

# 2024 Regional Case Set Intercollegiate Ethics Bowl

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# CASES

1. Ring, Ring, Ring, Ban-anaphone!
2. I've Just Seen a Face
3. Car Calls the Cops
4. That Dog Don't Hunt!
5. Life in the Parking Lot
6. You Did What?
7. A Link to the Future
8. Whose DNA Is It, Anyway?
9. Yellowstone Buffalo Buffalo Yellowstone Buffalo
10. This Is Not Your Grandparent's Seance
11. The Curse of the CrowdStrike
12. EV Trade War USA and EU V. China
13. Safe Surfing
14. Water Wars
15. Speaking Out Against Not Speaking Out



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## 1. Ring, Ring, Ring, Ban-anaphone!

At the end of August this year, California passed a law requiring all public schools to have a plan to limit cell phone usage among students.<sup>1</sup> This follows shortly after the Los Angeles Unified School District approved a ban on cell phones. The ban was the largest of its type at the level of school districts, and New York City Public Schools, the largest school district in America and among the largest in the world, is considering a ban too.<sup>2</sup> At the state level, bans on cell phone usage in class have been passed in Ohio, Pennsylvania, Louisiana, and Oklahoma (among others), showing a trend across the United States as a whole.

There are a variety of motivations for such bans, such as the quality of education received by students. Teachers in public schools have reported widespread frustration with cell phones in class, and a Pew Research Center survey in 2023 found that 33% of all public-school teachers reported phone usage as a “major problem,” with the majority of such reports coming from high school teachers.<sup>3</sup> Cell phones might constitute a distraction not only for the student using their phone but students around them.<sup>4</sup> A 2022 study conducted on undergraduates at the New York Institute of Technology found that students who are separated from their phones during class time had higher levels of comprehension and lower levels of anxiety. Extrapolated to high schoolers, bans might positively affect pedagogical outcomes in schools. A 2024 study in Norway found that the GPA of high school girls improved with stricter smartphone policies in schools, and that such effects were even higher in girls from lower socio-economic backgrounds.<sup>5</sup>

Another concern that drives legislation to restrict cell phones in the classroom is the mental health of students. The Norwegian study found that psychological health improved among high school girls and bullying decreased across boys and girls alike as smartphone policies were tightened. Advisories from the US Surgeon General in 2023<sup>6</sup> and 2024<sup>7</sup> have spoken to worries that social media usage can be damaging to the mental health of youths. As cell phones are the dominant interface for social media, and American youth spend a considerable amount of time in school, bans on cell phone usage in classrooms might mitigate some of these concerns.

Support for the negative mental health effects of social media and cell phone usage are inconclusive, however. While studies do show that some feel “bad” after using social media, identifying a definite causal connection—and a connection of the scale indicated the US Surgeon General—has not borne fruit.<sup>8</sup> Major world events like COVID-19 complicate the matter further, as the effects of living through a pandemic might be just as responsible for impacting the mental health of children as an increase in cell phone and social media usage, of which might have been exacerbated by the necessity of digital communication during the pandemic.

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<sup>1</sup> Jaysha Patel, *CA passes bill requiring schools to devise plan to ban or limit phones during the school day*, ABC 7 News, August 29, 2024, <https://abc7.com/post/cellphone-ban-california-passes-bill-requiring-schools-ban-limit-phone-use-during-school-day/15242889/>

<sup>2</sup> Jeff Winter and Alisha Ebrahimji, *The nation’s largest school district could ban cell phones by January*, CNN News, June 26, 2024, <https://www.cnn.com/2024/06/26/us/nyc-public-schools-cell-phone-ban/index.html>

<sup>3</sup> Jenn Hatfield, *72% of U.S. high school teachers say cellphone distraction is a major problem in the classroom*, Pew Research Center, June 12, 2024, <https://www.pewresearch.org/short-reads/2024/06/12/72-percent-of-us-high-school-teachers-say-cellphone-distraction-is-a-major-problem-in-the-classroom/>

<sup>4</sup> Laura Meckler, Hannah Natanson, and Karina Elwood, *Cellphone bans spread in schools amid growing mental health worries*, The Washington Post, August 27, 2024, <https://www.washingtonpost.com/education/2024/08/27/cell-phone-school-bans/>

<sup>5</sup> Sara Abrahamsson, “Smartphone Bans, Student Outcomes and Mental Health,” *NHH Dept. of Economics Discussion Paper No. 01*, February 22, 2024, <https://dx.doi.org/10.2139/ssrn.4735240>

<sup>6</sup> Teddy Amenabar, *What the surgeon general’s advisory says about social media for kids*, The Washington Post, May 23, 2023, <https://www.washingtonpost.com/wellness/2023/05/23/social-media-surgeon-general-youth-health-risk/>

<sup>7</sup> Cristiano Lima-Strong and Aaron Gregg, *Surgeon general calls for social media warning labels*, The Washington Post, June 17, 2024, <https://www.washingtonpost.com/technology/2024/06/17/surgeon-general-social-media-warning-labels/>

<sup>8</sup> Tatum Hunter, *What research actually says about social media and kids’ health*, The Washington Post, June 17, 2024, <https://www.washingtonpost.com/technology/2024/06/17/social-media-mental-health-research-surgeon-general/>

Some argue that the inclusion of cell phones in school and classroom environments might be better for students than an environment without.<sup>9</sup> As cell phones are ubiquitous in the real world, including in workplaces, and many public services—schools, health care, utilities—incorporate digital apps or processes designed for cell phones, constructing an artificial environment *without* phones might fail to prepare students for their futures as adults. While cell phones might be a distraction for some, they can also be used as teaching resources, allowing instructors to engage with students through different modalities.<sup>10</sup> While many active and proposed bans on cell phones in schools have exceptions for medical reasons, accessibility may extend beyond merely what is reported and approved through disability services in schools. The sense of connection between students is also mediated through cell phones and social media, which might be especially important as students reorient themselves after isolation policies during the COVID-19 pandemic.

Bans of cell phones in schools are paternalistic in nature, and in the case of children, this appears *prima facie* to be more justified than a broad, nationwide ban on social media apps.<sup>11</sup> However, high schoolers and public-school students in general have grown up in a world of changing technologies and values. The imposition of bans to further educational outcomes may simply indicate a preference of instructors to have their students conform to a more traditional classroom environment. Smartphones have existed in their current form for less than twenty years, and they have changed in purpose and functionality rapidly. At the start of 2010, 91% of schools had policies banning cell phones. By 2016, this had lessened to 66%, an indicator that the phones were becoming more integrated into all parts of life, including the academic sphere. The recent bans of cell phones have increased this number once again, but it might be asked what the long-term ends of such a ban could be. In a world interwoven with communication and information technologies, does shifting back to the traditional classroom setting really prepare students for a world where the divide between knowledge and accessible reference is increasingly blurred?

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<sup>9</sup> Anna Lamb, *Bans may help protect classroom focus, but districts need to stay mindful of students' sense of connection, experts say*, The Harvard Gazette, March 13, 2023, <https://news.harvard.edu/gazette/story/2023/03/experts-see-pros-and-cons-to-allowing-cellphones-in-class/>

<sup>10</sup> Simona Johnes, *Why Cell Phones Should Be Allowed in Schools — 11 Reasons Based on 16 Research Studies*, Science and Literacy, <https://scienceandliteracy.org/why-should-students-be-allowed-to-use-cell-phones-in-class/>

<sup>11</sup> Sapna Maheshwari and David McCabe, *Congress Passed a Bill That Could Ban TikTok. Now Comes the Hard Part*, The New York Times, April 23, 2024, <https://www.nytimes.com/2024/04/23/technology/bytedance-tiktok-ban-bill.html>

## 2. I've Just Seen a Face

If you find yourself traveling, you may notice that your identity is being verified in a new and different way.<sup>1</sup> Instead of showing your ID to an employee in the security line, you may find that you're asked to insert it into a machine while a camera captures your image. The machine software will then determine whether that image matches the person on your ID. Some airports use databases for identification so that the ID does not even need to be scanned.

