to legitimize the ruling regardless of its popularity.

Solution 6: A Presumption of Nonprecedence

Attorney Cole Waldhauser offers a solution that specifically targets problems regarding precedent and the shadow docket. He suggests the adoption of "a narrow statutory presumption of nonprecedence, applicable only to the Court's non-merits orders… By explaining its reasoning and collecting a signature from each Justice, the Court can signal its precedential intent to the lower courts and return transparency to its orders" (Waldhauser, 2022, p. 155). Essentially, unless the Court took the time to issue a written opinion and collect signatures, decisions made using shadow docket procedures would not be given precedential weight in successive litigation. To adopt this policy, congressional action is necessary to enshrine these procedural changes into law (Waldhauser, 2022, p. 168).

This solution would help solve problems related to transparency and precedential confusion, thus representing an effective approach to restore procedural clarity to the Court's shadow docket. Through the implementation of explicit procedural guidelines, Waldhauser's proposal would prevent the continued departure of the Court from the transparent standards that characterize its merits docket. A clear standard of nonprecedence would prevent the Court from continuing its practice of issuing contradictory advice on whether or not to use its non-merits decisions as precedent. Further, by requiring reasoning and agreement from the Justices for a decision to be precedential in effect, transparency would be heightened as lower courts would be given the necessary direction to use such decisions as clear precedent. In turn, this solution may help maintain the institutional integrity of the Court by returning public trust to non-merit orders and enhancing the procedural clarity of the non-merits docket. While research performed by Badas et al. (2022) suggests that some of the unease regarding the effect of precedent may be excessive given that shadow docket cases receive less engagement from the lower courts than cases from the merits docket, it is important to note that as time goes on, the non-merits docket has progressively received more engagement (pp. 13). This suggests that it is a laudable goal to address the confusion elicited by precedent given that even with lesser engagement, utilization of the non-merits docket as precedent

is creating problems that have elicited substantial concern within the legal community. Waldhauser's reform could preempt greater precedential harm accompanying increased engagement. By clarifying the procedures through which shadow docket decisions can be used as precedent, this solution would help to prevent the continued chipping away of the "reservoir of good will," thus confronting the broader legitimacy concerns that the shadow docket poses for the Court.

Less directly, the implementation of Waldhauser's suggestion will also address the ability of individuals to advance their agendas through the shadow docket. While new procedures would not necessarily prevent the Justices, the Office of the Solicitor General, and state attorney generals from prioritizing political objectives, these actors would no longer be able to cleverly reap the benefits of a process that enables the establishment of impactful precedents without justification. Instead, the explanatory opinion requirement would bring the process out of the shadows, and any politically motivated actions taken on the shadow docket would need to be defensible on their merits in order to hold precedential value.

Recommendations

The best way to mitigate broader concerns regarding the shadow docket's degrative impact on the Supreme Court's legitimacy is implementing Waldhauser's reforms to address the precedential impact of the shadow docket in tandem with legislatively codifying a test for emergency relief as suggested by Lampe. Requiring explanations for decisions if they will have precedential impact would increase transparency on the shadow docket by eliminating confusion over the precedential reach of non-merits decisions. This will ensure that non-merits decisions are adequately reasoned if they are to serve as stare decisis. While a presumption of nonprecedence would act as an indirect check on individuals by requiring that changes in precedent be justifiable and grounded in their merits, codifying a test for emergency relief would more directly prevent abuse of the shadow docket by individuals. By bringing greater objectivity to the determination of the cases that reach the Court's shadow docket, the selection process would be made more transparent while decreasing the ability of actors within the Court to further their agendas uninhibited. Concurrently, the implementation of these solutions would address both the problems stemming from a lack of transparent procedures and those concerning the behavior of individual actors.

Conclusion

In Federalist 78, Alexander Hamilton (1788) articulates that the judiciary "has no influence over either the sword or the purse… It may truly be said to have neither FORCE nor WILL, but merely judgment" (para. 8). The Court, having no mechanisms for enforcing its decisions, is dependent on public trust and the maintenance of its legitimacy for its judgments to remain esteemed and powerful. Any threat to the Supreme Court's legitimacy must therefore be taken seriously to preserve the Court's vital role in our constitutional republic. As misuse of the shadow docket becomes increasingly publicized, such harmful practices will increasingly contribute to the decline of the Supreme Court's perception as legitimate. Given that trust in the Court is already declining, it is imperative to seek reform for the shadow docket to safeguard the Court's institutional longevity.

In an era where the Supreme Court's legitimacy is increasingly being questioned, it is all the more important to address the serious threat posed by the shadow docket through the implementation of these reforms. Adopting a presumption of nonprecedence and codifying a test for emergency relief can address concerns regarding both the procedures of the shadow docket and the individuals who misuse it. This approach mitigates the significant problems created by the shadow docket constituting an integral step toward mending the fragile institutional fabric of the Supreme Court.

