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Dear Readers,

Thank you for picking up this issue of the Binghamton Law Quarterly!

It is an honor to serve as the newly elected President of the Binghamton Law Quarterly. I began writing for the Quarterly as a first-year student at Binghamton. As a current junior, it is wonderful to be able to grow with the Quarterly and see the progress that has been made over the last few years. We are currently living in a time with COVID-19 and virtual learning, which had resulted in many challenges that our newly elected Executive Board was able to overcome. However, we are looking forward to the growth and innovation that lies ahead and we are proud to bring you our first publication as a new team.

Our mission is to serve as an outlet for students to write passionately while bringing pertinent legal issues into focus. Our mission extends as we aim to provide an opportunity for students to enhance their reading and writing skills across a multi-disciplinary sphere—we welcome students from all majors and areas of academic interest. Thanks to a new team of writers and editors, we have decided not to assign this publication a theme. As a result, this issue brings a wide range of topics by our passionate student content writers.

Thank you to all readers for taking the time to read this copy and contributing to the Binghamton Law Quarterly's success. We are excited for what the coming year may bring, and we always encourage new writers, editors, and designers to join our team. If you would like to get involved, please contact quarterly@binghamtonsa.org and let us know how you'd like to contribute.

We would also like to thank the Politics, Philosophy and Law department, who has supported our publishing efforts through every publication cycle. We would also like to thank the Pre-Law office and the Harpur Law Council for helping us with student outreach and recruitment since the beginning formations of the Quarterly.

Finally, we must thank our dedicated writers and editors who worked to produce the content within this publication. For those pursuing a career in law and for those simply interested in legal topics that are relevant in our world today, we proudly present to you first issue for Fall 2021 of the Binghamton Law Quarterly.

Sincerely,
Juliet Tomaro
President and Chief Editor

ANALYZING THE HARMFUL EFFECTS OF DARK MONEY ON AMERICAN DEMOCRACY IN THE WAKE OF *CITIZENS UNITED VS. FEC*

By Samuel Glavey

The Supreme Court Case Citizens United v. Federal Election Commission has proven to be one of the most detrimentally consequential rulings handed down from our nation's highest bench in decades. The merits of the case were centered around the dynamic between free speech and campaign finance laws in the United States. Critics argue that the Supreme Court's ruling in favor of the group Citizens United has cultivated illiberal conditions in federal elections. Citizens United is a conservative non-profit organization that predominantly focuses on political advocacy for the GOP. In 2008, Citizens United challenged the Federal Election Committee on the grounds of constitutionality when the organization was prohibited from releasing a film that aimed to attack then-candidate Hillary Clinton, because it was deemed too close to the presidential primaries. Oral arguments for this case began in 2009, culminating in a decision in early 2010 which held that the free speech clause within the First Amendment precludes the federal government from banning "independent expenditure" in American elections.3

In the eleven years since the Supreme Court's decision in the landmark case Citizens United v. Federal Election Commission, the manner in which American politicians campaign, are elected, and subsequently govern has shifted dramatically. In a 5-4 ruling, the conservative wing of the Roberts Court being in the majority, the Supreme Court gutted long-observed campaign finance laws, enabling American corporations and affluent donor groups to dump unlimited contributions into our nation's elections. Prior to the Citizens United case in 2010, campaign finance laws dictated that non-profit groups, corporations, and labor unions were not allowed to make monetary contributions from their general treasuries towards pro-candidate advertisements. This stipulation however, was eventually struck down as part of the Citizens United ruling, with the court deeming it a form of censorship on protected speech.1

The Supreme Court's ruling on Citizens United effectively asserted that within the realm of American politics and campaign finance, corporations are people — that transitively are owed the same rights to speech and expression. In the wake of this ruling, a plethora of "Super PACs" have been formed, which the FEC defines as "non-connected political action committees".1 By law, these PACs are prohibited from direct coordination or contribution to any federal campaign; however, there is no limit on the amount of money they can spend in an attempt to influence an elector-

al outcome.1

One major consequence of the Citizens United ruling has been the proliferation of "Dark Money" in campaign finance.2 A term often seen as ambiguous, dark money is defined as "money donated to politically active nonprofit organizations or anonymous corporate entities, which spend this money to influence political campaigns or other special interests but are not required to reveal their donors".2 Critics often argue that dark money has greatly eroded the level of transparency seen in both federal elections and the integrity of the courts themselves. Following a more recent Supreme Court case that reaffirmed the legality of dark money, Americans for Prosperity Foundation v. Bonta, Rhode Island Senator Sheldon Whitehouse issued the following statement, "The Court that Dark Money built just handed dark-money donors a massive win. We are now on a clear path to enshrining a constitutional right to anonymous spending in our democracy, and securing an upper hand for dark-money influence in perpetuity.

Americans hate dark money; they hate crooked special-interest influence; and they hate that their voice in their democracy can't compete with a 'tsunami of slime' from mega-donors and corporations".9 Here Whitehouse, a former U.S. attorney, underscores the problematic precedent the court has set for dark money's legitimacy.9 By repeatedly prescribing anonymous, outside spending in our elections the same rights held by individual voters and small donors, the legislative docket in Washington D.C. has skewed heavily in favor of corporate America.