The technology has been developed by the transportation security administration, and they've been quietly rolling it out at airports across the country. The primary advantages are that this system is potentially faster, easier, and more accurate. To some, anything that makes the process less like an interrogation would count as an improvement.

On the other hand, many are alarmed to see this technology emerge without much warning. Some are concerned about the government having access to this kind of data. They are now allegedly using it to make airline travel easier, but there are lingering suspicions about what it could be used for in the future. It has become commonplace for people to become aware that a corporation has used their data for purposes to which they did not knowingly consent; data is sold to third parties and used for targeted advertising. For many, these concerns are even more troubling when the entity gathering the information is the government. Some argue that this would be an improvement—the technology could recognize potential threats or disgruntled former employees before acts of violence can take place. Others respond that this benefit would not be worth the violation of privacy that would result.

There are also serious concerns about how these systems will determine which individuals count as threats. People are concerned about what's become familiar forms of algorithm bias.<sup>2</sup> There is data to support the idea that facial recognition programs do less well identifying the faces of people of color. A recent study concluded that Native American, Black, and Asian people were 100% more likely to be misidentified than their white counterparts, and women were much more likely to be misidentified than men.<sup>3</sup> (Middle-aged men had the highest accuracy rate of identification overall.) People of color already encounter racial profiling at airports, and this policy has the potential to make these problems worse.

Those who defend the system point out that travelers can opt out of facial recognition by simply saying, "Please don't take my photo." If this is the case, the argument is that the government isn't really violating people's autonomy—they have the right to say "no." That said, it may be the case that the reasons people need to go to the airport make the circumstances inherently coercive and people might be deeply concerned that they won't get to their location unless they go along.

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<sup>1</sup> <https://apnews.com/article/facial-recognition-airport-screening-tsa-d8b6397c02afe16602c8d34409d1451f>

<sup>2</sup> <https://www.prindleinstitute.org/2019/01/problem-of-fair-algorithm/>

<sup>3</sup> <https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/>

### 3. Car Calls the Cops

In June, 2022, Alan McShane from Newcastle, England was heading home after a night drinking and watching his favorite football club at the local pub when he clipped a curb and his airbags were activated. The Mercedes EQ company car that he was driving immediately called emergency services, a feature that has come standard on the vehicle since 2014. A sobriety test administered by the police revealed that the man's blood alcohol content was well above the legal limit. He was fined over 1,500 pounds and lost his driving privileges for 25 months.<sup>1</sup>

No one observed Mr. McShane driving erratically. He did not injure anyone or attract any attention to himself. Were it not for the actions of his vehicle, Mr. McShane may very well have arrived home safely and without significant incident.

There are compelling reasons to have technology of this type in one's vehicle. It is just one more step in a growing trend toward making getting behind the wheel safer. In the recent past, people didn't have cell phones to use in case of an emergency; if a person got in a car accident and became stranded, they would have to simply hope that another motorist would find them and be willing to help them. However, this significant improvement to safety isn't always accessible during a crash. One's phone may not be within arm's reach and during serious car accidents a person may be pinned down and unable to move. Driving a car that immediately contacts emergency services when it detects the occurrence of an accident may often be the difference between life and death.

Advocates of this technology argue that a person simply doesn't have the right to drive drunk. It may be the case that under many circumstances a person is free to gauge the amount of risk that is associated with their choices and then choose for themselves the amount that they are willing to take on. This simply isn't true when it comes to risk that affects others in serious ways.

Others argue that we can't let technology turn any country into a police state. Though such people agree that there are clear safety advantages to technology that can help a person in the event of an accident, this particular technology does more than that—it serves as a non-sentient witness against the driver. This radically changes the role of the car. A vehicle may once have been viewed as a tool operated by a person—a temporary extension of that person's body. Often cars used as tools in this way are the property of their operators. Until now, a person's own *property* hasn't been in the position to turn them in. Instead, if a police officer wanted information about some piece of a person's body, they'd need a search warrant. This technology removes the element of choice on behalf of the individual when it comes to the question of whether they want to get the police involved or to implicate themselves in a crime.

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<sup>1</sup> [https://uk.news.yahoo.com/drink-driver-caught-mercedes-car-called-999-crash-075819678.html?guce\\_referrer=aHR0cHM6Ly9sLmZhY2Vib29rLmNvbS8&guce\\_referrer\\_sig=AQAAAKdeoOnGLstc7wjGHmKyKVjVe3N0ETUZvOTudITGcwx2S9gtiG2Ksw2RYvY06g8OHyXmZLSdMAEgTGMTUYNtZHjG9Z2JmPxOBS68msPraiTx1ZC9aIHBWZe-PPYy1FMBOCiuX6rVg72edqM5fCDbtuFCDxDk9M8G09ePtkXvzux\\_&guccounter=2](https://uk.news.yahoo.com/drink-driver-caught-mercedes-car-called-999-crash-075819678.html?guce_referrer=aHR0cHM6Ly9sLmZhY2Vib29rLmNvbS8&guce_referrer_sig=AQAAAKdeoOnGLstc7wjGHmKyKVjVe3N0ETUZvOTudITGcwx2S9gtiG2Ksw2RYvY06g8OHyXmZLSdMAEgTGMTUYNtZHjG9Z2JmPxOBS68msPraiTx1ZC9aIHBWZe-PPYy1FMBOCiuX6rVg72edqM5fCDbtuFCDxDk9M8G09ePtkXvzux_&guccounter=2)

#### 4. That Dog Don't Hunt!

The practice of hunting with dogs traces back to ancient Egypt. It became particularly popular in Britain in the 16th century when social clubs began using dogs with highly developed senses of scent to track woodland animals, dominantly foxes. Participants engaged in the activity primarily for sport. For the most part, the practice in this region of the world has now come to an end. On January 23, 2023, the Hunting with Dogs Bill was passed in Scotland.<sup>1</sup> The ban does not outlaw hunting outright, nor does it even ban the practice of hunting with dogs. What the bill does do is make it illegal to chase and hunt animals with a pack of more than two dogs for sport. But farmers and ranchers can apply for exemptions for the purposes of “wildlife management.”

One dominant line of reasoning in animal ethics is that we ought to focus on animal welfare. Animal welfare approaches frequently direct their attention not toward banning human use of animals outright, but toward making such practices less cruel or harmful. So, for example, the advocate of an animal welfare approach might focus not on *eliminating* factory farming, but on making the practices used as part of factory farming more humane. This is the kind of strategy that has been successful when it comes to legislation mandating that egg-laying hens be raised cage-free.<sup>2</sup>

The argument against hunting with dogs takes a similar approach. The argument is that being chased by a large pack of dogs causes animals such as deer, hares, and foxes extreme distress. The animals who end up dying directly in the hunt do not die quickly and painlessly; they are ripped to death by a large pack of dogs against whom they never stood much of a chance. The animals who aren't ultimately caught by the dogs and don't die directly as a result of the hunt nevertheless experience severe psychological and physiological problems as a result of the trauma. Some of them suffer injuries that they must deal with for the rest of their lives. Some animal welfare theorists argue that it may not be possible to end hunting entirely, but we ought to ban *this* form of hunting because it is cruel and unusual.

Other animal advocates do not support the Hunting with Dogs Bill in its current form. Those who adopt this philosophy take on the perspective articulated by philosopher Tom Regan that “the truth of animal ethics requires empty cages, not larger cages.” Thinkers like Regan who believe that we should be focusing on rights rather than simply on welfare are likely to think of the Hunting with Dogs Bill as incoherent. After all, if we acknowledge that for sentient beings who can experience pain, being ripped apart while still alive is a bad thing, preventing these animals from being ripped alive by *large packs* of dogs doesn't go far enough. We should outlaw dog hunting in any form by any number of dogs.

