

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

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## 1. Fight over “Friday for Future”

Climate change is happening now. According to the National Academy of Sciences, “Humans are changing the Earth’s climate.”<sup>1</sup> The primary driver of this anthropogenic climate change is the greenhouse gas CO<sub>2</sub>, which builds up in the atmosphere due to the burning of fossil fuels and the destruction of forests. Historically, significant climate changes have corresponded with species extinctions, mass migrations, and alterations to landmass shapes and ocean currents. The severity of continued warming is projected to reach an additional 2.6 to 4.8 °C (4.7 to 8.6 °F) by 2100. This projected level of climatic change will result in food insecurity, desertification, and the displacement and migration of billions of people living in coastal areas.

In May of 2018 fifteen-year-old Swedish student Greta Thunberg won an essay writing contest on climate change and was contacted by Bo Thorén from Fossil Free Dalsland. Thunberg, encouraged to become a more proactive climate activist, considered a school strike as a possible strategy. This plan was inspired by the activism of students at Marjory Stoneman Douglas High School, who had refused to go to school to draw attention to the need for gun reform following the school shooting in Parkland, Florida. After trying, and failing, to recruit friends and classmates to her cause, on August 20<sup>th</sup>, 2018, Thunberg sat outside of the Swedish Parliament and “handed out fliers with a long list of facts about the climate crisis and explanations on why [she] was striking.”<sup>2</sup>

“The first thing I did was to post on Twitter and Instagram what I was doing,” said Thunberg, “and it soon went viral. Then journalists and newspapers started to come.” Following the Swedish general elections in September, Thunberg returned to school on Monday through Thursday, protesting outside Parliament only on Fridays. The Skolstrejk för klimatet (school strike for the climate) then picked up followers on social media with the hashtag #FridaysForFuture. In the subsequent year, the Friday boycotts have grown and on March 15<sup>th</sup>, 2019, 1.6 million students from 133 countries participated, missing school to engage in public protest about our response to climate change.<sup>3</sup>

The school strike for climate includes weekly school strikes on Fridays in which students are asked to “strike in front of their closest town hall, every Friday. With a sign, take a picture and post it with the hashtags #Fridaysforfuture and #Climatestrike.”<sup>4</sup> According to Thunberg, “School children are required to attend school. But with the worsening Climate Destruction this goal of going to school begins to be pointless.” Secretary general of the United Nations, António

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<sup>1</sup> National Academies of Sciences, Engineering, Medicine “*Understanding the Climate System*” [http://sites.nationalacademies.org/sites/climate/SITES\\_193558](http://sites.nationalacademies.org/sites/climate/SITES_193558)

<sup>2</sup> Brent Lindeque, “Greta Thunberg: School strike for climate and to save the world!” May 5<sup>th</sup>, 2019. <https://www.goodthingsguy.com/opinion/greta-thunberg/>

<sup>3</sup> Suyin Haynes, “Students From 1,600 Cities Just Walked Out of School to Protest Climate Change. It Could Be Greta Thunberg's Biggest Strike Yet” *TIME*, May 24<sup>th</sup>, 2019. <https://time.com/5595365/global-climate-strikes-greta-thunberg/>

<sup>4</sup> Fridays For Future, “How to climate strike.” <https://www.fridaysforfuture.org/how>

Guterres, said of the student protests: “My generation has failed to respond properly to the dramatic challenge of climate change. This is deeply felt by young people. No wonder they are angry.”<sup>5</sup>

Not all leaders are supportive of the strike. UK Prime Minister Theresa May issued a statement saying in part, “It is important to emphasize that disruption increases teacher's workloads and wastes lesson time that teachers have carefully prepared for... That time is crucial for young people precisely so that they can develop into the top scientists, engineers and advocates that we need to help tackle this problem.”<sup>6</sup> In the UK, fines of £60 can be levied against the parents of student strikers. In one case, students Ellie Kinloch, Tyler McHugh, and Isobel Deady boycotted school on Friday, May 24<sup>th</sup>, 2019, to take part in Youth Strike 4 Climate march. The trio informed their principal in advance as the Fridays For Future website suggests; yet, they were subsequently banned from attending their school’s prom as punishment for truancy.<sup>7</sup>

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<sup>5</sup> António Guterres, “The climate strikers should inspire us all to act at the next UN summit” *The Guardian*, March 15<sup>th</sup>, 2019. <https://www.theguardian.com/commentisfree/2019/mar/15/climate-strikers-urgency-un-summit-world-leaders>

<sup>6</sup> Alan McGuinness, “Theresa May criticises pupils missing school to protest over climate change”. *SkyNews*, February 15<sup>th</sup>, 2019. <https://news.sky.com/story/theresa-may-criticises-pupils-missing-school-to-protest-over-climate-change-11638238>

<sup>7</sup> Josh Barrie, “Three schoolgirls have been banned from their end of year prom after going on a climate emergency march”. *iNews* June 21<sup>st</sup>, 2019. <https://inews.co.uk/news/uk/schoolgirls-banned-prom-attending-climate-emergency-protest/>

## 2. Student Loan Forgiveness

“A \$1.5 trillion-dollar crisis.”<sup>8</sup> That is how a 2018 *Forbes* magazine article described student loan debt. Student debt has tripled since 2005 and is now the second largest category of consumer debt, trailing only mortgage loans. Worse still, interest accumulation and new loans grow student debt by more than \$100 billion dollars annually. At current repayment rates, about 1% per year, existing student debt will take a century to pay off.<sup>9</sup> The student loan delinquency or default rate (defined as being 90+ days delinquent) is approximately 10.7%. These student loans are generally not dischargeable in bankruptcy and are guaranteed by the federal government.

Some people oppose the student loan system, claiming government-guaranteed student loans present a no-risk opportunity for lenders and encourage irresponsible lending. Although most student loans are originated by government programs, lending has increased steadily since the federal government established loan programs. As early as 1987, Secretary of Education Bill Bennett argued that “increases in financial aid in recent years have enabled colleges and universities blithely to raise their tuitions, confident that Federal loan subsidies would help cushion the increase.”<sup>10</sup> As Bennett predicted, college tuition has continued to grow as money available to young people has increased.

The long-term impact of student debt on tuition is uncertain, but the impact on young people is becoming clear. Indeed, 65% of student debt is concentrated in the hands of people under 40 years old. The average borrower has debt over \$37,000 and pays around \$400 per month.<sup>11</sup> This represents between 10-20% of the average borrowers’ after-tax income. In this context, many borrowers find that they cannot afford traditional post-college rites of passage such as buying a home, getting married, and having children. This dilemma has been described as the “disastrous domino effect” of ballooning student loans.<sup>12</sup>

Recently, political leaders have offered various plans to address the looming student loan crisis. Senator Bernie Sanders has a plan to cancel the entire \$1.5 trillion dollars of accumulated student

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<sup>8</sup> Zack Friedman “Student Loan Debt Statistics In 2018: A \$1.5 Trillion Crisis” *Forbes* June 13<sup>th</sup>, 2018.

<https://www.forbes.com/sites/zackfriedman/2018/06/13/student-loan-debt-statistics-2018/#5152e1527310>

<sup>9</sup> Shahien Nasiripour, “At This Rate, It Will Take 100 Years to Pay Off America’s Student Debt”

*Bloomberg*, August 16<sup>th</sup>, 2019. <https://www.bloomberg.com/news/articles/2019-08-16/you-may-be-dead-before-you-pay-off-your-student-loans>

<sup>10</sup> Jordan Weissmann, “Student Loans Might Be Driving Up the Cost of College. So What Do We Do About It?”

*Slate*, September 8<sup>th</sup>, 2015.

<https://slate.com/business/2015/09/student-loans-drive-up-college-costs-what-should-we-do-about-it.html>

<sup>11</sup> Raul Elizalde “With Student Debt At Crisis Level, Some Good News For Graduates” *Forbes*, May 17<sup>th</sup>, 2019. <https://www.forbes.com/sites/raulelizalde/2019/05/17/with-student-debt-at-crisis-level-some-good-news-for-graduates/#66c3dd231308>

<sup>12</sup> “Buried in Debt A national survey report on the state of student loan borrowers in 2018” November 1<sup>st</sup>, 2018. Summer and Student Debt Crisis <https://www.meetsummer.org/share/Summer-Student-Debt-Crisis-Buried-in-Debt-Report-Nov-2018.pdf?t=1541171524>

loan debt.<sup>13</sup> Senator Elizabeth Warren’s plan also aims to alleviate the student loan burden but caps loan forgiveness at \$50,000 with the amount phased out by \$1 for every \$3 in household income above \$100,000.<sup>14</sup> Both Senators also propose making public college tuition free.

