

# **REGIONAL** **ETHICS BOWL** **CASES**

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## 1. Abandoned? Well, that's too bad

The Rowe family is suing Blue Energy LLC for compensation regarding an incident that occurred in May 2012, although they say not even a million dollars would be sufficient for the horrors they endured. Reuters reported that “Hanson and Michael Rowe noticed an overpowering smell, like rotten eggs, seeping from an abandoned gas well on their land in Kentucky. The fumes made the retired couple feel nauseous, dizzy, and short of breath.”<sup>1</sup> Unfortunately, the Rowes faced significant difficulty in holding the well's owner accountable. While the well was on their land, the well itself was owned and drilled by J.D. Carty Resources LLC in 2006. Carty dissolved in 2008 and sold the well to a company that was then acquired by Blue Energy, LLC, which denied any ownership or obligation for the well.

The state of Kentucky declared the well an environmental emergency and ran a 40-day operation to plug it, while the Rowes moved to a trailer on their property with no running water. Regulators determined the leak was a toxic blend of hydrogen sulfide, a common drilling byproduct, and the potent greenhouse gas, methane.

In last year's bipartisan infrastructure law, 4.7 billion dollars were provided to plug and remediate abandoned oil and gas wells.<sup>2</sup> There are anywhere from 750,000 to over 3 million abandoned oil and gas wells in the U.S. and they emit millions of metric tons of methane per year. In addition to climate impacts, they also can contaminate ground water and even pose safety hazards. And these wells are labor intensive and expensive to plug, costing anywhere between \$76,000 to \$1 million for each well<sup>3</sup>. If you do the math, the funds set aside for fixing the issue are a good start but nowhere near sufficient to fully address the problem.

While the issue of abandoned wells has been pervasive for decades, our lawmakers have only begun to focus on remediation in the last few years. Many saw remediation of abandoned wells as politically popular because it could become a source of jobs in so called “energy transition communities” or areas where fossil fuel industry jobs dwindle as we transition to cleaner energy. And although the money will be put towards reducing emissions, something which we must do in order to reduce the most dire effects of climate change, some lawmakers have stated that the private companies who caused this problem should be footing the bill, not the federal government. Increasing bonding requirements for future well drilling could ensure that private companies put aside money in advance to deal with abandoned wells, but this would not address wells that have already been abandoned. Additionally, the money allocated in the bipartisan infrastructure law for remediation of abandoned wells will not solve the systemic problems that resulted in the abandonment of wells that emit methane, which would only accelerate with a transition away from fossil fuels.

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<sup>1</sup> Nichola Groom, “Special Report: Millions of abandoned oil wells are leaking methane, a climate menace” June 16, 2020, Reuters <https://www.reuters.com/article/us-usa-drilling-abandoned-specialreport/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-menace-idUSKBN23N1NL>

<sup>2</sup> H.R.3684 - Infrastructure Investment and Jobs Act <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>

<sup>3</sup> Daniel Raimi, Alan J. Krupnick, Jih-Shyang Shah, and Alexandra Thompson, “Decommissioning Orphaned and Abandoned Oil and Gas Wells: New Estimates and Cost Drivers” Environmental Science & Technology 2021 55 (15), 10224-10230 <https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c02234>

But, as made clear by the Rowe's situation, these abandoned wells are causing harm in communities, and the debate over who should pay would not have helped them live in a safe home. If there is political capital so to speak, many argue that the opportunity should be grabbed by the horns.

## 2. Happy to be alone?

On May 18, 2022, the New York Court of Appeals heard a case on whether Happy the elephant has the right of Habeas Corpus, and therefore, whether she is considered a legal person. This was the first case of its kind in an English-speaking high court and called into question what constitutes a person in the United States.<sup>1</sup>

For the past 45 years, Happy the elephant has been kept at the Bronx Zoo in a one-acre enclosure, with intermittent contact with other elephants.<sup>2</sup> A petition led by the Nonhuman Rights Project (NhRP) garnered almost 1.5 million signatures calling for Happy's release to an elephant sanctuary. The petition, titled "*End Happy The Elephant's 10 Years of Solitary Confinement*", states that Happy has been in isolation since her companions Grumpy and Sammy died. Zoo defenders assert that Happy is not alone, and that she receives extensive care, including efforts at interaction and enrichment, unlike prisoners in solitary confinement who receive little if any human contact. For instance, Happy resides next to another female elephant, Patty, who is separated by a fence and the two elephants can see and smell each other, and even touch trunks.<sup>3</sup>

Proponents on both sides agree that a ruling in favor of Happy's personhood would have massive ramifications. The Nonhuman Rights Projects filing the case on behalf of Happy, argue that the ruling could help animals achieve the bodily liberty that has been denied to them across human history. Whereas in a brief, attorneys for the Bronx Zoo wrote "Expanding the notion of a 'person' to include animals ... has implications not just for zoos, but for pet owners, farmers, academic and hospital-based researchers and, most critically, every human who might seek or need access to the judicial system."

Happy was, in part, selected by the NhRP because in 2005 she was the first elephant to pass the mirror test, previously only passed by great apes and dolphins. The mirror test determines whether an animal possesses the ability of visual self-recognition and is often associated with capacity for empathy. It is unclear whether opening the legal recognition of personhood to Happy the elephant would set the stage for all animals to fall under this category. There have been many theories on how to quantify the moral value of a being, whether that is self-awareness, capacity for pain, or the capacity of rational thought. Some philosophers have even addressed consideration for the moral weight of plants.

