

REGIONAL

ETHICS BOWL

CASES

This is the Case Set for the Southeast Regional Ethics Bowl
It contains only the 12 Cases that will be used
Cases 6,11,12,13,16, and 17 are eliminated

FALL 2023

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Editor's Note: Please note that source materials cited may be used multiple times, but only identified once per case.

1. They Yearn for the Mines

In 1916, the Keating-Owen Act was passed as the first national effort to restrict child labor. The law set a minimum age of 14 for factory or cannery employment, and set a minimum age of 16 for work in mines or at night.¹ In 1918, the law was struck down by the Supreme Court.² National efforts to increase workplace safety in the early 20th century were often met with unsympathetic courts that ruled labor protections violated workers fundamental right to contract.³ Federal protection for worker safety, including child labor, did not succeed until the Fair Labor Standards Act (FLSA) passed Congress in 1938 as part of the New Deal. The FLSA imposed a federal minimum wage, set the 40 hour workweek, and restricted children from “oppressive labor” including mining and other jobs “detrimental to their health or well-being.”⁴

After the success of federal “New Deal” programs, many States passed tighter, more specific child labor laws. However, recently, lawmakers in at least 10 states have sought to loosen child labor laws. The Ohio legislature “is on track to pass a bill allowing students ages 14 and 15 to work...later than federal law allows, so a companion measure asks the U.S. Congress to amend its own laws.”⁵ In part the idea is to combat the most competitive labor market since WWII. With an unemployment rate at 3.4% there is a high demand for workers, which has exerted upward pressure on wages and has employers concerned about meeting their labor needs. Hospitality trade groups favor expanding working hours and roles for minors as a way to recover from pandemic employee losses. Employers in construction, factories, and meatpacking facilities tout the advantages for young employees including the development of valuable skills, work experience, and connections within industry.

From 2001-2021 employment of 16-19 year-olds fell by 21%, with many young people reporting that they are not seeking employment because they are in school.⁶ Increased graduation rates and education are positive trends, but the benefits of these goods are not distributed equally. Among the nation’s immigrant and poor communities the additional income of child labor is still often seen as vital. This is reflected in an uptick in child labor violations—last year the U.S. Department of Labor identified 835 child labor violations involving 3,876 children which is a 283% increase from 2015. It seems that there are economic pressures on both employers and children that make illicit child labor seem like a good choice.

On one hand, some argue that prohibition of child labor merely fuels this black market and makes conditions worse by decreasing supervision. On the other hand, some worry that increased work hours for children will erode hard won educational gains and put children at risk

¹The Keating-Owen Act of 1916 (P.L. 249, 39 Stat. 675). [Keating-Owen Child Labor Act \(1916\) | National Archives](#)

² *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

³ *See e.g.* *Lochner v. New York*, 198 U.S. 45 (1905).

⁴ 29 USC § 212; Susan Prince, Ed., (2005) Fair Labor Standards Handbook for States, Local Governments and Schools; APPENDIX I: FEDERAL STATUTES, WL 4891055.

⁵ Venhuizen, Harm “Kids could fill labor shortages, even in bars, if these lawmakers succeed” AP News (May 25, 2023). [Kids could fill labor shortages, even in bars, if these lawmakers succeed | AP News](#)

⁶ Elliott, Stephen “Lawmakers in 11 states seek to weaken child labor restrictions” USA Today (April 19, 2023). [Lawmakers in 11 states seek to weaken child labor restrictions \(usatoday.com\)](#)

of workplace harms. While there are economic and social concerns surrounding child labor, some contend that the state should play less of a role. On Sarah Huckabee-Sanders's account, parents are in the best position to know what will benefit or harm their children and should be able to consent to their children's employment without consulting the state.

2. Ban on Bans

On January 5, 2023, the Federal Trade Commission (FTC) began the administrative process for banning non-compete clauses in employment contracts.¹ A non-compete clause prevents an employee from engaging in work that competes with their employer or other specified group. For example, an agency that connects travel nurses with hospitals might include a non-compete clause so that the nurse cannot work directly for the contracting hospital thereby cutting out the agency who made the connection. Such clauses often apply beyond the end of employment and may continue to impact an employee's job prospects for years after they leave the job for which they signed the agreement. According to the FTC, "non-compete clauses bind about one in five American workers, approximately 30 million people."²

Non-compete clauses are, by definition, anti-competitive practices and are associated with a host of harms. For instance, non-competes limit entrepreneurial innovation because people who sign such agreements are often prohibited from realizing the gains associated with innovative ideas. The FTC estimates that its proposed ban on non-compete clauses would result in \$250-\$296 billion per year in increased wages. Paul Krugman argues that non-compete clauses "don't just reduce your wages. They also reduce your options if you're mistreated."³ One study reports that banning non-competes would close the race and gender wage gaps by 3.6-9.1 percent because a biased workplace is more difficult to leave with a non-compete in place.⁴

Employers include non-compete clauses in their employment contracts for a range of reasons including to protect their investments in worker training, to keep former employees from poaching clients, and to protect trade secrets. For example, in industries like power line maintenance, where a new lineman requires 2-4 years of on-the-job training, utility companies often use a non-compete to ensure that the new lineman, once fully trained, does not leave the employer for a higher salary elsewhere. The agreement is that in exchange for substantial training, the employee will work exclusively for the company that provided the training.

While the FTC has expressed concern that non-compete clauses inhibit labor markets and restrict choice in employment, others argue that more choice is not always better. Harrison Frye argues that non-compete clauses can be rational where the commitment devices help to solve coordination problems associated with uninhibited choice. Consider, for example, cases of specialized and expensive training which may benefit workers and employers, but which doesn't make sense to pay for without a commitment in advance. Further, Frye maintains that the real problem people have with non-competes is employer domination, which can be addressed by

¹ Non-Compete Clause Rule; Extension of Comment Period—A Proposed Rule by the Federal Trade Commission on 04/06/2023. 88 FR 20441. <https://www.federalregister.gov/d/2023-07036>

² FACT SHEET: FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete_nprm_fact_sheet.pdf

³ Krugman, Paul. "Capitalism, Socialism, and Unfreedom." The New York Times. August 26, 2018. <https://www.nytimes.com/2018/08/26/opinion/capitalism-socialism-and-unfreedom.html>.