In contrast, Mayor Pete Buttigieg has acknowledged the importance of addressing college costs and debt but stopped short of eliminating tuition or forgiving existing debt. Buttigieg expressed concerns, saying: “I have a hard time getting my head around the idea a majority who earn less because they didn’t go to college subsidize a minority who earn more because they did.”<sup>15</sup> Student loan debt is held by a relatively small number of people, approximately 45 million Americans. In contrast, nearly 80% of people have a credit card and 48% carry a balance some, most, or all of the time.<sup>16</sup>

U.S. Secretary of Education Betsy DeVos argues that “no bank regulator would allow this portfolio to be valued at full, face value. Federal Student Aid has a consumer loan portfolio larger than any private bank. Behemoths like Bank of America or J.P. Morgan pale in comparison.” DeVos describes this as a “a crisis in higher education” and points toward a market-based approach. A keystone of DeVos’s response is strengthening financial literacy. “Think about,” she says, “the power of having hard numbers, and how having that information could help a student make more informed—and better—decisions.” Additionally, DeVos advocates for online and trade schools saying, “Every person should have the opportunity to pursue the education that's right for them. And so, supporting and encouraging a multitude of pathways makes common sense.”<sup>17</sup>

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<sup>13</sup> Jeff Stein, “Sanders proposes canceling entire \$1.6 trillion in U.S. student loan debt, escalating Democratic policy battle” *Washington Post* June 24<sup>th</sup>, 2019. [https://www.washingtonpost.com/business/economy/sanders-to-propose-canceling-entire-16-trillion-in-us-student-loan-debt-escalating-democratic-policy-battle/2019/06/23/1eed053a-9561-11e9-aadb-74e6b2b46f6a\\_story.html?noredirect=on](https://www.washingtonpost.com/business/economy/sanders-to-propose-canceling-entire-16-trillion-in-us-student-loan-debt-escalating-democratic-policy-battle/2019/06/23/1eed053a-9561-11e9-aadb-74e6b2b46f6a_story.html?noredirect=on)

<sup>14</sup> Team Warren, “I’m calling for something truly transformational: Universal free public college and cancellation of student loan debt” *Medium*, April 22<sup>nd</sup>, 2019. <https://medium.com/@teamwarren/im-calling-for-something-truly-transformational-universal-free-public-college-and-cancellation-of-a246cd0f910f>

<sup>15</sup> Elizabeth Popp Berman, “Pete Buttigieg argues against free college. This is why progressives can’t agree about subsidizing tuition.” *Washington Post*, April 5<sup>th</sup>, 2019. <https://www.washingtonpost.com/politics/2019/04/05/pete-buttigieg-argues-against-free-college-this-is-why-progressives-cant-agree-about-subsidizing-tuition/>

<sup>16</sup> *Report on the Economic Well-Being of U.S. Households in 2016* Federal Reserve, p. 35. May, 2017. <https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf>

<sup>17</sup> “U.S. Secretary of Education Betsy DeVos Warns of Looming Crisis in Higher Education” U.S. Department of Education; November 27<sup>th</sup> 2018. <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-warns-looming-crisis-higher-education>

### 3. Callout Culture

In an interview about his latest film *Cold Pursuit*, which tackles themes of revenge, actor Liam Neeson described an incident from his past when he sought revenge. Many years ago, he said, one of his close friends told him that she had been raped by a black man. Neeson reacted by roaming the streets with a crowbar for a week or more, hoping that a “black bastard” would pick a fight with him so that he could kill him. Neeson said that he was shocked by his own reaction but learned a lesson from his awful behavior: that revenge just leads to more and more violence.<sup>18</sup> Not surprisingly, the backlash was swift. Neeson was quickly described as a racist, “a representative of racial terror,” and the face of white privilege. It was pointed out that his actions were reminiscent of the history of lynching, where black people were often murdered by white people under the pretense of revenge. The fact that this incident happened 40 years ago, that no one was actually hurt, or that Neeson readily acknowledged that his actions were terrible did not lessen the criticism. Rather, to some, these facts only confirmed how racism continues to exist and that Neeson should not be let off the hook. Neeson, for his part, maintains that he is not racist.<sup>19</sup>

While Neeson’s confession was particularly troubling, people and companies are often called out for much less. For example, social media backlash recently led to Gucci apologizing and pulling a sweater design that appeared to reference blackface.<sup>20</sup> A high school student created an uproar over cultural appropriation when she posted photos of herself on social media wearing a Chinese-style dress to prom.<sup>21</sup> White beauty influencers have been accused of “blackfishing”—making themselves look black or mixed race through makeup, hairstyles, and even plastic surgery.<sup>22</sup>

These callouts have consequences in the real world. The object of a callout can be subject to a torrent of online commentary, ranging from polite criticism to shaming to verbal abuse. Entire online communities “cancel” celebrities and brands en masse, resolving to boycott them and shaming those who don’t. Callouts can translate into social ostracism, lost followers, lost jobs,

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<sup>18</sup> Clemence Michallon, “Liam Neeson interview: Rape, race and how I learnt revenge doesn’t work,” *The Independent*, Feb. 4, 2019, <https://www.independent.co.uk/arts-entertainment/films/features/liam-neeson-interview-rape-race-black-man-revenge-taken-cold-pursuit-a8760896.html>

<sup>19</sup> Alex Abad-Santos, “Liam Neeson’s comments show how racism and denial work hand in hand,” *Vox*, Feb. 9, 2019, <https://www.vox.com/2019/2/8/18212117/liam-neesons-racist-comments-denial>

<sup>20</sup> Madeline Holcombe, “Gucci apologizes after social media users say sweater resembles blackface,” *CNN*, Feb. 8, 2019, <https://www.cnn.com/2019/02/07/us/gucci-blackface-sweater/index.html>

<sup>21</sup> Amy Qin, “Teenager’s Prom Dress Stirs Furor in U.S.—but not in China,” *The New York Times*, May, 2018, [https://www.nytimes.com/2018/05/02/world/asia/chinese-prom-dress.html?source=post\\_elevate\\_sequence\\_page-----](https://www.nytimes.com/2018/05/02/world/asia/chinese-prom-dress.html?source=post_elevate_sequence_page-----)

<sup>22</sup> Kameron Virk and Nesta McGregor, “Blackfishing: The women accused of pretending to be black,” *BBC*, Dec. 5, 2018, <https://www.bbc.com/news/newsbeat-46427180>

and lost business.<sup>23</sup> And when the target happens to suffer from mental illness, callouts can turn tragic, even leading to suicide.<sup>24</sup>

Many argue that callout culture, especially on the internet, is helpful in changing social norms. As one author explains, "Call-out culture might seem harsh, especially to those who have fallen foul of it, but it's a necessary part of creating the best possible spaces we can."<sup>25</sup> Social media is a powerful platform for underrepresented voices, and it can be used to expose bigotry and hold people accountable for their harmful behavior.<sup>26</sup> For example, viral videos of everyday racist behavior show "that racism and racists are . . . real and everywhere."<sup>27</sup>

Others believe that callout culture has gone too far. "Though it may have once served a constructive purpose, call-out culture has since morphed into the online equivalent of road rage," one author posits. "It encourages dangerous overreactions to perceived offenses, many of which are too innocuous to warrant a reaction at all."<sup>28</sup> Indeed, callout culture may have a chilling effect on dialogue because people fear being called out and stigmatized. As one college student put it, "I probably hold back 90 percent of the things that I want to say due to fear of being called out . . . People won't call you out because your opinion is wrong. People will call you out for literally anything."<sup>29</sup>

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<sup>23</sup> Jonah Engel Bromwich, "Everyone is Canceled," *The New York Times*, June 28, 2018, <https://www.nytimes.com/2018/06/28/style/is-it-canceled.html>; Cheryl Wischhover, "The biggest beauty trend in 2018? Makeup brands behaving badly," *Vox*, Dec. 18, 2018,

<https://www.vox.com/2018/12/18/18139611/beauty-drama-influencer-scandal-2018-deciem-kat-von-d>; Invisibilia, "The Callout," NPR, April 13, 2018, <https://www.npr.org/2018/04/13/601971617/the-callout>

<sup>24</sup> D.A. Kirk, "Calling Out Call-Out Culture," *Medium*, May 12, 2018, <https://medium.com/s/story/calling-out-call-out-culture-dresses-mental-health-and-the-destructive-nature-of-online-shaming-1eaac4e164a>

<sup>25</sup> Lucy Uprichard, "In Defence of Call-Out Culture," *Huffington Post UK*, Dec. 27, 2013.

<sup>26</sup> The Race Card, "Stop Attacking 'Call-Out Culture' Just Because it Hurts Your Feelings. Some People Need to be Called Out," *Afropunk*, June 2, 2017, <https://afropunk.com/2017/06/stop-attacking-call-out-culture-just-because-it-hurts-your-feelings-some-people-need-to-be-called-out/>

<sup>27</sup> Emma Grey Ellis, "The Case for Viral 'Callout' Culture," *Wired*, Dec. 12, 2018, <https://www.wired.com/story/viral-call-out-culture/>

<sup>28</sup> Kirk, *supra*.

<sup>29</sup> Conor Friedersdorf, "The Destructiveness of Call-Out Culture on Campus," *The Atlantic*, May 8, 2017, <https://www.theatlantic.com/politics/archive/2017/05/call-out-culture-is-stressing-out-college-students/524679/>

#### 4. Having Children as the Climate Changes

Rep. Alexandria Ocasio-Cortez (D-NY) recently posed a difficult question in an Instagram live stream: “Basically, there’s a scientific consensus that the lives of children are going to be very difficult [due to climate change]. And it does lead, I think, young people to have a legitimate question: Is it okay to still have children?”<sup>30</sup>

Politically conservative commentators quickly characterized Ocasio-Cortez's comments as a "no-child policy." They deemed her view ugly, frightening, and "disturbingly authoritarian, even fascistic." One commentator suggested that she may have been having a mental breakdown. As one news show host put it, "She's saying, 'don't have kids' because it's going to hurt our country. So if you don't believe in kids, and families, and the flag, then you're effectively admitting to civilizational suicide."<sup>31</sup>

But many young people share 29-year-old Ocasio-Cortez's worry. In a recent poll by Business Insider, approximately 38% of people between the ages of 18 and 29 and 34% of people between 30 and 44 agreed that climate change should be factored into the decision to have children or not. Similarly, in a 2018 New York Times survey of people between 20 and 45, 11% of respondents indicated that they did not want children or were unsure about having children because of the threat of climate change. A full 33% of respondents stated that they were having fewer children than they wanted to have because they were concerned about climate change.<sup>32</sup> Indeed, the United States birthrate has hit record lows for the past several years.<sup>33</sup>

Recent reports on climate change paint a dire picture. "The impacts and costs of climate change are already being felt in the United States, and changes in the likelihood or severity of some recent extreme weather events can now be attributed with increasingly higher confidence to human-caused warming."<sup>34</sup> According to the world's leading scientists, we have twelve years

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<sup>30</sup> Umair Irfan, "We need to talk about the ethics of having children in a warming world," Vox, Mar. 11, 2019, <https://www.vox.com/2019/3/11/18256166/climate-change-having-kids>