NhRP argues that those who have claims against their case do so for personal interest, such as the National Association for Biomedical Research, which claimed that "extending habeas rights to animals would ... drive up the cost of conducting critical research using animals, threatening to

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<sup>1</sup> Michael Doyle, "Happy the elephant's case poses heavy philosophical" Politico, 05/12/2022 <https://subscriber.politicopro.com/article/eenews/2022/05/12/happy-the-elephants-case-poses-heavy-philosophical-questions-00032060>

<sup>2</sup> Vicki Constantine Croke, "Happy the elephant had her day in court. We humans are better for it." The Washington Post, June 23, 2022 <https://www.washingtonpost.com/opinions/2022/06/23/bronx-zoo-elephant-lawsuit-happy-captivity/>

<sup>3</sup> Jill Lepore, "The Elephant who could be a person" The Atlantic, 11, 2021 <https://www.theatlantic.com/ideas/archive/2021/11/happy-elfphant-bronx-zoo-nhrp-lawsuit/620672/>

impede important medical breakthroughs and other major scientific advances that benefit humans and animals alike.”<sup>4</sup>

Three Buddhist scholars countered in a brief that “this legal moment for Happy represents a great opportunity to consider the treatment of sentient beings from a cross-cultural and more moral perspective than we have done before, so as to avoid perpetuating a great moral wrong merely because it has been a habit of the law.”

On June 16, 2022, the top New York Court ruled that Happy cannot claim habeas corpus rights, and therefore, is not a legal person. While this may put to rest this challenge seeking animal personhood in the United States, the law is not necessarily coextensive of morality.

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<sup>4</sup> Kathleen M. Sullivan, Amicus Curiae Brief, September 24, 2021  
<https://www.nonhumanrights.org/content/uploads/Kathleen-Sullivan-brief-Happy-Court-of-Appeals.pdf>

### 3. Knowledge for the sake of ... lizard dewlaps?

An ecology lab at a renowned University focuses their research on animals largely found in the Caribbean and the southeastern United States. One of the groups focuses on anoles, a type of lizard of which there are more than 425 species, and focuses on one of these species. The *Anolis Distichus* had been selected out of hundreds, due to the dearth of research on the particular species, because it is smaller and quicker, and therefore harder to catch than others. The group researches the lizard's dewlap, a brightly colored extendible flap of skin, and seeks to determine its true purpose as it has been hypothesized that male anoles use it to attract mates. In the course of research, teams of students are sent to capture wild anoles for study, measurements are taken, and then the lizards are released. But sometimes during this process, accidents happen, and the lizards die due to sun exposure, dropping of containers, or other unforeseen circumstances.

It is unclear to some, what this research would do for either humanity, or for the lizards themselves. This begs the question whether knowledge, for the sake of knowledge, is a goal justified in it of itself, in exchange for the loss of animal lives. Others may argue that scientific discoveries sometimes lead to unexpected advantages in other aspects of life. Like how scientists discovered that sharks resist infection, and then transitioned this knowledge into studying the sharks' immune system with the hope that their immunity could unlock secrets to improve human health<sup>1</sup>. Scientists may not always know the application of their study until after findings are made. Thus, it's possible the dewlap research could become relevant for conservation of lizard habitats if, for instance, we learn that they need to use their dewlaps in a particular location, climate, or time of day. And even if the research does not impart some immediate further application, some could say the knowledge alone is powerful. But the anoles at the moment do not get a say.

The above is an example where animals are accidentally killed in the field, but in many cases, animals are killed at the end of experiments due to factors such as stress or illness, that would not allow them to be returned to the wild. Many consider this a reasonable cost of better knowledge and understanding of our world. In Germany, there are investigations into whether the routine culling of unused research animals should be allowed, as they were not even used "for the greater good". For example, the European Union estimated that in 2017, EU labs culled 83% of mice in labs without any studies, due to space or time constraints.<sup>2</sup> Animal rights activists in many countries have tried and failed for decades to get stricter animal testing laws on the books. The Animal Welfare Act is the only federal legislation that regulates researching animals in the U.S, but it does not cover 95% of the animals used in laboratories such as mice, rats, birds, and fish.<sup>3</sup>

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<sup>1</sup> Melinda Ratini, "Understanding Cancer -- the Basics" WebMD, January 20, 2022

<https://www.webmd.com/cancer/news/20170721/what-sharks-can-teach-us-about-our-health>

<sup>2</sup> Hinnerk Feldwisch-Drentrup "Germany weighs whether culling excess lab animals is a crime" Science, May 5, 2022, <https://www.science.org/content/article/germany-weighs-whether-culling-excess-lab-animals-crime>

<sup>3</sup> Susan Gilbert, Gregory E. Kaebnick, and Thomas H. Murray, "Animal Research Ethics: Evolving Views and Practices," Special Report, Hastings Center Report 42, no. 6 (2012) <http://animalresearch.thehastingscenter.org/u-s-law-and-animal-research/>

#### 4. Do no harm

On December 24, 2017, 75-year-old Charlene Murphey was admitted to Vanderbilt University Medical Center with a subdural hematoma.<sup>1</sup> Two days later, Murphey's condition had improved, and she was prescribed a sedating drug, Versed, to allow her to be still during a final MRI before release. RaDonda Vaught, a registered nurse with seven years of experience at the hospital, was ordered to administer the sedative. Vaught attempted to withdraw the sedative from an automated dispensing cabinet by keying "VE" into the search function. When this failed Vaught used an override code to manually withdraw the medication. Unfortunately, Vaught mistakenly withdrew vecuronium, a paralyzing drug, the administration of which led to the death of Charlene Murphy.

Vaught admitted her error to Vanderbilt administrators, explaining that she was distracted by a trainee and had been complacent. That information was not passed on to medical examiners, as required by law, and Murphy's death was attributed to natural causes. In the following month Vaught was fired but retained her nursing license as Vanderbilt continued to suppress public knowledge of the incident. In October 2018, the incident became public due to an anonymous tip and Vaught faced a hearing with the Tennessee Department of Health's Board of Nursing. Vaught explained the incident and that overriding the automated dispensing system was daily practice, that "You couldn't get a bag of fluids for a patient without using an override function." The board allowed her to retain her license.

