# Gene-Editing Aff

### Part 1: Framework

**The Role of the Judge is to Promote the Reclaiming of Educational Spaces**, which means they must endorse our ability to use debate for critical discourse.

#### [ROB & Arana ‘21] As educational oppression is rooted in ignorance; the **Role of the Ballot is to Endorse the Strategy that Better Addresses Material Oppression to LGBTQ+ folk**. This means we use the round to increase education about hidden rights violation. While this framework is open to multiple forms of oppression, it’s time to specifically talk about LGBTQ+ since republicans are making it increasingly difficult to do so.

Arana ‘21: Arana, Gabriel. [A writer for The New Republic] “The Republican Plot to Ban LGBTQ History in Public Schools” *The New Republic*, June 28, 2021. <https://newrepublic.com/article/162862/republican-laws-ban-lgbtq-history-education> EM

**This Pride month, as revelers hit the streets to celebrate LGBTQ history, Republican state legislatures are hard at work trying to erase it.** And it’s not just epochal events like the Stonewall riots, or towering figures like Harvey Milk, that could be wiped from classroom instruction. **In public schools in Tennessee, Arkansas, and Montana, it may soon become illegal even to mention Bayard Rustin, the openly gay co-organizer of the 1963 March on Washington, or educate kids about the AIDS crisis. In May, Tennessee became the first state to pass what queer-rights advocates have branded as “Don’t Say Gay” laws, which either forbid the teaching of LGBTQ history in K-12 schools outright or allow parents to choose whether their children participate in lessons that include it.** Within days, Montana followed suit**. Yet another bill in Arkansas awaits the signature of the state’s Republican governor. Similar bills have been considered in West Virginia, Iowa, and Missouri, and even more proposals are percolating through red-state legislatures. Akin to bans on the teaching of critical race theory, these laws seek to preserve the myth that the story of America is one of inexorable progress and unblemished virtue, that we stand exceptional among nations as the gleaming embodiment of democracy; they also imply that a great number of us don’t matter. In particular, legislation forbidding the teaching of queer history aims to ossify what remains of society’s moral disapproval of LGBTQ people and endangers queer youth susceptible to suicide. “It is a false representation of the past, one in which LGBTQ people are imagined never to have existed,”** said Anthony Mora, associate professor of history and Latinx studies at the University of Michigan. “The hesitancy to open up questions about the failures of the past—of not living up to the goals of the republic—is less about the past than about not wanting to change the present, to hold in place the status quo and not allow for real moments of debate and change.”

Thus, COOPTING LIBERATION DISCUSSION IN FAVOR OF IMPACTS UNRELATED TO QUEERNESS IS A PERFORMATIVE ACT OF HEGEMONIC HETERONORMATIVITY IN THE DEBATE SPACE.

### Part 2: I Do Not Need To Be Cured

#### [Holbrook 1] PATENTS ARE BEING PURSUED TO REVERSE THE GAY GENE”

**Holbrook 1**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

**This Article argues that patents also possess the potential to express governmental preferences for, disfavor towards, or even condemnation of various members of society.** The recent discoveries into human biology portend discoveries that relate to various conditions that are central to a person’s identity. The deaf, for example, do not view their condition as a pathological condition in need of curing: to them, they are simply a linguistic minority. Similar concerns have been expressed by others, such as high-functioning autistics and little people. **Patents on discoveries related to such conditions would communicate the message that “curing”30 these people would be normatively good, further marginalizing these groups. One particular group whose trait is increasingly shown to be biologically related has already borne the brunt of societal and expressive marginalization: gays and lesbians. Recent scientific studies have demonstrated that homosexuality is undoubtedly influenced by biology, even if it is not biologically determined in all cases.31 A likely result of such research into the origins of sexual orientation would be the formulation of methods to “cure” gays and lesbians.**32 An even more likely scenario would be a pre-natal screen that would estimate the likelihood that the fetus would be gay, permitting termination of the pregnancy33 or perhaps consumption of a pill to reduce the likelihood of bearing a gay child.34 **Patents resulting from the quest to find the “gay gene” or other biological origins of homosexuality have the potential to express moral condemnation of gays and lesbians. Although a patent relating to sexual orientation or the alteration of such orientation has yet to issue, at least one researcher in this field has confirmed his intent to pursue patent protection on such a discovery.35 This Article will explore the potential for patents to perform a social signaling function, apart from the market signal articulated in portfolio theory.** I contend that patents communicate information that is relevant not only in a technical or pecuniary sense but also in a normative one. Central to this signaling is the utility doctrine, which delineates the inventions that are socially beneficial and thus worthy of patent protection. I explore these contentions using the paradigm of sexual orientation because it is pregnant with issues of morality and the potential for expressive consequences. **Granting patents on genes related to sexual orientation, and potentially other conditions such as deafness, high-functioning autism, or dwarfism, communicates government approval that these groups are pathological and should be cured.** Such a communication expressively harms these groups. This line of argument contributes an additional basis to criticize granting certain patents in areas relating to human biology and genetics.36