<sup>31</sup> Eliza Relman, "Fox News hosts accuse Alexandria Ocasio-Cortez of 'admitting to civilization suicide' after the congresswoman asks if it's 'okay to still have children' with the threat of climate change," Business Insider, Feb. 26, 2019, <https://www.businessinsider.com/fox-news-hosts-say-alexandria-ocasio-cortez-wants-to-get-rid-of-kids-2019-2>

<sup>32</sup> Eliza Relman & Walt Hickey, "More than a third of millennials share Rep. Alexandria Ocasio-Cortez's worry about having kids while the threat of climate change looms," Business Insider, March 4, 2019, <https://www.businessinsider.com/millennials-americans-worry-about-kids-children-climate-change-poll-2019-3?r=US&IR=T>

<sup>33</sup> Bill Chappell, "U.S. Births Fell To A 32-Year Low in 2018; CDC Says Birthrate Is In Record Slump," NPR, May 15, 2019, <https://www.npr.org/2019/05/15/723518379/u-s-births-fell-to-a-32-year-low-in-2018-cdc-says-birthrate-is-at-record-level>

<sup>34</sup> Umair Irfan, "3 big takeaways from the major new US climate report," Vox, Nov. 24, 2018, <https://www.vox.com/2018/11/24/18109883/climate-report-2018-national-assessment>



left to reverse course and prevent the worst consequences of climate change. But mustering the political will to make the required changes will be difficult.<sup>35</sup>

Concerns over procreating in the face of climate change fall into two broad categories: that today's children will suffer the brunt of the consequences of climate change, and that having more children will make the problem of climate change worse by increasing the burden on the planet. As Travis Rieder, ethics professor and father of one, explains: "Procreating both contributes to climate change and creates a new victim of climate change, . . . I don't know whether people should have kids, or whether they should have a big family, but I do believe that climate change should be part of their deliberation, because the consequences of bringing a new person into a changing world are really morally serious."<sup>36</sup>

Another factor to consider is whether today's children will be the ones to find the solution to climate change. Your child may grow up to be a leading scientist, an environmental advocate, or at least vote for political solutions to climate change.<sup>37</sup> Erle Ellis, a geography and environmental systems professor, puts it this way: "People who are so concerned they would even consider not having children are the very kind of people who can be part of the solution. By having children they have doubled down on the future. They are motivated. Because they know if they don't succeed, they are failing not only themselves but this new generation they have brought into the world."<sup>38</sup>

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<sup>35</sup> Jonathan Watts, "We have 12 years to limit climate change catastrophe, warns UN," The Guardian, Oct. 8, 2018, <https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report>

<sup>36</sup> James Rainey, "For some millennials, climate change clock ticks louder than biological one," NBC News, April 21, 2019, <https://www.nbcnews.com/news/us-news/some-millennials-climate-change-clock-ticks-louder-biological-one-n993331>; see also Alexis Papazoglou, "Is It Cruel to Have Kids in the Era of Climate Change?" The New Republic, Feb. 25, 2019, <https://newrepublic.com/article/153149/cruel-kids-era-climate-change>

<sup>37</sup> Tyler Cowen, "Want to Help Fight Climate Change? Have More Children," Bloomberg Opinion, March 14, 2019, <https://www.bloomberg.com/opinion/articles/2019-03-14/want-to-help-fight-climate-change-have-more-children>

<sup>38</sup> Rainey, *supra*.

## 5. Social Justice and Marijuana Legalization

Recreational marijuana is now legal in ten states and the District of Columbia. A full two-thirds of states have legal medical marijuana. Legalization on a federal level appears to be on the horizon. As one law professor explains, "We're at the stage of marijuana reform 2.0"—the question is not just *whether* marijuana should be legalized but *how*.<sup>39</sup>

White men currently dominate the burgeoning multibillion-dollar cannabis industry. As of 2017, industry executives were 81 percent white and 73 percent male.<sup>40</sup> Although legalization has drastically reduced arrests for marijuana-related crimes overall, racial disparities persist. Compared to white people, black people are still much more likely to be arrested for crimes like underage possession, public consumption, or unlicensed sale of marijuana. For example, in Alaska—where pot was legalized in 2014 and sales began in 2016—arrest rates dropped by approximately 99% for white people and 93% for black people. However, in 2016, white people were arrested for marijuana offenses at a rate approximately *ten times less* than black people: there were 17.7 arrests per 100,000 black people and only 1.8 arrests per 100,000 white people.<sup>41</sup>

These disparities are not the result of differences in rates of marijuana usage: blacks and whites use marijuana at roughly equal rates. Rather, these disparities are the product of a racially biased criminal justice system. As explained by the director of the ACLU Criminal Law Reform Project and one of the authors of *The War on Marijuana in Black and White*, "The war on marijuana has disproportionately been a war on people of color. State and local governments have aggressively enforced marijuana laws selectively against Black people and communities, needlessly ensnaring hundreds of thousands of people in the criminal justice system at tremendous human and financial cost."<sup>42</sup>

Despite these concerns, some believe that simply legalizing marijuana is much-needed progress, even though it is imperfect. Others believe that racial justice initiatives must be part of any plan to legalize marijuana to ensure that communities that were ravaged by the war on drugs get priority on the benefits of legalization. Proposed measures would give businesses owned by women and people of color an advantage when applying for licenses to legally grow and sell marijuana. As one businessman explains, "Here's a drug that for years has been the bane of the

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<sup>39</sup> Jennifer Peltz, "Pot 'legalization 2.0': Social equity becomes a key question," Associated Press, May 19, 2019, <https://www.apnews.com/dcce234afaa7441483f59a190d84c62f>

<sup>40</sup> Liz Posner, "The Green Rush is Too White," Pacific Standard, Dec. 10, 2018, <https://psmag.com/economics/the-green-rush-is-too-white-hood-incubator-race-weed>; see also Eli McVey, "Chart: Percentage of cannabis business owners and founders by race," Marijuana Business Daily, Sept. 11, 2017, <https://mjbizdaily.com/chart-19-cannabis-businesses-owned-founded-racial-minorities/>

<sup>41</sup> German Lopez, "After legalization, black people are still arrested at higher rates for marijuana than white people," Vox, Jan. 29, 2018, <https://www.vox.com/policy-and-politics/2018/1/29/16936908/marijuana-legalization-racial-disparities-arrests>

<sup>42</sup> *Report: The War on Marijuana in Black and White*, ACLU, June 2013, <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>

minority community, sending young people to jail by the boatloads. Now, it could be a boon to these communities, but minorities have been left out."<sup>43</sup> Another concern is that people who are serving prison time or have criminal records for marijuana offenses that are no longer crimes should have their sentences vacated and their records expunged. For example, San Francisco automatically cleared thousands of marijuana convictions, and other counties in California have followed suit. In other states, like Colorado and Oregon, defendants can request that their records be sealed (though not erased).<sup>44</sup>

Opponents of marijuana legalization have also turned to social justice arguments, claiming that legalization will harm low-income and minority communities. As the president and CEO of one organization that opposes legalization explains, "We don't want either extreme. We don't want incarceration, and we don't want legalization and commercialization."<sup>45</sup> Rather, his organization—called Smart Approaches to Marijuana—argues that criminal penalties for marijuana possession should be removed but legalization would go too far by creating a multi-billion-dollar industry that would worsen systemic injustice.<sup>46</sup>

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<sup>43</sup> Janell Ross, "Legal marijuana made big promises on racial equity—and fell short," NBC News, Dec. 31, 2018, <https://www.nbcnews.com/news/nbcblk/legal-marijuana-made-big-promises-racial-equity-fell-short-n952376>; Tracy Jan & Fenit Nirappil, "Battling the racial roadblocks to joining the legalized marijuana trade," The Washington Post, June 2, 2017, [https://www.washingtonpost.com/business/economy/battling-the-racial-roadblocks-to-joining-the-legalized-marijuana-trade/2017/06/02/7321de02-416f-11e7-9869-bac8b446820a\\_story.html?utm\\_term=.e0c1c656351d](https://www.washingtonpost.com/business/economy/battling-the-racial-roadblocks-to-joining-the-legalized-marijuana-trade/2017/06/02/7321de02-416f-11e7-9869-bac8b446820a_story.html?utm_term=.e0c1c656351d)

<sup>44</sup> David Jordan, "What happens to old marijuana convictions in states where it's now legal?" Associated Press, June 22, 2018, <https://www.boston.com/news/politics/2018/06/22/marijuana-legalization-convictions>

<sup>45</sup> Sophie Quinton, "Marijuana Bills Increasingly Focus on Social Justice," Pew, July 19, 2018, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/07/19/marijuana-bills-increasingly-focus-on-social-justice>

<sup>46</sup> "Marijuana and Social Justice," Smart Approaches to Marijuana, <https://learnaboutsam.org/marijuana-and-social-justice/> (last accessed 7/3/2019).

## 6. “Girl-scouts” and The Girl Scouts

In November of 2018, the Girl Scouts of America (GSA) filed a lawsuit against the Boy Scouts of America (BSA) for trademark infringement. The GSA claimed that, following the BSA’s decision to include girls in its organization to modernize and create a more gender-inclusive program, it has confused potential applicants and given the impression that the two organizations are being merged into one.