Vaught was arrested on February 4, 2019 and charged with reckless homicide and impaired adult abuse. To fund her legal defense, Vaught started a GoFundMe campaign writing, "Many feel very strongly that setting the precedent that nurses should be indicted and incarcerated for inadvertent medical errors is dangerous." Nurses rallied to Vaught's defense raising over \$100,000, appearing at her trial, and writing letters of support. Janie Harvey Garner, a St. Louis registered nurse and founder of Show Me Your Stethoscope, a nurse's group with more than 600,000 members said, "In response to a story like this one, there are two kinds of nurses," Garner said. "You have the nurses who assume they would never make a mistake like that, and usually it's because they don't realize they could. And the second kind are the ones who know this could happen, any day, no matter how careful they are. This could be me. I could be RaDonda."<sup>2</sup>

Pharmacists have taken Vaught's case as an object lesson in the need for reform in the control of dangerous medications. For example, pharmacist confirmation of drugs obtained by overriding an automated dispenser, limiting overrides to emergency situations, separate control systems for paralytic drugs, like vecuronium, and other increases in institutional safeguards.<sup>3</sup> Under

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<sup>1</sup> Brett Kelman "The RaDonda Vaught trial has ended. This timeline will help with the confusing case" Nashville Tennessean March 27, 2022. <https://www.tennessean.com/story/news/health/2020/03/03/vanderbilt-nurse-radonda-vaught-arrested-reckless-homicide-vecuronium-error/4826562002/>

<sup>2</sup> Brett Kelman "As a nurse faces prison for a deadly error, her colleagues worry: Could I be next?" NPR, March 22, 2022 <https://www.npr.org/sections/health-shots/2022/03/22/1087903348/as-a-nurse-faces-prison-for-a-deadly-error-her-colleagues-worry-could-i-be-next>

<sup>3</sup> Myungsun (Sunny) Ro and Emily B. Holcomb, "More Lessons Learned From RaDonda Vaught Case" Pharmacy Practice News June 27, 2022 <https://www.pharmacypracticenews.com/Operations-and-Management/Article/06-22/More-Lessons-Learned-From-RaDonda-Vaught-Case/67213>

increased federal scrutiny Vanderbilt developed a “plan of correction” which satisfied officials and allowed it to continue operations with federal funds.

On the other hand, the Tennessee Department of Health’s Board of Nursing reversed its earlier decision and revoked Vaught’s nursing license. Vaught was subsequently convicted of criminally negligent homicide and abuse of an impaired adult. Although guilty of very serious charges, Vaught was sentenced to three years of probation and while she will likely never be a nurse again, she will also likely not serve time in prison. Still, many worry that the apparent institutional cover-up and chilling effect on nurses will cost other patients their lives.



## 5. Do innocents pay the price?

On February 24, 2022, Russia invaded Ukraine in an escalation of long-standing tensions between the nations. The on-going conflict has caused humanitarian problems including food shortages and a refugee crisis. In response to the conflict American and EU nations have provided and pledged billions in military support to Ukrainian defense. Individuals and private organizations have refused to carry Russian vodka in restaurants, liquor stores, or bars; refused to play symphonies by Russian composers. Additionally, western nations have implemented an aggressive series of escalating sanctions on the Russian state and individual powerful Russian citizens.

Beyond western state sanctions, some private organizations have chosen to apply pressure on Russia within their own spheres of influence. In one such case, Wimbledon, the oldest and perhaps most prestigious tennis tournament in the world, banned Russian and Belarussian athletes. Wimbledon's ban impacts a handful of top players including Daniil Medvedev, the number two ranked men's tennis player, and Aryna Sabalenka, the number four ranked women's tennis player.<sup>1</sup>

Wimbledon wrote in explanation, "Given the profile of The Championships in the United Kingdom and around the world, it is our responsibility to play our part in the widespread efforts of Government, industry, sporting and creative institutions to limit Russia's global influence through the strongest means possible."<sup>2</sup> The statement continues, "In the circumstances of such unjustified and unprecedented military aggression, it would be unacceptable for the Russian regime to derive any benefits from the involvement of Russian or Belarussian players with The Championships." Ian Hewitt, Chairman of the All England Club, commented: "We recognise that this is hard on the individuals affected, and it is with sadness that they will suffer for the actions of the leaders of the Russian regime."

In response to Wimbledon's actions, both the men's and women's professional tennis tours stripped the points available for Wimbledon participants. A statement from the Association of Tennis Professionals (ATP) condemns Wimbledon's decision as undermining the merit based ranking system. It goes on to add, "Discrimination based on nationality also constitutes a violation of our agreement with Wimbledon that states that player entry is based solely on ATP rankings." Novak Djokovic, the top-ranked men's player and Serbian war survivor describes the decision as "...crazy. The players, the tennis players, the athletes have nothing to do with it [war]. When politics interferes with sport, the result is not good." Martina Navratilova, a nine-time Wimbledon champion, says "as much as I feel for the Ukrainian players and Ukrainian people," excluding players is "unfair" and "not helpful."<sup>3</sup>

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<sup>1</sup> Rachel Treisman "Wimbledon bans Russian and Belarussian players — including No. 2 Medvedev" NPR, April 20, 2022 <https://www.npr.org/2022/04/20/1093741869/wimbledon-russian-players>

<sup>2</sup> "Statement Regarding Russian and Belarussian Individuals at The Championships" Wimbledon April 20, 2022 [https://www.wimbledon.com/en\\_GB/news/articles/2022-04-20/statement\\_regarding\\_russian\\_and\\_belarusian\\_individuals\\_at\\_the\\_championships\\_2022.html](https://www.wimbledon.com/en_GB/news/articles/2022-04-20/statement_regarding_russian_and_belarusian_individuals_at_the_championships_2022.html)

<sup>3</sup> Lee Igel "Wimbledon Ban On Russian And Belarussian Players Serves Points About Sports And Politics" Forbes, Apr 26, 2022 <https://www.forbes.com/sites/leeigel/2022/04/26/wimbledon-ban-on-russian-and-belarusian-players-serves-points-about-sports-and-politics/?sh=267ffc22473e>

Since originally writing this, in an ironic twist of fate, this year's Wimbledon Women's Champion was Russian born Elena Rybakina. Rybakina plays under the flag of Kazakhstan and travels with a passport from that country. Reportedly her decision in 2018 to play as a Kazakh was made primarily due to financial considerations and her parents continue to reside in Moscow.

