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IN his letter to Jean Baptiste Le Roy, Benjamin Franklin wrote, “[I]n this world nothing can be said to be certain, except death and taxes.”¹ In fact, taxation and the debate regarding its role in federal government has remained at the core of American civic discussion since the Boston Harbor rebellion in 1773.²
Despite enduring taxation discussion, without Congressional action addressing the ‘fiscal cliff,’ and principally the outlook of the Bush tax cuts, Mr. Franklin would accept another certainty: the American middle class and global economy bear the risk of impending financial hardship.3

**Correlation between the ‘Fiscal Cliff’ and the Bush Tax Cuts**

The ‘fiscal cliff’ refers to a series of tax increases and spending cuts effective December 31, 2012, unless Congress meets established deficit reduction benchmarks.4 On the tax side, the ‘fiscal cliff’ references, among others, an expiration of the payroll tax holiday and the alternative minimum tax patch.5 Yet, totaling $180 billion, “[T]he tax cuts enacted during President George W. Bush’s term represent the biggest slice of the [‘fiscal cliff’] pie.”6

The 2001 and 2003 Bush tax cuts enacted comprehensive tax reductions for most American taxpayers.7 The cuts included, “[M]arginal rate reductions, the introduction of a new 10 [percent] tax bracket, an expansion of the child tax credit, and a variety of other provisions.”8

In December 2010, Congress passed, and the President signed, a two-year extension of both Bush tax cuts.9 The extension included an automatic expiration on December 31, 2012.10

**Defining American Middle Class**

The term American middle class lacks precise definition.11 In 2011, the U.S. Census Bureau reported median U.S. annual household income at $50,000.12 Accordingly, the Census divided the U.S. population into five income-based categories, each comprising 20 percent of the population. “If the middle 20 percent is truly the ‘middle-class,’ then middle class households make between $38,500 and $62,400 per year.”13
CONGRESSIONAL INACTION AND ITS EFFECT ON THE AMERICAN MIDDLE CLASS

Congressional inaction in addressing the expiring Bush tax cuts will immediately impact the American middle class through an increase in annual tax liability and a subsequent reduction in disposable income.\(^{14}\)

If allowed to fall off the ‘fiscal cliff,’ at least 90 percent of American taxpayers will see taxes rise.\(^{15}\) In 2013, the American middle class, defined as Americans with income between $38,500 and $62,400 per year, will see taxes increase at least $2,000.\(^{16}\) “For most taxpayers, the bulk of the increase would be triggered by the expiration of tax cuts enacted in 2001 and 2003 during the George W. Bush administration.”\(^{17}\)

The Bush tax cuts provided a middle class family of four a $1,825 annual saving.\(^{18}\) Yet, if allowed to expire, federal income tax brackets revert to pre-2001 levels for American middle class taxpayers.\(^{19}\) Connecticut residents will see the highest 2013 tax increase with an additional $5,783 in tax liability.\(^{20}\) Mississippi residents will be least impacted, with an anticipated 2013 increase of $1,310.\(^{21}\)

Further, the Bush tax cuts offered middle class taxpayers a $1,000 tax credit per child.\(^{22}\) An expiration would revert the tax credit to $500 per child.\(^{23}\) In essence, this relapse acts as an additional tax hike by increasing pre-tax personal income by $500 per child.\(^{24}\)

Quantifying this effect, a Bush tax cut expiration, “[W]ill reduce [middle class] after-tax income by about 4 percent . . . if you’re spending every dollar you’ve got makes a noticeable dent in your budget.”\(^{25}\) Thus, if a middle class taxpayer earned equal personal income in 2012 and 2013, an expiration of the Bush tax cuts will simply result in less to spend in 2013.\(^{26}\)

Therefore, Congressional inaction will immediately impact the American middle class through an increase in federal income tax liability and subsequent reduction in disposable income.\(^{27}\) However, a Bush tax cut expiration, by way of the ‘fiscal cliff,’ will span outside domestic borders.\(^{28}\)
Congressional Inaction and its Effect on the Global Economy

Congressional inaction in addressing the Bush tax cuts will further impact the global economy through both a reduction in U.S. domestic growth and a subsequent decline in global manufacturing and investment.29