Of course, animal advocates are not the only parties in Scotland or in Britain who disagree over laws of this type. There is strong pressure from some groups to overturn the legislation. Many of the arguments rest on familiar attitudes about the nature of non-human animals and their relationship to humans.

In addition to arguments in support of dominance and hierarchy, advocates of dog hunting argue that they have a right to their cultural traditions. For instance, this month, Scotland's Lanarkshire and Renfrewshire Hunt, which met for the first time in the 1700s, announced that, as a result of the new bill, they could no longer conduct their hunt and that their 300-hundred-year tradition was now coming to an end.<sup>3</sup>

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<sup>1</sup> <https://www.gov.scot/news/hunting-with-dogs-bill-passed/>

<sup>2</sup> <https://www.foodsafetynews.com/2021/03/utah-adopts-cage-free-law-with-2025-start-date/#:~:text=Utah%20is%20the%20eighth%20state,into%20law%20on%20March%2017.>

<sup>3</sup> <https://www.cnn.com/2023/03/12/europe/scotland-fox-hunting-club-final-hunt-animal-rights-intl-hnk/index.html>

## 5. Life in the Parking Lot

This past March, the city of Sedona, Arizona, opened a 40-space “safe parking lot” to provide homeless residents a secure place to park and sleep without fear of harassment or being forced to move.<sup>1</sup> This initiative allows them to rest more comfortably while working toward stability. To qualify for this program, participants must be fully employed within the city and actively engage with local social services. The Sedona City Council voted 6-1 to approve the lot, which is supported by a two-year grant from the Arizona Department of Housing.<sup>2</sup>

While the program is intended as a temporary solution—operating for just two years as the city seeks more permanent answers to the housing crisis—it has sparked controversy. Many residents express concerns that the lot could attract crime or pollution. Sedona, like many communities, faces challenges in providing housing even for fully employed residents, exacerbated by the rise of short-term rentals like Airbnb and VRBO. Similar situations have led to housing shortages in places like Flagstaff, Arizona and elsewhere.<sup>3</sup> While safe parking lots offer a temporary fix, some residents argue that addressing the root cause, such as the proliferation of short-term rentals, might be a more substantial solution.

The practice of living in cars is not uncommon in the United States, particularly in states like California that lack a legal obligation to shelter the homeless. In Los Angeles, even full-time students with multiple jobs sometimes find themselves living out of their vehicles.<sup>4</sup> Los Angeles resident Brian Ramian shared his experience: “Is your co-worker sleeping in their car? You may never know. I had three jobs while living out of my car. Good jobs, too—serving \$100 steaks and \$1,000 bottles of Cabernet. No one ever knew.”<sup>5</sup>

Following the vote, the Supreme Court ruled that bans on sleeping outside do not qualify as “cruel and unusual punishments,”<sup>6</sup> and thereby are not in conflict with the Eighth Amendment. In states like California, homelessness is caused in greater part by lack of affordable housing than drug abuse and mental illness.<sup>7</sup> Following the ruling, many cities have begun clearing homeless encampments. In some states, like California, there are measures to provide temporary housing or safe spaces to the homeless, but these are not universally adopted nor required according to the new precedent set by the Supreme Court. Sedona’s “safe parking lot” appears to be a viable option to help move the homeless to a safer area without destroying what many would consider to be their home.

This raises the question: Is a “safe” parking lot an effective and ethical way to address homelessness? While one Sedona resident argues, “There’s nothing compassionate about helping someone live in their car,”<sup>8</sup> for many with no other options, a car may be preferable to facing the elements.

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<sup>1</sup> Rafi Schwartz, *Safe Parking Lots Grow as Unhoused People Increasingly Find Shelter in Cars*, The Week US, Mar. 21, 2024, <https://theweek.com/politics/safe-parking-lots-unhoused-people-shelter-cars>

<sup>2</sup> Lacey Latch, *As Housing Costs Skyrocket, Sedona Will Allow Workers to Live in Cars. Residents Aren’t Happy*, Arizona Central, Mar. 15, 2024, <https://www.azcentral.com/story/news/local/arizona/2024/03/15/sedona-approves-safe-parking-for-workers-living-in-cars/72958830007/>

<sup>3</sup> Roshan Abraham, *Running Rampant: How Short-Term Rentals Affect Communities With Loose Restrictions*, Shelterforce, Feb. 22, 2024, <https://shelterforce.org/2024/02/22/how-short-term-rentals-affect-communities-with-loose-restrictions/>

<sup>4</sup> M. Nolan Grey, *The UCLA Students Who Live in Their Cars*, The Atlantic, Aug. 3, 2023, <https://www.theatlantic.com/ideas/archive/2023/08/california-vehicular-homelessness-car-dwelling-los-angeles/674901/>

<sup>5</sup> Brian Ramian, *Opinion: I Once Lived in My Car and Can’t Fathom Criminalizing Homelessness*, The Los Angeles Times, May 2, 2024, <https://www.latimes.com/opinion/story/2024-05-02/california-homeless-laws-living-in-car>

<sup>6</sup> Lindsey Whitehurst, *Divided Supreme Court rules in major homelessness case that outdoor sleeping bans are OK*, AP News, June 28, 2024, <https://apnews.com/article/supreme-court-homeless-camping-bans-506ac68dc069e3bf456c10fcedfa6bee>

<sup>7</sup> Ethan Varian, *How Bay Area cities are responding to Newsom’s calls for homeless sweeps after landmark Supreme Court ruling*, East Bay Times, August 26, 2024, <https://www.eastbaytimes.com/2024/08/17/how-bay-area-cities-are-responding-to-newsoms-calls-for-homeless-sweeps-after-landmark-supreme-court-ruling/>

<sup>8</sup> Tim Perry, *Council Votes 6-1 to OK Car Camp for Homeless Workers*, Sedona Red Rock News, Mar. 14, 2024, <https://www.redrocknews.com/2024/03/14/council-votes-6-1-to-ok-car-camp-for-homeless-workers/>



## 6. You Did What?

George, a 77-year-old man, suffers from multiple chronic health conditions, including emphysema, congestive heart failure, and rheumatoid arthritis. Despite these challenges, he lives alone and manages to meet most of his daily needs. George has developed strong friendships with many of his neighbors, who are well aware of his medical issues and limitations. They frequently check on him, a gesture of kindness that he deeply appreciates.

One morning, during his routine walk, a neighbor found George lying in his driveway, conscious but incoherent, with his ankle twisted at an unnatural angle. Alarmed, the neighbor immediately called 911. EMTs arrived swiftly and transported George to the nearest emergency room.

Upon arrival, X-rays revealed that George had sustained multiple fractures in his ankle and lower leg. However, he was unable to explain to the ER staff what had caused the fall. Given George's history of heart problems, the ER physician suspected that a cardiac event had triggered the incident. A cardiologist was quickly consulted, and after assessing George—whose heart rate had dropped to the 40s—the cardiologist concurred that a cardiac arrest was the likely cause. As George awaited surgery to repair his fractures, the cardiologist decided to insert a pacemaker as a precautionary measure to prevent further cardiac events. The procedure was carried out promptly.

The next morning, when informed about the pacemaker insertion, George was furious. He pointed out that he had a standing DNR (Do Not Resuscitate) order in his hospital records, which explicitly instructed against any life-saving interventions. George argued that the insertion of a pacemaker violated his explicit wishes and expressed his intent to take legal action.

In response, the cardiologist explained that he had discussed the procedure with George while he was still in the ER and that George had signed a consent form authorizing the pacemaker insertion. However, George insisted that he had no memory of any such conversation and claimed that the signature on the consent form was a forgery. Despite being shown the signed consent form, George remained adamant that he had no recollection of consenting to the procedure and continued to dispute its validity.