## 6. Are sports dope?

Performance in sports is enhanced by regular training, adequate rest, good nutrition, and supplemental medication. There is apparent universal agreement that the first three of these are foundational to the values of sports. But the use of supplemental medication to enhance performance has been quite controversial.

In 1935, Adolf Butenandt and a team of German scientists first synthesized human testosterone for the treatment of hypogonadism and depression. Butenandt would go on to win the Nobel Prize in Chemistry for his work on “sex hormones.”<sup>1</sup> By 1954 the Soviet weightlifting team was using testosterone injections to enhance their performance, but with detrimental health effects such as prostate enlargement. In 1956, to compete with fewer side effects, U.S. weightlifting doctor John Ziegler synthesized the anabolic steroid methandrostenolone (Dianabol). Unfortunately, dianabol does have rather serious side effects including liver damage and increased risk of stroke. These very serious potential health consequences are the reason performance enhancing drugs (PEDs) are often prohibited in competition.

1960 Sports Illustrated published an exposé on the use of amphetamines, tranquilizers, cocaine, and other drugs in elite sports.<sup>2</sup> Eventually the international Olympic committee included anabolics and testosterone on their banned substances list. The Montreal Olympics of 1976 were the first Olympic games to drug test for anabolics and testing regimes have grown since then. Now all major U.S. sporting leagues, including the NFL, MLB, NBA, NHL, MLS, and UFC, test for a range of substances from marijuana to anabolic steroids. But these leagues do not test equally and the growth in testing is not without its critics.

Libertarians have long advocated an end of prohibition arguing that the use of PEDs should not be regulated beyond the individual’s choice. For decades now serious athletes have suspected that most of their competition is using some form of banned PED and this belief leads to a prisoner’s dilemma in which using PEDs seems like the only rational choice.<sup>3</sup> This belief seems supported by studies where over 50% of anonymous competitive amateur athletes admitted using PEDs in the previous year.<sup>4</sup> Some hope to change the calculation by increasing surveillance on athletes, but more testing leads to more creative drug regimes and it seems impractical to reliably catch even most PED users.<sup>5</sup>

Further complicating the situation are the apparent inequities of enforcement regimes. Recently a Russian Olympic figure skater, Kamila Valieva, tested positive for Trimetazidine, a banned substance. But her case is in arbitration, and she has not been suspended, in part because she is a minor. Some draw a comparison to the case of Sha’Carri Richardson, a U.S. sprinter who was

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<sup>1</sup> “What is the history of anabolic steroid use?. National Institute on Drug Abuse website.” NIDA April 12, 2021. <https://nida.nih.gov/publications/research-reports/steroids-other-appearance-performance-enhancing-drugs-aped/what-history-anabolic-steroid-use>

<sup>2</sup> George Walsh “Our Drug-Happy Athletes” <https://www.si.com/more-sports/2008/03/11/steroid-timeline>

<sup>3</sup> Haugen KK. “The performance-enhancing drug game.” *Journal of Sports Economics* 2004;5:67–87.

<sup>4</sup> Ulrich, R., Pope, H.G., Cléret, L. et al. Doping in Two Elite Athletics Competitions Assessed by Randomized-Response Surveys. *Sports Med* 48, 211–219 (2018). <https://doi.org/10.1007/s40279-017-0765-4>

<sup>5</sup> Brandon Spektor “Why Is It So Easy to Cheat at the Olympics?” *LiveScience* February 13, 2018 <https://www.livescience.com/61747-how-widespread-olympic-doping.html>

suspended for marijuana she reportedly used in the days following the death of her mother. Critics argue that, while both took a banned substance the “difference is that she is black, and Valieva is white.”<sup>6</sup>

Compounding the disparity in possible outcomes is the choice between various systems of drug testing. For instance, leagues like the NFL administer their own drug programs, with team physicians doing the testing, and lower penalties for marijuana than anabolic steroids. The Olympic Games use a testing protocol developed and administered by the World Anti-Doping Agency (WADA). Other organizations, like the UFC, rely on the U.S. Anti-Doping Agency (USADA) for testing and regional rules for determining penalties. A newer organization, the Voluntary Anti-Doping Agency (VADA) launched in 2011 with the goal of attracting athletes who are not required to be tested, but who want to compete without PEDs.

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<sup>6</sup> Joe Lancaster “Olympic Athletes Can Take Drugs so Long as They Also Get an Unfair Advantage” Reason February 15, 2022 <https://reason.com/2022/02/15/olympic-athletes-can-take-drugs-so-long-as-they-also-get-an-unfair-advantage/>

## 7. Anti-Vax or Anti-American

The United States Air Force Academy graduating class of 2022 was three fewer than anticipated at the May 25<sup>th</sup> ceremony in Colorado Springs. Three cadets who anticipated graduating with their classmates and receiving commissions in the USAF refused COVID-19 vaccination and were not allowed to attend the ceremony. One of the cadets has resigned from the Academy and may owe the cost of his attendance to taxpayers. The other cadets are in a legal limbo as they seek to join one of several class action lawsuits filed on behalf of military members who were required to either be vaccinated or be separated from military service.<sup>1</sup>

According to former Colorado state Rep. Gordon Klingenschmitt, “These are evangelical Christian cadets, who are pro-life, and they object to the fact that the vaccines were tested on aborted fetal stem cell lines. Because of their objection to abortion, their conscience will not let them ... inject this particular drug into their own bodies.” The cadets applied for religious exemptions for the mandated vaccination, but their requests were denied—as of January 2022, the USAF had only approved a total of 9 religious exemptions. Director of Public Affairs Brian Maguire responded saying, “The majority of our religious accommodation requests centered on the use of stem cells in the development and/or production of the currently available vaccines. The Moderna and Pfizer vaccines did not use stem cells in the development, testing or production and were presented as an option. The cadets refused to commit to this vaccine.”<sup>2</sup>

The cadets received an official letter of reprimand for not taking the vaccine in violation of Article 90 of the Uniform Code of Military Justice for disobeying an order from a superior officer. The letter makes the point that officers in the military are expected to obey orders even when they disagree with those orders. In this case, disobeying the order to be vaccinated, “jeopardizes the health, safety and readiness of yourself and of your fellow military members and compromises our mission.”