Citizens United has certainly changed America's political functions and political discourse, alike. In many ways the introduction of unfettered dark money has driven the needs of voters out of the political arena. Simply put, our nation's democracy was not constructed to sustain these oversized campaign contributions from a relatively small population of ultra-wealthy Americans. At its core the very inclusion of disproportionate contributions, that hold the explicit aim of skewing electoral results in exchange for more favorable policy outcomes, cuts against the democratic maxim of "one person, one vote" — a legislative precedent set in the Supreme Court case Wesberry v. Sanders in 1964. Take tax policy for example; in 2017 President Donald Trump and Congressional Republicans passed the Tax Cuts and Jobs Act, a major corporate tax cut that reduced the corporate tax rate from 39% to 21%. This bill had an estimated 34% level of support from all voters (Monmouth 2019) and was passed by a simple majority of 51 senators that at the time represented just 47% of the country.5 On the flip side, a poll recently released by the firm "Data For Progress" indicates that 68% of voters support a Wealth Tax on Ultra-Millionaires, double that of the Trump Tax Cuts — including 81% of Democrats, 66% of Independents, and 57% of Republicans (Warren 2021). However, this tax policy has virtually no traction on Capitol Hill in large part thanks to the influence special-interest dark money holds over lawmakers.

With the immense presence of

special interest money linked to candidates running for federal office, many politicians (once elected or reelected) find themselves more legislatively bound to the interests of the corporations or wealthy donors that bankrolled television advertisements than the voters who were persuaded by said ads. It is estimated that in the years following the Citizens United case, $1 billion in dark money has been spent in federal elections — with a record $100 million spent in the 2020 election cycle alone.6 Dark money has produced a toxic cycle of political quid pro quos, which has ultimately manifested a major schism between what voters need and what their federal representatives will do for them. Many would argue that the constituency of any given district or state has the prerogative to vote out an elected official that abandons their contemporary needs or values in favor of the affluent donor class. While this is true in a more functional democracy, the super PACS that have permeated our elections can also spend unlimited amounts of money in opposition to a candidate.4 In a political ecosystem defined by special interests, highly concentrated disinformation efforts from super PACs and corporations have fueled hyper-partisanship in America and done their best to drive substantive policy discourse out of the national debate.

The Supreme Court's ruling on Citizens United v. Federal Election Commission has allowed for corporate entities and special interest groups to drown out the voices of American voters in our democracy, regardless of their party affiliations. By labeling corporations, labor unions, and non-profit organizations a protected class under the First Amendment, American voters have been cut out of the policymaking process almost entirely. In this case, the prevalence of such poorly-contextualized interpretations of the First Amendment have actually given a disproportionate voice to the few, at the expense of the right to free speech for the many. However, all is not lost for our democracy. Congress and state governments have the ability to pass a Constitutional Amendment that aims to reverse the precedent set by Citizens United v. Federal Election Commission. Given the difficulty of such an action, Congress ought to consider the other options at its disposal. Congress can pass strengthened campaign-contribution disclosure laws to mandate that all contributions are immediately made public so as to bolster the level of transparency afforded to voters during election cycles. Congress could also pass laws that effectively ban corporate contributions to federal elections entirely. There is a path forward in the wake of the Citizens United ruling where our democracy can survive, but whether or not that path is followed comes down to whether our elected representatives have the courage to follow it.

CITATIONS

1 Davidson, Roger H., Walter J. Oleszek, Frances E. Lee, and Eric Schickler. Congress and Its Members. 17th ed. Thousand Oaks, California: CQ PRESS, 2021.

2 Dictionary.com. (n.d.). Dark money definition & meaning. Dictionary.com. Retrieved September 20, 2021, from https://www.dictionary.com/browse/dark-money

3 Lau, Tim. "Citizens United Explained." Brennan Center for Justice, December 12, 2019. https://www.brennancenter.org/our-work/research-reports/citizens-united-explained.

4 Pika, Joseph A., John Anthony Maltese, and Andrew Rudalevige. Politics of the Presidency. 10th ed. Thousand Oaks, California: CQ PRESS, 2021.

5 Tauberer, Joshua. "The Senate Has Never Been as Un-Democratic as It Was in 2017–2018, and Minority Rule Could..." Medium. GovTrack Insider, December 30, 2018. https://govtrackinsider.com/the-senate-has-never-been-as-un-democratic-as-it-was-in-2017-2018-and-minority-rule-could-801e1046af28.

6 Torres-Spelliscy, Ciara. "Dark Money in the 2020 Election." Brennan Center for Justice, November 20, 2020. https://www.brennancenter.org/our-work/analysis-opinion/dark-money-2020-election.

7 "Trump's Tax Time Troubles." Monmouth University Polling Institute, June 5, 2019. https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_041719/?utm_source=link_newsv9&utm_campaign=item_249161&utm_medium=-copy.

8 Warren, Elizabeth. "A Wealth Tax on Ultra-Millionaires is a Winning Strategy for Democrats." Data For Progress, March 1, 2021. https://www.dataforprogress.org/blog/2021/2/22/warren-wealth-tax-winning-strategy.