## 7. A Link to the Future

In December 2022, news outlets reported that Elon Musk's medical device company, Neuralink, is under federal investigation for animal welfare violations. Neuralink is, in theory, a medical device that is robotically stitched into a person's brain with the hope that it will help paralyzed individuals regain control over parts of their bodies to which they have lost access. If successful, the device may increase human ability to control things with their thoughts using a technological interface. The ability to regain control over one's limbs and sense organs may just be the beginning of uses for this kind of device.<sup>1</sup>

Musk has attracted some criticism for inaccurately reporting the speed at which we can expect this technology to develop. In December of this year, he claimed that implantation of the device in a human skull could happen as early as six months from the time that he made the announcement. Success in this endeavor has the potential to at least partially rehabilitate Musk's tarnished reputation resulting from his handling of the Twitter takeover.<sup>2</sup> He has powerful reasons to hope that his promises from Neuralink will be honored quickly. In keeping with these motivations, he has reportedly demanded that his employees conduct research more quickly. Employees are reporting that this increased speed has resulted in significant violations of the Animal Welfare Act.

This development is of particular concern because satisfying the demands of the Animal Welfare Act is not particularly difficult to do. The Act does not provide a tremendous number of restrictions when it comes to how animals can be treated when used in research. Many animals are not protected at all, such as birds, rats, and mice.

Whistleblowers from the company report that rapid research into this technology has resulted in numerous botched animal surgeries, and Reuters reports that Neuralink has killed, "about 1,500 animals, including more than 280 sheep, pigs and monkeys, following experiments since 2018."<sup>3 4</sup>

These allegations of animal cruelty reveal what perhaps should have been obvious but that probably flew beneath the radar for most people: Neuralink is engaging in animal testing, with Elon Musk at the helm. There are a cluster of objections against using non-human animals for testing Neuralink in the first place. Some scientists have expressed doubts that this kind of technology is viable at all. Neuralink claims to be, essentially, a mind-reading device. To effectively and responsibly read minds, we'd need to understand a lot more about how brains function. If Neuralink is really just a billionaire's sci-fi fantasy with little chance of actually delivering on its promises, then the use of beings who are capable of suffering and of living lives of their own outside of the lab is particularly unjustified.

Neuralink has the potential to do real good in the world; it is likely that some paralyzed individuals would very much like to see this technology come to fruition. That said, we may do well to reflect on the lessons offered by Mary Shelley in *Frankenstein*; and guard against allowing a feverish thirst for progress to blind us to the things that make human life good or to the need for compassion for our most vulnerable populations.

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<sup>1</sup> <https://www.reuters.com/technology/musks-neuralink-faces-federal-probe-employee-backlash-over-animal-tests-2022-12-05/>

<sup>2</sup> <https://www.nytimes.com/2022/11/30/health/elon-musk-neuralink-brain-device.html>

<sup>3</sup> <https://www.washingtonpost.com/technology/2022/12/06/elon-musk-neuralink-animal-cruelty/>

<sup>4</sup> <https://www.reuters.com/technology/musks-neuralink-faces-federal-probe-employee-backlash-over-animal-tests-2022-12-05/>

## 8. We Just Heard Immunity

David Duffy and his team from the University of Florida recently discovered a groundbreaking method for tracking the health and whereabouts of sea turtles.<sup>1</sup> As the turtles represent an endangered species, the scientists' goal was to study their migration patterns and to identify the environmental factors that might be influencing their health and well-being. Researchers found that they were able to extract meaningful DNA samples from air, water, and sand at the beach. Those samples allowed researchers to draw conclusions about sub-populations and to test for the presence of pathogens that lead to a particularly deadly form of cancer in sea turtles.

The discovery that significant DNA information could be extracted from these sources is great news for conservation scientists as well as for people who care about the preservation and well-being of animals more broadly. Scientists can use genetic information about animals without disturbing them in their natural habitats; they can wait until an animal has vacated a space before using the genetic material left behind to learn more about the creature and that creature's community.

Researchers also learned something with more controversial consequences. Meaningful amounts of *human* DNA were extracted from air, water, and sand as well—amounts of DNA that can pick out the genetic code of specific individuals. This means that human beings, like other animals, leave behind genetic information essentially everywhere we go. This discovery gives rise to many important moral questions.

One such question is: Who owns discarded pieces of a person's body? Does the person still have some rights of ownership over physical matter that comes from their own body? If so, do these ownership rights entail a corresponding right to decide what can be done with the matter? Or, instead, are discarded cells like trash—once we've shed them, we no longer have any reasonable claim to ownership over them? Should we adopt a "finders keepers" attitude when it comes to discarded genetic material?

One response may be that treating small bits of discarded material as part of a person's body is impractical and unrealistic. If shedding cells is something we do everywhere we go, there can be no returning discarded cells. At that point, the living source has lost any control. It might be tempting to think that there isn't much at stake here.

That said, humans don't have the best track record when it comes to using genetic material in morally responsible ways. For example, in one famous case, a woman named Henrietta Lacks consented to a biopsy as part of her cancer treatment.<sup>2</sup> Scientists used her genetic material for research and found that her cells—now called HeLa cells—had remarkable properties that led to major advances in medical treatment. For decades, Lacks' family was not compensated in any way for their matriarch's contribution. One reason to be concerned about Duffy's discovery is that a person's cells could easily be used to profit others without any compensation accruing to the source. If this is the case, a person's discarded genetic material may just be a new capitalist frontier to commodify and exploit.

But there are other reasons to be concerned that genetic information will be misused. For instance, in the late 1980s, members of the Havasupi Tribe provided their genetic material for the purposes of studying Type II Diabetes, a condition from which many members of the tribe suffered.<sup>3</sup>

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<sup>1</sup> <https://news.ufl.edu/2022/05/sea-turtle-edna/>

<sup>2</sup> <https://www.reuters.com/legal/litigation/henrietta-lacks-heirs-sue-cut-medical-research-profits-are-they-too-late-2022-04-12/>

<sup>3</sup> <https://www.prindleinstitute.org/2017/10/genetic-research-navajo-nation/>

Unbeknownst to the donors, the genetic information was used to research migration patterns, inbreeding, and schizophrenia within the tribe. Migration studies of tribal members, in particular, could potentially disrupt the already tenuous relationship that Native Persons have with the land and provide another avenue for governmental exploitation. When genetic material is collected or used without consent, it can lead to further discrimination and racism.

In addition to these concerns, we also tend to think that a person is entitled to privacy when it comes to details about their own body. When we shed our DNA, we don't do so intentionally; we don't give consent. But if an institution or individual was able to extract DNA from a location where we unwittingly shed it, they could come to know all kinds of details about any of us. The right to privacy begins within the borders of one's own body even if those borders might shift or extend. Then, of course, there are the implications for forensic science. Since its discovery, DNA has changed the landscape in criminal justice. There is no doubt this has had some tremendous positive consequences. Killers who had gone free for decades to commit all sorts of atrocities were eventually captured using DNA, sometimes through the use of unconventional methods.<sup>4</sup> That said, the presence of DNA is not always evidence that a specific individual committed a crime. Sometimes context gets lost when DNA evidence is found. Finding a person's DNA at a scene, even when there is a harmless explanation for that fact, can blind investigators to other explanations and prevent them from looking into other viable suspects whose DNA was, for whatever reason, not extracted.

Duffy's discovery encourages speculation about a future in which it is impossible to get away with committing a crime—one in which there will always be genetic evidence to connect a person to a scene at the time a crime was committed. In such a world, we might wonder, what happens to Fourth Amendment rights? We might be looking at a future in which the genetic tapestry of any space is, in a sense, open access. In such a world, what would it mean for search and seizure to be "unreasonable"?