According to one whistleblower’s account, in October 2021 Air Force Secretary Frank Kendall told commanders “no religious accommodations could or should be approved for anyone who would be remaining in the Department of the Air Force.”<sup>3</sup> However, the U.S. military has allowed numerous medical exemptions to the vaccination policy. For some, this calls into question the degree to which safety is impacted by unvaccinated members of the armed forces.

Amid concerns that vaccination requirements are overblown and the possible costs that cadets may face for refusing, some in Congress have taken the side of the cadets and introduced the Defending Freedom of Conscience for Cadets and Midshipmen Act. The Act would, if passed, prevent denial of graduation for not being vaccinated against COVID-19; prevent being

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<sup>1</sup> Lolita Baldor “3 Air Force cadets who refused vaccine won’t be commissioned” AP News May 21, 2022 <https://apnews.com/article/covid-health-united-states-government-and-politics-education-c8debc71373ab4b4390980b12072ef5a>

<sup>2</sup> Stephanie Earls “Air Force Academy cadets who refused vaccine, and were denied waiver, could face expulsion” The Gazette May 14, 2022 [https://gazette.com/premium/air-force-academy-cadets-who-refused-vaccine-and-were-denied-waiver-could-face-expulsion/article\\_070a3fec-d2fc-11ec-9490-0f8a500e9fd2.html](https://gazette.com/premium/air-force-academy-cadets-who-refused-vaccine-and-were-denied-waiver-could-face-expulsion/article_070a3fec-d2fc-11ec-9490-0f8a500e9fd2.html)

<sup>3</sup> O'Dell Isaac “Air Force Academy cadet submits resignation after refusing vaccine on religious grounds” The Gazette May 18, 2022 [https://gazette.com/coronavirus/air-force-academy-cadet-submits-resignation-after-refusing-vaccine-on-religious-grounds/article\\_7ebca986-d6f2-11ec-8d5c-5787c7294f98.html](https://gazette.com/coronavirus/air-force-academy-cadet-submits-resignation-after-refusing-vaccine-on-religious-grounds/article_7ebca986-d6f2-11ec-8d5c-5787c7294f98.html)

dismissed from a service academy for refusing to be vaccinated; and, prevent any cadet who is not allowed to commission due to their COVID-19 vaccination status from being subject to repayment claims.<sup>4</sup>

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<sup>4</sup> Marco Rubio, “Colleagues Introduce Bill to Protect Air Force Cadets, Midshipmen From Being Punished for Not Receiving Covid-19 Vaccine” May 25 2022 <https://www.rubio.senate.gov/public/index.cfm/2022/5/rubio-colleagues-introduce-bill-to-protect-air-force-cadets-midshipmen-from-being-punished-for-not-receiving-covid-19-vaccine>

## 8. Damn the dam?

As part of the Colorado River Storage Project, the construction of the Glen Canyon Dam began in 1956. The 726-foot-tall dam is the United States' second highest concrete-arch dam. The dam created Lake Powell—covering parts of Arizona and Utah—which reached full capacity in 1980. In 1972, the area was declared Glen Canyon National Recreation Area and is managed by the National Park Service.

Supporters of the dam note that the dam produces five billion kilowatt-hours of electricity each year which supports the needs of seven western states. Further, as a national park, the lake provides recreation opportunities to over four million visitors each year. These visitors support a half-billion-dollar tourism industry. The Bureau of Reclamation, which runs the dam, describes Lake Powell as a “bank account” of water for dry years. This water supply is essential to three lower states of the Colorado River Basin.

However, Lake Powell is facing an existential threat: record low water levels caused a two-decade long megadrought. Currently, the lake is about one-third full and long-term trends indicate that the lake level will continue to fall. John Fleck of the University of New Mexico told KUER radio, “It appears to be this permanent phenomenon that’s lowering the lake levels. You should not expect it to return to high lake levels over long periods of time. That’s just not something we can expect to happen.” The NPS has been forced to close multiple boat ramps, the Dangling Rope Marina, and dock access to Rainbow Bridge National Monument because of the low water levels. Further, the low levels will make honoring water allocations dating from the 1920 difficult if not impossible to honor. In a worse-case scenario, the dam could cease power production in the near future.

For decades, groups have called for the draining of Lake Powell. Some see the low water levels as the perfect opportunity to do so and return Glen Canyon to its natural state. Glen Canyon Institute Director Eric Balken told NPR, “All of the best data that we have suggests it’s going to be mostly empty for now on. So I think it’s really important for policymakers to consider what phasing out this reservoir looks like, because if we don’t, then we might just be stuck in a harder situation down the road where it’s happening by default.” Balken’s group advocates for using Lake Mead as the primary water storage reservoir for the states relying on water from the Colorado River.

Draining the lake could mean recovering what has been called America’s “lost national park.” Although lower lake levels mean less water-based recreation, slot canyons, grottoes, cliffs, and spires are emerging to provide different recreation activities. Further, historic and cultural sites representing thousands of years of human activity in the area could be uncovered.