9 Whitehouse, Sheldon. "Whitehouse Slams SCOTUS Decision IN AFPF Dark Money Case: U.S. SENATOR Sheldon Whitehouse of Rhode Island." whitehouse.senate.gov, July 1, 2021. https://www.whitehouse.senate.gov/news/release/whitehouse-slams-scotus-decision-in-afpf-dark-money-case.

WATERS OF THE UNITED STATES DEFINITION CHANGES

By Kaitlyn DeYulio

Since the implementation of the Clean Water Act in 1972 the meaning of "Waters of the United States" has taken on a new importance. "Waters of the United States" refers to the navigable waters in the U.S. It is a threshold term utilized in the Clean Water Act to establish the scope of federal jurisdiction.1 The 1972 Clean Water Act makes discharging pollutants into the waters of the United States without a permit unlawful.8 Following this Act the Environmental Protection Agency and U.S. Department of the Army have utilized the term Waters of the United States (WOTUS) in regulations and many Clean Water Act programs have used the definition as well.2 WOTUS is intended to describe the navigable waters in the United States, however the definition of WOTUS is always subject to change for various reasons.

Currently the definition in use by the Environmental Protection Agency and U.S. Department of the Army to interpret WOTUS is that of the pre-2015 regulatory regime. Under this regime, the term WOTUS refers to all waters past, presently or at all susceptible to interstate or foreign commerce. It also refers to interstate waters including wetlands and waters that could affect interstate or foreign commerce.2 Additionally, WOTUS under the pre-2015 regulatory regime means all impoundments of water defined as WOTUS, tributaries of waters identified in the section, and the territorial sea and wetlands adjacent to waters identified in the section.2 The reason this definition is in use and not a more recent definition is due to the case of Pascua Yaqui Tribe v. U.S. Environmental Protection Agency, which will be discussed shortly.

The Obama Administration's new rule in 2015 defined WOTUS broadly, where it was interpreted to include waters with a "significant nexus", which could be difficult to determine and cause inconsistent application of the rule.7 The Trump Administration attempted to clear up the uncertainty of this rule by replacing it with the Navigable Waters Protection Rule, which narrowed the meaning of WOTUS.7 The Navigable Waters Protection Rule redefined the waters of the United States to federally regulate four categories: territorial seas and traditional navigable waters; perennial and intermittent tributaries; certain lakes, ponds, and impoundments; and wetlands that are adjacent to jurisdictional waters.4 Additionally, the Navigable Waters Protection Rule states the waters that are not federally controlled. These include areas that only contain water after it rains, groundwater, many ditches, prior converted cropland, watering ponds for farm and stock and waste treatment systems.4 Under the Navigable Waters Protection Rule, the Pascua Yaqui Tribe sued the U.S. Environmental Protection Agency in a case known as Pascua Yaqui Tribe v. U.S. Environmen-

tal Protection Agency. Plaintiffs argued that the Navigable Waters Protection Rule disregarded established science and did not consider the effects of ephemeral waters on traditional navigable waters enough.5 As a result, on August 30th, 2021 District Judge Rosemary Marquez ordered that the Navigable Water Protection Rule be vacated and remanded for reconsideration.5 Due to this, the pre-2015 regulatory regime is in use for the time being.

The Biden Administration plans on revising the rules defining WOTUS with a two-step process. First, the administration plans on removing the Navigable Waters Protection Rule and utilizing the 1986 definition for agency decision making.6 Then the administration plans to create a new definition for WOTUS that aims to protect ephemeral streams, ditches and adjacent wetlands.6 This two-step process is in line with the expectations that came from Pascua Yaqui Tribe v. U.S. Environmental Protection Agency.

The "Waters of the United States" definition is constantly changing. With each new Presidential administration comes different goals for the definition. In some cases, the definition may be broadened, as it was under the Obama Administration. In others it may be narrowed, like under the Trump Administration. It may also be adjusted to suit other circumstances, like the Biden Administration making changes that fit the requirements coming from Pascua Yaqui Tribe v. U.S. Environmental Protection Agency. Changes to the definition could also be halted and reverted to older definitions, if necessary as it was for the Pascua Yaqui Tribe v. U.S. Environmental Protection Agency case. Overall, the WOTUS definition is constantly subject to change due to changes in presidential administration, but also sometimes due to influences coming from outside of the administration and Environmental Protection Agency.

CITATIONS

Citations

1 “About Waters of the United States.” EPA. Environmental Protection Agency, September 3, 2021. https://www.epa.gov/wotus/about-waters-united-states.

2 “Clean Water Act Programs Utilizing the Definition of WOTUS.” EPA. Environmental Protection Agency, September 2, 2021. https://www.epa.gov/wotus/clean-water-act-programs-utilizing-definition-wotus.

3 “Current Implementation of Waters of the United States.” EPA. Environmental Protection Agency, September 16, 2021. https://www.epa.gov/wotus/current-implementation-waters-united-states.

4 Davenport, Coral. “Trump Removes Pollution Controls on Streams and Wetlands.” The New York Times, January 22, 2020. https://g-mnc.org/wp-content/uploads/2020/01/NYT_Trump-Removes-Pollution-Controls-on-Streams-and-Wetlands-The-New-York-Times.pdf.