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Ethical Violence: Re-Examining Pacifism through Existentialist Ethics of Ambiguity

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Abstract:

The perspective that we can classify all violence as inherently unethical is complicated by the reality that in certain contexts, violence stands to be the most viable way to minimize harm or overcome grave injustices and violations of human freedom. But if nonviolence isn't always successful on its own, and political violence seems incomplete without pacifist ideals, where do we draw the line? The conversation surrounding the morality of violence has been a subject of much debate and academic inquiry. On one end of the spectrum exists absolute pacifists, who maintain that violence is inherently immoral and therefore impermissible in all cases. While contingent pacifists deviate from this extreme by allowing for exceptions where violence may be deemed ethical, there is significant disagreement over what conditions could justify such exceptions. By drawing from Simone de Beauvoir's Existentialist work titled "The Ethics of Ambiguity," this paper proposes a new approach to defining the conditions where violence may be morally justifiable within a contingent pacifist framework.

Introduction

Although it seems intuitive to contrast peace to violence, there are cases which demonstrate that in certain circumstances, violence is effective at achieving what most would judge to be morally good or desirable outcomes. Violence certainly has the potential to be used as a means of promoting tyranny or dehumanization, but the inverse is true as well– violence can also be used as a means of combating oppression and securing political rights and freedoms for those who have been deprived of such. This conundrum raises the question of how we are to judge the morality of actions that entail violence. Absolute pacifists, or those who hold the belief that violence is inherently unethical and can never be justified, struggle when confronted with scenarios where violence may be the only way to defend oneself or another. In geopolitical contexts, an unwavering commitment to non-violence can be impractical when confronted with power struggles, territorial disputes, and human rights violations in which other state and political actors are willing to utilize violence. Contingent pacifism, which allows exceptions where violence can be considered ethical, emerges in response to these critiques. This paper ultimately contends that while violence is inherently morally wrong, it can still be morally justified in certain circumstances. After contextualizing the concept of violence and further distinguishing between absolute and contingent pacifism, two principles derived from Simone de Beauvoir's *The Ethics of Ambiguity* will be used to inform potential conditions under which violence may be deemed morally permissible from within a contingent pacifist perspective:

1. The use of violence must be in the pursuit of willing oneself and others free.
2. The use of violence must be a last resort, used only when all reasonable alternatives have been exhausted.

This framework will then be extended to examine a case study where violence was used as a means of fighting apartheid in South Africa.

Conceptualizing Violence

Although definitions of violence have often been restricted to include only actions that entail physical harm, many scholars and activists argue that the definition of violence should be extended to include actions which inflict harm that is psychological or social in nature. For instance, Paulo Freire, a Brazilian educator and philosopher, advocates that forms of societal oppression such as slavery or systemic discrimination based on gender constitute a form of violence. In *Pedagogy of the Oppressed,* Freire articulates how violence manifests as a process that dehumanizes individuals, stripping them of their agency and relegating them to objects devoid of autonomy, stating– "Any situation in which some individuals prevent others from engaging in the process of inquiry is one of violence. The means used are not important; to alienate human beings from their own decision-making is to change them into objects" (85). Although psychological violence is rarely maintained without the underlying threat or use of physical violence, from Friere's perspective even harm that is exclusively psychological in nature constitutes violence. For the purpose of this paper, violence will be understood as an action or system that causes harm, whether physical or psychological, and/or inhibits individuals from exercising their agency and participating fully in society.

Pacifist Responses to Violence

Absolute Pacifism

While pacifism can be broadly defined as a moral opposition to violence and a commitment to peace, it is important to acknowledge that pacifism is a diverse philosophy with varying levels of intensity and approach. One form of pacifism is absolute pacifism, which asserts that violence is morally unjustifiable in *every* circumstance without exception–even if it is a necessary means to protect oneself or another (McMahan, 2010). Absolute pacifism constitutes a form of moral absolutism, as it posits that the principle of nonviolence is immutable and never eligible for exceptions. Minimally, this principle is adopted individually, e.g. "violence is always morally wrong for *me*" whereas maximally the principle is extended to apply to all individuals, e.g. "violence is always wrong *for everyone*" (Koontz, 2008, p. 233). In *Understanding Peace: A Comprehensive Introduction*, Michael Alan Fox, a defender of absolute pacifism, contends with the questions raised by the philosophy, asking "should immoral actions be used to stop other (perhaps gravely more) immoral actions?" Fox argues that even in cases where violence may appear to be a necessary means to achieve a desirable outcome, resorting to violence only legitimizes and reinforces its use as a means of conflict resolution (Fox, 2013, p.127).

The moral opposition to violence held by absolute pacifists is typically rooted in the belief that the act of violence itself is inherently wrong– not only because of the harm it inflicts upon others, but also because of the moral degradation that it inflicts upon the one who carries it out. Absolute pacifists would argue that violence works to diminish and eradicate meaning from our lives. In response to objections surrounding the practicality of pacifism, in *Pacifism Without Right and Wrong*, Daniel Diederich Farmer writes:

> I can think of nothing that does better justice to the "real world" than the acknowledgement that violence is dreadful and should be avoided whenever possible. Violence has the power of destroying meaning in our lives by unnaturally shortening the lives of our loved ones, by eradicating whatever sense of security we may have, and by turning those of us who use it into less than fully human beings. (44)

For these reasons, absolute pacifists maintain that violence is never morally justifiable. Even if the violence is being implemented to bring about a positive social change, to secure freedoms or rights for an oppressed group, or to achieve some other greater good. In fact, absolute pacifists would go so far as to say that even violence used as a means of self-defense or in defense of a victim is morally reprehensible.