## 9. Freedom of tweets

As Twitter sues Elon Musk to force his purchase of the company or pay a reported one billion dollars in compensation, the character of Twitter today and under Musk's proposed leadership has become contentious. In March 2022, when Musk began his acquisition bid, he polled users on the platform asking, "Free speech is essential to a functioning democracy. Do you believe Twitter rigorously adheres to this principle?" Musk's offer letter contained his response, "I now realize the company will neither thrive nor serve this societal imperative in its current form. Twitter needs to be transformed as a private company."<sup>1</sup>

Twitter's content moderation policies have developed over the last ten years to prohibit the glorification of violence, incitement of violence, harassment, hateful conduct, graphic content and much more. These policies themselves have clarifying policies, but still require judgment calls. The judgment of the content moderation team has come under criticism in the past for being too aggressive, too lenient, and too inconsistent. For instance, when Twitter permanently suspended former President Donald Trump's account over tweets relating to the January 6<sup>th</sup> riots many viewed the decision as censorship of valid political beliefs and while others lamented the decision as too late.<sup>2</sup>

Musk's perspective is that content moderation should mirror local laws regarding speech and thus be as lenient as legally permissible and has vowed to reinstate the former President's account. Critics wonder, "[i]f Twitter wants to pull back from moderating speech on its site, will people be less willing to hang out where they might be harassed by those who disagree with them and swamped by pitches for cryptocurrency, fake Gucci handbags or pornography?"<sup>3</sup> Beyond the user experience, others express concern that the rampant spread of misinformation on platforms like Twitter leads to a degradation of democracy and acts of violence like those of January 6<sup>th</sup>.

However, the proposed sale of Twitter resolves the digital public square will continue to be controlled by a handful leading voices at places like Twitter, Facebook, and Tik Tok. These leaders are controlled by market forces and their own moral compasses but are not themselves beholden to a democratic electorate. Some states have taken decisions about content moderation away from unelected leaders by implementing laws restricting the content on digital platforms. These new laws include both the Digital Services Act in the European Union, which requires Twitter to scrub its platform of misinformation and abuse, and Vietnam's policy of holding companies accountable for government criticism on their platforms.

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<sup>1</sup> Jennifer Korn, "Elon Musk's bumpy road to possibly owning Twitter: A timeline" CNN Business, August 19, 2022 <https://www.cnn.com/2022/05/17/tech/twitter-elon-musk-timeline/index.html>

<sup>2</sup> Bobby Allyn and Tamara Keith, "Twitter Permanently Suspends Trump, Citing 'Risk Of Further Incitement Of Violence'" NPR January 8, 2021 <https://www.npr.org/2021/01/08/954760928/twitter-bans-president-trump-citing-risk-of-further-incitement-of-violence>

<sup>3</sup> Shira Ovide, "Buying Twitter, Elon Musk Will Face Reality of His Free-Speech Talk" New York Times April 26, 2022 <https://www.nytimes.com/2022/04/26/technology/twitter-elon-musk-free-speech.html>



## 10. A minor problem...

Joseph Campbell famously discussed the process of “coming of age,” and the need for rites of passage to help youths transition from childhood into adulthood in “The Power of Myth,” a transcribed interview between Campbell and Bill Moyers of PBS.<sup>1</sup> Campbell talked about how myths, be they religious (as with Jewish bar and bat mitzvahs at 12 to 13, and Christian confirmation from about 12 to 15) or secular rites (quinceañera at 15, sweet 16 and drivers’ licenses at 16, and even gang membership from around 12 to 18 years of age), all aim to give the young person a sense of transition into the world of adult responsibilities and independence.

But notably, the timetable for the transition into adulthood is neither concrete nor consistent for all groups or individuals. For instance, the religious coming of age celebrations are usually around 12 to 13, but the secular rites are often a little later, around 15 to 16. States also have myriad laws when it comes to age of consent<sup>2</sup>, marriage<sup>3</sup>, and legal capacity to enter into contracts<sup>4</sup>. These laws provide a slow evolution to legal adulthood, granting partial rights that will become full (or at least fuller) once the youth turns 18 (a few minor rights are still withheld until 21, such as the age to buy alcohol or to consume marijuana in states where it has been legalized).

Given that there are different approaches to a minor’s ability to consent to participate in significant, potentially life-altering behaviors, some ask whether these pre-adulthood rights should necessarily be tied to other legal rights that a minor may need to exercise, particularly as relate to medical treatment. In many states, minors may visit a gynecologist or family physician to obtain birth control, abortion care, or to treat sexually transmitted diseases without a parent consenting or being present. However, in other states, despite youths being allowed to marry under the age of 18, they nevertheless cannot see a gynecologist or other sexual healthcare provider without the consent of a parent or guardian.

Similarly, many states have allowed minors to obtain vaccines against deadly diseases without parental consent, particularly in light of the public health needs of society, as well as the potential for serious, even debilitating diseases if vaccines are not administered. As vaccines and abortions become increasingly controversial, many minors are seeking medical care without the permission or even expressly against the wishes of their parents. In many states, minors can obtain birth control without parental consent, and a recent piece of legislation in California may

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<sup>1</sup> See Campbell and Moyers, *The Power of Myth*, Betty Sue Flowers, Editor, Anchor Books, a Division of Random House, Inc., July 1991.

<sup>2</sup> “Statutory Rape: A Guide to State Laws and Reporting Requirements,” Office of the Assistant Secretary for Planning and Evaluation, U.S. Dept. of Health and Human Services, Dec. 14, 2004, <https://aspe.hhs.gov/reports/statutory-rape-guide-state-laws-reporting-requirements-1#:~:text=In%20the%20majority%20of%20states,and%2011%20states%2C%20respectively>).

<sup>3</sup> “Marriage Age in the United States,” Wikipedia, last accessed September 5, 2022, [https://en.wikipedia.org/wiki/Marriage\\_age\\_in\\_the\\_United\\_States#:~:text=With%20parental%20consent%2C%20a%20person,family%20division%20of%20district%20court.&text=Minors%20cannot%20marry](https://en.wikipedia.org/wiki/Marriage_age_in_the_United_States#:~:text=With%20parental%20consent%2C%20a%20person,family%20division%20of%20district%20court.&text=Minors%20cannot%20marry).