⁴ Johnson, Matthew; Lavetti, Kurt; Lipsitz, Michael, The Labor Market Effects of Legal Restrictions on Worker Mobility; Federal Trade Commission (October 12, 2021). <https://ssrn.com/abstract=3455381> or <http://dx.doi.org/10.2139/ssrn.3455381>.

governments providing more robust unemployment benefits and union negotiating power providing for greater employee voice.⁵ The AFL-CIO describes non-compete agreements as “a growing problem for mid-wage, skilled trades workers like plumbers.”⁶

The FTC’s proposed non-compete clause ban is in substance the same proposal as the bipartisan congressional “Workforce Mobility Act” which was introduced, and failed, in 2019, 2021, and 2023.⁷ Some people worry that when legislation cannot be passed through Congress, it subverts democracy for unelected bureaucrats to implement the same policy through an executive agency. Executive agencies go through a “notice and comment” rule making process, but do not take a vote and are not directly accountable to the electorate. Arguably, the streamlining of agencies and their political insulation keeps them from falling into the gridlock of Congressional inaction and is the modern technocratic way of administering a large nation state. In this case executive agency action could make a big splash in labor market by significantly restricting non-compete clauses.

⁵ Frye, H. (2020). The Ethics of Noncompete Clauses. *Business Ethics Quarterly*, 30(2), 229-249. doi:10.1017/beq.2019.30

⁶ Sprinkle, Jeremy; Could Your Old Boss Keep You from Getting a New Job? AFL-CIO Blog (June 2, 2017). <https://aflcio.org/2017/6/2/could-your-old-boss-keep-you-getting-new-job>

⁷ Atlas, Clifford; Winton, Erik; Bipartisan Bill to Ban Most Non-Compete Agreements Reintroduced in U.S. Senate Friday, *National Law Review*, Volume XIII, Number 34 (February 3, 2023). <https://www.natlawreview.com/article/bipartisan-bill-to-ban-most-non-compete-agreements-reintroduced-us-senate>

3. Roll of Thunder

In 2020, the Burbank Unified School District removed five classic novels from school reading lists: *Adventures of Huckleberry Finn* by Mark Twain; *Roll of Thunder, Hear My Cry* by Mildred D. Taylor; *To Kill a Mockingbird* by Harper Lee; *The Cay* by Theodore Taylor; and *Of Mice and Men* by John Steinbeck. All but *Huckleberry Finn* have been required reading for district students.¹

The superintendent of BUSD cited complaints from four parents, three of whom are Black, who alleged the classics could potentially harm the district's roughly 400 Black students because of the racism depicted and language used in these works. Further, exposure to racist culture and language in these books might suggest that attitudes have not changed—or even seem to provide support for racist (or sexist) attitudes that some students might already hold. One mother said her daughter was approached by a white student using the N-word, which he had learned from reading *Roll of Thunder, Hear My Cry*.² She added, “My daughter was literally traumatized. [...] These books are problematic ... you feel helpless because you can't even protect your child from the hurt that she's going through.” Another Black parent argued that the portrayal of Black people is mostly from a white perspective (although the author of *Roll of Thunder, Hear My Cry* is Black).³

Opponents note that the guidance of an informed and caring teacher can educate students about this shameful history and about the resilience and resistance of marginalized persons/societies; these discussions can move students from ignorance or complacency to becoming involved in the fight for social justice. Further, they note that assuming students of color are incapable of putting great literature into proper perspective is far more racist than studying these works.

Responses in the local paper and at a school board meeting to discuss the change uniformly opposed the decision; students who had read the books praised the works for opening their eyes to U.S. racist history and the long and ongoing attempts to address the fallout from racism. Several mentioned *To Kill a Mockingbird* as opening their eyes to the actual lived experience of racism and cited the behavior of Atticus Finch as a model of how a single person could stand against it.⁴

¹ Sungjoo Yoon, *I'm a High School Junior. Let's Talk About 'Huckleberry Finn' and 'Mockingbird.'* New York Times (April 18, 2022). <https://www.nytimes.com/2022/04/18/opinion/school-book-bans-students.html?smid=nytcore-ios-share&referringSource=articleShare>.

² Samantha Lock, *'To Kill a Mockingbird,' Other Books Banned From California Schools Over Racism Concerns.* Newsweek (April 13, 2020). <https://www.newsweek.com/kill-mockingbird-other-books-banned-california-schools-over-racism-concerns-1547241>

³ Dorany Pineda, *In Burbank schools, a book-banning debate over how to teach antiracism.* Los Angeles Times (November 12, 2020). <https://www.latimes.com/entertainment-arts/books/story/2020-11-12/burbank-unified-challenges-books-including-to-kill-a-mockingbird>.

⁴ But cf., Laura Marsh, *These Scholars Have Been Pointing Out Atticus Finch's Racism for Years.* The New Republic (July 14, 2015). <https://newrepublic.com/article/122295/these-scholars-have-been-pointing-out-atticus-finchs-racism-years>.

The censorship of books is not new.⁵ For example, after the Civil War, white Southerners worked to remove history books that negatively portrayed the role of the South in that conflict. But the nature of censorship changes over time. Jonathan Friedman, Director of PEN America's Free Expression and Education program said:

Challenges to books, specifically books by non-white male authors are happening at the highest rates we've ever seen. What is happening in this country in terms of banning books in schools is unparalleled in its frequency, intensity, and success. Because of the tactics of censors and the politicization of books, we see the same books removed across state lines: books about race, gender, LGBTQ+ identities, and sex most often. This is an orchestrated attack on books whose subjects only recently gained a foothold on school library shelves and in classrooms. We are witnessing the erasure of topics that only recently represented progress toward inclusion.⁶

Still, one wonders if there is a difference between opposing a book ban for reasons beyond mere content or consequences to readers. *Can book bans be opposed—or supported--on principled grounds?* Might requiring reading of *Mein Kampf* in a history course be banned by appealing to the moral principle of integrity, particularly commitment to the bedrock values of a community? Consequences aside, might Jewish communities legitimately support banning a book that egregiously misrepresented their culture and fomented widespread mistreatment of their members. Or what about banning *Lolita* in a course on post-traumatic psychotherapy? The professor might genuinely believe her students need a thorough appreciation of psycho-sexual trauma to enable them to counsel victims appropriately. As such, requiring her students to read *Lolita*⁷ is a matter of professional integrity, one that a ban would inhibit.

The reasons for the proposed bans vary: Some books challenge longstanding narratives about American history or social norms; others are deemed problematic for language, sexual, or political content. In the abstract, the dispute is about First Amendment rights, the meaning of free speech, and which voices are heard. More specifically, it's about what should be taught to BUSD's roughly 15,200 enrolled students—who are 47.2% white, 34.5% Latino, 9.2% Asian and 2.6% Black—and how Burbank can aggressively address racism and racial conflicts with sensitivity. But Black parents in the district, who have a lifetime of dealing with micro—and macro—aggressions, are seeing their children plagued by the same issues. They also worry about the books' portrayal of Black history and whether these older books imply that racism was a problem in the past that has been laid to rest. One Black parent objects that the books portray

⁵ Report, PEN America. *1,586 School Book Bans and Restrictions in 86 School Districts Across 26 States*. (April 7, 2022). <https://pen.org/press-release/report-1586-school-book-bans-and-restrictions-in-86-school-districts-across-26-states/>

⁶ *Ibid.*

⁷ For a variety of interpretations of this novel, see <https://en.wikipedia.org/wiki/Lolita>.