5 Pascua Yaqui Tribe v. U.S. Environmental Protection Agency (The United States District Court for the District of Arizona August 30, 2021).

6 Petersen, Rafe. “Biden Administration Begins Process of Revising Waters of the U.S. Rule: Insights.” Holland & Knight, August 6, 2021. https://www.hklaw.com/en/insights/publications/2021/08/biden-administration-begins-process-of-revising-waters-of-the-us-rule.

7 Smith, Brooks, Andrea Wortzel, Fitzgerald Veira, Byron Kirkpatrick, Patrick Fanning, and Ashley Cameron. “Trump Administration Publishes Final Navigable Waters Protection Rule.” Environmental Law and Policy Monitor. Troutman Pepper Hamilton Sanders LLP., April 21, 2020. https://www.environmentallawandpolicy.com/2020/04/trump-administration-publishes-final-navigable-waters-protection-rule/.

8 “Summary of the Clean Water Act.” EPA. Environmental Protection Agency, September 9, 2020. https://www.epa.gov/laws-regulations/summary-clean-water-act.

CHANGES AHEAD FOR MOVEMENT IN THE EU

By Lea Frenkel

The original vision of the European Union (EU) was established on four central pillars: the free movement of labor, capital, goods, and services.1 In a recent survey by Eurostat, "Europeans ranked the freedom of movement as the EU's major achievement- above peace, standardized currency, and student exchanges".2 Accordingly, the question arises: How did the EU come to establish free movement as a characteristic so integral to its function in international affairs?

In 1957, the Treaty of Rome created the European Economic Community (ECC), legitimizing the four principles previously outlined, largely, as the name would suggest, for economic benefits.2 The UK joined the treaty in 1973, allowing free movement between itself and other signatory countries. In 1992, the Treaty of Maastricht transformed the ECC into what we know today as the EU, explicitly establishing the principle of freedom of movement and residency for all citizens of participating countries.2 Third party nationals from outside the EU have significantly fewer rights to residency and work in EU countries, making these agreements especially significant for EU citizens.2

However, when it came time for Britons to vote to stay or leave the EU, during the movement known as "Brexit," many cited freedom of movement as the deciding factor in their decision to vote "yes" to separating the UK from the EU bloc. With increasing numbers of migrants to the UK from European countries, many Britons felt that the lack of British control over who enters the country and is permitted to seek work was a major concern. The solution, in their eyes, would be exemption from EU rules of freedom of movement- something that is impossible as long as a state is a party to the EU. As the former Prime Minister of the United Kingdom, Theresa May, put it, "We will do what independent, sovereign countries do: we will decide for ourselves how we control immigration,".2 Partially as a result of this issue, the UK officially left the EU in January of 2020, and the British Parliament repealed EU laws as of January 2021.3

With the decision of the UK to formally leave the European Union, came a difficult path forward for the symbolic right to freedom of movement in the EU. Due to the streamlined process of obtaining residency in another EU country for EU citizens, the British government has limited resources to identify foreigners living in the country. Of the roughly 3.5 million EU citizens from outside of the UK currently living there, not a single one has a physical residency permit provided by the British government to prove their status.2

As such, the British government was forced to create a plan representing a middle ground between free movement and

complete sovereign control over residency rights. The British Parliament set forth the EU Withdrawal Act of 2020, which states that EU citizens who apply to the "EU Settlement Scheme" by June of 2021 have the right to remain in the UK until December of 2023.4 With this status, residents will be afforded the right to work in the UK, use the National Health Service, enroll in education in the UK, access public funds, and travel in and out of the country.4 After this agreement expires, though, the British government plans to instate a points-based policy, which bases residency qualifications on skills and talents of individual applicants, rather than citizenship.4

The foundational change in the way travel and residency rights will be decided between EU citizens and British nationals can be understood as follows: as long as the UK is not a member of the European Union, EU citizens will be treated as third party nationals in all situations. This means that they will not be given preference in applications for residency, work, or any other program that EU citizens previously had "special" rights for.5

This is not an issue for EU citizens alone, as UK citizens will be subject to the same changes when visiting or residing in the European Union. Given the 30% rise in UK citizens moving to EU countries between 2008 and 2018, the change in policy regarding freedom of movement in the EU will have widespread effects.6 British citizens will now need to follow the same rules as non-EU citizens, which limit free movement in the Schengen area, and do not allow travelers to reside in states for longer than 90 days in every 180 day period.6 These effects on British nationals lead many to believe that the British government is likely to negotiate individual treaties with European countries. For instance, a significant number of British citizens own second homes in France, and a change in their rights to residency could be cause for domestic outcry- such incentives could impact the constantly evolving interactions between the UK and the EU.6

The implications of the nullification of freedom of movement between the UK and the EU stand to complicate far more than travel and residency. In their quest to identify non-British citizens in the UK without an existing system to do so, the British government is at risk for mass discrimination. The inability of the government to distinguish between those who can legally continue to reside and work in the UK coupled with the current global sensitivity to racial, religious, and gender profiling, is likely to result in cases of misconduct by employers, banks, and the NHS in deciding who ought to stay or leave the country.2 Europeans' access to healthcare in the UK will also be at stake - a necessity residents have relied upon for decades. In terms of education and employment, European students are already seeing the effects of no longer being able to easily access British institutions, as the UK has already pulled out of the Erasmus student exchange program, and employment qualifications may not be accepted across the English channel.3 With such turbulent changes ahead, the British government will be facing internal and external pressures

to revisit their plan of complete rejection of EU laws when it comes to the right of freedom of movement.