<sup>4</sup> “Legal Ages Laws,” law.jrank.org, <https://law.jrank.org/pages/11848/Legal-Ages.html>; last accessed Sept. 5, 2022; Stim, Richard, “Who Lacks the Capacity to Contract?” Nolo.com, last accessed Sept. 5, 2022, <https://www.nolo.com/legal-encyclopedia/lack-capacity-to-contract-32647.html>,

allow children to be vaccinated against COVID-19 without needing their parents' permission.<sup>5</sup> With the proliferation of anti-vaccination movement, critics of these new vaccine rights laws worry that the legislation may allow children to make decisions they do not fully understand.<sup>6</sup> For instance, many in the anti-vaccination movement hold serious concerns about the potential long-term impacts of new vaccines, which have yet to be tested for long-term impacts to health that may not be known for years or even decades.

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<sup>5</sup> Klass, Perri, M.D., "When Should Children Take Part in Medical Decisions?" The New York Times, Sept. 20, 2016, <https://www.nytimes.com/2016/09/19/well/family/when-should-children-take-part-in-medical-decisions.html>.

<sup>6</sup> Abcarian, Robin, Should kids need parental consent for vaccines? Read this before you decide," Los Angeles Times, Jan. 26, 2022, <https://www.latimes.com/opinion/story/2022-01-26/teen-parents-consent-covid-vaccine>.

## 11. Granola mom is nuts?

Maria was a loving mother. Because she herself struggled with her health and weight, she decided that she was going to do her best for her child and make best efforts to shield him from artificial colors and sweeteners, focusing her efforts on growing their own food, buying local, and serving her son whole, minimally processed foods. In other words, no eating at McDonalds or drinking Hi-C fruit drinks, but enjoying beef and barley soup and using a juicer to process fresh fruits and veggies into snacks. Maria's son started daycare when she had to start work, and the daycare in question agreed to make modest accommodations for her son. Maria would regularly bring treats for her child that followed her dietary restrictions to ensure that he could eat with his classmates and not feel excluded. This meant that the daycare would let Maria know what color fruit drinks they served, and Maria would bring in fresh juices in place of the Hi-C of the day. For many months, this went on, and Maria's son flourished, making new friends, enjoying mealtime, and learning social skills.

However, this all changed when one day, the daycare staff made a mistake and inadvertently gave Maria's son the regular, artificially flavored/colored/sweetened drink, and her son had an allergic reaction, requiring an ER visit. Maria's son was in anaphylactic shock, and his throat was closing, resulting in a near fatal incident until an EpiPen was used to administer life-saving medication. Maria was incensed that the daycare had not followed her son's nutritional plan but was ultimately relieved that her son's allergic reaction was resolved so quickly.

Unfortunately for Maria, her son's recovery did not end the stress of the day. Once her son appeared ready for discharge from the ER, the treating physician pulled Maria aside and chastised her for choice of diet for her son. He warned her that if she didn't expose her son to the colors and flavors he was almost certainly going to encounter when out, it could lead to serious allergies and that he could end up right back at the hospital; and next time, they might not be so lucky.<sup>1</sup>

Maria was shocked and taken aback by the doctor's response, as she thought she had been helping her child to become the healthiest he could be. She was now faced with the difficult decision about whether to continue on her healthful path with her son, or allow her son to be exposed to the toxins of normal American life in order to ensure he could function in "normal" society.

(Based on a true story.)

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<sup>1</sup> See e.g. Bell, Becky, M.S., R.D. "Food Dyes: Harmless or Harmful?" Healthline.com, Jan. 7, 2017, [https://www.healthline.com/nutrition/food-dyes#TOC\\_TITLE\\_HDR\\_6](https://www.healthline.com/nutrition/food-dyes#TOC_TITLE_HDR_6) (last accessed Sept. 5, 2022).

## 12. My company, my choice?

In light of the recent Supreme Court case, *Dobbs v. Jackson Women’s Health Organization*,<sup>1</sup> which overturned *Roe v. Wade*, the 1973 ruling that made access to abortion a constitutional right, states like Texas, Alabama, Ohio, Idaho, and others have now activated their trigger laws to effectively ban abortion in a post-Roe world;<sup>2</sup> Many companies have struggled with how to react to changing healthcare laws that could deter female talent from joining their businesses.<sup>3</sup> Some young professionals have legitimate fears of the dangers that could exist in emergency situations involving reproductive healthcare. To mitigate this hesitation and draw more talented applicants, as well as to generate positive social capital, some corporations have enacted corporate policies promising to fund travel for non-life-threatening treatment, including abortion.<sup>4</sup>

Texas, particularly, has been marketing itself as a tech haven that promotes lighter business regulation, lower taxes, and more affordable housing than that found on the coasts.<sup>5</sup> These conditions have, in turn, drawn major corporations to move their headquarters to Texas. Many such corporations have found benefits in hiring a more diverse workforce—including more women<sup>6</sup>—but the enactment of these new abortion restrictions has changed the dynamics and deterred women from joining Texas-based corporations for fear of a lack of reproductive health services in cases of rape, incest, or risks to the mother’s life. With the new reproductive healthcare restrictions, these major corporations face a double-edged sword—respond to their staff’s needs and provide support for reproductive health out of state, but face potential legal liability and/or governmental backlash to such policies,<sup>7</sup> or maintain the status quo and accept the loss of many highly qualified individuals who simply do not wish to undertake the risk of being denied essential forms of healthcare.<sup>8</sup>

Many corporations have come out on the side of providing leave and even travel cost reimbursement for their staff who need to make use of reproductive healthcare out of state.<sup>9</sup>

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<sup>1</sup> 597 U.S. \_\_\_\_, 2022; 2022 WL 2276808; 2022 U.S. LEXIS 3057.