Contingent Pacifism

Critics of absolute pacifism argue that it is too rigid, and that there must be some cases or exceptions where the use of violence ought to be considered morally permissible. Contingent pacifists account for this criticism, deviating from the absolute condemnation of violence. Even among contingent pacifists, however, there is disagreement over the conditions under which violence is permissible. One prominent school of thought is pragmatic pacifism, which posits that even if we were to deny there being any such moral principle of nonviolence, we still have good reason to favor nonviolent forms of resistance because nonviolent strategies tend to be more successful. These claims are supported by the conclusions of scholars operating outside the academic domain of pacifism. For instance, in a study conducted by political scientists Erica Chenoweth and Maria Stephans, an analysis of 323 armed and unarmed conflicts occurring between 1900 and 2006 indicates that nonviolent strategies of political resistance are far more likely to succeed than violent strategies. This is primarily because nonviolent forms of political resistance tend to be

perceived as more legitimate and, in turn, are more likely to secure international support. Pragmatic pacifists argue that even if one does not adhere to the moral principle of nonviolence, nonviolent forms of resistance are still preferable to their violent counterparts, but only because they tend to be more successful. In *The Failure of Pacifism and the Success of Nonviolence*, Howes presents a defense and explanation of pragmatic pacifism stating, "In contrast to traditional pacifism, which rejects violence on moral grounds, this brand of pacifism relies upon political as opposed to moral principles to make the case against violence" (428). In this regard, pragmatic pacifism is a kind of consequentialism in that its defense of nonviolence is rooted purely in its effectiveness in bringing about social and political change.

As demonstrated by contingent pacifists, one can offer exceptions to a principle of nonviolence rooted in the same concerns as absolute pacifists; we can still give credence to the sentiment that violence is a moral wrong while acknowledging that it may also be a moral necessity under select circumstances and conditions. Defining those circumstances with specificity is outside the scope of this paper, but a foundation for doing so can be laid by deriving principles from the framework posed in Simone de Beauvoir's *The Ethics of Ambiguity*. This approach is useful because it recognizes that promoting peace and non-violence is not just a matter of ideals, but also of practical considerations such as the political, economic, and social factors that influence conflicts.

De Beauvoir and Ambiguity

In order to understand Simone de Beauvoir's claims relating to the morality of violence, it is first essential to review the framework she develops in her book The *Ethics of Ambiguity,* which lays out an existentialist framework positing that the highest ethical goal is to will ourselves and others free: "to will oneself moral and to will oneself free are one and the same decision" (24). Willing our freedom has to do with embracing ambiguity, which, according to de Beauvoir, defines the human condition. Ambiguity in the context of existentialism can be understood as a state of tension induced by the dual and somewhat contradictory position inherent to the human condition. After elaborating upon what the term ambiguity entails within this perspective, I will explain its relation to freedom, oppression, and violence.

Ambiguity as Tension

One example of ambiguity can be found in the tension that arises between our situatedness and our freedom. We are situated in the sense that our identity is constantly being shaped: by our past, by those around us, and by the external circumstances which, regardless of being beyond our control, still play a role in defining who we are and how we navigate the world. Simultaneously, however, we are free in the sense that we have great ability to shape the world around us. We constantly and unavoidably change and influence ourselves and those around us through the actions we choose. Yet although we have the capacity to choose our own path, these choices are constrained by the social and historical contexts in which they are made. Furthermore, tension results from the reality that our subjective experiences as individuals are intertwined with the subjective experiences of those around us; as individuals, we are subjects in that we contain our own perspectives and agency, yet we are also objects within the subjective experiences of others.

We can identify yet another example of this tension in the two other facets of the human experience: facticity and transcendence we find ourselves caught between. In this context, facticity can be understood as the facts that are true about ourselves in a given moment: our biological makeup, our social and cultural context, and our personal history, all things that shape who we are and constrain the choices available to us. Transcendence, on the other hand, can be understood as our capacity to envision new possibilities and to act in ways that transform ourselves and the world around us. It is the quality of our being that allows us to transcend our facticity/our current reality in order to strive towards something new. The tension between facticity and transcendence can be both liberating and constraining. Our facticity can provide a sense of stability and continuity in our lives; however, it can also limit our potential and prevent us from fully realizing our dreams and aspirations. At the same time, our transcendence can offer us a sense of possibility, inspiring us to pursue new projects and imagine a different future. Our transcendence grants us the ability to build relationships and find meaning in the world, but being characterized by such uncertainty it can also be overwhelming, leading one to feel directionless and meaningless.