In the suit, the GSA has raised two points: (1) that its participants benefit most from gender-exclusive environments, and (2) that they are defending their intellectual property. GSA owns trademarks registered with the United States Patent and Trademark Office, including the phrase “Girl Scout”. The organization believes that the value of its brand has been negatively impacted by the decision of the BSA to include girls.<sup>47</sup> “We did what any brand, company, corporation or organization would do,” the GSA stated, “to protect its intellectual property, the value of its brand in the marketplace and to defend its good name.”<sup>48</sup> But the lawsuit reflects something deeper than brand management. The GSA also argues that research has shown girls tend to “learn best in an environment led by girls, through programs tailored specifically for girls”. This argument suggests that the suit concerns how best to advance gender equality by empowering girls and young women.<sup>49</sup>

“We are reviewing the lawsuit carefully,” the BSA stated. “Our decision to expand our program offerings for girls came after years of requests from families who wanted the option of the B.S.A.’s character and leadership development programs for all their children—boys and girls.” The BSA has been embroiled in several costly controversies over the past two decades, from denying admission of openly homosexual scouts and leaders, to sexual abuse cases. The BSA began calling its members “scouts” instead of “boy scouts” in an attempt to become more inclusive and appeal to a wider applicant pool. But the GSA asserts that the inclusion of girls in the BSA has created an environment of confusion and fails to recognize an important distinction between the two programs namely that they have male and female leadership, respectively.

Some GSA members, however, have voiced frustration with the organization’s decision to move forward with the lawsuit, claiming that the decision was made without the input of its most important participants. Not only was the decision contrary to the GSA philosophy of being a “girl-led” organization: the choice to litigate was made without the input of actual girls. Some have criticized the spirit of the lawsuit by reminding the GSA of a similar controversy at the

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<sup>47</sup> Tony Marks, “The Scouts Teach Us All a Lesson About Trademark Law,” *Forbes*, 12, Feb. 2019. <https://www.forbes.com/sites/tonymarks/2019/02/12/the-scouts-teach-us-all-a-lesson-about-trademark-law/#5a08cb2a7386>

<sup>48</sup> Niraj Choksi, “The Girl Scouts Have Sued The Boy Scouts, Now What?” *The New York Times*, Nov. 9th, 2018, <https://www.nytimes.com/2018/11/09/us/girl-scouts-sue-boy-scouts.html>

<sup>49</sup> Claire Suddath, “Boy Scouts are Just Scouts now and that’s making Girl Scouts Mad” *Bloomberg Businessweek*, April 17th, 2019, <https://www.bloomberg.com/news/features/2019-04-17/boy-scouts-are-just-scouts-now-and-that-s-making-girl-scouts-mad>

birth of the organization, when a high-level member of the BSA's leadership lobbied against the GSA's use of the term "scouts", which he believed applied exclusively to boys. Juliette Gordon Low, the founder of the Girl Scouts, refused to change the term.

## 7. Your Best Self Now

The Chinese Government is rolling out an electronic social credit system to promote “trustworthiness” in its society and economy.<sup>750</sup>The program is an ambitious attempt to boost the Chinese economy by encouraging pro-social behavior among its citizens and corporations, while at the same time accumulating vast amounts of data to drive policy decisions. Those exhibiting incentivized behaviors (e.g., donating to charity, stopping at crosswalks, abiding by food safety regulations, or promptly paying taxes) can earn rewards and privileges, like discounts on insurance and access to prestigious civil service jobs. Those with poor scores suffer punishments such as restricted air travel or being denied access to certain schools and universities.

Critics call the system Orwellian and claim that it presents yet another threat to the already thin freedoms enjoyed by Chinese citizens.

Proponents suggest it’s no different than Yelp or Uber, which aggregate subjective consumer reports to provide better service. Perhaps a more apt metaphor for the West is the credit score, which is intended to measure and approximate fiscal responsibility, and is then used by businesses to determine how much credit to extend to customers. The ultimate aim of the project, perhaps like Ebay’s seller ratings, is to introduce “novel tools for monitoring and regulating market behavior.”<sup>51</sup> “I feel like in the past six months, people’s behavior has gotten better and better” said a Chinese entrepreneur in support of the program.<sup>52</sup> “The social credit system is just really adding technology and ... formality to the way the party already operates,” says Samantha Hoffman, a consultant at the International Institute for Strategic Studies (IISS) who researches Chinese social management.

The Chinese government has touted the program not as a method of social control, so much as a big-data enabled step towards market regulation, which they hope to use to transform their economy and better compete with the West. Chinese policymakers intend to utilize the massive government data collection program to quickly react to social and environmental trends. The concept is that, by unifying the Chinese business and civic sectors around a set of common incentives, the economy and society at large would become more agile and adaptable, while “Western market economies, in comparison, would appear slow-moving and highly fragmented.”

The system is the latest of a long line of attempts at social control by the Chinese government, dating back to the Maoist era - with at times disastrous results. Similar Government systems have

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<sup>50</sup> Mistreanu, Simina “Life Inside China’s Social Credit Laboratory” *foreignpolicy.com*. April 3, 2018. <https://foreignpolicy.com/2018/04/03/life-inside-chinas-social-credit-laboratory/>

<sup>51</sup> Meissner, Mirjam. “China’s Social Credit System” *Merics, Mercator Institute for China Studies*. May 24, 2017. [https://www.merics.org/sites/default/files/2017-09/China%20Monitor\\_39\\_SOCS\\_EN.pdf](https://www.merics.org/sites/default/files/2017-09/China%20Monitor_39_SOCS_EN.pdf)

<sup>52</sup> Ma, Alexandra “China Social Credit System: Punishments and Rewards Explained,” *Business Insider*. Oct. 29, 2018. <https://www.businessinsider.com/china-social-credit-system-punishments-and-rewards-explained-2018-4>

ranged from state-monitored farming collectives to self-policing schemes which encouraged citizens to report their neighbors' transgressions.

Of course, for those who have already incurred a bad score, it is unclear how a person can redeem themselves. The Communist Party intends to make "China a pleasant and acceptable place for people to live in order to not get angry," says Rogier Creemers, a scholar of Chinese law at the Leiden University Institute for Area Studies in the Netherlands, "It doesn't mean it's benevolent. Keeping people happy is a much more effective means than employing force."

## 8. When ya gotta go

When Brooke Johns' 3-year-old son announced he "had to use the potty right away", she stopped at a gas station<sup>53</sup>. Fearing they wouldn't reach the bathroom in time, she tried to shield her son as he urinated outside. The shielding was only partially effective however and when a deputy sheriff noticed the act, a ticket was issued for disorderly conduct, citing an ordinance against "...any person who...befouls... public property...so as to create a hazardous, unhealthy or physically offensive condition."

This case would not be the first time that people have had to choose between following city ordinances and following biological necessity. Defenders of such ordinances would cite the problems for aesthetics and cleanliness of a society where anyone can create a public restroom in any place. It can be expensive to keep a water supply clean<sup>54</sup>. It is also hard to imagine a greater lack of respect for someone's private property than using it as a makeshift toilet. For most people, a good way of complying with both law and excretory urges is simple prior planning. Good citizens (and presumably responsible parents) urge people to "go before you go", so as not to put a strain on public or private property without proper plumbing.

However, as many caregivers know, the advice of an experienced adult is not always number one on a child's mind. In times of crisis, like the one faced by Johns, one has to choose between skirting the law and other humiliating (and potentially unsanitary or dangerous<sup>55</sup>) alternatives. Children are not the only ones who can spring a leak on a moment's notice, as an increasingly aging population has to admit. And in the case of those with needs for accessible facilities, finding a public restroom which meets one's needs can be a crap shoot.

The enforcement of public urination laws on minors like Johns' son can up the pressure on those who may come from the homeless population<sup>56</sup> or other cultures where children are taught it is permissible do a lot more than pee in public<sup>57</sup>. Chinese children, for instance, use city streets without any kind of fear of being ticketed. But they are not alone. In many rural American communities, you don't have to be overly conscious about when to open the barn door and water the crops either. And enforcement of public urination laws can lead to significant consequences.

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<sup>53</sup> Ewing, Michelle. "Pregnant mom says she was ticketed over toddler's potty emergency". *Cox Media*. <https://www.wsbtv.com/news/national/hot-topics/pregnant-mom-says-she-was-ticketed-over-toddlers-potty-emergency/938030712>. 8 April 2019. Accessed 20 August 2019.

<sup>54</sup> Schmidt, Brad. "Man caught urinating in Mount Tabor reservoir prompts Portland to shift water supply". *Oregon Live*. [https://www.oregonlive.com/portland/2011/06/man\\_caught\\_urinating\\_in\\_mt\\_tab.html](https://www.oregonlive.com/portland/2011/06/man_caught_urinating_in_mt_tab.html) 15 June 2011. Accessed 20 August 2019.

<sup>55</sup> Dooldeniya, Mohantha. "Lower Abdominal Pain in Women After Binge-Drinking." *British Medical Journal*. Nov. 8, 2007.

<sup>56</sup> Bloom, Matt. "There are just 5 bathrooms for the 1800 people living on Skid Row". <https://www.scpr.org/news/2016/08/29/63987/there-are-just-five-bathrooms-for-the-1800-people/>. August 29, 2016. Accessed 20 August 2019.

<sup>57</sup> Ashcraft, Brian and Eric Jou. "Why Kids Keep Crapping in Public in China". *Kotaku*. <https://kotaku.com/why-kids-keep-crapping-in-public-in-china-5987786>. March 13, 2013. Accessed 20 August 2019.



In some cases, arrests for it have led to deportation proceedings<sup>58</sup>, none of which would happen if the offending urinator were a dog.

Finally, society's attitudes on yielding to nature's call appear to be changing. Gone are the days when one is only allowed to go the restroom between classes or on class "bathroom breaks". In an increasingly hydrated society, it is not considered out of the ordinary to discretely slip out of a lecture hall to powder one's nose.

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<sup>58</sup> Noren, Laura. "Only Dogs are Free to Pee" in *Toilet: Public Restrooms and the Politics of Sharing*. Molotch, Harvey and Noren, Laura, eds. NYU Press. November, 2010.

## 9. Open Sourcing... Your Pancreas?

Type 1 diabetics' pancreases don't make insulin to break down glucose when it enters the body's bloodstream via nourishment. They face a lifelong regimen of needle sticks, blood tests, and injections to regulate their blood sugars. Recently, medical device manufacturers have tried to help solve the problem with insulin pumps—which pump externally stored insulin into the body—and continuous glucose monitors (CGMs) — which are worn on the body to continually monitor blood sugars and alert diabetics when more insulin (or less) is needed.