#### [Holbrook 2] Patents on medicine relating to genes is the new eugenics movement.

**Holbrook 2**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

The messages and signals are necessary elements of any functioning property system. Patents therefore undeniably act in ways to facilitate signals and communication beyond there simple disclosure. A patent differs from other forms of property in a significant way: they are granted by the US government after a substantive review of an application for the right to exclude. An inventor must demonstrate that she has satisfied the patentability requirements11 and is thus entitled to a patent, which the United States Patent and Trademark Office (PTO) confirms by issuing the patent. The fact that the patent is a grant of a right by the government enhances the signals of the patent document. The government’s imprimatur help convey the signal with greater clarity and confidence. The patent has credibility behind it because of the government’s imprimatur. 12 There is no reason that these signals are limited to technical and pecuniary considerations. The message in the patent also can involve the contents of the invention contained within it. The government imprimatur attending the patent grant can confirm the legitimacy of a technology.13 In particular, the genetic revolution has resulted in discoveries linking genes, proteins, and other biological processes to human behavior generally.14 Research into biological causes of behaviors is inevitable and, indeed, has already begun.15 Recent discoveries include genes that influence aggressiveness,16 weight,17 intelligence, 18 novelty seeking, worry19 and harm avoidance.20 One scientist has noted that “[t]he real breakthroughs in understanding personality are not occurring on leather couches but in laboratories.”21 Another has suggested that “[t]he genetic analysis of behavior will prove to be . . . the most important advance in the behavioral sciences in [his] lifetime.”22 Many of these discoveries are patentable. While patents relating to genetically-based diseases are desirable, **patents on genes and processes that influence behaviors, activities, or conditions that are not clearly harmful could be problematic.23 These discoveries may result in the ability to manipulate or choose preferential traits, a form of privatized eugenics.24 The PTO inevitably will be grant patents on biological discoveries with such eugenic potential. This begs the question of whether we want the patent system to create an incentive for these types of discoveries. Moreover, the imprimatur of the patent grant can express the view that such technologies are legitimate and normatively good.** Patents are awarded only for inventions that are useful. Utility, however, is a relative concept: what is good for one could be destructive to another. **This concern is particularly acute for groups whose identities are tied to their biological state or behaviors: the invention could be used to destroy these groups by “curing” them or by preventing their birth through prenatal screening. The grant of patents on these technologies confirms that the government views them favorably, and could express that these groups are highly disfavored, further marginalizing them.**

#### [Holbrook 3] The medical community creating patents determines whose biological conditions should be altered – hurting PWDs.

**Holbrook 3**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

**What constitutes pathological is often infected by social and cultural norms, not simply medical knowledge.** The most obvious example is homosexuality itself. As discussed above, until the early 1970s, the medical community, with considerable internal debate, did consider homosexuality to be pathological. Nothing changed in the 1970s with respect to homosexuality– instead social norms and views of homosexuals changed with in the medical community, resulting in it being eliminated as a pathological condition.212 The contextual nature of psychological disorders, therefore, may result in an ever-moving target of what constitutes pathological. **The medical line of therapy/enhancement could truly break down in the context of the deaf, dwarfs, and high-functioning autistics. The deaf do not view themselves as medically pathological, although the hearing community would view them as lacking one of the key human senses and, thus, possessing a pathological condition. The medical community would seem to be more in line with that of the hearing community, risking that the use of a medical norm would allow patents that arguably would express disfavor to the deaf community. A similar argument could be made for dwarfs, who have bodies that function entirely normally. They are simply statistically far outside the normal range of human height. High- functioning autistics can view themselves as simply having different social skills, which is not inherently wrong. Arguably, this should not be viewed as a pathological condition, but likely the medical community would disagree. Simply because these distinctions are difficult to make, however, does not inevitably mean that we should allow everything to be patented.** Regulatory agencies other than the PTO are charged with making this distinction already.213 The PTO could be require the demonstration of a utility that is beyond mere enhancement and one that instead is a therapy directed to a known pathology. The DSM could remain an effective tool, however. While on the margins some conditions may seem close to the line of pathology, there are some conditions that universally would be viewed as pathological, such as schizophrenia and bipolar disorder. The DSM would at least provide certainty for certain behaviors.

### **Thus:**

#### [Plan Text and Holbrook 4] I affirm, “Resolved: Member nations of the World Trade Organization ought to eliminate intellectual property protections for gene-editing medicines.”