Ambiguity as Freedom

These opposing aspects of our condition are in a relentless sort of tug-of-war, and de Beauvoir suggests that individuals commonly resort to denying one side of their own ambiguity and/or the ambiguity of others in an attempt to secure relief through maintaining a sense of certainty and predictability. Such a choice however is ultimately futile and self-defeating, as denying ambiguity hinders freedom and in turn the ability to build meaning. De Beauvoir maintains that an individual alone is incapable of experiencing freedom to the same extent as someone within a community of free individuals: "For freedom wills itself genuinely only by willing itself as an indefinite movement through the freedom of others" (90). Instead, in

order to will ourselves and others free, we must accept ambiguity. We must recognize both the subjective and objective, the factical and transcendent, the situated and the free aspects of ourselves and others so that we can exercise our freedom in ways that enhance rather than diminish the freedom and the ability to build meaning.

Oppression as a Denial of Ambiguity

De Beauvoir goes on to make a distinction between two types of expressions of freedom: negative and positive. For de Beauvoir, positive freedom is more than simply an individualistic pursuit but rather, a collective effort to create a community of free individuals with the opportunity to build fulfilling and meaningful lives. Conversely, negative freedom entails the use of agency and force to limit and deny the freedom of others. This context is necessary to understand the way de Beauvoir conceptualizes oppression. Oppression can be understood as a range of actions and practices employed by individuals, groups, or institutions that work to restrict or limit the freedom and agency of others. In oppressive dynamics, it can be said that the oppressor is denying ambiguity; they fail to acknowledge the ambiguity of the oppressed by taking them to be entirely situated to the extent that they objectify them, denying their right to transcendence.

This denial of transcendence refuses individuals the opportunity to engage in the constructive movement of building their own futures. Negative expressions of freedom, such as oppression, are fundamentally contradictory because limiting the freedom of others undermines the very basis of individual freedom. From an existentialist standpoint, oppression is not only unnatural, but paradoxical, because one cannot restrict the freedom of others without also impeding their own. De Beauvoir states, "The existence of others as a freedom defines my own situation and is even the condition of my own freedom" (91).

Therefore, actions which constitute negative expressions of freedom, such as oppression and coercion, violate the ethical principle of willing oneself and others to be free. De Beauvoir further proposes that we have a moral obligation to actively work to extend and promote freedom and autonomy for all, which commonly entails resisting and dismantling systems of oppression whether they be institutional, societal, or individual. The book states: "We have to respect freedom only when it is intended for freedom, not when it strays, flees itself, and resigns itself. A freedom which is interested only in denying freedom must be denied" (91). This quote suggests that freedom is self-limiting. Willing genuine freedom does not mean creating circumstances that allow individuals to use their agency in whichever way they choose. What matters is not the mere fact of being free, but in how freedom is exercised and used in a given context. To de Beauvoir, true freedom is aimed towards promoting more freedom rather than seeking to deny or limit the freedom of others. In other words, negative expressions of freedom which seek to restrict the freedom of others are not genuine freedom and according to de Beauvoir, must be rejected and refused.

Ethics of Ambiguity and Violence

Although de Beauvoir recognizes that violence commonly serves to maintain oppression, she does not entirely denounce its use altogether. Rather, de Beauvoir argues that there are exceptional circumstances in which employing violence is justified; not as a means of revenge or retribution, but as a mechanism for overcoming oppression and protecting oneself and others from harm. Critics may argue that de Beauvoir's acceptance of violence in certain circumstances undermines her larger argument against oppression. It may be said that by condoning violence as a means of resistance, she fails to offer a comprehensive solution that addresses the root causes of oppression and inequality but instead perpetuates a cycle of violence that only serves to reinforce the very systems of oppression she seeks to dismantle. De Beauvoir acknowledges this concern and ultimately concedes that it is unfortunately true that individuals who use violence in resistance to oppressors can become a kind of oppressor themselves, adopting the same power dynamics and tactics as the oppressor they seek to subvert. In her book, she writes:

> ...by calling for the triumph of freedom over facticity, ethics also demands that they [the oppressors] be suppressed; and since their subjectivity, by definition, escapes our control, it will be possible to act only on their objective presence; others will here have to be treated like things, with violence; the sad fact of the separation of men will thereby be confirmed. Thus here is the oppressor oppressed in turn. (97)

This passage acknowledges the difficulties of weaponizing violence while still maintaining ethical integrity, asserting a strong presumption against violence. Nevertheless, she maintains that there is a false equivalency underneath these accusations, as she attributes a moral distinction between violence used in the pursuit of freedom and violence used to restrict freedom. To further address the complexities of using violence in an ethical manner, de Beauvoir was careful to specify that violence should be a last resort, used only when all other alternatives have been exhausted. Although violence has the potential to be used ethically, its use must always be carefully considered and evaluated in light of the broader ethical and political context. De Beauvoir maintains that it is important to consider the potential long-term consequences, and asserts that violence should only be used as a last resort

and non-violent means of resistance should be employed whenever possible.