Black people from a white perspective: “There’s no counter-narrative to this Black person dealing with racism and a white person saving them.”⁸

Finally, many parents argue that teaching children about the nature and management of social, political, or moral conundrums is a parental, not a school, responsibility. This approach allows parents to locate troubling issues within the family’s moral and social history with which the child is already familiar.

⁸ *Op.cit.* note 2. For a further interesting discussion of this issue, see Jess Row, ‘*American Dirt*’ and the tradition of the moral parable. Los Angeles Times (January 30, 2020)
<https://www.latimes.com/entertainment-arts/books/story/2020-01-30/jess-row-on-sentimental-art-including-jeanine-cummins>.

4. Stand Your Porch

The complete loss of income by many residents during the COVID crisis and the downturn of the economy has led to delinquencies in rent payment. In response, Washington State enacted what some call the “eviction Gideon,” wherein the state now funds groups like The Housing Justice Project to defend tenants who are facing eviction. This program—and many similar programs across the country—is now state law and survives the end of the formal public health crisis. While larger landlords can more easily budget around this new dynamic, many smaller landlords, some of whom only own one rental property, now face much greater hurdles (and cost) in order to recover possession of their home. The provision of free counsel to tenants has at times resulted in massive financial harm to those landlords who are untrained in the law and make minor technical errors in their attempt to remove an unruly or delinquent tenant. Some say that the law goes too far and creates an unfair advantage for the tenants, especially against small landlords. Others say the law goes nowhere near far enough—that civil litigation should entitle all parties to representation by an attorney to avoid money giving the upper hand to one side or the other.

Supporters argue that *Gideon v. Wainwright*—the Supreme Court case¹ that held a defendant charged with a felony who cannot afford legal representation is entitled to a lawyer, paid for by the state—should be extended beyond felony cases to civil cases as well.² In most civil cases involving eviction, almost all landlords have legal representation. Tenants, on the other hand, only rarely have such assistance. As a result, the moral obligation to balance the interests of competitors is foregone. But in the words of Justice Hugo Black, writing in *Gideon v. Wainwright*, both parties should “stand equal before the law.”

Free legal assistance in noncriminal cases is rare.³ Nationally, important civil legal needs are met only about 20 percent of the time for low-income Americans, according to James J. Sandman, president of Legal Services Corporation, a federal agency that finances legal aid groups.⁴ But the legal representation of renters would be a sensible investment. A 2014 study by the Boston Bar Association noted that every dollar spent representing families and individuals in housing court would save \$2.69 in other services such as emergency shelter, health care, foster care, and law enforcement; perhaps some of these savings could be transferred to landlords. Finally, tenants who are represented by legal counsel can avoid eviction in 92% of cases.⁵

¹ *Gideon v. Wainwright*, Oyez, <https://www.oyez.org/cases/1962/155>

² Sandy Rosenberg. *Without a Lawyer*. Legislative Diary. (February 18, 2021). <https://www.delsandy.com/tag/gideons-trumpet/>.

³ Brian Frosh. *Maryland Eviction Process ‘Unfair’ to Tenants: Commentary*. The Baltimore Sun (12/11/2020). <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1213-frosh-serial-evictions-20201211-nlu6zmiqjc7dyohhvxq5k3cu-story.html>

⁴ Legal Services Corporation. (2022). <https://www.lsc.gov/>

⁵ Task Force Report, Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts (October 2014), <https://www.bostonbar.org/app/uploads/2022/06/statewide-task-force-to-expand-civil-legal-aid-in-ma-investing-in-justice.pdf>.

Children are especially vulnerable to the problems of being unhoused.⁶ For example, unhoused kids are more likely to suffer from hunger, leading to poor physical and emotional health, and experience four times as many respiratory infections, twice as many ear infections and are four times more likely to have asthma. Moreover, psychological, developmental, educational, and security concerns attach to children's evictions; they are less likely to have adequate access to medical and dental care and may be affected by a variety of health challenges due to inadequate nutrition and access to food. They are more likely to be chronically absent from school and to be suspended. They are at increased risk of being sexually and physically victimized and bullied. Finally, they experience significantly greater risk of suicidality, substance abuse, alcohol abuse, risky sexual behavior, and poor grades in school.⁷ While one might argue that adults should be held fiscally responsible for their contracts, surely innocent children should not pay the price for parental misfortunes.⁸

Opponents, however, charge that failing to hold adults accountable to their agreements sets a bad precedent. While renters might not be fully responsible for their poverty, neither are their landlords; and since the losing party in court cases typically is required to pay the attorney fees of the winning party, landlords would be doubly punished financially for situations not of their making.

Moreover, the job of *governments* is to help residents who are down on their luck. Supporting this work is one of the reasons we—including landlords—pay taxes. Forcing landlords to absorb the costs burdens them twice, again for a problem they did not create. Further, society has many more pressing problems on which to spend tax dollars than on lawyers; failure to control climate change or to ensure that residents have enough clean water will cause much more suffering than failure to help a few evictees. Although those evicted will suffer hardships, these pale in comparison to the failure to address looming catastrophes that will affect the entire population. Further, many evictees are personally responsible for their financial hardship: they spend their money on drugs or alcohol—for which they fail to seek available treatment. Or they have lost their jobs and could find other jobs but consider the available jobs beneath them. If they won't take responsibility for themselves, why should taxpayers pay for their defense—especially during tough times when everyone is struggling? Would this not promote ongoing dependency over self-sufficiency? Would this make irresponsibility seem even more appealing?⁹

⁶ Arms of Hope. *Too Many Children are Homeless*. (2020). https://stopchildhomelessness.org/the-facts/?gclid=EAIaIQobChMI_uS12Oy2_wIVDgCtBh3yCgcZEAAAYASAAEgJc3_D_BwE

⁷ American Psychological Association. *Exploring the mental health effects of poverty, hunger, and homelessness on children and teens*. (2022). <https://www.apa.org/topics/socioeconomic-status/poverty-hunger-homelessness-children>.

⁸ National Low Income Housing Coalition. *Out of Reach: The High Cost of Housing*. (2021). https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf.

⁹ Kyle J. Cassaday. *CAUF [Cold and UnCared For]*. (Revised 2022). <https://caufsociety.com/why-should-we-not-help-the-homeless/>; Tejvan Pettinger, *Pros and Cons of Capitalism*. Economics Help (20 October 2019). <https://www.economicshelp.org/blog/5002/economics/pros-and-cons-of-capitalism/>.