Economists estimate Congressional inaction will draw between $400 billion and $720 billion from U.S. domestic growth.30 Growth reduction of this magnitude will mean as much as 4.6 percent of gross domestic product could be lost.31 An economist at the Tax Foundation stated the U.S. is, “[T]eetering on zero growth,” and that, “This sort of domestic policy would immediately impact demand and really shock investors.”32

Quantifying the global risk, it has been estimated that the, “[D]ramatic fiscal tightening implied by the fiscal cliff could tip the U.S. and possibly the global economy into recession. . . At the very least it would be likely to halve the rate of global growth in 2013.”33 Thus, Congressional inaction will likely decrease domestic demand by reducing U.S. imports and exports and slow global growth.34

In fact, Congressional inaction has already played a role in global economics.35 U.S. manufacturers have delayed orders, capital improvements, and employment expansion out of global recession fears.36 Jay Timmons, President of the National Association of Manufacturers affirmed that as a result of ‘fiscal cliff’ uncertainty U.S. manufacturers have, “[B]asically stop[ped] in their tracks.”37 The national delay in investment is of even greater concern.38 “[T]he rate of economic growth is slowing, from 4.1 [percent] at the end of last year to an anemic 1.5 [percent].”39 This national delay will affect the global economy’s ability to recover from recent economic recession.40 A delay in economic recovery will ultimately be felt by those in the American middle class.41

Therefore, Congressional inaction regarding the Bush tax cuts will immediately impact the global economy by reducing U.S. domestic growth and reducing global manufacturing and investment.42
CONCLUSION

Without Congressional action, the American middle class and global economy bear the risk of impending financial hardship.43 Perhaps even Mr. Franklin did not envision how the ensuing taxation debate would play in contemporary civic discussion.44 However, if the only certainty in life is death and taxes, taxation debate is always around the corner.45

NOTES

1 Benjamin Franklin, The Writings of Benjamin Franklin 69 (1905).
8 Id.
12 Id.

Montgomery, supra note 15; see also Terry Savage, What the ‘Fiscal Cliff’ Means for You, CHI. SUN TIMES (Nov. 7, 2012), http://www.suntimes.com/business/savage/16224595-452/what-the-fiscal-cliff-means-to-you.html (stating the ‘fiscal cliff’ will ‘directly hit[ ]’ the middle class” if no action is taken).

Id. See also David Jackson, Obama Team: Millions Face Tax Hikes if All Bush Rates Expire, USA TODAY (Jul. 24, 2012), http://content.usatoday.com/communities/theoval/post/2012/07/obama-team-million-faces-tax-hikes-if-all-bush-rates-expire/1#.UKV_dIc8CSo (“Some 114 million families would see average tax hikes of $1,600. . . if all the George W. Bush tax cuts are allowed to expire.”).


Id.

Id. See also Watson, supra note 3.

Id.

Interview with Jeffrey Kwall, Research Professor, Kathleen and Bernard Beazley Institute at Loyola Univ. Chi. Sch. Of Law (Oct. 18, 2012); see Jackson, supra note 21.

Id.


Id. See also Cox, supra note 6.

Cox, supra note 6; see also Jackie Calmes, The ‘Fiscal Cliff’ Explained, N.Y. TIMES (Nov. 15, 2012), http://www.nytimes.com/2012/11/16/us/politics/the-fiscal-cliff-explained.html?page_wanted-all; but see Damian Paletta, Pressure Rises on Fiscal Cliff, WALL ST. J. (Nov. 9, 2012), http://professional.wsj.com/article/SB100014241278873248941045578107363250113122.html (“If all spending cuts and tax increases are avoided, CBO forecast the U.S. economy would grow by about 1.7% next year.”).

"U.S. stocks have struggled to hold onto gains...as investors fret the economy could slip into recession if no deal is reached to avoid the "fiscal cliff.".

33 Morcroft, supra note 28; see also Jason Scott, U.S. Fiscal Cliff Threatens World Economy, Australia’s Swan Says, BLOOMBERG (Nov. 11 2012), http://washpost.bloomberg.com (stating fiscal cliff impact has already begun and, "could stretch far beyond the U.S" effecting the global economy).