The Ethics of Ambiguity and Contingent Pacifism: Establishing Conditions for the Ethical Use of Violence

The framework posed in de Beauvoir's *The Ethics of Ambiguity* can be used in conjunction with contingent pacifism to better define the circumstances where implementing violence may be morally justifiable. It would be reasonable to question the compatibility of *The Ethics of Ambiguity* and contingent pacifism, given the apparent contradiction between the two approaches. After all, this framework rejects the notion of a fixed moral system or objective moral truth, while contingent pacifism advocates for the application of specific moral principles to guide the use of violence. This objection is valid in that it points out a potential point of tension and raises important questions regarding the consistency of these two positions. However, though existentialism rejects the idea of fixed moral systems it does not necessarily deny the existence of universal principles that should be used to guide ethical decision-making. This does, however, mean that applying these principles is not entirely fixed and unchanging but remains open to interpretation and adaptation to specific situations.

Condition One: To Will Ourselves and Others Free

Despite the differences in these approaches, Ethics of Ambiguity and contingent pacifism are compatible as they share a moral aversion to violence and commitment to individual freedom and autonomy. By leveraging these shared values, we can use Ethics of Ambiguity to delineate the conditions under which violence may be morally justifiable within a contingent pacifist perspective. To start, we can adopt de Beauvoir's principle of willing ourselves and others free as the first condition. This principle can guide us in evaluating whether violence is an ethical response when used to combat oppression or negative expressions of freedom. According to this principle, if violence is used as a means of combating oppression or negative expressions of freedom, it may be justifiable within a contingent pacifist framework.

Condition Two: Last Resort

Building on the first principle of willing ourselves and others to be free, we can establish a second principle derived from *The Ethics of Ambiguity,* which requires the exhaustion of all reasonable alternatives to violence before considering it justified. This second principle serves as a safeguard against the abuse of violence, as it requires a thorough examination of all possible non-violent solutions before resorting to violent means, and reinforces the moral opposition to violence inherent to this framework and pacifism. Once it is established that violence was used within the context of fighting against oppression, and all other reasonable alternatives had been exhausted before resorting to violent means, we can qualify the violence as ethical.

South African Apartheid as a Case Study

To illustrate how the principles derived from *The Ethics of Ambiguity* can be applied to real-world situations, let us consider the fight against apartheid in South Africa during the second half of the 20th century. In 1964, South African police opened fire on a peaceful demonstration, resulting in the death of sixty-nine protesters, each of whom were shot in the back as they attempted to flee the scene. This event became known as the Sharpeville Massacre and not only a month after this tragedy, the South African government banned the group that was responsible for the demonstration, The African National Congress or the ANC. The ANC is a political party which is still active to this day, however at the time, the ANC was primarily a liberation movement committed to advocating for the abolition of apartheid, or the race-based segregation and discrimination which was not only widespread but legally sanctioned in South Africa during this time. Since its founding in 1912, the ANC's fight against apartheid had been undertaken exclusively through rigorously nonviolent means including efforts consisting of public service boycotts, sit-ins, labor strikes, and other forms of civil disobedience (Zunes, 138-139).

A rapidly rising number of individuals however began to judge this commitment to solely nonviolent strategies to be inadequate, and a movement to combat apartheid through armed conflict began gaining traction. Following the Sharpeville Massacre and the banning of the ANC, political tension only escalated. Nelson Mandela publicly burnt his passbook–an "internal passport" intended to enforce segregation–in a demonstration with Lutuli, the president of the ANC, and police began raiding the homes of Africans and pursuing mass arrests of those thought to have association with the ANC. Despite their banning, the ANC did not quietly dissolve as the government had suspected they would, and instead, they shifted their efforts underground. In 1961, Mandela issued a statement to South African newspapers threatening to launch a campaign of sabotage unless the government agreed to hold a constitutional convention. When the government failed to comply, the leadership of the now unlawful ANC, rebranded as the "National Executive," deviated from their former commitment

to nonviolence and adopted an armed struggle against the state of South Africa. The armed wing, Umkhonto we Sizwe, carried out several acts of violence, including dozens of bombings against government installations and infrastructure (Ellis, 661-664).

Application

By applying the two conditions derived from *The Ethics of Ambiguity,* we can easily conclude that the South African Police's use of violence in the Sharpeville Massacre was unethical. We can clearly identify that the use of violence by the police was not aimed at securing freedom, but rather the inverse, maintaining the status quo of apartheid and the oppression of Black South Africans. Their actions were in direct opposition to the principle of willing freedom, which requires that violence must be used to secure freedom rather than to maintain oppression. Because they failed the first condition, whether or not they have exhausted all other alternatives is irrelevant.

In contrast, by applying the same conditions, we can judge the armed struggle adopted by the National Executive to be ethical. Firstly, the violence implemented in this context was aimed at willing genuine freedom. By examining the history of South Africa, we can find countless other clear and unambiguous instances in which oppression was weaponized by the state against Black citizens, satisfying the first criterion for determining whether the use of violence was morally justifiable. For example, Black South Africans were routinely paid lower wages than their white counterparts and denied access to education and job opportunities which fostered a cycle of poverty and dependence (Mhlauli, Salani, and Mokotedi). Additionally, the oppressive pass laws required Black South Africans to carry identification documents with them at all times and restricted their movement to certain areas. The pass laws constituted a form of oppression, as they restricted the movement of Black South Africans and disabled them from traveling freely or seeking work outside of designated areas. Failure to produce a pass could result in arrest and imprisonment and in 1970, over 2.8 million arrests were made under the pass laws (South African History Online). The National Executive's adoption of armed struggle was, therefore, a response to the government's use of violence and oppression and was aimed at securing freedom from apartheid for all South Africans.