CITATIONS

1 Portes, Jonathan. 2016. "Immigration, Free Movement and the EU Referendum." National Institute Economic Review 236: 14–22. doi:10.1177/002795011623600103.

2 Tuttle, Myrna El Fakhry. 2020. "The Impact of Brexit on the Free Movement of Persons." LawNow Magazine. Centre for Public Legal Education Alberta. November 17. https://www.lawnow.org/the-impact-of-brexit-on-the-free-movement-of-persons/.

3 Sandford, Alasdair. 2020. "Life after Brexit: What Will the Rule Changes Mean for People in 2021?" Euronews. December 31. https://www.euronews.com/2020/12/28/life-after-brexit-what-will-change-for-people-in-2021-when-the-uk-is-free-of-eu-rules.

4 "Apply to the EU Settlement Scheme (Settled and Pre-Settled Status)." 2020. GOV.UK. https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means.

5 "Explanatory Guides: British in Europe." 2020. Springly. British in Europe. https://www.britishineurope.org/page/1016540-explanatory-guides#P5.

6 "UK Citizens Increasingly Moving to EU since Brexit Vote, Study Says." 2020. Euronews. August 5. https://www.euronews.com/2020/08/05/brexit-uncertainty-study-shows-rise-in-uk-citizens-moving-to-eu-countries-since-2016.

THE WHISTLEBLOWERS OF FORT BLISS

By MADISON MERCADO

Have you ever wondered what happens to children who make it across the U.S./Mexico border by themselves? Often, they are sent to places like Fort Bliss, which is an emergency intake site for unaccompanied migrant children outside of El Paso, Texas. One would hope that such facilities are made to safely house these children, but in reality, Fort Bliss has now received three separate whistleblower complaints.4 A new report has been published almost every month since July of this year, each concerning some form of child neglect. The first complaint drew attention to a multitude of ways that the Department of Health and Human Services (HHS) has contributed to the abuse of children, including unqualified supervisors, foul odors, and miscommunication that led to severe anxiety and depression for many children.5 The second whistleblower reported on the inadequate supply of masks that led to a large COVID-19 outbreak in the facility.3 The third and final report included an account of three different emergency intake facilities, but Fort Bliss had a specific complaint.3 Among the instances of neglect mentioned was an incident where children were burned with scalding hot water when they were bathed.6 The reports lead one to wonder what else may be happening at Fort Bliss that was not caught by the brave whistleblowers.

The first whistleblower report was published on July 7th, 2021 on behalf of Ms. Elkin and Mr. Mulaire, employees charged with aid in the supervision of the children by the Government Accountability Project. According to the report, Fort Bliss was running rampant with issues. The instances of neglect included can be briefly described as gross mismanagement by the HHS, which endangered the safety and health of the children. For example, many of the children suffered from anxiety and depression due to the traumatic events that led to their time at Fort Bliss. Due to the structure of the cramped tents that the children were kept in, many were not visible to supervisors. This is a major safety concern because if a child is hiding under a bunk and is having a panic attack or a medical emergency, they can easily be overlooked by the adult supervisors. Even when Ms. Elkin and Mr. Mulaire saw a child in need of assistance and looked toward the contractors in charge to provide it, some resisted, were indifferent, or were outwardly hostile to the child in question. Therefore, many children did not receive the help they needed.4

Furthermore, the children were not given clean bedding or clothes, which led to a foul odor in the encampment. The portable restrooms further added to the odor. Another reported instance of neglect concerned the contractors who were in charge of supervising the children. Many

lacked experience with children in general, not to mention ones in extreme emotional distress. Lastly, many of the children did not see their caseworkers for over a month, if at all. These children were not able to get sponsors in the US so they could leave Fort Bliss. There was one instance where Mr. Mulaire had to take matters into his own hands and report on the situation of a boy who had not been contacted by a caseworker yet. The excuse by those in charge of the process said he got "lost in the system".5 If it were not for Ms. Elkin and Mr. Mulaire, according to the report, many of the children would not have received the necessary care and attention that was required.

The second whistleblower report was not quite as extensive as the first but was just as worrisome. The main concern regarded the COVID-19 outbreak due to the lack of masks available to the children who were kept in crowded conditions.6 The number of specific cases was not disclosed by a US Public Health Service manager, due to their concern for the possibility of politics and perception taking over the situation. Similar to the first report, there was again a complaint about clean clothing not being available, specifically clean underwear. Furthermore, the report mentioned the mismanagement of mental health issues suffered by the children and unqualified employees who were hired for the job.2The similar allegations made in both whistleblower reports, which were made not even a month apart, only further strengthen their report that these events are indeed occurring at Fort Bliss.