5. Is David a Badie?

In March this year, 6th graders from 11-12 years old at the Tallahassee Classical School were exposed to Michelangelo's David. David, a biblical character known for slaying Goliath before ascending to lead Israel, is depicted as a young man, nude, 15 feet tall, carved from white marble. The children saw a photographic reproduction of the original sculpture, which is presently on display in the Galleria dell'Accademia of Florence, during a lesson on Renaissance art. Teachers at the school had shown this photograph in years past, but unlike previous years, the charter school did not notify the children's parents in advance of the lesson and some of them were upset.

Several parents of the sixth graders reportedly reached out to principal Hope Carrasquilla after the incident to express frustration and concern. One parent described the art history lesson as pornographic and was upset it had been shared with minor students. Two other parents were upset that they had not been notified in advance of the lesson. The chair of the school's board, Barney Bishop III, said the failure to warn parents was an "egregious mistake" and principal Carrasquilla was given an ultimatum: resign or be terminated. She chose to resign.

According to the school's public statement, "some parents send their children to charter schools, so they have more of a say over what goes on in the classroom," and principal Carrasquilla was a bad fit with the values of the institution.¹ The issue of parental control over children's education is one that has been taken up by Congress in both Florida and federally. For example, Florida passed HB 1557 which provided penalties for the teaching or even discussion of some restricted topics relating to sex and gender identity. And with H.R. 6056, the 'Parents Bill of Rights' would require schools to provide parents more notice of lesson plans and accept more input from parents on curriculum decisions.

The school has responded to the uproar over their firing of the principal, stating, "if [the parents are] not in favor of it, we're going to give them alternative curriculum," but the school does plan to keep the Renaissance art lesson next year.² This isn't the first time that famous art has resulted in scandal; it isn't even the first time for Michelangelo's David. Famously, Queen Victoria had a reproduction of David cast for display and upon seeing it was so shocked by the nudity that a fig leaf was used to cover the genitalia whenever the Queen was near. Modern society may still be recovering from the prudishness of the Victorian era, but many point to the historical and artistic value of appreciating art in its original form, and further emphasize that the taboo around nudity may also lead to scientific and social harms by teaching children to be ashamed of their bodies or shy to learn human anatomy or even safe sex practices when such

¹ Statement: Tallahassee Classical School (March 31, 2023). <https://tlhclassical.org/wp-content/uploads/2023/04/TCS-Statement-Sets-Record-Straight-Retains-Lawson-Huck-Gonzalez-Law-Firm-2.pdf>

²Kim, Juliana, "A principal is fired, invited to Italy after students are shown Michelangelo's 'David'" NPR: All Things Considered (March 27, 2023). <https://www.npr.org/2023/03/27/1166079167/tallahassee-classical-michelangelo-david-principal-fired>

topics become age appropriate. Cecilie Hollberg, director of the Galleria dell'Accademia, welcomed all the parties to come see for themselves why this masterpiece is not pornography.

7. Sending Bad Signals

The Cigna Group is a managed healthcare and insurance company that oversees medical claims from over 18 million customers. In the case of an accepted claim, one might pay substantially less for medical treatment. Medical insurance claims can be denied by a provider for a variety of reasons, including limitations on coverage due to a specific plan or provider network,¹ but a common reason for a denied health insurance claim is that the treatment is *not a medical necessity*. If Cigna deems a certain treatment unnecessary, they can deny a customer's claim for said treatment.

There is no standard definition of medical necessity across companies or states,² nor even within companies themselves, which may make claim determinations on an ad hoc basis depending on the adjuster reviewing a claim. When a claim is initially rejected for lack of medical necessity, however, patients may still appeal that determination and request review by physicians in states like California³ and Maryland,⁴ which mandate these rights under state law.

In a recent article by ProPublica,⁵ investigative reporters uncovered and described an automated system utilized by Cigna to either approve or deny payment for claims. The review caseload of Cigna's medical directors—physicians employed to review claims—was being supported and simplified by a fast automated review system. Instead of requiring that medical directors spend time reviewing each case individually, cases were being automatically classified by the automated system as medically necessary (or unnecessary) to save time.

This review system helps to ensure consistency across claims (so that patients are treated more equally), and to prevent claims that Cigna considers unneeded or harmful to patients without requiring its directors to spend time scrutinizing such claims. The truth, however, may be more sinister. According to one of the system's developers, Dr. Alan Muney, the system cuts down on “administrative hassle” and helps the company save “billions of dollars.” Such focus on profits is precisely why an ever-growing contingent of healthcare advocates say that insurers, as the primary gatekeepers to healthcare access, should not be answerable to financial incentives to deny needed coverage. On the other hand, quicker claims review means that more patients may see relief, either in getting approved treatments more quickly, or allowing denied patients the ability to make informed decisions and adjusting to the denials. Cigna is a for-profit corporation and utilizes an automated review system as a matter of efficiency, allowing it to fulfill the claims it does approve in a timely and fair manner.

¹ Elizabeth Davis, *Reasons for Health Insurance Claim Denials and What You Should Do*, Verywell Health, January 14, 2023, <https://www.verywellhealth.com/what-is-a-health-insurance-claim-denial-1738690>

² National Academy for State Health Policy, *State Definitions of Medical Necessity Under the Medicaid EPSDT Benefit*, April 23, 2021, <https://nashp.org/state-definitions-of-medical-necessity-under-the-medicare-epsdt-benefit/>

³ Cal. Code Regs. Title 10 §2695.7

⁴ Md. Code, Ins. §15-10A-05

⁵ Patrick Rucker et al., *How Cigna Saves Millions by Having Its Doctors Reject Claims Without Reading Them*, ProPublica, March 25, 2023, <https://www.propublica.org/article/cigna-pxdx-medical-health-insurance-rejection-claims>

“In 2017, 121 major health insurance issuers denied a total of more than 42 million claims. Consumers appealed less than 200,000 (0.05%) of these denials. Although consumers have the right to bypass their insurer’s internal appeals process and go directly to an external review, this happens in fewer than 1 in 11,000 denied claims (0.009%).”⁶

Cigna’s physician review system (much like the rest of its technologically-assisted claim review) is built to comply with state laws and regulations, but some argue that using similar, if not nearly identical automated review, violates the spirit, if not the letter of these laws.

Some critics of the review system, including Cigna customers, former Cigna employees, and insurance experts, emphasize that the intent of physician review requirements was to get a human to ask questions, look at a more complete health profile, and make a more thorough assessment of risks and benefits customized to the patient’s medical history and needs. These complaints are further highlighted when one considers recent ProPublica reporting that within a two-month period in 2022, Cigna’s medical directors denied 300 thousand claims with an average review time of just 1.2 seconds. Claims automatically routed for denial lack basic information, such as gender and race, drawing criticisms from doctors that the system is unfair to patients.