The second condition is also satisfied, as we can identify that their use of violence was in fact a last resort. The National Executive had attempted non-violent means for decades, and after the Sharpeville Massacre it became clear that peaceful means would not be successful. Therefore, the decision to adopt an armed struggle was well-considered, taken only after all other options had been exhausted. The use of violence was a means to an end, and was not a goal in itself. The National Executive's primary aim was to secure freedom and equality for all South Africans, and violence was only used as a last resort to achieve that goal.

Conclusion

As we navigate a political landscape where new forms of conflict and activism continue to emerge, our understanding of violence and its ethical implications will rightfully evolve. The criteria we use to define what constitutes ethical violence is significant because it will inevitably shape how we define the limits of self-defense, distinguish between a protest and a riot, and determine the line between activism and terrorism. The labels and language we use carry the power to either villainize or justify political movements and individual actions. This paper aimed to engage in the ongoing discourse surrounding the morality of violence by arguing that it is not necessary to disregard the moral wrongness inherent to violence in order to defend that it has the potential to be used in a morally justifiable manner within select circumstances and conditions. In constructing a new contingent pacifist framework, the following conditions derived from Simone de Beauvoir's *The Ethics of Ambiguity* were developed: that the use of violence is in the pursuit of willing oneself and others free, and that it may only be implemented as a last resort when all reasonable alternatives have been exhausted. Although these conditions are not exhaustive, they provide a foundation for further examination of this critical conversation.

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PUBLIC OFFICIAL CONTRIBUTIONS

Navigating Complexity: Balancing Concerns and Evidence in Great Salt Lake Environmental Management

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At the Department of Environmental Quality, we are actively involved in the management and protection of the Great Salt Lake, from water and air quality to waste management and environmental remediation. We are most often asked about air quality when it comes to the lake, and hear concerns of toxic dust plumes during wind events to a nuclear-level environmental disaster that will leave Salt Lake uninhabitable for future generations.

The concern around the drying of the Great Salt Lake and the possible implications, as well as the broader impacts of climate change - higher temperatures, drought, drying water resources, and more extreme weather events that may generate dust from exposed lake beds and other waterbodies--are very real.

It is also very rational to be concerned about the future of our state if we fail to adapt and understand our changing environment and how it is and will continue to impact our quality of life as our state grows.

With that in mind, as an organization that bases decisions, regulations, and policies on science and the law, we have a natural skepticism towards claims surrounding the Great Salt Lake - especially those that are on either end of the rhetorical spectrum - until they can be backed up by facts, data, and science. As teams of primarily scientists and engineers, we are problem-solvers, which requires some optimism and an understanding of how things can change under the right circumstances.

While these doomsday scenarios in some cases may seem useful to light a fire under leaders or the public to drive change, if that doom instead leads to despair and pessimism, the problem begins to feel larger than us, even intractable. Those scenarios ultimately run counter and can even undermine the change they are trying to achieve.

In order for us to find solutions to the challenges we face, we must have a clear scientific understanding of where we stand when it comes to the Great Salt Lake as it relates to air quality, as well as air quality in general along the Northern Wasatch Front. With this scientific clarity, paired with an eye towards solutions, and an understanding that with the right actions and effort, we can prevent a future clouded by toxic dust.

Based on what is reported in the media, you may assume that we, as in the many scientists, policymakers, researchers and other stakeholders, have a complete picture and understanding of how exactly a drying lakebed will impact air quality in Utah, including the composition of the dust, the areas that will be most affected, and possible health repercussions.

In reality, as is the case with any incredibly complex matter, especially one that is as novel as the challenges we face with the Great Salt Lake, and the fact that air quality is influenced by so many factors, including other pollution sources,

geography, weather and the lake itself, we are just beginning to develop a picture of how the drying Great Salt Lake lake bed will impact air quality along the Northern Wasatch Front.

What we do know is that overall Utah's air quality has improved significantly over the past 20 years. From 2002 to 2017, the state's population grew by 34%. During that same time, total statewide air emissions have been reduced by 27.3% - a 45.7% reduction in per-capita emissions. Large industries reduced air pollutant emissions by 12% between 2017 and 2019 alone. Thanks to these emission reductions, we are seeing fewer and fewer inversion days during the winter and much better air quality overall.

This is also the case in the areas surrounding the Great Salt Lake, where monitors show that particulate matter or PM pollution - the type we may expect to see increasing from more dust--is actually trending down. A Division of Air Quality analysis of historical data at four Wasatch Front air quality monitoring sites shows an overall decrease in PM10 (particulate matter 10 micrometers or less in diameter) levels and a reduction in the frequency of very high PM10 events (above 30 micrograms per cubic meter of air), even after removing wildfire days.