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<sup>4</sup> <https://www.prindleinstitute.org/2018/08/spilled-blood-in-the-bloodline-the-ethics-of-using-genealogy-to-catch-criminals/>

## 9. Yellowstone Buffalo Buffalo Yellowstone Buffalo

In late May of this year, Clifford Waters pled guilty to one count of “of feeding, touching, teasing, frightening or intentionally disturbing wildlife” in Yellowstone National Park. The punishment for the crime was a fine of \$1,000, half of which went to Yellowstone’s wildlife fund. Waters was charged with the crime after he helped a newborn bison cross the Lamar River when the animal had become separated from his mother and the rest of his herd.<sup>1</sup>

Waters was unaware that his act of assistance could lead to the young bison’s rejection by the herd. Unfortunately, that is indeed what happened. The bison survived the incident but was later euthanized by park staff because of his hazardous habit of approaching cars and people at the park. Representatives of the park claim they could not remove the animal to a sanctuary due to a local law prohibiting the removal of bison from the park except for use in scientific research or slaughter.

Many argue that it is difficult to see how justice was done or welfare protected in any aspect of this case. It is important, of course, for many reasons, that human beings do not interfere too much in the lives of wildlife. When humans feed or otherwise intervene in the lives of wild animals, it can be dangerous for the animals. In this case such behavior led the calf to be socially ostracized.

Behaviors that are safe for humans may not be safe for other animals, and foods that may be healthy for human consumption may cause serious health problems for other animals. Human behavior also often leads to the destruction of animal habitats which can put animal lives and social structures at risk. Too much interaction can also be dangerous for humans. In addition to the violence to which an animal might resort if they feel threatened, if an animal becomes too comfortable with humans, there may be a higher incidence of zoonotic disease spread and disruption of natural ecosystems. For all of these reasons, it may be important to have laws discouraging people from engaging in potentially harmful interactions with wild animals. Bison, in particular, are known to gore humans when humans get too close.

It is true that some humans interact with non-human animals in reckless and irresponsible ways. Humans often risk their lives to get selfies with animals, causing the animals to feel threatened and to respond with defensive, often violent behavior. Consider, for example, a 27-year old Indian man who was trampled to death while trying to snap a selfie with a wild elephant or the man in China who was killed when dragged into the ocean by a 1.5 ton walrus with whom the man was trying to get a picture.<sup>2</sup>

These are both tragedies, but these victims also had very different motivations from Waters who was attempting to save the bison. Waters wasn’t acting in his own self-interest. He was not treating the bison as a tool for his own entertainment. He was exhibiting empathy for the creature and put himself in harm’s way to attempt to rescue it. His behavior was evidence of virtues of character such as courage as compassion. Park staff and prosecutors could have made the decision to look the other way in this case given the circumstances, but they opted not to do so.

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<sup>1</sup> <https://www.cnn.com/travel/article/yellowstone-visitor-bison-euthanized/index.html#:~:text=Officials%20are%20investigating%20an%20incident,calf%20at%20Yellowstone%20National%20Park.&text=Officials%20at%20Yellowstone%20National%20Park,to%20the%20National%20Park%20Service>.

<sup>2</sup> <https://timesofindia.indiatimes.com/city/salem/man-27-trampled-to-death-while-taking-selfie-with-elephant/articleshow/98646504.cms?from=mdr>

## 10. This Is Not Your Grandparent's Seance

There is nothing that causes more grief than the death of a loved one; it can inflict an open wound that never fully heals, even if we can temporarily forget that it's there. We are social beings and our identities aren't contained within our own human-shaped space. Who we are is a matter of the roles we take on, the people we care for, and the relationships that allow us to practice and feel love. The people we love are part of who we are and when one of them dies, it can feel like part of us dies as well. For many of us, the idea that we will never interact with our loved one again is unbearable.

Some entrepreneurs see any desire as an opportunity, even the existential impulses and longings that come along with death. In response to the need to have loved ones back in our lives, tech companies have found a new use for their deepfake technology. Typically used to simulate the behavior of celebrities and politicians, some startups have recognized the potential in programming deepfake chat-bots to behave like dead loved ones. The companies that create these bots harvest data from the deceased person's social media accounts. Artificial intelligence is then used to predict what the person in question would say in a wide range of circumstances. A bereaved friend or family member can then chat with the resulting intelligence and, if things go well, it will be indistinguishable from the person who passed away.

Some people are concerned that this is just another way for corporations to exploit grieving people. Producers of the chatbots aren't interested in the well-being of their clients, they're only concerned with making money. It may be the case that this is an inherently manipulative practice, and in the worst of ways. How could it possibly be acceptable to profit from people experiencing the lowest points in their lives?

That said, the death industry is thriving, even without the addition of chatbots. Companies sell survivors of the deceased burial plots, coffins, flowers, cosmetic services, and all sorts of other products. Customers can decide for themselves which goods and services they'd like to pay for. The same is true with a chatbot. No one is forced to strike up a conversation with a simulated loved one, they have a chance to do so only if they have decided for themselves that it is a good idea for them.

In addition to the set of objections related to coercion, there are objections concerning the autonomy of the people being simulated. If it's possible to harm the dead, then in some cases that may be what's going on here. We don't know what the chatbot is going to say, and it may be difficult for the person interacting with the bot to maintain the distinction between the bot and the real person they've lost. The bot may take on commitments or express values that the living person never had. The same principle is at play when it comes to using artificial intelligence to create versions of actors to play roles.<sup>1</sup> The real person may never have consented to say or do the things that the manufactured version of them says or does. Presumably, the deceased person, while living, had a set of desires related to their legacy and the ways in which they wanted other people to think of them. We can't control what's in the heads of others, but perhaps our memories should not be tarnished nor our posthumous desires frustrated by people looking to resurrect our psychologies for some quick cash.

In response, some might argue that dead people can't be harmed. As Epicurus said, "When we exist, death is not; and when death exists, we are not. All sensation and consciousness ends with death and therefore in death there is neither pleasure nor pain." There may be some living people who are disturbed by what the bot is doing, but that harm doesn't befall the dead person—the dead person no longer exists. It's important to respect autonomy, but such respect is only possible for people who are capable of exercising it, and dead people can't.

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<sup>1</sup> <https://www.prindleinstitute.org/2020/01/resurrecting-james-dean-the-ethics-of-cgi-casting/>

Another criticism of the use of chat-bots is that it makes it more difficult for people to arrive at some form of closure. Instead, they are prolonging the experience of having the deceased with them indefinitely. Feeling grief in a healthy way involves the recognition that the loved one in question is really gone.

In response, some might argue that everyone feels grief differently and that there is no single healthy way to experience it. For some people, it might help to use a chat-bot to say goodbye, to express love to a realistic copy of their loved one, or to unburden themselves by sharing some other sentiment that they always needed to let out but never got the chance.

Other worries about chatbot technology are not unique to bots that simulate the responses of people who have passed on. Instead, the concern is about the role that technology, and artificial intelligence in particular, should be playing in human lives. Some people will, no doubt, opt to continue to engage in a relationship with the chat-bot. This motivates the question: can we flourish as human beings if we trade in our interpersonal relationships with other sentient beings for relationships with realistic, but nevertheless non-sentient artificial intelligence? Human beings help one another achieve the virtues that come along with friendship, the parent-child relationship, mentorship, and romantic love (to name just a few). It may be the case that developing interpersonal virtues involves responding to the autonomy and vulnerability of creatures with thoughts and feelings who can share in the familiar sentiments that make it beautiful to be alive.