For example, the drug mifepristone—known informally as “the abortion pill”—has been approved by the FDA to treat Cushing’s syndrome.⁷ Due to the legal complications surrounding abortion in the United States, an insurance claim regarding the prescription of mifepristone to a patient in Texas may be automatically denied in compliance with Texas law.⁸ An automated system, however, may not highlight the fact that the patient is a man, or 80 years old, or has had a hysterectomy. As of 2023, Cigna does not list abortion as a medically necessary use of mifepristone,⁹ and limits abortion access in accordance with state regulations.¹⁰

One patient, Nick van Terheyden, felt that the system had mistakenly denied his claim for a \$350 blood test on the basis of being “medically unnecessary.” Van Terheyden, a physician himself, was able to have his bill paid by Cigna (seven months after the blood test) after taking his rejection to an independent reviewer, who determined the test to be justified. Van Terheyden believes that such a system is “not good medicine” and constitutes a failure to care for patients.

⁶ Liz Helms, *Has Your Insurer Denied a Medical Claim? Stand Up For Your Rights*, Stat News, May 17, 2019, <https://www.statnews.com/2019/05/17/appeal-denied-medical-claim/>

⁷ Caroline Hopkins, *The ‘Abortion Pill’ May Treat Dozens of Diseases, But Roe Reversal Might Upend Research*, NBC News, June 25, 2022, <https://www.nbcnews.com/health/health-news/abortion-pill-may-treat-dozens-diseases-roe-reversal-might-upend-resea-rcna34812>

⁸ Tex. H.B. 2, Sess. 87(R) (Tex. 2021)

⁹ The Cigna Group, *Drug and Biologic Coverage Policy: Mifepristone (Korlym®)*, December 15, 2022, https://static.cigna.com/assets/chcp/pdf/coveragePolicies/pharmacy/ip_0092_coveragepositioncriteria_mifepristone.pdf

¹⁰ The Cigna Group, *Administrative Policy: Abortion*, November 15, 2022, https://static.cigna.com/assets/chcp/pdf/coveragePolicies/medical/ad_a006_administrativepolicy_abortion.pdf

8. Vive La Reform

Government-funded retirement benefits have become a point of financial pressure for various developed countries, particularly as life expectancy continues to increase yet retirement ages remain the same.¹ Raising the retirement age may even have social benefits, such as counteracting ageism through downstream corporate incentives to hire older workers for long-term positions.

In China, where the age of retirement can be as low as 50, the government has suggested raising the retirement age to prevent their pension system from running out of money.² In the United States, Republican lawmakers have suggested raising the age of eligibility for Social Security benefits to counteract the possibility of insolvency for the old age portion of Social Security.³

One of the most generous countries to retire in is France. The retirees of France have enjoyed an earlier average retirement and a higher pension compared to their average European counterparts. While the average statutory retirement age in the EU sits at 64.8, French pensioners—at least those who make sufficient contributions—can retire as early as 62.⁴ Additionally, French pensioners enjoy an average post-tax income about 15-20% higher than pensioners in Britain and Germany.

On April 15, 2023, a proposal to raise the minimum retirement age in France was enacted into law.⁵ President Emmanuel Macron, who had unveiled the plan in January, used a special power in French legislature to push the plan through without a vote from the National Assembly, France's legislative body.⁶ Macron defended his plan, citing the financial strain on the French pension system as a factor in raising the retirement age.⁷ With French pension spending being as high as that of Italy, Greece, and Spain (all of which experienced significant economic turmoil within the past 10 years), the raise in retirement age (and other reforms to the pension system) is hoped to avoid a 13+ billion-euro shortfall every year.

¹ Peter Feuerherd, *Why Retirement Age Is 65 (And Why It's Getting Higher)*, JSTOR Daily, May 8, 2017, <https://daily.jstor.org/why-retirement-is-age-65-and-why-its-getting-higher/>

² Farah Master & Raju Gopalakrishnan, *China to Raise Retirement Age to Deal With Aging Population – Media*, Reuters, March 14, 2023, <https://www.reuters.com/world/china/china-raise-retirement-age-deal-with-aging-population-media-2023-03-14/>

³ Howard Gleckman, *The Worldwide Debate Over Raising The Retirement Age*, Forbes, March 15, 2023, <https://www.forbes.com/sites/howardgleckman/2023/03/15/the-worldwide-debate-over-raising-the-retirement-age/?sh=1f733d031402>

⁴ Leigh Thomas, *Macron Pension Reform Ends Cherished French Exception*, Reuters, April 20, 2023, <https://www.reuters.com/world/europe/macron-pension-reform-ends-cherished-french-exception-2023-04-18/>

⁵ The Associated Press, *Macron's Unpopular Plan to Raise France's Retirement Age is Enacted Into Law*, NPR, April 15, 2023, <https://www.npr.org/2023/04/14/1170238212/macrons-pension-age-france>

⁶ Conor Murray, *Here's What To Know About France's Controversial Pension Reforms As Macron Survives No-Confidence Vote*, Forbes, March 20, 2023, <https://www.forbes.com/sites/conormurray/2023/03/20/heres-what-to-know-about-frances-controversial-pension-reforms-as-macron-survives-no-confidence-vote/?sh=7b6e1352675f>

⁷ Sylvie Corbet, *Macron Says He Hears France's Anger, But Defends Pension Law*, Associated Press, April 17, 2023, <https://apnews.com/article/france-macron-protests-pensions-6bd2716fb8352505650440182ed68fc7>

French experts have been skeptical of the reform. Macron and French Prime Minister Elisabeth Borne have cited budget shortfall as a rationale behind their pension reform, but an independent 2022 report from the Pensions Advisory Council in France found that claims about “excessive pension spending” were unsupported by real figures.⁸ Economist Michaël Zemmour, an outspoken critic of the age increase, believes that such reform is inequitable.⁹ While a few extra years may not mean much to white-collar workers, blue-collar workers might struggle with extraneous factors such as injuries and chronic conditions resulting from manual labor.

The reform in France has not been popular with the public either. In the weeks leading up to the law’s passing, over a million protesters took to the streets to show their disagreement with the proposal.¹⁰ These protests continued long past the plan’s passage and implementation, and labor unions continued to organize demonstrations and strikes into June.¹¹ The majority of French citizens backed such protests, showing sustained and widespread dismay at the changes to retirement age and the pension system. A major charge against the French government is that the law does not respect the will of its citizens, as a politically legitimate democracy should be an extension of the collective will of its citizens—however, these same citizens elected the leaders making these decisions, and sometimes the votes simply do not recognize the necessity of austerity measures when a country’s populace demands more services or benefits than the budget can feasibly bear.