The most recent whistleblower report, which was revealed to the public on September 8th, reports on more disturbing events that have occurred at Fort Bliss. One such event includes children being burned by very hot water during baths. The whistleblower also complained that children were taken to get their blood drawn but not told what for, and were threatened with deportation a number of times. An HHS spokesperson has responded to the report, saying that these incidents have been dealt with (not denying that they occurred) and that their top priority is the interests of the children kept at Fort Bliss. However, the whistleblower denies that these issues have been fixed and emphasizes that "the problems are ongoing, systemic, and repeated".3 In light of the two previous reports about the neglect happening at Fort Bliss, it is not hard to believe this whistleblower's statement that nothing has been resolved is true.

The issues reported clearly violate the rules set by the Flores settlement agreement, which sets specific standards for how the Immigration and Naturalization Service (INS) is supposed to treat kids. These rules include "(a) release children from detention to approved sponsors without unnecessary delay; (b) place children in the "least restrictive setting," which was read to individually consider their ages and needs; and (c) implement general standards for the care and treatment of children in detention"1 Though the INS has been reformed to include these rules, several proposals have been made in order to further help unaccompanied children in the immigration system gain more dignity, autonomy, and

consideration. They suggest that "an exception [be made] to the Immigration and Nationality Act for unaccompanied minors to be appointed counsel [at the expense of the government], the elimination of the distinction between unaccompanied minors from contiguous nations and unaccompanied minors from noncontiguous nations in the TVPRA, and the application of the strict scrutiny to review equal protection claims of undocumented immigrants".1 The whistleblower reports, therefore, are merely reporting on neglect and mismanagement in a system that has originally been designed in a neglectful way.

The whistleblowers' complaints about what happens at Fort Bliss can only do so much. Reporting what they have seen and helping the children they can is a true testament to their character. Despite the accusations, however, the fate of Fort Bliss has yet to be determined and the proposals to fix the system to be implemented.

CITATIONS

1 Ali, Mahrukh. “Zero Sympathy: Unaccompanied Minors’ Rights in the US Immigration
System.” Indiana Journal of Global Legal Studies 28, no. 2 (2021): 245–66. https://doi.org/10.2979/indjglolegstu.28.2.0245.

2 Flores, Adolfo. “Detained Immigrant Children Didn’t Have Adequate Masks during a
Covid Outbreak, Whistleblowers Allege.” BuzzFeed News. BuzzFeed News, July 29, 2021.
https://www.buzzfeednews.com/article/adolfoflores/whistleblowers-fort-bliss-immigrant-children.

3 Flores, Adolfo. “Immigrant Children Were Burned with Scalding Water and Threatened
at an Emergency Shelter, a Whistleblower Said.” BuzzFeed News. BuzzFeed News, September 8, 2021.
https://www.buzzfeednews.com/article/adolfoflores/fort-bliss-immigrant-children-shelter-whistleblower.

4 Popovich, Anna. “Third Whistleblower Complaint about Fort Bliss Detention Center
Alleges Immigrant Children Were Abused and Neglected.” Government Accountability Project, September 17, 2021. https://whistleblower.org/in-the-news/whistleblower-network-news-third-whistleblower-complaint-about-fort-bliss-detention-center-alleges-immigrant-children-were-abused-and-neglected/.

5 Seide, David Z., and Dana L. Gold. “Protected Whistleblower Disclosures of Gross
Mismanagement by the Department of Health and Human Services at Fort Bliss,
Texas Causing Specific Dangers to Public Health and Safety.” Government Accountability Project, July 2021.
https://whistleblower.org/wp-content/uploads/2021/07/070721-Fort-Bliss-Whistle
blowers-Disclosure.pdf.

6 Smith, Jess. “Two Federal Whistleblowers Reveal HHS Instructions to Downplay Fort
Bliss’ Migrant Children COVID-19 Outbreak.” Government Accountability Project, August 2, 2021. https://whistleblower.org/in-the-news/latin-post-two-federal-whistleblowers-reveal-hhs-instructions-to-downplay-fort-bliss-migrant-children-covid-19-outbreak/.

CAN STATES IMPOSE A VACCINE MANDATE?

By Nicholas Hassett

In an order on July 29, 2021, Texas Governor Greg Abott declared that, "no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization".3 This comes in the midst of a nationwide debate regarding the legality of vaccine mandates in response to the spread of COVID-19 across not just the United States, but the entire world. The main argument against the ability of the State to mandate a COVID vaccine is that the mandate would be a violation of the 14th Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws…".4 However, this may be not a strong enough claim by those opposing the mandate. Due to the spread of COVID-19, a debate that once raged across the United States in the early 1900's has recently had a resurgence.

In order to find the answer to whether or not a state can legally enforce a vaccine mandate it is important to look at court cases regarding the Smallpox vaccine and seeing how the rulings could be applied to the similar situation playing out today.