## 11. The Curse of the CrowdStrike

On July 19, 2024, a regular content update for Windows computers hosting a cybersecurity program called “Falcon” caused a massive IT outage that led millions of computers to crash.<sup>1</sup> CrowdStrike, the cybersecurity firm responsible for the software, deployed the update slightly after midnight Eastern Time and then—realizing a problem—rolled it back an hour and a half later.<sup>2</sup> Despite only being live for less than two hours, the faulty update was able to severely impact airline travel, banking, and health care, with an estimate of \$5.4 billion in financial losses. In response to the outage and its fallout, Microsoft is set to host a cybersecurity conference to discuss constructing a “more resilient” IT ecosystem.<sup>3</sup>

Airlines such as United and American Airlines were forced to ground flights during the outage,<sup>4</sup> but Delta Airlines was especially impacted, canceling more than 7,000 flights both during and in the days following the faulty update.<sup>5</sup> As other airlines and industries recovered from the outage, Delta continued to struggle, requiring manual fixes at every digital terminal with limited IT resources and manpower.<sup>6</sup> The flight outages brought thousands of complaints from travelers and an investigation by the US Department of Transportation.

Delta passengers have filed class-action lawsuits against both Delta<sup>7</sup> and CrowdStrike<sup>8</sup> over delays, and Delta has indicated that they will be pursuing damages from CrowdStrike and Microsoft for losses incurred as a direct result of the faulty update.<sup>9</sup> Both CrowdStrike and Microsoft have responded, however, by pointing the finger back at Delta. In addition to offering immediate IT assistance following the outage—of which Delta is alleged to have refused—both companies have claimed that Delta’s antiquated IT infrastructure was the cause of its continued problems during the outage.<sup>10</sup> Outdated IT systems are not only vulnerable to software malfunctions, like those that might come from faulty updates, but also are more difficult to service as cybersecurity technologies advance.

Vulnerable IT systems are not just a matter of consumer grievance and inconvenience. The Government Accountability Office has noted that the CrowdStrike outage bears similarities to the SolarWinds attack in 2019, wherein foreign, state-sponsored hackers were able to utilize regular content updates to install a “backdoor” in the network monitoring software “SolarWinds.” These hackers were then able to gain remote access to systems that were used by the federal

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<sup>1</sup> Reuters, *Crowdstrike deploys fix for issue causing global tech outage*, Reuters, July 19, 2024, <https://www.reuters.com/technology/crowdstrike-says-actively-working-with-customers-impacted-by-outage-2024-07-19/>

<sup>2</sup> Brain Fung, *We finally know what caused the global tech outage – and how much it cost*, CNN News, July 24, 2024, <https://www.cnn.com/2024/07/24/tech/crowdstrike-outage-cost-cause/index.html>

<sup>3</sup> Reuters, *Microsoft to host cybersecurity summit after CrowdStrike-induced IT outage*, Reuters, August 23, 2024, <https://www.reuters.com/technology/cybersecurity/microsoft-host-cybersecurity-summit-after-crowdstrike-induced-it-outage-2024-08-23/>

<sup>4</sup> Nadine El-Baweb, Josh Margolin, and Jon Haworth, *CrowdStrike outage sparks global chaos with airline, bank and other disruptions*, ABC News, July 19, 2024, <https://abcnews.go.com/US/american-airlines-issues-global-ground-stop-flights/story?id=112092372>

<sup>5</sup> Greg Angel, *Thousands files complaints after Delta Airlines cancellation chaos*, Spectrum News, July 25, 2024, <https://mynews13.com/fl/orlando/news/2024/07/25/delta-air-lines--dot--airline>

<sup>6</sup> Max Zahn, *Why did Delta take days to restore normal service after CrowdStrike outage? Experts weigh in*, ABC News, July 27, 2024, <https://abcnews.go.com/Business/delta-days-restore-normal-service-after-crowdstrike-outage/story?id=112299966>

<sup>7</sup> Michelle Chapman, *Delta facing class action lawsuit over tech outage; customers seeking refunds*, AP News, August 8, 2024, <https://apnews.com/article/delta-lawsuit-crowdstrike-outage-microsoft-6c9c95c00d54d272ba34e6b407afa335>

<sup>8</sup> Anne Bucher, *CrowdStrike hit with class action over Delta flight outages*, Top Class Actions, August 27, 2024, <https://topclassactions.com/lawsuit-settlements/travel/crowdstrike-hit-with-class-action-over-delta-flight-outages/>

<sup>9</sup> Jordan Novet and Ari Levy, *Delta hires David Boies to seek damages from CrowdStrike, Microsoft after outage*, CNBC, July 29, 2024, <https://www.cnbc.com/2024/07/29/delta-hires-david-boies-to-see-damages-from-crowdstrike-microsoft.html>

<sup>10</sup> Rajesh Kumar Singh, *Microsoft blames Delta for its struggle to recover from global cyber outage*, Reuters, August 7, 2024, <https://www.reuters.com/technology/microsoft-blames-delta-its-struggle-recover-global-cyber-outage-2024-08-06/>



government to monitor federal networks.<sup>11</sup> The “Falcon” software affected by the faulty update is used to monitor threat environments and prevent breaches within computer networks.<sup>12</sup> In the case of the July 19 outage, the update caused computers to crash rather than making such systems vulnerable to cyberattacks—particularly because the failure occurred within the operating systems themselves—but as “Falcon” is used to detect and prevent cyberattacks, a more subtle failure of this software could make millions of computers easier to infiltrate. As the scale of the CrowdStrike outage shows, a single update can be devastating, to say nothing of a faulty update leveraged intelligently by malicious actors.

Some have taken the CrowdStrike outage as a sign that IT infrastructure, both governmental and corporate, cannot be dependent on a single company or the services they offer.<sup>13</sup> Many big tech companies, such as Microsoft and Apple, have designed “digital ecosystems” constituted by proprietary systems and software. Organizations are incentivized to use homogeneous digital resources, such as the same hosting service for email, file management, and video calling. A university that provides email through Microsoft Outlook is likely to use Office 365, whereas a university that relies on Google’s Gmail services is likely to also rely on Google Docs and Google Meet. These decisions are made both for the sake of convenience and security, and vendors like CrowdStrike are designed to keep particular digital ecosystems safe. The CrowdStrike outage and the specific struggles of companies like Delta only highlight the concern that increased reliance on a small selection of tech companies might give hackers an advantage with fewer digital ecosystems to focus their attention in breaching. One proposal for widespread IT safety would be to diversify tech contractors and options, relying on a wider range of software and hardware to minimize the damage from accidental and intentional outages alike.

At the same time, the consolidation of digital resources may not be the problem, but the companies, agencies, and institutions that rely on them. While the CrowdStrike outage was widespread, Delta was unique in how severely they were affected. The obligation, if one exists, to staff enough IT specialists and keep IT infrastructure modernized seems to fall on the shoulders of companies that utilize systems rather than contractors who simply deploy them. Outdated, unmaintained systems are liable to fail regardless of a digital contractor’s efforts to keep them effective against innumerable cybersecurity threats. Given the complexities of such systems, however, it may be difficult to know where and when a vulnerability appears until it is too late.

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<sup>11</sup> US Government Accountability Office (GAO), *CrowdStrike Chaos Highlights Key Cyber Vulnerabilities with Software Updates*, US GAO, July 30, 2024, <https://www.gao.gov/blog/crowdstrike-chaos-highlights-key-cyber-vulnerabilities-software-updates>

<sup>12</sup> CrowdStrike, *Falcon Platform*, CrowdStrike, <https://www.crowdstrike.co.uk/falcon-platform/>

<sup>13</sup> Heidi Boghosian, *Opinion: The CrowdStrike outage shows the danger of depending on Big Tech overlords*, July 23, 2024, The Los Angeles Times, <https://www.latimes.com/opinion/story/2024-07-23/crowdstrike-outage-microsoft-tech-security>

## 12. EV Trade War USA and EU V. China

In May 2024, President Joe Biden announced plans to quadruple tariffs on China-made Electric Vehicles (EV).<sup>1</sup> This will raise the current import tax on EVs from 25% to 100%. Biden also plans to impose an increased tariff on Chinese solar cells from 25% to 50%,<sup>2</sup> on particular Chinese steel and aluminum from 7.5% to 25%, and Chinese lithium batteries and semiconductors from 25% to 50%.<sup>3</sup> The argument the White House offered was that the tariffs hikes were necessary to protect American industries from unfair competition.