Determining an appropriate age of retirement and reasonable benefits for pensioners may become more urgent as global labor needs are driven down further by recent advances in AI and automation. Artificial intelligence and its contribution to economic inequality has been observed by various economists,¹² potentially affecting white-collar jobs similarly to robotic automation affecting blue-collar jobs.¹³ Measures to raise the retirement age and constrain pension spending may exacerbate the economic inequality caused by automation, however there may be ways in which AI and automation can positively impact workers at large. If artificial intelligence and robotic automation allow for less working hours in a week or improved working conditions, these technologies might help ameliorate some of the difficulties experienced by older workers and accommodate higher retirement ages.

⁸ Romain Brunet, *Macron’s Pension Reform: Necessary Changes to an Unsustainable System?*, France 24, January 1, 2023, <https://www.france24.com/en/france/20230109-macron-s-pension-reform-necessary-changes-to-an-unsustainable-system>

⁹ Lisa Louis, *Why the French Are Protesting Against Pension Reform*, Deutsche Welle, January 30, 2023, <https://www.dw.com/en/france-pension-reform-plans-trigger-public-backlash/a-64513082>

¹⁰ The Associated Press, *More Than 1 Million Demonstrate Across France Against Pension Reforms*, NPR, March 24, 2023, <https://www.npr.org/2023/03/24/1165759889/more-than-1-million-demonstrate-across-france-against-pension-reforms>

¹¹ Kevin Varley, *French Anger Over Pension Law Tops Worldwide Protests in 2023*, Bloomberg, June 2, 2023, <https://www.bloomberg.com/news/articles/2023-06-03/french-anger-over-pension-law-tops-worldwide-protests-in-2023>

¹² David Rotman, *How To Solve AI’s Inequality Problem*, MIT Technology Review, April 19, 2022, <https://www.technologyreview.com/2022/04/19/1049378/ai-inequality-problem/>

¹³ Jay Fitzgerald, *Robots And Jobs in the US Labor Market*, The NBER Digest, National Bureau of Economic Research, May 2017, <https://www.nber.org/digest/may17/robots-and-jobs-us-labor-market>

9. Making Money Off of Murders

Fascination with true crime is nothing new—violent crimes have captivated the public since the 1800s and that fixation has only continued to grow. Shows such as *Tiger King* and *Making of a Murderer* have become household names, even making their way into academic discourse. True crime media has increasingly emphasized the entertainment dimensions of its gruesome stories, leading to a significant moral dilemma.

While many watchers are just tuning in to tune out, some argue that watching the true crime genre can have several destructive outcomes on its viewers and victim's families. It has been noted that the true crime genre can warp viewers' expectations and understanding of the legal system, may desensitize viewers to violence, and is disrespectful to the victims and their families.¹ This leaves many viewers wondering if they are participating in a societal problem that goes beyond bingeing Netflix.

One result of society's fixation on true crime is something called the "Serial Effect" (a reference to the podcast Serial, which famously covered Adnan Syed's murder trial). The Serial Effect theory suggests that true crime media "can lead to jurors holding unrealistic expectations of forensic evidence and affect their decisions."² The possibility of swaying a jury and potentially causing an unfair conviction is just one of the potential negative effects that true crime media may have.

Another critique of true crime media is that it has a negative effect on grieving families. When Netflix's dramatized true crime series, *Dahmer—Monster: The Jeffrey Dahmer Story*, was released, one of Dahmer's victim's families spoke out, stating that not only are series like these insensitive to victims and their families, but that they "[keep] the obsession' with killers going."³ It's been debated that extensive coverage of crime incentivizes people who desire notoriety to commit crimes (especially when it comes to mass shootings)⁴ however, like the link between video games and violence, this connection can be hard to prove.⁵

In addition to potentially being disrespectful to victim's families, some say that profiting off of tragic events is distasteful, if not outright immoral. The act of producing and making

¹ Di Tella, Rafael, Lucia Freira, Ramiro H. Gálvez, Ernesto Schargrotsky, Diego Shalom, and Mariano Sigman. "Crime and Violence: Desensitization in Victims to Watching Criminal Events." *Journal of Economic Behavior & Organization* 159 (March 2019): 613–625.

² Reetz, Noelle "The 'Serial Effect' Unpacking the Phenomenon of the True-Crime Podcast" *Georgia State University Research Magazine*. <https://news.gsu.edu/research-magazine/the-serial-effect>

³ Porterfield, Carlie "Dahmer Victim's Mother Blasts Netflix Series After Actor Wins Golden Globe—Latest Family Member To Speak Out" *Forbes* (Jan 12, 2023). <https://www.forbes.com/sites/carlieporterfield/2023/01/12/dahmer-victims-mother-blasts-netflix-series-after-actor-wins-golden-globe-latest-family-member-to-speak-out/?sh=356e47b15804>

⁴ Meindl JN, Ivy JW. Mass Shootings: The Role of the Media in Promoting Generalized Imitation. *Am J Public Health*. 2017 Mar;107(3):368-370. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5296697/>

⁵ Hagan, Ekua "The Psychology of "Copycat Killers" Exploring the relationship between crime-related media coverage and murder" *Psychology Today* (July 13, 2021). <https://www.psychologytoday.com/us/blog/the-human-equation/202107/the-psychology-copycat-killers>

money off of true crime is something that even the producers of this media themselves have had a difficult time grappling with. When Ned Parker, the executive producer of *I Am a Killer*, received “letters of opposition” from the family of one of the victims highlighted in the docuseries, he said “that he had never encountered such a ‘moral dilemma’ in his career.”⁶

Dramatized TV series that are more geared toward entertainment aren’t the only subgenre of true crime to receive criticism by victims’ family members; documentaries have received similar critiques. The sister of Brooke Preston spoke out against a documentary about her murder that was made by Hulu, saying that she wants to be able to grieve in peace.⁷ The director of the documentary, Skye Borgman, said that her documentary is fair to both sides, including the person responsible for the murder who claimed he was sleepwalking.⁷

Proponents of true crime emphasize that such media is meant to educate others and prevent these crimes from happening again. Kat Albrecht, a criminology scholar, asserts that people being educated about the judicial system should be viewed as positive, but it’s determining if the information that they’re getting is accurate that should be the issue. The educational role of true crime has led to wrongful convictions being overturned as well as to rightful convictions in cases that had long turned cold.⁸ Overall, true crime has also spread awareness of the ways that injustice can be carried out through the judicial system. Additionally, there might even be a preventative role that these shows, movies, and podcasts have in helping citizens avoid being victims of violent crimes. In light of these observations, the question seems to be more about what parameters true crime media should stay within to avoid the negative outcomes that it can have.

Many streamers and podcast listeners may just want to ‘*Dateline* and chill,’ yet the question remains if we all might be victims of ‘true crime’ in the long run. However, the line between true crime, fictionalized crime, and news coverage of true crime, as well as the educational benefit that these forms of media might bring, raise many questions regarding what ethical standards we should impose on crime media.