Additionally, a historical analysis of PM10 over time has shown a long term decreasing trend in each federal particulate matter standard (Total Suspended Particulate, PM10, PM25) as new lower federal air quality standards have been set.

This improvement is the result of many factors and emissions reductions efforts, and it is also a clear demonstration that we have the ability to make dramatic changes with the right investment and commitment from policymakers and the public.

And while the current data indicates that we may not yet be experiencing adverse effects from low Great Salt Lake levels, we do have clear examples of dry or drying lake beds causing major dust storms and even unlivable conditions, as is the case of Owens Lake in California. Currently in Utah, Sevier Lake, a mostly dry lake in the western central region of the state, along with the West Desert, are the sources of the largest dust storms that impact the Wasatch Front.

Much of the concern surrounding the lake involves the heavy metals that can be found in the lake bed dust that are both naturally occurring and due to historic industrial activity. The prospect of these types of contaminants in our airshed is alarming, but this is another area where it is too soon to draw scientific conclusions about the health risk it poses to the public.

Recent studies that identified high toxic (e.g. arsenic) concentrations used surface soil samples near the lake or evaluated deposited dust. These studies do not directly translate to dust that is suspended during high wind events then transported beyond the lake. Further study of ambient air samples that would better represent the potential transport of dust is needed to make definitive any conclusions.

One conclusion we can draw from this information and where we are in our understanding of the lake is that we need more research. Fortunately, there are many organizations and individuals actively focused on just that.

Currently, the Division of Air Quality is involved in numerous efforts to monitor, assess, and address air quality concerns as they relate to the Great Salt Lake. Our air quality scientists are analyzing filters for arsenic as well as other pollutants from historical dust days; conducting community air monitoring where community-based air monitors will be deployed in targeted areas to measure possible impacts; and the placement of additional PM10 monitoring stations in locations that we have identified might be more influenced by Great Salt Lake dust.

These efforts are in collaboration with and in addition to the efforts of many other experts at the University of Utah, Utah State University, and the United States Geological Survey.

The management and protection of the Great Salt Lake presents significant challenges that require a balanced approach grounded in science, data, and collaboration among stakeholders. While concerns about air quality and the potential impacts of a drying lakebed are legitimate, it is essential to avoid succumbing to extreme narratives that may lead to despair rather than constructive action.

As an organization committed to evidence-based decision-making, the Department of Environmental Quality recognizes the complexity of the issue and the need for further study to fully understand the implications. Our ongoing efforts to monitor air quality, assess potential risks, and engage in collaborative research initiatives underscore our commitment to addressing these challenges proactively.

Despite the uncertainties surrounding the future of the Great Salt Lake, there is reason for cautious optimism. Utah has made significant strides in reducing air emissions and improving overall air quality, demonstrating the effectiveness of concerted efforts and investments in environmental stewardship.

Moving forward, it is imperative that we continue to invest in research, monitoring, and mitigation efforts to safeguard the health and well-being of our communities. By working together and remaining committed to evidence-based solutions, we can ensure a sustainable future for Utah, even in the face of evolving environmental challenges.

The Bold Colors of Healing: Fostering Hope, Leadership and Community Among Utah's System-Involved Youth

Nubia Peña, *Director, Utah Division of Multicultural Affairs*
Claudia Loayza, *Planning Policy & Engagement Coordinator, Utah Division of Multicultural Affairs*

The Utah Division of Multicultural Affairs' (MCA) mission is to promote a welcoming climate that builds pathways to opportunity and community connection across the state. We have served Utah for more than 10 years and have strived to embody the concept of "meeting people where they are," which is both a mindset and a process. It means innovating beyond the concept "it's the way it's always been done," and instead striving to co-create solutions with communities that consider the barriers to access and success. This means going at the pace of community trust, slowing down to ask questions, building proximity, showing compassion, and upholding the dignity of all who engage with state services and call Utah home.

One of the key ways in which we engage in this work is through our dynamic Multicultural Youth Leadership Program (MYLP) having served more than 15,000 students since 2012. At MCA, we believe and take pride in the fact that our youth are not just our future, but are necessary leaders for today. Our program includes initiatives that work with historically underserved youth in both rural and urban regions, offering learning experiences designed to explore education, career and civic pathways, and help encourage a spirit of service. We empower middle- and high- school students, and college-age youth across Utah to understand that they can rise above adversity and become intentional creators of a positive and rewarding life. This, in turn, helps foster a new generation of engaged leaders that contribute to our collective narrative of success.

We have been able to reach students from every corner of the state through conferences, curated workshops, and co-hosted leadership events in partnership with regional experts. We are thrilled that we interface with young leaders who are eager to learn about the possibilities found in higher education and various career fields.

However, as a division, we have been on a journey of reimagining our program and considering ways in which we can also engage the hardest to reach. Our team continually is inspired to explore opportunities that support our often-forgotten youth affected by adverse social factors, who rarely have access to programming that encourages pathways for successful integration in the community.