34 Morcroft, supra note 28.

35 Scott, supra note 33.


37 Id.


39 Watson, supra note 3.


42 Watson, supra note 3.

43 Watson, supra note 3; Andrews, supra note 14.

44 Franklin, supra note 1.

45 Id.
Welcome to the ‘justice gap!’ Say ‘hello’ to a nation in which the number of people who qualify for legal aid—with incomes at or below 125 percent of the federal poverty level—is nearing an all-time high.1 Take a look at the studies finding that 80 percent of the civil legal needs of low-income people go unmet.2 Open your eyes to a legal system bogged down by self-
represented litigants who do not know how to navigate the courts or effectively identify their rights.³

While the need for public interest attorneys for low-income individuals is crystal-clear, the solution to eliminating the ‘justice gap’ is not so obvious.

Taking Action: Making Pro Bono Mandatory

Judge Jonathan Lippman of the New York Court of Appeals took matters into his own hands last May when he proposed a state rule requiring new attorneys to complete at least 50 hours of qualifying pro bono service before applying for admission to the New York State Bar.⁴ According to Judge Lippman, one of the major purposes behind the new rule is to help fill the ‘justice gap’.⁵ Judge Lippman reasoned that if each of the approximately 10,000 lawyers who apply to the New York State Bar every year were to contribute 50 hours of pro bono work, the poor would receive about 500,000 hours of badly needed legal services.⁶
A Conflict of Interest

Immediately after the New York rule was publicized, a fierce debate ensued among lawyers regarding ‘mandatory pro bono.’ Although the topic of ‘mandatory pro bono’ has been controversial for quite some time, Judge Lippman’s announcement paved the way for a very public discussion.

One major concern expressed about the New York pro bono requirement is that it places an excessive burden on recent law graduates who are heavily in-debt and having difficulties finding paying jobs. Within a day of Judge Lippman’s announcement, an editor for Above the Law wrote: “The first thing we do, let’s kill indenture all the lawyers. Because forcing people who are already on food stamps to work for free is clearly the best option for improving access to pro bono legal services in New York.”

Another criticism of the New York requirement is that law students are not qualified to take on pro bono cases since they lack relevant experience. The petitioner in Mallard, an attorney who was assigned by a judge to represent indigent inmates in a complex case, raised a similar argument. Mallard claimed that he should be permitted to withdraw from the case on the basis that he did not possess the necessary trial skills that would enable him to competently handle the case.

Esther Lardent, President of the Pro Bono Institute, recognizes the danger of forcing unwilling attorneys to engage in pro bono work. Although she generally supports pro bono requirements for law students, Lardent “worries] about poor people with lawyers who don’t want to be there.”

The advisory committee that formulated the final version of the rule addressed many of these concerns. The new requirement, which applies to anyone accepted to the New York State Bar on or after January 1, 2015, takes a broad approach to defining what qualifies as pro bono work. Although the 50 hours must be spent providing some type of public service, students have considerable flexibility in pursuing work that interests them. While students are highly encouraged to fulfill the requirement by delivering legal services directly to the poor, students can also accumulate hours spent doing pro bono work for nonprofits, civil rights groups or any of the three branches of government.
Furthermore, students are afforded three full years to complete their 50 hours of pro bono work. The rule specifies that students can start fulfilling the requirement as soon as they begin law school and can continue to do so until they file an application for the New York State Bar. During the three-month hiatus between taking the bar and receiving test results, future graduates are not yet licensed attorneys and have ample time to complete pro bono hours.

Finally, the rule takes into consideration concerns that law students lack qualifications and therefore requires pro bono hours to be completed under the supervision of a practicing lawyer, judge or member of a law school faculty. According to Judge Lippman, “this idea that you have to be a lawyer with 25 years experience to provide a service doesn’t make any sense to me.”

Many law schools across the country also have pro bono graduation requirements. “The experiential component is a major benefit to students,” explains Victoria Ryan, coordinator of Valparaiso University Law’s Pro Bono Program. “By working under the supervision of an attorney while they are still in school, students continually hone their legal skills and gain practical knowledge. When they eventually take on their first cases as new attorneys, they are prepared to do so.”

A COMMON GROUND

Although opponents and supporters of ‘mandatory pro bono’ may butt heads on many issues, they seem to share a common concern—that pro bono is not the answer to eliminating the ‘justice gap.’