⁶ Chan, Melissa “‘Real People Keep Getting Re-traumatized.’ The Human Cost of Binge-Watching True Crime Series” TIME (April 24, 2020). <https://time.com/5825475/true-crime-victim-families/>

⁷ Hirwani, Peony “Dead Asleep: Murder Victim’s Sister Asks Hulu to Remove Documentary” The Independent (June 16, 2022). <https://www.independent.co.uk/arts-entertainment/films/news/dead-asleep-murder-victim-hulu-documentary-b2102307.html>

⁸ Ali, Lorraine “True-crime TV often exploits its subjects. This game-changing duo wants to end that” LA Times (September 28, 2022). <https://www.latimes.com/entertainment-arts/tv/story/2022-09-28/reasonable-doubt-id-investigation-discovery-fatima-silva-chris-anderson#:~:text=%E2%80%9CReasonable%20Doubt%2C%E2%80%9D%20which%20airs.for%20such%20compelling%20television%2C%20though>

10. Your Right to The Great Outdoors

The responsibility humans have to the environment currently cannot be overstated—with record-breaking high temperatures each summer, increasingly fragile ecosystems leading to dangerous mudslides and higher chances of unstoppable, devastating fires, many climate experts say that our window to change the future of our environment is slowly closing.¹

Many citizens are impelled to protect the environment due to their participation in outdoor sports—seeking time in nature is often perceived as a virtuous activity that has the potential to increase human knowledge of and responsibility for protecting the environment. An increase in the time spent in the ‘great outdoors’ instills a valuable perspective that humans are just but one species in a world full of biodiversity, and often reinforces a renewed sense of responsibility to be aware of one’s ‘carbon footprint’ and an interest in being a more active environmental steward. For these reasons and many others, humans enjoy engaging in outdoor sports activities, including activities that arguably may have a net negative impact on the environment.

One of the most criticized forms of outdoor sports in relation to the climate is off-roading. Some argue that off-roading erodes soil and contributes to carbon pollution—the emissions from an off-road vehicle alone make it a sport with a more substantial impact on the environment than most other outdoor sports.² Additionally, there are often physical traces of off-roading, with black tire marks covering the sides of beautiful rock formations which show the designated trails.

Despite the name, off-roaders are typically traversing routes that have existed for decades, and which have been thoughtfully chosen to avoid negative impacts on fragile ecosystems. Further, off-roaders themselves are more inclined to engage in birding, mountain biking, backpacking, and enjoying nature with their families than non-off-roaders, activities that greatly contribute to an overall commitment to sustainability and an interest in environmental protection than many other hobbies.¹²

Off-roaders also note that the overall carbon impact of recreational activities like off-roading is minor compared to other human activities, such as consuming meat or regularly flying in an airplane.³ In fact, some off-roaders are hunters, which they also believe is a net-positive when it comes to the environment given the negative environmental effects of factory farming.¹³ (Hunting, another outdoor sport onto itself, also plays a significant role in controlling animal

¹ Mandel, Kyla and Worland, Justin “The Window to Adapt to Climate Change Is ‘Rapidly Closing,’ Warns the IPCC” TIME (February, 2022). <https://time.com/6152183/ipcc-report-climate-change-adaptation/>

² King, Lindsey B. “The Environmental Impact of OHV Recreation” 5280 (April 24, 2020). <https://www.5280.com/the-environmental-impact-of-ohv-recreation/>

³ Siler, Wes “In Defense of Off-Roading” Outside (July 12, 2018). <https://www.outsideonline.com/outdoor-gear/cars-trucks/defense-roading/>

overpopulation, though this sport and its environmental effects are just as contentious as off-roading).⁴

Rock climbing, an increasingly popular outdoor (and indoor) sport, has had its own share of climate critique. The chalk climbers use to grip rocks has contributed to a similar “visual pollution” as the tire marks of off-roading and has a negative effect on the growth of several species, leading some National Parks to ban its use all together.⁵ However, climbers themselves have committed to codes of ethics where they seek to minimize human interference in ecosystems. Some climbers make short-term safety sacrifices over a long-term desire to minimize their environmental impact, such as refusing to add more gear than necessary to a climbing route to reduce its visual impact.⁶

Even seemingly low-impact outdoor sports, like hiking, have also received criticism about their negative environmental effects. Hiking contributes to soil erosion, tree defoliation, and an increase in litter and human waste in and around trails. It seems that no outdoor sport is completely neutral in its potential climate effects.

⁴ “Does Hunting Help or Hurt the Environment?” Scientific American (November 10, 2009). <https://www.scientificamerican.com/article/earth-talks-hunting/>

⁵ Snow, Jackie “Rock climbing is getting more popular—and that concerns conservationists” National Geographic (July 23, 2021). <https://www.nationalgeographic.com/travel/article/rock-climbing-is-more-popular-than-ever-is-that-a-good-thing>

⁶ Climbing Ethics, The American Alpine Club, (1990). <http://publications.americanalpineclub.org/articles/12199007600/Climbing-Ethics>

14. Professional Self-Regulation

Since Watergate, federal law has mandated that all Executive, Legislative, and Judicial branch officials annually disclose gifts to them, their spouses, and dependent children, regardless of their source.¹ In early 2023, an investigative report revealed that Supreme Court Justice Clarence Thomas received financial contributions from real estate magnate Harlan Crow, including over \$100,000 of tuition payments for Thomas' grand-nephew, who Thomas took legal custody of at six years of age and raised as a son into adulthood.²

Justice Thomas did not report these tuition payments, nor other benefits from his close friendship with Crow. This prompted outrage, both in the public and Congressional leaders, with the latter calling for stronger outside-enforced rules for both reporting and dealing with potential conflicts of interest on the High Court.³ Even the American Bar Association joined in, noting that, "the absence of a clearly articulated, binding code of ethics for the justices of the Court imperils the legitimacy of the Court."⁴

The separation of powers established by the U.S. Constitution directly challenges efforts for the legislative branch to provide additional binding oversight of the judicial branch. The justices themselves have defended self-regulation, in keeping with the typical practice in the legal profession, and in line with Congress' own practice of regulating the professional ethics of its own members and staff.