Zucht v. King

In this 1922 case, Rosalyn Zucht was not allowed to attend neither a public nor private school in San Antonio, Texas because she did not have all of the required vaccinations set forth by the county. Zucht argued that this was an obstruction of her liberty and rights because a vaccine should not be mandatory in order for her to attend school.5 This case made it to the Supreme Court where the justices determined that Rosalyn Zucht's rights were not being infringed upon and there was nothing that could be done since the State was acting in the interest of the health of the general public.6

Laurel Hill Cemetery v. San Francisco

A city court had ruled that the bodies laid to rest in the local cemetery posed a health threat to the citizens of San Francisco due to how close the cemetery was to a populated part of the city. The court determined the deceased bodies should be moved. When the case reached the Supreme Court, the Supreme Court ruled that they could not overrule "the decision of the local authorities on question involving the health of the neighborhood".2 This is a landmark decision in that it shows the Supreme Court has restraint when it comes to public health issues, allowing for lower courts to have control of their individual territories.2

Jacobson v. Massachusetts

In response to the Smallpox outbreak, in 1904, the State of Massachusetts mandated a vaccine for all of its citizens. This public safety measure was generally well received, but not by Henning Jacobson, who declined to take the vaccine.1 He was subsequently fined $5 but fought the fine and mandate, using the 14th Amendment as the base of his argument.1 The case made its way to the Supreme Court where the court ruled against Jacobson, commenting that, "It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health".1 Ultimately, it is likely that the decision of whether a COVID vaccine mandate is constitutional or not will end in its own Supreme Court ruling.

However, if the cases mentioned above provide any guidance, the legality of a state vaccine mandate would be hard to argue against. On the basis of the Zucht v. King ruling, if a mandate is deemed to be the best action for the health of the public then it would be constitutional. In Laurel Hill Cemetery v. San Francisco and Jacobson v. Massachusetts also place the decision of protecting public health in the hands of the state thus making a mandate a state issue instead of a federal one.

Altogether, these three cases create a strong defense for the constitutionality of a state-imposed COVID vaccine mandate.

CITATIONS

1 "Jacobson v. Massachusetts, 197 U.S. 11 (1905)." Justia Law. Accessed September 21, 2021. https://supreme.justia.com/cases/federal/us/197/11/.

2 "Laurel Hill Cemetery v. San Francisco, 216 U.S. 358 (1910)." Justia Law. Accessed September 21, 2021. https://supreme.justia.com/cases/federal/us/216/358/.

3 Svitek, Patrick. "Gov. Greg Abbott Bans Government Mandates on Covid-19 Vaccines Regardless of Whether They Have Full FDA Approval." The Texas Tribune. The Texas Tribune, August 25, 2021. https://www.texastribune.org/2021/08/25/texas-covid-19-vaccine-mandates-ban-greg-abbott/.

4 "The 14th Amendment of the U.S. Constitution." National Constitution Center – The 14th Amendment of the U.S. Constitution. Accessed September 21, 2021. https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv.

5 "Zucht v. King - 260 U.S. 174, 43 S. Ct. 24 (1922)." Community, n.d. https://www.lexisnexis.com/community/casebrief/p/casebrief-zucht-v-king.

6 "Zucht v. King, 260 U.S. 174 (1922)." Justia Law. Accessed September 21, 2021. https://supreme.justia.com/cases/federal/us/260/174/.

HOW PRESIDENTIAL ADMINISTRATIONS SHAPE US ENVIRONMENT REGULATIONS

By Olivia DiPalermo

From the last several presidential terms, it can be seen that the aims of presidential administrations can have profound effects on the laws and regulations that shape our American society. One facet of regulation that has been greatly reshaped in recent years is environmental regulation. Differing priorities under the Obama, Trump, and now Biden administrations have resulted in alterations to longstanding legislations such as the Clean Air Act and Endangered Species Act, which have served as pillars of environmental regulation for decades. Under the Trump administration, over one hundred environmental rules and regulations were rolled back in favor of potential economic gains– this garnered extreme pushback from citizens, scientists, and environmental groups, and the effects of weakening these regulations have already begun to negatively impact the environment. Now, the Biden administration has set forth a new vision of strict environmental regulation and innovation that will require a massive reconstruction of the environmental regulatory systems in this country. This historical pattern goes to show how integral presidential bias is in determining the health and safety of our citizens, and how impactful regulations are in protecting and preserving the wellbeing of our collective environment.

During the Trump administration, over one hundred regulations affecting nearly all key components of environmental regulation, such as water and air quality, land use, species protection, and climate change prevention, were weakened or eliminated.4 Beyond enraging the public, these changes also resulted in the termination of nearly 1,600 Environmental Protection Agency employees, serving to weaken one of the leading agencies for enforcing compliance to existing environmental regulations.3 Rollbacks included weakening Obama-era regulations on carbon dioxide emissions from vehicles, eliminating safeguards on nearly half of the nation's protected wetlands, and removing restrictions on toxic mercury emissions from power plants.7 It is also important to note how the country's clean energy development regressed during the Trump administration. This can be seen through the lifting of bans on oil and natural gas extraction and the diminishment of the Coal Ash Rule, which controlled the disposal of harmful coal waste, and the replacement of the Clean Power Plan.1 Though some effects of these rollbacks may not be seen for years, the impacts of the alterations to the Endangered Species Act and regional species protections have already had visible ecological impacts.