Around 2013, hopeful Type 1 diabetics and their families started to investigate tying these two systems together<sup>59</sup>. If the two devices could talk to one another, then the pump could supply or cut off insulin when the CGM notices a deviation from a normal blood sugar reading. However, such a system would require software to coordinate the two activities, and the software which ran the devices was the property of the medical device manufacturers, kept locked down in the devices for safety reasons. Turning over control of insulin injections to a computer running an algorithm could potentially be deadly.

Undeterred by the safety concerns, hackers found a security flaw they could exploit in a popular older insulin pump in order to install new software on the pump<sup>60</sup>. All of a sudden, they could program a pump to talk to a CGM and potentially regulate a person's blood sugar automatically. This process is called a “closed loop” (some who use it call themselves “loopers”) and can act as a kind of artificial pancreas. Sensing backlash and safety concerns, but wishing to spread the technology to those who wished to use it, coders released the Open Artificial Pancreas System (OpenAPS<sup>61</sup>) as open-source software that anyone could download, compile, and, control an insulin pump.

While still in their infancies, these systems promise to liberate diabetics from constant monitoring and sticking, which is a special problem when diabetics are children who may not realize the necessity of the treatments.

The OpenAPS is not FDA approved, and still requires expensive supplies in the pump, CGM patches, and supporting supplies. OpenAPS is not illegal as long as the group does not attempt to sell devices that implement it. Meanwhile, medical device manufacturers have also introduced their own closed loop systems<sup>62</sup>. Both the physical devices and the code used to monitor and treat blood sugar issues are controlled by the manufacturers under the guidance of the Food and Drug Administration (FDA) and the security flaw has been fixed in current pump models. The code was developed under intellectual property protections and remains so in order to make the devices profitable and—according to medical device manufacturers—safe for their users.

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<sup>59</sup> Zhang, Sara. “People Are Clamoring to Buy Old Insulin Pumps”. *The Atlantic*. 29 April 2019. <https://www.theatlantic.com/science/archive/2019/04/looping-created-insulin-pump-underground-market/588091/>. Accessed 20 August 2019.

<sup>60</sup> Ibid.

<sup>61</sup> <https://openaps.org>

<sup>62</sup> “U.S. FDA Approves “Artificial Pancreas” for Diabetes Treatment”. *Scientific American*. 28 September 2016. <https://www.scientificamerican.com/article/u-s-fda-approves-artificial-pancreas-for-diabetes-treatment/>. Accessed 20 August 2019.

Some Type 1 Diabetics and their families still believe OpenAPS is the better solution, however. One mother has used the system to develop a closed loop system for her daughter that she claims works just as well as proprietary closed loop systems<sup>63</sup>. Furthermore, since it requires an older pump and can lengthen the lifetime of certain supplies like batteries, it can be a more affordable system.

\*Note:

After the release of this case, a representative from OpenAPS contacted us, saying that there is no issue of intellectual property concerns stemming from their use of software on older pumps. According to the representative, "the software running on these older pumps did not need to be changed in any way. It does not perform any automatic insulin dosing: it just follows whatever instructions are entered into the pump via its keypad, or remotely via a computer. We simply leveraged the ability to send insulin dosing commands to the pump, in order to instruct it to temporarily administer a lower or higher rate of insulin as needed. This is nothing more than automating the commands that people with diabetes execute manually and therefore does not pose any intellectual property concerns." This differs from the reporting in *The Atlantic* that was relied upon in notes 59 and 60.

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<sup>63</sup> Gillette, Becky. "Local Mom Builds Do-It-Yourself Diabetes Regulator". *Eureka News*. 23 May 2018. <http://eureka.news/local-mom-builds-do-it-yourself-diabetes-regulator/>. Accessed 20 August 2019

## 10. More heat, less light

The freedom of speech is usually understood as a legal concept. As enshrined in the First Amendment to the Constitution of the United States, it says that Congress shall make no laws abridging the freedom of speech, or of the press<sup>64</sup>. However, the Constitution is silent on the obligations of private companies, families, churches, and many other institutions where people express themselves. Thus, mainstream social networks like Facebook and Twitter are free to regulate the speech that occurs on their platforms as they see fit.

Sensing a rise in the use of their platforms to spread violent and/or hateful rhetoric and backlash from their users, Facebook and Twitter began active banning certain articles, sites, users, groups for using what they deemed hateful or violent speech<sup>65</sup>. These moves, called “deplatforming” by proponents and “censorship” by those who were banned generated great discussion online and led to other, smaller platforms making the same decisions.

In reaction to such moves, however, social networks like “Gab”<sup>66</sup> rose up promising to be a final bastion of free speech in a world of censorship. Increased traffic was also driven to sites like 4chan and 8chan<sup>67</sup>, where moderation is notoriously permissive and identities are obscured. While 4chan and 8chan had long been known as places where people shared illegal and controversial text and imagery, Gab opened in 2017 with an eye towards attracting members from the far right and alt-right who had been banned from other networks. The gunman that attacked the Tree of Life synagogue in October 2018 was an avid user of Gab<sup>68</sup> and other alt-right sites and the logo for the site is widely understood to be derived from a popular anti-semitic meme. In effect, the concentration on free speech makes Gab a go-to destination for racism, sexism, and anti-semitism<sup>69</sup>.

While deplatforming seems to have moderated the influence of hate groups on popular social media sites, some argue that the decisions have increased hate speech online by concentrating it in a place where it generates “less light” but “more heat”. Furthermore, with the advent of social

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<sup>64</sup> "The Constitution of the United States," Amendment 1.

<sup>65</sup> Newton, Casey. “Facebook says it will begin removing misinformation that leads to violence”. *Verge*. 18 July 2018. <https://www.theverge.com/2018/7/18/17588624/facebook-misinformation-removal-violence-hate-speech-sri-lanka>. Accessed 20 August 2019.

<sup>66</sup> Selyukh, Alina. “Feeling Sidelined By Mainstream Social Media, Far-Right Users Jump To Gab”. *NPR.org*. <https://www.npr.org/sections/alltechconsidered/2017/05/21/529005840/feeling-sidelined-by-mainstream-social-media-far-right-users-jump-to-gab>. November 21, 2018. Accessed 20 August 2019.

<sup>67</sup> Austin, Patrick Lucas. “What Is 8chan, and How Is It Related to This Weekend's Shootings? Here's What to Know”. *Time.com*. 9 August 2019. <https://time.com/5644314/8chan-shootings/>. Accessed 20 August 2019.

<sup>68</sup> Roose, Kevin. "On Gab, an Extremist-Friendly Site, Pittsburgh Shooting Suspect Aired His Hatred in Full". *The New York Times*. October 28, 2018. <https://www.nytimes.com/2018/10/28/us/gab-robert-bowers-pittsburgh-synagogue-shootings.html>. Accessed 20 August 2019.

<sup>69</sup> Weich, Ben. "Inside Gab, the alt-right's social media network that is awash with antisemitism". *The Jewish Chronicle*. 2 January 2019. <https://www.thejc.com/news/world/inside-the-social-media-network-of-the-alt-right-1.477090>. Accessed 20 August 2019.

networks concentrated on a particular form of thinking there are now well-known destinations for getting more involved in these movements that were scattered on places where they could be countered by other speech before.

These concerns echo concerns of 19<sup>th</sup> century thinkers like John Stuart Mill<sup>70</sup> who argued that even speech which was offensive and known to be false should not be restricted. He argued that even speech such as this could make one's experience of the truth stronger and keep truths from becoming "dead dogmas". While Mill and others were concerned more about government censorship, some argue that the premises also lend themselves to censorship of public forums of any kind, such as the kind featured on social media today.

Finally, some worry that, despite the energizing effect on hate groups, the decisions that Facebook and Twitter set a dangerous precedent for online speech. While the Constitutional prohibition against Congress making laws against speech guaranteed that one could find a place to speak one's mind, the private ownership of popular social networks may not allow that same kind of movement. If Facebook and Twitter can decide for themselves what constitutes acceptable discourse on their platforms, they essentially have the ability to bend cultural conversations as they see fit<sup>71</sup>—and to further the interests of those who own them. Even if hate speech in plain view was a consequence of less restrictive moderation, it meant that no one was actively shaping the content that one saw. This allowed users to make up their own minds about the appropriateness of what was being expressed without anyone else intervening. If popular social media sites exercised these powers to push other kinds of agendas, there would be no prohibitions to stop them.

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<sup>70</sup> Mill, John Stuart. *On Liberty*. London: John W. Parker and Son, West Strand. 1859.

<sup>71</sup> Brannon, Valerie. "Free Speech and the Regulation of Social Media Content". *Congressional Research Service*. R45650. 27 March 2019. <https://crsreports.congress.gov/R45650>.

## 11. Gone in a blink

Jim was on a hike when it happened... when he tripped and fell from a path for no reason that he could figure and got the testing. He discovered he had the same form of amyotrophic lateral sclerosis, more commonly known simply as ALS or Lou Gehrig's Disease, that took his mother at an early age. Jim was now on a journey that was almost certain to end in incapacity and eventually, death.

Jim's wife, Beth, now had to plan education and care for their young daughter, but also had to plan for a dramatically reduced lifespan for her husband and life sustaining medical treatments that would help him through the loss of function that was likely to occur in the coming five years. Jim granted Beth a power of attorney for healthcare decision making and executed advance directives that indicated that he did not want to be resuscitated (colloquially known as a "DNR"). He also encouraged her to work with his physicians to assist him with treatments, medications, and other medical decisions and procedures.