The European Union (EU) has also raised tariffs on Chinese EVs.<sup>4</sup> The new EU tariffs on individual manufacturers range from 17.5% to 37.6%, on top of a 10% duty already in place for all EVs imported from China. This could raise the price of EVs across the EU, making them less affordable for European consumers. EU officials say the rise in imports was boosted by “unfair subsidization,” which allowed China to sell EVs at much lower prices than those produced by the European motor industry.

According to the White House, China heavily subsidized EVs, solar cells, lithium batteries and semiconductors, which allowed them to produce far more EVs than the rest of the world can absorb. Subsidies give Chinese companies a significant onset, pricing, and competitive advantage. When Chinese companies fail to sell their surplus products domestically, their only option is to dump them on global markets at unfairly low prices, thus making it hard for clean energy industries in other countries to compete. China’s overcapacity distorts global prices and production patterns and hurts American firms and workers.

In addition to the US-raised tariffs, Europe is the largest overseas market for China’s EV industry. China-made EVs are relatively rare on US roads but are much more common in Europe. By imposing higher tariffs, the EU is making the statement that it will correct what it sees as a distorted market.

Others argue that the USA and European Union need to set aside their own personal differences with China and look towards achieving clean energy. The cheapest Chinese EV produced by BYD is \$10,000 and the cheapest Tesla produced by an American company is \$35,000. As inflation continues to rise, the cost of living rises, interest rates rise, and getting a car loan with affordable interest rates becomes tougher. By subsidizing components such as lithium, aluminum, solar cells, semiconductors to produce Electric Cars, Chinese companies have, in fact, made EVs more affordable. Thus, more people can switch from gas guzzling vehicles to clean energy EVs. If the USA and EU impose higher tariffs, the cost of EVs for consumers will increase, thus undermining the goal of being carbon-neutral by 2050.

Some argue that the Chinese should not be punished for doing their homework, and they made a strong choice when they bet on EVs early on. According to the Center for Strategic and International Studies, between 2009 and 2023, more than \$230 billion of state support was pumped into the EV industry. China accounted for more than 60% of the world’s new Electric Car sales in 2023.<sup>5</sup>

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<sup>1</sup> <https://www.npr.org/2024/05/14/1251096758/biden-china-tariffs-ev-electric-vehicles-5-things>

<sup>2</sup> <https://apnews.com/article/biden-china-tariffs-electric-vehicles-solar-254546e92f823a78220c195a0a42a10e>

<sup>3</sup> <https://www.msn.com/en-ca/money/topstories/biden-hiking-tariffs-on-chinese-evs-solar-cells-steel-aluminum-adding-to-tensions-with-beijing/ar-BB1mm0WO?ocid=BingNewsVerp>

<sup>4</sup> <https://apnews.com/article/european-union-electric-vehicles-tariffs-china-b56ef6eff5e8970bf3a9d3304fdbaa5>

<sup>5</sup> <https://www.cnn.com/2024/04/23/cars/electric-vehicle-sales-forecast-iea/index.html>

### 13. Safe Surfing

Beginning in early 2023, many states began requiring pornography websites to crack down on age verification for the protection of children.<sup>1</sup> In most cases, the laws require that some form of identification is uploaded to the site in question to confirm the person accessing the explicit content is 18 or older. Before this change occurred, it was common for such websites to display pop-ups prompting the user to check a box or simply to agree that they are a legal adult. The result of the legislation has been that popular porn sites such as Pornhub have restricted access to their content in these states rather than implementing a requirement that their users upload ID.<sup>2</sup>

A statement from Pornhub's parent company, Aylo, explains the motivation behind their decision to restrict access to their content in states with ID verification laws, "Aylo has publicly supported age verification for years, but we believe that any law to this effect must preserve user safety and privacy, and must effectively protect children from accessing content intended for adults," the company said in April of 2024. "Unfortunately, the way many jurisdictions worldwide have chosen to implement age verification is ineffective, haphazard, and dangerous. Any regulations that require hundreds of thousands of adult sites to collect significant amounts of highly sensitive personal information is putting user safety in jeopardy."<sup>3</sup>

Aylo stressed that it doesn't want adult material to be viewed by minors, but the company claims users will not stop consuming pornography but will instead just go to unsafe sites that don't comply with the law. Virtual Private Networks (VPN) like NordVPN are also a way to get around the user verification laws and searches for VPNs tend to grow in states that have passed these kinds of laws.<sup>4</sup> The company believes that their site is more secure than shadier sites that may contain tracking or malware. It is important to note that X, formally known as Twitter, has recently allowed the use of adult content on its platform, hoping to monetize channels which may rival Only-Fans.<sup>5</sup> Children do not randomly stumble across these porn sites; they knowingly search for them.

These laws also raise concern for freedom of speech and freedom of association because the government is, in effect, creating significant obstacles in the path both of people who are creating and sharing sexually explicit content and those who are viewing it. Some are concerned that the state is censoring content it does not like under the guise of trying to protect children. The law doesn't only impact children; it has a chilling effect on adult pornography use as well. State Supreme Courts are beginning to consider the constitutionality of these laws.<sup>6</sup>

Louisiana was the first state to pass an age verification law. Since then, seventeen more states have followed suit. Pornhub has already pulled access to its content in Texas, Mississippi, Arkansas, Montana, North Carolina, Utah, Nebraska, and Virginia.

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<sup>1</sup> <https://action.freespeechcoalition.com/age-verification-resources/state-avs-laws/>

<sup>2</sup> <https://www.msn.com/en-us/money/other/new-idaho-law-in-effect-pornhub-restricts-website-access-to-idahoans/ar-BB1phHAW?ocid=BingNewsVerp>

<sup>3</sup> <https://spectrumnews1.com/ky/louisville/news/2024/06/17/porn-site-age-verification-kentucky>

<sup>4</sup> <https://edition.cnn.com/2024/03/15/tech/vpn-searches-spike-texas-pornhub/>

<sup>5</sup> <https://www.nbcnews.com/tech/tech-news/elon-musk-x-allowing-users-post-consensual-adult-content-rcna155488>

<sup>6</sup> <https://19thnews.org/2024/07/supreme-court-porn-id-law/>

## 14. Water Wars

In 1944, Mexico and the United States agreed to a treaty wherein, every five years, Mexico would send 1.75 million acre-feet of water from the Rio Grande to the US, and the US would send 1.5 million acre-feet of water from the Colorado River to Mexico.<sup>1</sup> The treaty, “animated by the sincere spirit of cordiality and friendly cooperation,” served both a political and functional role. While serving to unite the two countries in mutual exchange, the treaty also provided measures against droughts and other water-related crises. With this in mind, however, the appropriate provisions of water were drawn up in the past, when water needs concerned a comparatively smaller population and smaller agricultural needs.

In 2024, the cooperation between Mexico and the United States become strained, as a wide variety of factors have contributed to vastly increased water needs on both sides of the river.<sup>2</sup> Rapid development and increasing urbanization in both Mexico and the United States, in addition to economic incentivization to construct farms and factories following the passage of NAFTA in 1994, have all caused increased water usage. Additionally, with this past summer following an unfortunate trend of being among the hottest on record in the American Southwest, climate factors are now also contributing to the lack of available water.<sup>3</sup>

In the midst of increased water needs and worsening conditions, Mexico currently owes the United States 900 thousand acre-feet of water, due in October 2025.