**Holbrook 4**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

In fact, the ultimate utility that we may be protecting is that of choice – allowing persons to determine how best to use these technologies. But falling back on choice does not answer the question of why the government should be involved in granting patent rights for these discoveries. Choice alone as purely a “good” is quite debatable in the context of privatized eugenics, which the patent system is poised to incentivize. 220 The right to choose may accompany a considerable cost – elimination of groups considered outside the norm.221 While the regulation of this choice undeniably lies outside of the patent system,222 that system need not embrace destructive choices by allocating a given technology as “useful” regardless of the harm that invention might inflict. The government should not be facilitating such activities with the patent system. **The patent system is one of incentives** – if an inventor will engage in research resulting in a patentable invention, she is rewarded with the patent’s period of exclusivity, which allows the inventor to recoup her sunk costs and preventing free-riding by competitors. There is no doubt that denying patents in this area will not stop research into such technologies – other public measures would be required.223 **Eliminating, or modifying the availability of, patent rights in these areas would at least help to mitigate these commercial interests and make such innovations less desirable. Regardless, though, do we really want the patent system – with the approbation of a government-granted right – to incentivize the creation of inventions with such powerful expressive harms and enormous eugenic potential? Simply because denying patent protection will not stop these technologies does not mean that we should, therefore, continue to grant these patents and create incentives for harmful and potentially destructive discoveries.**224

#### [Daley] THIS IS A TYPE OF MEDICINE

**Daley**: Daley, Jim. [Jim Daley is a freelance journalist based in Chicago.] "Gene Therapy Arrives", Nature, December 4, 2019. <https://www.nature.com/articles/d41586-019-03716-9> EM

**The idea for gene therapy—a type of DNA-based medicine that inserts a healthy gene into cells to replace a mutated, disease-causing variant—was first published in 1972.** After decades of disputed results, treatment failures and some deaths in experimental trials, the first gene therapy drug, for a type of skin cancer, was approved in China in 2003. The rest of the world was not easily convinced of the benefits, however, and it was not until 2017 that the U.S. approved one of these medicines. Since then, the pace of approvals has accelerated quickly. At least nine gene therapies have been approved for certain kinds of cancer, some viral infections and a few inherited disorders. A related drug type interferes with faulty genes by using stretches of DNA or RNA to hinder their workings. **After nearly half a century, the concept of genetic medicine has become a reality.**

### Part 3: Solvency

#### [Holbrook 5] Eliminating patents for gene-editing affirms that homosexuality is not pathological.

**Holbrook 5**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

Patents traditionally have been justified on the basis of incentives. Commentators have justified patent law on three different incentive systems: quid pro quo, ex ante, and prospect theories. Under the quid pro quo view, the patent acts as an incentive for the innovator to disclose the invention to the public in exchange for the patent’s exclusive rights.2 **On the most basic level, the patent disclosure communicates a message to the public about what the inventor has discovered and how to make and use that discovery.**3 According to the ex ante incentive view, patents are needed to combat the public good problem of information: without patents, competitors could free ride on the invention and compete with the innovator without incurring the research and development costs.4 Such free riding reduces the ex ante incentive to invest in innovation. The third view, prospect theory, contends that patents create the incentive to commercialize the invention after the patent has issued.5 By defining the property right surrounding the invention, the inventor can best coordinate later commercialization of the good in a way akin to prospecting of mineral rights.6 Recent scholarship has persuasively challenged these paradigmatic views and has demonstrated that patents perform functions far different than providing these basic incentives. **Patents can operate as a vehicle for transmitting messages. For example, patents can serve as a signal to markets about aspects of the firm. A robust patent portfolio can send a signal to the market about the nature of a firm’s innovation capacity or other factors relevant to potential investors.**7 The patent thus acts as an intermediary, translating otherwise complicated information into a simpler form to allow the markets to operate more efficiently. Patents communicate other information in order to reduce transaction costs: they can facilitate affirmative asset partitioning by firms and combat “team production” problems arising in efforts by firms to develop and exploit information assets.8 Patents consequently serve a far greater communicative effect then simply communicating the technical information regarding the invention and the scope of the exclusionary rights. This reality is not surprising. Property rights often involve issues of communication, messages, and symbols.9 The need for notice of property rights among parties necessitates that there be a common language of communication and expression of who owns the rights and what those rights are.10 **Property rights are more than simply the ability to exclude others.**

**They add:**

**Gays and lesbians have obtained greater acceptance socially and legally, however. Homosexuality is no longer considered a disease, and psychological treatments to change sexual orientation have been condemned by the medical establishment as ineffective and potentially harmful.** Legally, states and localities are affording gays and lesbians far more legal protections than in the past.41 Many Americans believe that homosexuals should receive protection against employment discrimination.