The demand for legal representation for low-income individuals is currently not being met. In light of the recent recession, there has been a dramatic increase in the number of people with foreclosure, debt collection and bankruptcy cases who are unable to afford an attorney. Furthermore, due to cuts in federal funding for the Legal Services Corporation (LSC), LSC-funded programs eliminated 241 full-time attorney positions in 2011 and expect that similar reductions will continue to be made. These organizations anticipate that they will also need to restrict the types of cases that they accept. While pro bono work is one important vehicle for supplying legal services to the
poor, it cannot replace the enormous contributions that could be made by full-time, federally funded programs.34

BREAKING BOUNDARIES: THE LEGAL AID SYSTEM IN FRANCE

French lawyers have traditionally recognized a professional duty to provide legal aid to indigent clients.35 The legal aid system in France, which is organized by the French Bar, has two components: aide juridictionnelle and accès au droit.36 Accès au droit, which is unpaid and completely voluntary, is intended to provide all indigent clients with equal access to legal information.37

Aide juridictionnelle provides actual representation to those clients who fall below a certain financial threshold.38 However, Aide juridictionnelle would not be classified as ‘pro bono’ in the traditional American sense.39 Although the indigent clients do receive full or partial legal services free of charge, the qualified attorneys who provide these services are actually paid small sums by the state.40 Payment under aide juridictionnelle, which varies depending on the procedure that the attorney performs, is typically insignificant in comparison to what a private attorney would receive for providing the same service.41

Furthermore, under the system of aide juridictionnelle, the amount of legal aid an applicant receives depends entirely on the applicant’s financial situation.42 According to the 2012 eligibility criteria, applicants who earn _ 929 or less a month are entitled to receive total legal aid.43 Applicants who earn between _ 930 and _ 1,393 a month qualify for partial legal aid.44 If an applicant is eligible for partial aid, the percentage of aid that the state covers ranges from 85 percent to 15 percent depending on the applicant’s monthly income.45

One downside of the French legal aid system is that restrictions on legal advertising prevent lawyers and firms from targeting clients by offering pro bono services.46 Therefore, lawyers in France who wish to do pro bono work must offer their services through the French Bar’s aide juridictionnelle system, which provides attorneys to all financially qualifying clients with civil, criminal, and administrative cases.47
A CHALLENGE FOR AMERICA

Although there are fundamental differences between the way legal aid is delivered under the French and American systems, there are many similarities between the legal systems in both countries. Specific aspects of the French aide juridictionnelle system offer guidance for how we can effectively address the ‘justice gap’ in the United States.

Similar to France, lawyers in the United States also have a professional responsibility to provide legal services to those unable to pay according to the concept of ‘pro bono publico.’ The American Bar Association recommends that lawyers fulfill this ethical obligation by contributing at least 50 hours of pro bono legal services per year. Although ABA Model Rule 6.1 states that the majority of pro bono hours should be rendered free of charge, lawyers are also encouraged to accept a substantially reduced fee in return for providing services to people of modest means.

Because lawyers in the United States are not prohibited from advertising pro bono services, it is not necessary for private attorneys to go through legal aid organizations to represent clients who are unable to pay legal fees. In fact, the LSC recognizes that contributions by private lawyers to decrease the overall demand for legal services are an essential mechanism for narrowing the ‘justice gap.’

The lesson to be learned from the French system of aide juridictionnelle is that making a living and providing legal representation to low-income individuals are not mutually exclusive. As litigants and attorneys both face increasing financial burdens, why isn’t it possible for them to help out each other?

Low-income individuals who can’t afford lawyers would greatly benefit from receiving legal representation at a reduced fee. Judges frequently complain that self-represented people typically don’t know what legal points to argue or what motions to file. Seventy-five percent of lawyers believe that people who represent themselves are more likely to lose their cases, according to the results of an ABA survey. These opinions have evidentiary support, as studies indicate that tenants facing eviction who receive full legal representation are two to five times more likely to have favorable results than their unrepresented counterparts.
Likewise, more private attorneys would be able to represent needy clients if they received some sort of compensation for their services. By taking reduced-fee cases on a ‘pro bono’ basis, lawyers unable to find full-time employment would gain meaningful experience while establishing themselves as practicing attorneys.

While this type of an arrangement might initially seem inconsistent with our traditional notions of ‘pro bono’ services, increasing access to legal representation is certainly ‘for the good of the people.’ While even a modified ‘pro bono’ system is not the sole solution to eliminating the ‘justice gap,’ it is certainly one of many, and may be a way to help struggling attorneys as well.57

NOTES

3 Collins, supra note 1; Leila Atassi, When Most Needed, Legal Aid is Forced to Reduce Services, CLEVELAND PLAIN DEALER, Mar. 12, 2012, 2012 WLNR 5361507.
5 Id.
6 Id.
8 Barnard, supra note 4.
10 Id.
11 Randag, supra note 7.
13 Id.
14 Barnard, supra note 4.
15 Id.