<sup>2</sup> “State Bans on Abortion Throughout Pregnancy,” Guttmacher Institute, July 16, 2022, <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>.

<sup>3</sup> Matt O’Brien, Dee-Ann Durbin, Barbara Ortutay, David Koenig, and Ken Sweet, “Abortion ruling pushes businesses to confront divisive politics,” PBS.com, June 25, 2022, <https://www.pbs.org/newshour/nation/abortion-ruling-pushes-businesses-to-confront-divisive-politics>.

<sup>4</sup> *Id.*

<sup>5</sup> Lee, Don, “Silicon Valley’s tech monopoly is over. Is the future in Austin, Texas?” Los Angeles Times, Feb. 9, 2022, <https://www.latimes.com/politics/story/2022-02-09/silicon-valleys-tech-monopoly-is-over>.

<sup>6</sup> Phillips, Katherine W., “How Diversity Makes Us Smarter,” Scientific American, October 1, 2014, <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

<sup>7</sup> Wiessner, Daniel, “Legal clashes await U.S. companies covering workers’ abortion costs,” Reuters, June 27, 2022, <https://www.reuters.com/world/us/legal-clashes-await-us-companies-covering-workers-abortion-costs-2022-06-26/>; Marr, Chris and Robert Iafolla, “Can States Ban Employer Abortion Aid? Post-Roe Limits Explained,” Bloomberg Law, June 28, 2022, <https://news.bloomberglaw.com/daily-labor-report/can-states-ban-employer-abortion-aid-post-ro-roe-limits-explained>.

<sup>8</sup> McCarty Carino, Meghan, “How the tech landscape could change if abortion laws do,” Marketplace.org, June 24, 2022, <https://www.marketplace.org/2022/06/24/how-the-tech-landscape-could-change-if-abortion-laws-do/>.

<sup>9</sup> Marquardt, Andrew, “With *Roe v. Wade* overturned, major firms from Starbucks to Tesla will cover employees’ abortion travel costs. Here are the major employers who have promised to cover it,” Fortune.com, May 16, 2022, <https://fortune.com/2022/05/16/starbucks-apple-microsoft-amazon-employee-abortion-travel-expenses/>.

Although this response from corporate America was welcomed by many, some have questioned the motivations of these corporations.<sup>10</sup> Many of these corporate giants do not appear to have any issue with providing their tax revenues to such states through their continued presence within the state.<sup>11</sup> Moreover, many of these corporations provided muted or non-existent initial responses to the leak of the proposed ruling in Dobbs, and only joined the PR bandwagon to enact such policies after it appeared that other corporate players were gaining positive traction with such policies.<sup>12</sup>

Some argue that the policies don't go far enough. Providing \$4,000 to employees seeking medical care does not necessarily protect the spouses and children who must live in that state, as well.<sup>13</sup> Others argue that the policies go too far, because they create a digital trail that could be used to prosecute the employees for seeking out of state what could not be done within the state.<sup>14</sup> Still others who support abortion bans would argue that abortion is essentially murder, and thus, actions within the state to commit murder outside of the state should come with attendant "conspiracy" charges against employees and/or employers who committed such acts.<sup>15</sup> The businesses themselves could thus face potential criminal liability for the implementation of such travel reimbursement policies. This is particularly true in states like Idaho, where state law now prohibits travel out of state to obtain an abortion.<sup>16</sup>

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<sup>10</sup> Linkins, Jason, "Corporate America Doesn't Really Care About Your Abortion Rights," The Soap Box, The New Republic, July 18, 2022, <https://newrepublic.com/article/167053/corporations-abortion-ban-roe>.

<sup>11</sup> See e.g., Korte, Lara, "Democrats look to recruit businesses from red states restricting abortion," Politico.com, June 28, 2022, <https://www.politico.com/news/2022/06/28/democrats-recruit-businesses-from-red-states-restricting-abortion-00042716>; Cohn, Scott, "As decision on Roe v. Wade looms, states weigh the economic cost of abortion bans," CNBC, June 21, 2022, <https://www.cnbc.com/2022/06/21/in-post-roe-v-wade-world-states-weigh-economic-cost-of-abortion-ban.html>.

<sup>12</sup> Goldberg, Emma and Lora Kelley, "Companies Are More Vocal Than Ever on Social Issues. Not on Abortion," The New York Times, June 24, 2022, <https://www.nytimes.com/2022/06/24/business/abortion-roe-wade-companies.html>.

<sup>13</sup> Rowland, Christopher, "Groups that aid abortion patients pull back, fearing legal liability," The Washington Post, July 15, 2022, <https://www.washingtonpost.com/business/2022/07/15/abortion-aid-drying-up/>.

<sup>14</sup> "Companies covering abortion travel costs for employees could face privacy hurdles," Moneywatch, CBS News, July 5, 2022, <https://www.cbsnews.com/news/companies-could-face-hurdles-covering-abortion-travel-costs/>.

<sup>15</sup> See e.g. Belz, Emily, "The Pro-Life Movement Faces Blue State Backlash," Christianity Today, July 1, 2022, <https://www.christianitytoday.com/news/2022/july/roe-wade-dobbs-abortion-blue-states-legislatures.html>. (not that this article may contain inaccuracies, as it states that no U.S. states contain abortion protections, yet others note that 11 states have constitutional protections for abortion access, see "State Constitutions and Abortion Rights," Center for Reproductive Rights, <https://reproductiverights.org/state-constitutions-abortion-rights/>; Marr, Chris and Robert Iafolla, "Can States Ban Employer Abortion Aid? Post-Roe Limits Explained," Bloomberg Law, June 28, 2022, <https://news.bloomberglaw.com/daily-labor-report/can-states-ban-employer-abortion-aid-post-roe-limits-explained>

<sup>16</sup> Kitchener, Caroline and Devlin Barrett, "Antiabortion lawmakers want to block patients from crossing state lines," The Washington Post, June 30, 2022, <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/>.