Complicating the issue, lower-court judges are bound to a judicial code of conduct mandating that its own judges avoid any "appearance of impropriety in all activities." The High Court does not have such a code and has failed to reach consensus on any binding policy for themselves. Chief Justice John Roberts and others have declared themselves to be special exceptions to rules that apply to lower court judges, due to the "unique role the Constitution assigns the Supreme Court as the ultimate decision-maker in the nation's judiciary."⁵

It is unclear how the unique role of the Supreme Court impacts Justices responsibilities and the proper limits of external. However, it is clear that public confidence and trust in the

¹ Kaplan, Joshua; Elliott, Justin; and, Mierjeski, Alex "Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition." Pro Publica (May 4, 2023). <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-sctus>

² Quinn, Melissa "Clarence Thomas delays filing Supreme Court disclosure amid scrutiny over gifts from GOP donor" CBS News (June 7, 2023). <https://www.cbsnews.com/news/clarence-thomas-supreme-court-disclosure-form-extension-harlan-crow/>

³ Marimow, Ann E.; and, Barnes, Robert "Deep divide at Supreme Court ethics hearing, despite some GOP calls for action" The Washington Post (May 2, 2023). <https://www.washingtonpost.com/politics/2023/05/02/senate-supreme-court-ethics-hearing/>

⁴ Marimow, Ann E.; and, Barnes, Robert "Supreme Court justices discussed, but did not agree on, code of conduct" The Washington Post (Feb. 9, 2023). <https://www.washingtonpost.com/politics/2023/02/09/supreme-court-ethics-code/>

⁵*Ibid.*

Court may be significantly impacted by the standards to which Justices hold themselves or which are imposed upon them.

15. BlackRocking the Environment

In 2016, Larry Fink, the CEO of BlackRock, wrote a landmark letter that called on the financial industry to act against climate change and to make investments in companies evaluating their commitment to Environmental and Social Governance (“ESG”).¹ ESG has taken a spotlight in the US, but the original term was coined in 2004 by the UN in an effort to push companies to focus on the Environmental, Social, and Governance Matters that affect the whole world.

BlackRock is considered as one of the world’s largest asset managers (with over \$10 trillion in assets), and Fink wanted to use this position to guide the financial interests of its clients, but also to make an impact on supporting companies contributing to a greater good.

After BlackRock’s statement and ensuing conversations, companies like Starbucks and Microsoft started reporting on ESG measures they were implementing. Plans to introduce more diversity on their boards, the carbon emissions they were trying to offset, and the risks to their businesses from climate-related conditions all were highlighted in detailed annual reports. They provided investors an insight into business risks and how they planned on remaining competitive and strategic. In addition to companies, securities exchanges like the S&P 500 now has an ESG Index which measures the performance of companies meeting sustainability criteria.

The Securities and Exchange Commission (SEC), in its role as an investor protection authority & regulator, has now adopted rules requiring businesses to include ESG information as part of regular disclosure.² They claim this will allow investors to have a balanced look at the operations and risks to publicly traded companies from factors such as renewable energy sources and climate change, amongst others.

However, critics of ESG assert that asset managers of companies participating in ESG analysis are operating under a “woke” agenda that aims to shutter whole industries and cause considerable economic losses to some communities.³ Others have argued that the goal of these companies should only be profit-generation for their investors and not being the “climate police.” Still other companies claim that the rating on indexes, like the S&P 500 and ESG, are being “weaponized by phony social justice warriors” and “greenwashing.” States and pension funds like those of teachers, unions, and public service officials have also raised concerns that their investment dollars do not see the highest returns if they have to limit their profits according to ESG rules.

¹ Mufson, Steven and MacMillan, Douglas “BlackRock’s Larry Fink tells fellow CEOs that businesses are not ‘climate police’ Investment executive says his firm will not use its shares to press for divestment of oil and gas companies” The Washington Post (January 18, 2022). <https://www.washingtonpost.com/climate-environment/2022/01/18/blackrock-larry-fink-letter-climate/>

²SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors (March 21, 2022). <https://www.sec.gov/news/press-release/2022-46>

³ Bystan Choe “Congress has declared war against ‘woke’ ESG investing. What is ESG and why do some hate it so much?” Fortune (March 1, 2023). <https://fortune.com/2023/03/01/congress-war-against-woke-esg-investing-what-is-esg/>

Companies who implement ESG policies have made the case that following these guidelines allows for reducing risks to their business and focuses on sustainability measures for their communities and consumers alike. However, these policies are often seen as exclusionary based only on ideological beliefs, and harmful to communities that depend on traditional business investments.

In an annual address to investors at the beginning of 2022, Larry Fink announced that while BlackRock remains committed to ESG initiatives, it will not press for divestment of oil and gas companies.

18. Storming the Barnes: Collection or Conspiracy?*

In 1922, art-collector and philanthropist Albert C. Barnes chartered the Barnes Foundation with the goal of improving the American public's understanding and appreciation of art. In the ensuing decades, Barnes' combination of wealth and passion allowed him to assemble the world's greatest private collection of post-impressionist and modern art.¹ In his Pennsylvania home, he hung the paintings of Cezanne, Picasso, Renoir, and Matisse alongside African, Indigenous American, and medieval European art. Estimates of the value of the collection sit at around \$25 billion USD.

When Barnes died in 1951, his living trust made it explicit that the Barnes Foundation was to keep his collection exactly as he had left it: displayed in his private residence and available for viewing only by appointment. The trust even specified that the paintings were to remain in the exact position they had occupied in Barnes' expansive home while he was alive. Barnes had carefully planned every detail of his collection's layout: arranging his paintings not by creator or historical period, but by shape, color, and theme.² Barnes was insistent that his collection be used only for art education—seminars, school tours, and workshops for working class art enthusiasts—and not for general display. The Barnes foundation was not, according to the intentions of its creator, a museum open to the viewing public.

The arrangement changed in 2004 when a court granted a request from the Barnes' Foundation's board of trustees to move the collection from Barnes' home to a new public gallery in Philadelphia. The move drew sharp criticism from some art-world figures and friends of Barnes who considered it a betrayal of the ideals of the organization's founder. After all, the paintings belonged to Barnes, and his wishes had explicitly forbidden the transformation of his collection into a public museum with admissions fees. Some, like attorney John Anderson, accuse the city of Philadelphia of colluding with the Barnes Foundation's Board to cash in on a lucrative opportunity to increase tourism downtown.³ During his lifetime, Barnes was a vocal critic of what he saw as the commercialization and corruption of art, and wanted his Foundation to be insulated from commercial pressures. Some artists, most notably Henri Matisse, agreed with Barnes' view, calling his suburban home the only "sane place" to view art in the United States.⁴

Others view the decision differently, arguing that a new facility open to the public increases access to beautiful and historically significant works of art. In their view, the intentions

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¹ [The Barnes Foundation, "About the Barnes"](#)

² The designers of the Foundation's new home have taken considerable pains to preserve the collection's original layout. See [NPR, "Barnes Foundation Changes Location, But Little Else"](#).

³ [NPR, "Art Of The Steal': Actual Heist Or Conspiracy Theory?"](#)

⁴ [Philanthropy Roundtable, "Outsmarting Albert Barnes"](#)

of a long-dead donor are less important than the good the collection could do if the paintings were easier for the public to see and enjoy.