Mexico has experienced a severe drought since 2011. In Mexico City, a decrease in rainfall has dramatically affected both the city itself and its watershed in the past few months.<sup>4</sup> While groundwater has been a primary source of water for years, dwindling groundwater levels have been exacerbated by drier-than-usual conditions and a leaking, inefficient water grid. Mexico City’s water emergency bears similarities to the water crisis further north near the Rio Grande. In the city of Chihuahua, drought conditions affect farmers worst of all. In 2020, the Mexican government used water from a dam in Chihuahua to fulfill its water obligations to the United States, leading to protests that ended with one woman shot by the Mexican National Guard.<sup>5</sup> In 2024, farmers in the town of Tlalco, Veracruz blocked a highway to protest the use of water by US-owned factory farms.<sup>6</sup> Two protestors were shot by police in the ensuing effort to disperse the protestors, inciting further demonstrations and instigating the already frustrated local population.

In the United States, a lack of water availability has impacted South Texan communities for similar reasons to their North Chihuahuan and Coahuilan counterparts.<sup>7</sup> Farmers and industries are suffering from the lack of available water—this February, the last sugar mill in Texas closed down after 50 years of operation due to lack of water. Texas’s citrus industry, based primarily in South Texas along the Rio Grande, now faces the potential of disappearing in the same way that the sugar industry did. With thousands of jobs being threatened and a major source of state income at stake, Texans have demanded that their representatives pressure Mexico into sending the water.

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<sup>1</sup> International Boundary and Water Commission (IBWC), *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande*, February 3, 1944, accessible via <https://www.ibwc.gov/treaties/>

<sup>2</sup> Laura Paddison and Fidel Gutiérrez, *A water war is looming between Mexico and the US. Neither side will win*, CNN News, June 17, 2024, <https://edition.cnn.com/2024/06/17/climate/water-conflict-us-mexico-heat-drought/index.html>

<sup>3</sup> Denise Chow, *Heat records fell, some shattered, in June across parts of Arizona, Nevada, and Texas*, NBC News, July 4, 2024, <https://www.nbcnews.com/science/environment/heat-wave-southwest-hottest-june-2024-rcna160057>

<sup>4</sup> Doc Louallen and Matt Rivers, *Mexico City residents, faced with water crisis, resort to drastic measures*, ABC News, June 29, 2024, <https://abcnews.go.com/International/mexico-city-residents-faced-water-crisis-resort-dramatic/story?id=111472771>

<sup>5</sup> BBC, *Mexico reaches water deal with US despite violent protests*, October 22, 2020, BBC News, <https://www.bbc.com/news/world-latin-america-54652706>

<sup>6</sup> David Bacon, *US Corporations Pump Aquifers Dry as Police Kill Water Defenders in Rural Mexico*, August 26, 2024, Truthout, <https://truthout.org/articles/us-corporations-pump-aquifers-dry-as-police-kill-water-defenders-in-rural-mexico/>

<sup>7</sup> Bria Suggs, *Water treaty between Mexico and U.S. faces biggest test in 80 years*, August 16, 2024, NPR, <https://www.npr.org/2024/08/16/nx-s1-5075171/water-treaty-mexico-united-states>

A bipartisan congressional delegation, including Texan representatives of both parties, have signed a letter proposing that federal appropriations of money and assistance to Mexico be frozen until the water debt is resolved. According to one of the signatories, Monica de la Cruz (TX-R), “If we cannot save our farmers, then Mexico does not deserve to have any money appropriated to them.” Another signatory, Henry Cuellar (TX-D), commented on the situation, stating, “Mexico has not even responded to this, which means one thing [ . . . ] that the possible loss of money is probably less important than the water right now for their communities.”<sup>8</sup>

While Mexico struggles to provide water from the Rio Grande, the United States has otherwise kept its end of the deal. A fair agreement would entail that Mexico should, even at pains, keep up their end or find some way to extend their debt forward to be paid in better conditions. Better conditions, however, may never come. Ecological conditions continue to worsen as heat waves occur more frequently and with higher intensity across the globe.

Additionally, the water crisis poses unique challenges drawn across class lines. In Mexico City, the drought disproportionately affects the poor, who have to spend a much higher percentage of their earnings in order to get water—sometimes of which cannot be used for drinking or washing. Solutions by the Mexican government to reallocate water, both towards repaying the water debt as well as protecting companies operating in the area, have led to protests and death among local farming communities. The disproportionate effects might even be observed at a national scale, as the United States is far richer than Mexico, and the state of Texas<sup>9</sup> is far richer than the states of Chihuahua and Coahuila combined.<sup>10</sup> If the 1944 treaty was, at its core, an agreement to foster mutual cooperation, one wonders if the treaty still serves as a testament to this goal, or if it has since become an unhelpful obligation as an uncertain future approaches.

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<sup>8</sup> *Ibid.*

<sup>9</sup> Bureau of Economic Analysis (BEA), *Gross Domestic Product by State and Personal Income by State, 1st Quarter 2024*, BEA, June 28, 2024, <https://www.bea.gov/data/gdp/gdp-state>

<sup>10</sup> Guillermina Rodriguez, *Regional Indicator of Economic Activity 2023*, National Bank of Mexico, June 2023, <https://www.banamex.com/sitios/analisis-financiero/pdf/revistas/IRAE/IRAE2023.pdf>

## 15. Speaking Out Against Not Speaking Out

In May 2023, a federal court judge ruled that Erica Herman, ex-girlfriend of Tiger Woods, must comply with the terms of the non-disclosure agreement she signed at the onset of their relationship.<sup>1</sup> Among other things, the NDA required Herman to pursue any claims against Woods through arbitration rather than in court. Doing so would protect the reputation of the golf superstar.

Herman disputed the validity of the NDA in part because of a piece of federal legislation, the Speak Out Act, which went into effect in December 2022.<sup>2</sup> The Act rendered unenforceable non-disclosure agreements regarding sexual assault and abuse that were entered into before the allegation was made. In short, this means that a person cannot be compelled in advance to remain silent about any sexual assault or misconduct that might occur while involved with the party with whom they have entered into the agreement. Herman alleged that her claims against Woods included accusations of sexual harassment. The judge ruled that there was insufficient evidence for that contention.

This case is among the first to be heard since the passing of the Speak Out Act. The judge was tasked with determining whether the behavior Woods exhibited toward Herman counted as sexual abuse. Herman claimed that Woods suddenly and unexpectedly ended their relationship and kicked her out of the home they lived in together. She alleged that he used the guise of a trip to the Bahamas to get her out of the house and then abandoned her at the airport where a representative of Woods informed her that the locks had been changed and she would never see Woods again. In her arguments for the court, Herman pointed out that she was an employee of Woods when their relationship began, and he abused his position of power repeatedly in sexual ways. Her lawyers argued that Woods, “made the availability of her housing conditional on her having a sexual relationship with a co-tenant.”

This case raises moral questions about NDAs in general and NDAs that apply to sexual assault and misconduct specifically. Those who argue in favor of NDAs emphasize that they are consensual—no one has to sign an NDA if they don’t want to. Once they have signed it, the parties to the agreement are bound by the ethics of making promises. Further, advocates argue that in cases like Woods’s, rich and powerful people can have their lives and reputations destroyed by con artists and jilted lovers who are willing to lie to make some money.

Others, however, argue that NDAs are, in general, unethical unless they are narrowly tailored to protect trade secrets or intellectual property. These agreements always involve an imbalance of power, and, as a result, fully free and informed consent is not possible. Signing such an agreement is often a condition of employment and is therefore inherently coercive. Not all contracts are genuine promises—a person ought to be released by the obligations of a contract if that contract is exploitative or otherwise unjust. Such agreements prevent people from behaving fully autonomously and these restrictions do not serve any compelling interests aside from protecting the reputation of the individual or institution. There are much more important considerations than reputations.

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<sup>1</sup> <https://www.nytimes.com/2023/05/18/sports/golf/tiger-woods-erica-herman-lawsuit.html>

<sup>2</sup> <https://www.pbs.org/newshour/show/congress-passes-law-banning-non-disclosure-agreements-in-sexual-harassment-cases>