Early in the process, Jim and Beth learned about machines and software that had been developed to assist ALS patients with communication in the later stages of the disease's progression—OptiKey, PCEye Go, etc.<sup>72</sup> The machine would require Jim to receive some training but would utilize eye movements to enable him to continue to communicate when his ALS made speech impossible. One famous user of such technology was Stephen Hawking, who had a very rare form of ALS that did not result in rapid disease progression and death, but impaired gross motor skills. Jim was placed into contact with an ALS advocacy group that helped rotate such a machine to terminal ALS patients to assist them in maintaining connection and communication with their loved ones in their final days, but Jim's doctor indicated that it was likely he would still have at least 2-3 years before the disease.

A little over a year after Jim's diagnosis, Beth became concerned that Jim was likely experiencing increasing amounts of discomfort, both physically and emotionally, including muscle cramping and occasional back and neck pain<sup>73</sup>, as well as what she saw as increasingly severe depression—Jim was still capable of caring for himself in most instances, but as each episode of loss of muscle control occurred, Jim lamented to Beth that he wasn't sure how much longer he wanted to suffer a slow and terrifying death. Jim particularly did not want his wife and child's last interactions with him to be watching him deteriorate, lose his ability to speak, eat, use the restroom, or moving at all, nor did he want to burden them with the obligations of caring for his every need all day, every day. He was further concerned about the financial toll that his treatment and burdens of care would impose on his family. Beth constantly assured Jim that he

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<sup>72</sup> Turkel, Dan, "Paralyzed patients can control computers just by moving their eyes, thanks to this free software," *Business Insider*, September 11, 2015. <https://www.businessinsider.com/an-eye-tracking-interface-helps-als-patients-use-computers-2015-9>

<sup>73</sup> Amyotrophic Lateral Sclerosis Society of Canada, "10 Facts About Pain and ALS," <https://als.ca/wp-content/uploads/2017/02/10-Facts-About-Pain-English.pdf>

shouldn't worry about the cost or the burden, but she could see his distress mount, and wanted to know how best to help him.

Beth decided to reach out to several professionals for help. She contacted her own physician for a referral for counseling, so she could process her own anticipatory grief. Beth also contacted Jim's doctor to learn more about options he might want to explore for his depression as his ability to function waned, so she could help him better manage the days he still had left.

In discussing how Jim's ALS may be causing him pain and depression, the doctor treating Jim's ALS discussed a range of medications, physical therapies, hospice care, and counseling. Jim's doctor also educated Beth about a new technology developed to assist terminal ALS patients if they wanted to hasten the end of their suffering – basically, an assisted suicide machine that used software like the one developed to help ALS patients communicate.<sup>74</sup> Jim's doctor provided a referral for counseling for Jim and indicated that such a machine was an option if Jim sought counseling and had come to the rational conclusion that he wanted to end things on his own terms. The doctor obviously did not ever want to push such an option on Jim and was hesitant to even suggest it to Jim, but if Jim was looking into options for hospice and other similar treatments, the machine might be among the options laid out for him in his treatment plan. Jim's doctor provided Beth with a collection of brochures and literature to educate her on treatment options to help Jim along the way.

Beth left the brochures and other documents in a stack on the family desk. Beth was usually the only one to use the desk, and she did not worry about leaving the documents out in the open – if anything, she figured that in the off-chance Jim found the brochures, they might help him educate himself about treatment options. Jim found the brochures a few weeks later and started to wade through them. He struggled with some of the information contained in the stack, particularly the information about the assisted suicide machine. He mulled much of the information over and called the number for the counselor in the referral from his physician, but he knew he would have a few more topics to cover after his discoveries on the family desk.

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<sup>74</sup> Cuthbertson, Anthony, "Suicide Machine That Could Be Controlled by the Blink of an Eye Sparks Euthanasia Debate," *Independent*, April 18<sup>th</sup>, 2018. <https://www.independent.co.uk/life-style/gadgets-and-tech/news/suicide-machine-assisted-dying-euthanasia-debate-uk-clinic-sarco-nitschke-a8307741.html>

## 12. Not pimping aint easy

It is called the oldest profession. It is also a means by which workers can earn a significant income without any formal education.<sup>75</sup> But sex work is illegal in most states and countries—although it persists as a vibrant black market in most areas.<sup>76</sup> Those countries and states that do make sex work legal generally place many restrictions on the practice, including mandatory protection, sexually transmitted disease (STD) testing, and reporting requirements.<sup>77</sup>

The trade is dangerous—workers place themselves in physically and emotionally vulnerable positions, which increases the likelihood of premature death 5.9 fold over peers not engaged in sex work.<sup>78</sup> But there are several methods that sex workers have developed to help them protect themselves from violence. Online screening of clients enables sex workers to share known threats and protect themselves from violence.<sup>79</sup> Sex workers who cannot offer their services online sometimes end up soliciting clients on the streets, which can expose them to greater risk of violence. Street solicitation increases the likelihood that these sex workers may need to employ the services of a pimp to assist them in protecting themselves from violence.<sup>80</sup> These added risks and costs may serve as a deterrent to participating in the industry for a limited subset of sex workers, but a large volume of sex workers will continue to engage in their career, regardless of the method by which they reach their clients.

Because sex work is illegal, and because online platforms have obligations to abstain from facilitating illegal activity, a number of platforms that have previously enabled sex workers to manage their affairs online including Craigslist.org, Backdoor.com, and more recently, Tumblr, have stopped allowing advertising of such services.<sup>81</sup> These sites ceased hosting sexual services advertisements in large part due to the passage of the “Stop Enabling Sex Traffickers Act

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<sup>75</sup> See, e.g., Channon, Max, and Neil Shaw, “How much prostitutes earn revealed in new study - and how many hours they work to get it,” *The Mirror*, Jan. 23, 2018. <https://www.mirror.co.uk/news/uk-news/how-much-prostitutes-earn-revealed-11902009>

<sup>76</sup> Lubin, Gus, “There Are 42 Million Prostitutes In The World, And Here’s Where They Live,” *Business Insider*, January 17, 2012. <http://www.businessinsider.com/there-are-42-million-prostitutes-in-the-world-and-heres-where-they-live-2012-1?IR=T>

<sup>77</sup> Martinez, Michael, “What to Know About Nevada’s Legal Brothels,” CNN, October 19, 2016. <https://www.cnn.com/2015/10/14/us/lamar-odom-nevada-brothels/index.html>

<sup>78</sup> See, e.g., Potterat, J. J.; Brewer, D. D.; Muth, S. Q.; Rothenberg, R. B.; Woodhouse, D. E.; Muth, J. B.; Stites, H. K; Brody, S., “Mortality in a Long-term Open Cohort of Prostitute Women,” *American Journal of Epidemiology*. April 15, 2004. <https://academic.oup.com/aje/article/159/8/778/91471>

<sup>79</sup> Cunningham, Scott, Gregory DeAngelo, and John Tripp, “Craigslist Reduced Violence Against Women,” February 2019. <http://scunning.com/craigslist110.pdf>

<sup>80</sup> Berlatsky, Noah, “Female homicide rate dropped after Craigslist launched its erotic services platform,” ThinkProgress.com, October 17, 2017. <https://thinkprogress.org/craigslist-erotic-services-platform-3eab46092717/>

<sup>81</sup> Hamilton, Matt, “Backpage shuts down adult section, citing government pressure and unlawful censorship campaign,” *Los Angeles Times*, Jan. 9, 2017. <https://www.latimes.com/local/lanow/la-me-ln-backpage-shutdown-20170109-story.html>; Rosenberg, Eli, “Tumblr’s nudity ban removes one of the last major refuges for pornography on social media,” *The Washington Post*, December 3, 2018. <https://www.washingtonpost.com/business/2018/12/04/tumblrs-nudity-crackdown-means-pornography-will-be-harder-find-its-platform-than-nazi-propaganda/?noredirect=on>



(SESTA)” and “Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)” SESTA-FOSTA enables victims of sex trafficking to sue online platforms that allow human traffickers to market their victims’ services.<sup>82</sup> Research suggests that use of the erotic services sections of these websites only increases the total amount of sex work being performed, rather than transitioning sex workers from street solicitation to online solicitation. As such, making these services less available for use by sex workers is expected to result in an overall reduction in the number of sex workers engaged in the industry.<sup>83</sup> Some argue that we, as a society should aim for reducing the total amount of sex work being performed, because, they argue, all sex work is based upon violence against women.<sup>84</sup>

On the other hand, many sex workers argue that they love the freedom and compensation that their jobs provide them, and that all work involves some form of unpleasantness or sacrifice.<sup>85</sup> They and their supporters believe that sex work should be decriminalized for a number of reasons, not the least of which is that, if opponents of sex work argue that it harms women, criminal sentences and records hurt women more, both directly and in preventing some victims from coming forward to report abuse.<sup>86</sup> SESTA has resulted in a number of unintended consequences, including a realization by police that the legislation has made their jobs more difficult.<sup>87</sup> Sex workers similarly have voiced opposition to the legislation, finding that it can stifle online communications aimed at giving them support and community.<sup>88</sup> Most importantly, if empowering women is the goal, one consequence of SESTA has been that it has driven some sex workers back to the streets and empowered pimps to renew abuse of sex workers.<sup>89</sup>

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<sup>82</sup> Wikipedia contributors. "Stop Enabling Sex Traffickers Act." Wikipedia, The Free Encyclopedia. Wikipedia, The Free Encyclopedia, 2 Aug. 2019.