The impacts of environmental regulation can also be seen more clear-

ly through the examination of particular species over time. This is demonstrated in the cases of the American burying beetle and the monarch butterfly. At the bidding of the Trump Administration, the U.S. Fish and Wildlife Service, a government agency dedicated to the protection of wildlife and habitat conservation, weakened protections put on the endangered American burying beetle, a once-prevalent species east of the Rocky Mountains, to accommodate oil and gas drillers.6 Additionally, the Trump Administration made decisions to deny protections for a well-known American species, the monarch butterfly.6 What might seem to some like a series of insignificant moves actually represents a greater disregard for biodiversity and threatened species in favor of profit. These moves by the Trump Administration have served to further stress the capacity of our natural environment to sustain human civilization. In addition, The Trump administration compromised the integrity of the Endangered Species Act by having wildlife officials consider the cost of conservation before deciding whether to consider a species endangered.6 This exemplifies that through unsustainable resource use and deliberate environmental degradation, the Trump administration put profit over the health and safety of the American people and our environment.

Expressed during his campaign and now in an official presidential capacity, President Biden and his administration seek to establish a new era of U.S. environmental regulation that will exceed even Obama-era laws in strictness. The first step in Biden's plan is the review and remediation of the regulations altered and removed by the Trump administration, a move that could potentially take nearly all of Biden's term.4 The process of restructuring the nation's environmental policy can be arduous. In some cases, Biden can use his executive authority to stop fossil fuel projects or strengthen federal land protections4, but in most cases, the rules must go through Congress to be repealed and replaced.7 Already Biden has taken action in a widely publicized decision to rejoin the Paris Climate Agreement and to revoke the Keystone XL pipeline permit, a pipeline that was proposed to carry crude oil from Canada to the United States over Native American historical and cultural sites.3 Additionally, he has taken steps to restore protections to Utah's Bears Ears and Grand Staircase-Escalante national monument sites, areas which were reduced under the Trump administration.4 Biden has demonstrated willingness to take steps toward re-establishing the integrity of U.S. environmental regulations lends confidence to his ability to complete many of the more intensive climate goals he has put forth.

In his January 2021 executive order on addressing the climate crisis, Biden reaffirmed his commitment to combating environmental degradation through "listen[ing] to science" and improving public health, limiting harmful chemical and pesticide exposure, holding polluters accountable, reducing overall greenhouse emissions, restoring national monuments, and prioritizing environmental justice through economic means.2 The executive

order went beyond simply proposing future goals; it also actively established a White House Environmental Justice Interagency Council and a White House Environmental Justice Advisory Council to prioritize environmental justice, and communicated plans to strengthen the EPA, Department of Justice, and Department of Health and Human Services.5 This was done to ensure that his administration's goals of environmental justice and climate action will be supported by robust governmental infrastructure. This past April, the Biden administration also proposed the largest environmental justice investment ever made in the U.S.: $1.4 billion dollars to be allocated to aid communities disproportionately affected by climate change and environmental degradation.8 Following sentiments promised in his campaign, Biden also aims to use 40% of these funds to invest in clean energy infrastructure in disadvantaged communities.9

Though the effects of Biden's plans remain to be seen, there is much promise historically in seeking legal and political avenues for improving environmental conditions. Often, having strict regulations and the political infrastructure to enforce them can serve as the most effective means of reducing environmental degradation on a national scale. These changes from administration to administration show how imperative it is to have a political administration that will work to improve the environmental regulatory systems of our nation and work to meet the goals of citizens, most of whom want a safe and healthy environment for themselves and their descendants. Through effective political aims and the use of legal frameworks, there is hope for the United States and our global partners to reduce the threat of climate change, which affects us all.

CITATIONS

1 Baker, Cayli. 2020. “The Trump Administration’s Major Environmental Deregulations.”
Brookings. Brookings, December 15, 2020. https://www.brookings.edu/blog/up-front/2020/12/15/the-trump-administrations-major-environmental-deregulations/. Accessed Sept 19, 2021.

2 Biden, Joseph R. 2021. “Executive Order on Protecting Public Health and the Environment and
Restoring Science to Tackle the Climate Crisis.” The White House. The United States Government, January 20, 2021. https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/. Accessed September 19, 2021.

3 Cho, Renee. 2021. “A Guide to the Biden Administration’s All-of-Government Approach to
Environmental Justice.” State of the Planet. Columbia Climate School, March 4, 2021. https://news.climate.columbia.edu/2021/03/04/biden-administration-environmental-justice/. Accessed Sept 9, 2021.

4 Davenport, Coral. 2021. “Restoring Environmental Rules Rolled Back by Trump Could Take
Years.” The New York Times. The New York Times, January 27, 2021. https://www.nytimes.com/2021/01/22/climate/biden-environment.html. Accessed September 19, 2021.

5 The United States Government. 2021. “Fact Sheet: President Biden Takes Executive Actions to
Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity across Federal Government.” The White House, January 27, 2021. https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/. Accessed Sept 19, 2021.

6 Grandoni, Dino, and Darryl Fears. 2021. “Biden Administration Moves to Bring Back
Endangered Species Protections Undone under Trump.” The Washington Post. The Washington Post, June 4, 2021. https://www.washingtonpost.com/climate-environment/2021/06/04/biden-endangered-species/. Accessed Sept 19, 2021.

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