#### [Holbrook 6] An elimination of patents solves – there is less incentive to make these drugs if they are not patented.

**Holbrook 6**: Holbrook, Timothy R. [Chicago-Kent College of Law] "The Expressive Impact of Patents", *Washington University Law Review*, Volume 84, Issue 3. 2006. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1181&context=law_lawreview> EM

**The pharmaceutical industry has come under criticism recently for failing to devote sufficient resources to particularly relevant drugs, instead focusing on the next generation of market-driven (as opposed to health-care driven) drugs such as antihistamines.** A recent study has shown that most new drugs entering the market are not particularly innovative and instead are simply follow-on improvements on already existing drugs.215 **There are a number of reasons for this reality: the dependency on drug companies on blockbuster drugs;216 the ability of companies to extend patent protection effectively on blockbusters through patent and FDA laws and regulations;217 and the reduced cost of relying on known drugs in proving safety and efficacy.**218 Innovation in the pharmaceutical market thus seems anchored to existing drugs, many of which are more driven towards enhancement as opposed to curing pathologies. A new utility standard, therefore, would reduce incentives for companies to spend money on “lifestyle” drugs and instead create greater incentive for pharmaceuticals and other companies to research drugs and biologics directed to more severe conditions. **With availability of patents curtailed, companies would not have the patent rights to recoup their sunk research and development costs. The ex ante incentive to research drugs that deal with lifestyle would therefore be dramatically reduced, affording the opportunity for drug companies to shift greater resources to finding cures to truly pathological conditions. Less money would be spent on the next generation of Viagra and hopefully more would be spent trying to find vaccines for AIDS.219**

#### [Meagher et al] The ability to do genetic engineering could cause the elimination of those who are considered deviating from “the norm”, send the message that people with disabilities are undesirable and life holds no value, and exacerbates stigma.

**Meagher et al**: Karen M. Meagher [  PhD Biomedical Ethics Research Program, Mayo Clinic] Megan A. Allyse [PhD Biomedical Ethics Research Program] Zubin Master, PhD [Biomedical Ethics Research Program, Mayo Clinic] Richard R. Sharp, [PhD Biomedical Ethics Research Program] “Reexamining the Ethics of Human Germline Editing in the Wake of Scandal” Mayo Clinic Proceedings, Volume 95, Issue 2. MB

In the decades since IVF was introduced, the ability to create embryos in vitro has given rise to a number of reproductive interventions. As genetic technologies improved, it became possible to remove DNA from in vitro embryos and assess them for genetic disease. The incidence of Tay-Sachs disease in the Ashkenazi Jewish community is a frequently cited example of how assisted fertility technologies can rescue families from the devastation of childhood disease; with a combination of community-based carrier screening and assisted fertility to avoid embryos affected with Tay-Sachs, the community dramatically reduced the frequency of the disease.33 Other communities experiencing serious genetic disease have seen hope in reproductive gene editing, emphasizing the ability to avoid similar outcomes for their children.34 However, these technologies also concern the ethics of procreation, including freedom to create one’s future children and obligations to promote their interests.35,36 With greater editing capabilities have come fiery debates about what constitutes disease, disability, and a life worth living. While seeking to eliminate lethal childhood conditions like Tay-Sachs was relatively uncontroversial, genetic conditions with more variable phenotypes and less immediate clinical impact are harder to categorize. In particular, the Down syndrome community has been vocal in raising concerns about how prenatal diagnosis can lead to the elimination of certain kinds of people labeled as deviating from a “healthy” norm.37 Some communities, including those with hereditary deafness or dwarfism, have expressed concern about the categorization of their phenotype—which many regard as an essential element of their identity—as “diseased.”38 At the same time, the use of these technologies to avoid conditions that do not manifest until late in life, or may not manifest at all, has been controversial. Individuals affected by late-onset genetic conditions have the opportunity to live productive, fulfilled lives. Should those lives be precluded on the basis of genetic risk?39 These more foundational debates about the goals of reproductive research make the use of germline editing to create HIV resistance especially problematic. In the present case, HIV is an infectious disease that can be avoided through well-known protocols.40 Transmission of the condition from parental serum is routinely avoided in assisted fertility by “washing” the gametes involved prior to fertility treatment. Moreover, using an elaborate and risky gene-editing procedure to offer even a chance of HIV resistance can send a telling message that life as an HIV-positive individual is sufficiently undesirable that it constitutes a life not worth living. Such research creates the very real possibility of exacerbating the stigma experienced by those living with HIV in China.40,41 None of the justifications for the use of either IVF or embryo editing appear to be justified by the target of the experiment.