[https://en.wikipedia.org/wiki/Stop\\_Enabling\\_Sex\\_Traffickers\\_Act](https://en.wikipedia.org/wiki/Stop_Enabling_Sex_Traffickers_Act),

<sup>83</sup> Cunningham, Scott & Todd D. Kendall, "Prostitution 2.0: The changing face of sex work," *Journal of Urban Economics*, 2011. <https://doi.org/10.1016/j.jue.2010.12.001>

<sup>84</sup> Johnson, Constance, "Prostitution: Not a Victimless Career Choice," *Women's eNews*, Sept. 22, 2000. <https://womensenews.org/2000/09/prostitution-not-victimless-career-choice/>

<sup>85</sup> Corvid, Margaret, "Moving on from the "happy hooker": why I love my job as a sex worker," *New Statesman America*, April 24, 2015. <https://www.newstatesman.com/politics/2015/04/moving-happy-hooker-why-i-love-my-job-sex-worker>

<sup>86</sup> Garsd, Jasmine, "Should Sex Work Be Decriminalized? Some Activists Say It's Time," *All Things Considered*, NPR, March 22, 2019. <https://www.npr.org/2019/03/22/705354179/should-sex-work-be-decriminalized-some-activists-say-its-time>

<sup>87</sup> Masnick, Mike, "Police Realizing That SESTA/FOSTA Made Their Jobs Harder; Sex Traffickers Realizing It's Made Their Job Easier," *techdirt.com*, May 14, 2018. [https://en.wikipedia.org/wiki/Stop\\_Enabling\\_Sex\\_Traffickers\\_Act](https://en.wikipedia.org/wiki/Stop_Enabling_Sex_Traffickers_Act)

<sup>88</sup> Siouxsie Q, "Anti-Sex-Trafficking Advocates Say New Law Cripples Efforts to Save Victims," *Rolling Stone*, May 25, 2018. <https://www.rollingstone.com/culture/culture-features/anti-sex-trafficking-advocates-say-new-law-cripples-efforts-to-save-victims-629081/>; Horn, Tina, "How a New Senate Bill Will Screw Over Sex Workers," *Rolling Stone*, March 23, 2018. <https://www.rollingstone.com/politics/politics-features/how-a-new-senate-bill-will-screw-over-sex-workers-205311/>

<sup>89</sup> Cole, Samantha, "Pimps Are Preying on Sex Workers Pushed Off the Web Because of FOSTA-SESTA," *Vice: Motherboard*, Apr. 30, 2018. [https://www.vice.com/en\\_us/article/bjpvqz/fosta-sesta-sex-work-and-trafficking](https://www.vice.com/en_us/article/bjpvqz/fosta-sesta-sex-work-and-trafficking)

### 13. Dragnet

Google operates an enormous database—Sensorvault—that uses cellphones to track people’s locations worldwide. According to Google, location data are used to “target ads and measure how effective they are —checking, for instance, when people go into an advertiser’s store. The company also uses the information in an aggregated, anonymized form to figure out when stores are busy and to provide traffic estimates.” Individual users “can see a timeline of their activities and get recommendations based on where they have been.”<sup>90</sup>

Although Google doesn’t share this information with advertisers or other companies, it does share data with police detectives who provide Google with warrants seeking location data tied to *specific users*. Recently, however, police have begun issuing “geofence” warrants that specify not individual users *per se*, but *all* users in an area near a crime scene at the time the crime was committed.<sup>91</sup> Sensorvault identifies devices that were in the “right” place at the right time. Google then labels the devices with anonymous ID numbers before providing the information to detectives, who then look at locations and movement patterns to see if any appear relevant to the crime in question. Once investigators narrow the field to a few devices, Google reveals identifying information such as names and email addresses.

Police have used this approach successfully to pursue both current and cold cases, identifying both law breakers and witnesses to crimes—though the rate of successful arrests or convictions is unclear. They have used the geofence approach in a variety of cases—robberies, sexual assaults, arsons, and murders. And they have used geofencing with increasing frequency: A Google employee reported that, in 2019, the company had received up to 180 requests in one week. Google declined to confirm precise numbers.<sup>92</sup>

While such successes are reassuring, this process is not without worries. First, the information may ensnare innocent parties who just happened to be in the wrong place at the wrong time—raising potential Fourth Amendment violations (the rights enshrined in the 4<sup>th</sup> Amendment to the U.S. Constitution, and many state Constitutions mean that a warrant must specify a limited search and establish probable cause of finding evidence related to a crime). Second, data may be inaccurate or unhelpful: not every phone is swept (users can opt out of the location services) and

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<sup>90</sup> Jennifer Valentino-DeVries, “Google’s Sensorvault Is a Boon for Law Enforcement. This Is How It Works.” *New York Times*, April 13, 2019. <https://www.nytimes.com/2019/04/13/technology/google-sensorvault-location-tracking.html>

<sup>91</sup> Chris Hoffman, “How to Stop Google’s Sensorvault From Sharing Your Location with Law Enforcement” *How to Geek*, April 26, 2019. <https://www.howtogeek.com/411387/how-to-stop-googles-sensorvault-from-sharing-your-location-with-law-enforcement/>

<sup>92</sup> Jennifer Valentine-DeVries, “Tracking Phones, Google Is a Dragnet for the Police” *New York Times*, April 13, 2019. <https://www.nytimes.com/interactive/2019/04/13/us/google-location-tracking-police.html>

sweeps are not uninterrupted (i.e., several minutes may pass before an area is swept again—meaning valuable evidence may go unrecorded). Third, the underlying assumption is that the identified user and her phone are in the same place, ignoring the possibility that the phone may not be on the user’s person. Fourth, given the high volume of requests, information to police may not be forthcoming for weeks, during which time other evidence may be ignored or disappear. Finally, privacy concerns abound—for example, collecting information about where one went and with whom—have given citizens and rights advocates pause.

Although users must explicitly sign in to Google’s location program, millions do—often unaware of the implications of doing so. For example, phone locations are collected even when/if cellphone owners are not currently using their phones. As a result, Google obtains a user’s “whole pattern of life.” Following the *New York Times* article raising concerns about the use of Sensorvault, the U.S. House of Representatives Committee on Commerce and Energy wrote a letter to Google CEO Sundar Pichai questioning Google’s methods for protecting consumer privacy and requesting that Pichai brief the committee in person.<sup>93</sup>

Nonetheless, according to police officials interviewed, geofencing has been a “game changer” in terms of identifying perpetrators, potential witnesses, and the contexts in which crimes have occurred.

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<sup>93</sup>Congress of the United States Committee on Energy and Commerce, Letter to Sundar Pichai CEO Google, April 3, 2019.  
[https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Google.2019.4.23.%20Letter%20to%20Google%20re%20Sensorvault.CPC\\_.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Google.2019.4.23.%20Letter%20to%20Google%20re%20Sensorvault.CPC_.pdf)

## 14. Measly Protection

New York State is facing its most severe measles outbreak in 27 years—275 confirmed cases through the first week of March 2019.<sup>94</sup> Health officials' efforts to halt the spread have failed, due in large part to an ultra-Orthodox Jewish community's refusal on religious grounds to vaccinate or engage in public health efforts towards vaccination and measles reporting. Health workers confirmed 153 cases of measles in Rockland County, NY—home to tens of thousands of ultra-Orthodox Jewish citizens and the highest volume of reported measles cases.<sup>95</sup> Ultra-Orthodox Jews "...live in close quarters with large families and have a high rate of personal interaction..."—factors associated with higher rates of infection.<sup>96</sup>

An extensive public health campaign was quickly undertaken, including widespread dissemination of information about the disease, including its ease of transmission, potentially devastating effects, and the safety and efficacy of the measles-mumps-rubella (MMR) vaccine. Officials were able to vaccinate nearly 17,000 residents and an executive order banning unvaccinated children and teenagers from public spaces resulted in nearly 6,000 unvaccinated children being pulled out of schools. Nonetheless, new cases continued to erupt. On April 17, 2019, New York City's Board of Health ordered mandatory vaccinations for everyone in the four hardest-hit zip codes. Five parents, believing mandatory vaccinations would violate their religious beliefs, sued NYC's health department and requested a halt to the mandatory vaccinations;<sup>97</sup> 10 days later, a NY state judge put the mandatory vaccinations on hold.<sup>98</sup>

Historically, exclusion of children from schools during outbreaks of infectious diseases has not been uncommon, but opponents of efforts targeting Rockland County in general, and ultra-Orthodox Jews in particular, worry that the measles crisis may give rise to "harassment, attacks and discrimination against ultra-Orthodox Jews." Georgetown Law Professor Lawrence O. Goston also noted: "This is virtually imprisonment of a child, and certainly significantly restricting the child's liberty." Northeastern University Professor Wendy E. Parmet worries about the long-term consequences of such extensive interventions: "Are you going to increase

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<sup>94</sup> Michelle Andrews, "Why measles hits so hard within N.Y. Orthodox Jewish community" Salon, March 12, 2019. [https://www.salon.com/2019/03/12/why-measles-hits-so-hard-within-n-y-orthodox-jewish-community\\_partner/](https://www.salon.com/2019/03/12/why-measles-hits-so-hard-within-n-y-orthodox-jewish-community_partner/)

<sup>95</sup> Michael Gold and Tyler Pager, "New York Suburb Declares Measles Emergency, Barring Unvaccinated Children From Public" *The New York Times*, March 26, 2019. <https://www.nytimes.com/2019/03/26/nyregion/measles-outbreak-rockland-county.html>

<sup>96</sup> Ben Sales, "What's really behind the measles outbreak in NY Jewish communities?" *Time of Israel*, June 8, 2019. <https://www.timesofisrael.com/whats-really-behind-the-measles-outbreak-in-ny-jewish-communities/>

<sup>97</sup> Tamara Mathias in Bengaluru and Jonathan Allen, "U.S. measles cases surge nearly 20 percent in early April, CDC says" *Reuters*, April 15, 2019. <https://www.reuters.com/article/us-usa-measles/measles-cases-in-u-s-surge-nearly-20-in-early-april-cdc-says-idUSKCN1RR1H4>

<sup>98</sup> Frances Stead Sellers, "Judge rules New York county can't ban unvaccinated children from schools, parks" *Washington Post*, April 6, 2019. [https://www.washingtonpost.com/national/judge-rules-new-york-county-cant-ban-unvaccinated-children-from-schools-parks/2019/04/06/589ae326-587e-11e9-8ef3-fbd41a2ce4d5\\_story.html?noredirect=on&utm\\_term=.f2f6039b50d9](https://www.washingtonpost.com/national/judge-rules-new-york-county-cant-ban-unvaccinated-children-from-schools-parks/2019/04/06/589ae326-587e-11e9-8ef3-fbd41a2ce4d5_story.html?noredirect=on&utm_term=.f2f6039b50d9)

the distrust [of ultra-Orthodox Jews] in health authorities?” Such comments point to professional concern that the failure to persuade the community and instead merely compelling compliance may undermine the ability of officials to make headway in future public health efforts.