MCA's Director Nubia Peña is a former victim advocate and juvenile defender, where she witnessed first hand the lack of community oriented programs that build leadership capacity for youth, particularly those who are incarcerated, in foster care, or exiting or having exited these systems. These youth need additional support navigating the world and feeling inspired to contribute. Typically, system-involved youth are even more marginalized and historically underserved because of the barriers of complex trauma, absent social support, and lack of blueprints for healthy coping. System-involved youth are also often unable to fully benefit from school activities, academic and extracurricular opportunities that expose youth to civic pathways. In addition, there is a lack of programs where

these youth can engage with mentors and role models who help them explore the many ways youth can become positively involved in service, volunteerism, leadership experiences and how to invest in the community they live in.

When she joined state government in 2019, Director Peña came with a myriad of experiences serving survivors of trauma and those existing at the farthest margins, which sparked a mindset shift for how we served our youth. This led to prioritizing efforts that moved beyond college and career exploration to also include initiatives that valued healing, cultivating connection, and increasing self-worth, which then could increase the capacity of our youth to view themselves as leaders with something meaningful to contribute to the world.

This resulted in Director Peña and MCA's Planning, Policy and Engagement Coordinator, Claudia Loayza, bringing together a coalition of partners to discuss creative and dynamic leadership programming for incarcerated youth. Our first pilot project, known as the "Stay Motivated" mural experience, was coordinated in partnership with the Utah Juvenile Justice Youth Services (JJYS), the Utah Division of Arts & Museums, UServeUtah, and the Utah Juvenile Defender Attorneys. The three-month project was an immersive creation of a 60-foot in length mural that covered the walls of the Salt Lake Valley Detention Center's gym. But it wasn't created just for the benefit of youth currently residing there, but also created *by* the youth, many of whom would serve three-to-five years before transitioning to the adult system.

Loayza, who had fostered a deep love for public art and activating community spaces for building connections, oversaw the project on behalf of MCA. The question she asked that inspired the direction for the program was: "How do we bring healing and hope to spaces that need it, especially places that could inspire a youth to view the world and themselves differently?" Organizers contracted local muralist Tracy Williams, who had a deep love for marginalized communities and was all-in on the project. Through trauma-informed art and leadership development instruction, incarcerated youth were encouraged to reflect on their own experiences, envision possibilities for an empowered life outside of detention, and consider the value of leading lives that gave back to their communities.

This was more than just another leadership program for the youth and partners involved. It was an opportunity to nurture hope, initiate healing, explore principles of compassionate leadership and kindness, all while introducing community-inspired programming into an isolated and often forgotten space.

Because of the impact on the youth's sense of self-worth and motivation to accomplish positive goals, MCA pursued a similar opportunity at the Weber Valley Youth Center in Ogden. This mural, titled "Watch Us Grow," followed a similar workshop and instruction process as our pilot program; however, it was unique because it was painted inside the residential unit instead of a common space. The design was once again fully informed by the youth. The mural showcases a basketball game next to a tree where you can see retired boxing gloves hanging on the branch, symbolizing the act of putting down weapons for the pursuit of a different life, one that led away from incarceration, one that led to community and family.

During the first unveiling ceremony, Williams told the youth: "You taught me a lot about love and forgiving." This project emphasized leadership development, civic and community engagement, community connection, positive and healthy role models, personal self-reflection, and valuing the arts as a form of expression for the students involved. It was an opportunity to nurture hope, cultivate emotional awareness, and introduce dynamic programming that reached the hearts of the young participants, which has a higher likelihood of creating paradigm shifts in attitudes, knowledge and behavior. One of the young men shared a powerful reflection during the community event where guests could see the mural and learn about the process. After engaging in this program, he said: "I've always used my hands to destroy and create harm in the past. But for the first time, I had an opportunity to use my hands to create something beautiful, and there are people who cared enough about me to celebrate what this means for me."

This embodies the underlying goal behind these initiatives for our division. To ensure that our most marginalized youth know and absorb the following:

- Change is possible.
- Opportunities are available.
- Leadership can happen wherever they are planted.
- Community can be redefined and expanded so one is not alone.
- Healing can occur in unlikely places.

The lessons learned through this experience have informed and influenced the programming that we are developing to ensure that our youths' hearts are as engaged as their minds when they learn about leadership principles, civic duty, and service and the power of connecting across differences.

MCA is inspired by the change we saw in the youth that participated, which has led our division to further develop dynamic curriculum that includes the "Writers Who Hope" program, the "Men of Promise" initiative, and the "Kindness Heals" mural engagement, each of which prioritizes investing time, resources, social capital, and above all, love, for young leaders in spaces and systems that would otherwise remain unseen. We are grateful for every partner, leader, and sponsor that has gone on this journey with us,

in particular JJYS for always saying yes. Our division's work in this area is just beginning and we look forward to sharing the progress and impact of efforts that were intentionally and thoughtfully rooted in love, grace, compassion, and hope and we invite more partners interested in collaborating to join us in empowering and championing the exceptional youth in our state.

"There is as much difference between planning and doing as there is between winning and losing. Follow up your plan with action."

-Robert H. Hinckley