The explanation of ultra-Orthodox communities’ reluctance to vaccinate their children (and themselves) is multi-faceted. Some community members have been persuaded by the global anti-vaccination claim that vaccines themselves cause diseases, particularly autism (though that claim has been fully discredited).<sup>99</sup> Others worry that vaccines are “dangerous” *per se*, a worry that has also been debunked, as severe complications of MMR are rare.<sup>100</sup> Some believe vaccinations violate Hasidic law—though nearly all rabbis refute this claim and recommend vaccination, as do the Orthodox Union and the Rabbinical Council of America.<sup>101</sup>

But part of the reluctance is cultural. Sociology Professor Samuel Heilman, who studies ultra-Orthodox Judaism, notes that ultra-Orthodox Jews live by different rules than the larger secular (“outside”) community: “Opposition to vaccines may be growing in the ultra-Orthodox world as a response to the community’s perception that the secular world is trying to weaken their social structures.” In other words, some may have concern that modern medicine is attempting to replace faith and the role of God as protector.

Supporters of requiring vaccinations argue that one responsibility of governmental health departments is the protection against threats to the populations they represent. In the case of measles, vaccines not only protect against the disease itself, but against complications that can accompany the disease (e.g., deafness, pneumonia, encephalitis). The vaccines also protect persons who, for reasons of youth (infants younger than 1 year of age cannot receive vaccines) or various medical conditions (e.g., immunosuppressed post-transplant patients, persons undergoing chemotherapy) are at risk if they are exposed to persons with measles. Officials argue that the welfare of the many is more compelling than the religious liberty of the few.<sup>102</sup> Taking a similar position, the US Supreme Court has ruled that states have authority to require compulsory

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<sup>99</sup> Lena H. Sun, “U.S. measles cases surge to second-highest level in nearly two decades” *Washington Post*, April 1, 2019. [https://www.washingtonpost.com/health/2019/04/01/us-measles-cases-surge-second-highest-level-nearly-two-decades/?utm\\_term=.8709f941fb4a](https://www.washingtonpost.com/health/2019/04/01/us-measles-cases-surge-second-highest-level-nearly-two-decades/?utm_term=.8709f941fb4a); Ari Feldman, “Measles Is Hitting Ultra-Orthodox Communities. Why Aren’t They Vaccinating?” *Forward*, January 11, 2019. <https://forward.com/news/national/417390/measles-is-hitting-ultra-orthodox-communities-why-arent-they-vaccinating/>

<sup>100</sup>World Health Organization, “Information Sheet Observed Rate of Vaccine Reactions Measles, Mumps and Rubella Vaccines” May, 2014. [https://www.who.int/vaccine\\_safety/initiative/tools/MMR\\_vaccine\\_rates\\_information\\_sheet.pdf?ua=1](https://www.who.int/vaccine_safety/initiative/tools/MMR_vaccine_rates_information_sheet.pdf?ua=1)

<sup>101</sup> “Statement on Vaccinations from the OU and Rabbinical Council of America” *Orthodox Union*, November 14, 2018. <https://www.ou.org/news/statement-vaccinations-ou-rabbinical-council-america/>

<sup>102</sup> Eli Rosenberg, “New York, epicenter of measles outbreak, bans religious exemptions for vaccines” *Washington Post*, June 13, 2019. <https://www.washingtonpost.com/health/2019/06/14/new-york-epicenter-measles-outbreak-bans-religious-exemptions-vaccines/>

vaccination.<sup>103</sup> Further, to the extent that some parents claim a religious exemption when their *actual* motivation is founded in an erroneous belief about vaccine efficacy or risk, no *rational* reason for foregoing vaccines exists.

On June 13, 2019, the New York state legislature eliminated religion as a permissible exemption to state law requiring vaccines for schoolchildren.

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<sup>103</sup> Jacobson v. Massachusetts, 197 U.S. 11 (1905); Rene F. Najera, "What the Supreme Court Has Said About Mandating Vaccines for School: Jacobson v. Massachusetts" *The College of Physicians of Philadelphia*, March 5, 2019. <https://www.historyofvaccines.org/content/blog/jacobson-v-massachusetts-reiss>

## 15. A Miscarriage of Justice?

On July 26, 2019, Marshae Jones was indicted on manslaughter charges. Ms. Jones, who was five months pregnant, was involved in an altercation with Ebony Jemison outside a Dollar General store in East Thomas, Alabama. Ms. Jemison, claiming she feared for her life, fired a gun in the direction of Ms. Jones. Early descriptions described the shot as a “warning shot” into the pavement of the parking lot; but the bullet ricocheted into Ms. Jones’ abdomen, killing her fetus.<sup>104</sup> Later accounts describe Ms. Jemison as firing directly into Ms. Jones’ abdomen.<sup>105</sup>

On July 28, 2019, District Attorney Lynneice Washington’s office stated they were undecided about whether to charge Jones with manslaughter or some lesser charge, or whether to charge her at all. According to Ms. Jemison’s mother, the grand jury chose not to indict Ms. Jemison because Jones allegedly started the fight and Jemison (who is licensed to carry a weapon) fired the shot out of fear.

Alabama law designates fetuses as persons. Consequently, fetuses can be thought of as rights holders whose rights are equal to the rights of the women who carry them. “In the state of Alabama, an unborn baby has the same rights as a living child,” said fellow citizen, Sharonda Hall, ...who just earned her bachelor’s degree in criminal justice and is hoping to attend law school. “Most people agree with it.” In fact, locals do not appear to question Ms. Jones’ culpability, but only how harsh her punishment should be. As Farah Stockman, a reporter for *The New York Times* observed, “Gun rights are popular here. Reproductive rights are not.”

Because the law in Alabama presumes a fetus holds its own rights, Ms. Jones holds some legal obligations to her fetus under the state’s law. Alabama’s manslaughter law makes it a felony to “recklessly” cause the death of another person. Ms. Jones is thought to fall under this description because she apparently initiated the confrontation with Ms. Jemison, which she had at least some reason to believe could turn hostile (the two women were co-workers with a history of negative interactions).

Jones is not “the first Alabama woman to face criminal charges for the unintentional loss of pregnancy. Women have been prosecuted for fetal death in car accidents, attempted suicide, drug overdoses, and more.”<sup>106</sup> Lynn Paltrow, executive director of National Advocates for Pregnant Women, adds, “Alabama leads the country in mothers charged with crimes related to

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<sup>104</sup> Platenburg, Ghenni, “A bullet, a miscarriage and an unthinkable question: Who’s the victim, and who is to blame?” *The Washington Post*, National, June 29, 2018, last accessed Aug. 26, 2019, <https://www.washingtonpost.com/nation/2019/06/29/bullet-miscarriage-an-unthinkable-question-whos-victim-who-is-blame/>.

<sup>105</sup> Stockman, Farah, “Alabamians Defend Arrest of Woman Whose Fetus Died in Shooting,” *The New York Times*, U.S. , June 30, 2019, accessed Aug. 26, 2019, <https://www.nytimes.com/2019/06/30/us/alabama-woman-marshae-jones.html>.

<sup>106</sup> Pollitt, Katha, “Marshae Jones Is Proof Pro-Lifers Don’t Care About Life,” *The Nation*, Reproductive Rights, June 28, 2019, accessed Aug. 26, 2019, <https://www.thenation.com/article/marshae-jones-alabama-abortion-baby/>.

pregnancy;” but she describes the charge against Jones as unique: “This is the first time the idea that fertilized egg or fetal personhood has provided the basis for arrest of a woman because she was pregnant, and she herself was the victim of a criminal act. Alabama has indicted Ms. Jones, claiming it is a crime for a woman to be unable to protect her own life and health.”

Finally, Alabama has some of the strictest reproductive laws in the country. In 2018, voters amended their Constitution “to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.” This spring (2019), the legislature passed a law that (a) bans abortion at all stages of pregnancy; (b) allows doctors *successfully* performing abortions to be charged with felonies and imprisoned for up to 99 years; and (c) allows a 10-year prison term for physicians *attempting* to perform abortions.<sup>107</sup> The only exception is endangerment of the mother’s life; women must even continue to carry pregnancies that result from rape or incest.<sup>108</sup> In some respects, this rule promotes moral consistency, because if A harms B, it does not follow that B should be allowed to harm C, even if C triggers some emotional response in B.

Randall Marshall, executive director of the Alabama ACLU, notes that Alabama “is one of the most dangerous places in the country for a black woman trying to carry her pregnancy to term, and this prosecution is just one more attack on the basic human rights and dignity of black women in our state.”

Jones’ pastor, family, and friends describe her as a loving and devoted mother to her six-year old daughter. Noting that Jones was unarmed, they have trouble seeing her as an aggressor and hope for leniency for her, particularly given the losses she had suffered. The district attorney’s office noted, “We feel sympathy for the families involved, including Ms. Jones, who lost her unborn child. The fact that this tragedy was 100 percent avoidable makes this case even more disheartening.”

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<sup>107</sup> Williams, Timothy, Alan Binder, “Lawmakers Vote to Effectively Ban Abortion in Alabama,” The New York Times, U.S., May 14, 2019, accessed Aug. 26, 2019, <https://www.nytimes.com/2019/05/14/us/abortion-law-alabama.html>.

<sup>108</sup> Williams, Timothy, Alan Binder, “Lawmakers Vote to Effectively Ban Abortion in Alabama,” The New York Times, U.S., May 14, 2019, accessed Aug. 26, 2019, <https://www.nytimes.com/2019/05/14/us/abortion-law-alabama.html>.