18 See id. (explaining that Lippman chose to define pro bono broadly so that the requirement would cover a greater range of public service work and would be less difficult for students to fulfill).

19 Secret, supra note 16.

20 Secret, supra note 16.


22 Randag, supra note 7.

23 Secret, supra note 16.

24 Id.


26 Telephone Interview by Victoria W. Ryan, Esq., Senior Director, Career Planning Center, Valparaiso University Law School (Oct. 22, 2012).

27 Id.

28 Id.

29 Atassi, supra note 3; LEGAL SERVS. CORP., supra note 2.

30 Collins, supra note 1; LEGAL SERVS. CORP., supra note 2.

31 Collins, supra note 1.

32 LEGAL SERVS CORP., supra note 2.


34 LEGAL SERVS. CORP., supra note 2.


36 Id.

37 Id. at 4.

38 Id. at 2.

39 Id. at 3.

40 Id.

41 Id.


43 Id.

44 Id.

45 Id.

46 PRO BONO INST., supra note 35, at 6.

47 Id. at 3, 6.
49 Id.
50 Id.
52 Barnard, supra note 4.
53 Collins, supra note 1.
54 Id.
55 Id.
57 Atassi, supra note 3; Legal Serv. Corp., supra note 2.
MADNESS IN THE HOLE: SOLITARY CONFINEMENT & MENTAL HEALTH OF PRISON INMATES

by EMILY COFFEY

Before his incarceration at the supermax prison, John Jay Powers did not suffer from mental illness. While serving a sentence for bank robbery, Mr. Powers witnessed the murder of another inmate by members of the Aryan Brotherhood. After testifying against the accused, he feared for his life and briefly escaped from prison. As a result of this infraction, he was sentenced to 60 months in solitary confinement in the federal ADX Florence supermax in Colorado - a sentence that drove him insane.
After his arrival at ADX, Mr. Powers amputated his testicle and scrotum, bit off two fingers, tattooed his entire body, and repeatedly attempted suicide. Despite this behavior, a supermax psychologist determined that he did not have an active mental disorder and was not in need of treatment or an alternative custody arrangement.

Severe, and often irreversible, psychological damage, like that experienced by Mr. Powers, is common among prisoners held in solitary confinement. Unfortunately, there are no statistics detailing how many prison inmates are mentally ill, let alone statistics of how many mentally ill inmates are held in solitary confinement. Prolonged or indefinite solitary confinement - isolation for 23 hours per day - does damage so severe that Juan Mendez, U.N. Special Rapporteur on Torture, has declared it torture.

**Solitary Confinement Units Widespread in the U.S. Prison System**

Yet solitary confinement is standard practice in the U.S. prison system and may be disbursed throughout, and used selectively within, a jail or prison or used exclusively within supermax facilities. Prisoners are placed in solitary confinement for a wide range of infractions. These infractions may be as minor as hoarding food or as serious as killing another inmate. Over 80,000 inmates are held in all solitary confinement units on any given day and around 40 U.S. states house 25,000 of those prisoners in supermax prisons, which are exclusively solitary confinement cells.

On June 11, 2012, the Senate Subcommittee on the Constitution, Civil Rights and Human Rights held the first Congressional hearing on solitary confinement. Charles Samuels, the Director of the Federal Bureau of Prisons, testified that federal policy “prohibits any inmate who suffers from a serious psychiatric illness to be placed in that confinement.” In every federal prison, he argued there is a doctoral level chief psychologist who oversees mental health issues because “the well being of these individuals should be something that is routine and ongoing.”

Yet a federal lawsuit alleges that ADX, the only federal supermax prison, is violating its own policies. Mr. Powers is a plaintiff in this class action, which alleges that the Bureau regularly assigns mentally ill prisoners to solitary confinement and ignores the mental health problems that arise as a result.
HUMAN RIGHTS AND PSYCHOLOGICAL EXPERTS AGREE: SOLITARY CONFINEMENT CAN CAUSE SERIOUS MENTAL ILLNESS

Anthony Graves, an exoneree who spent ten years in solitary confinement while on death row for a crime he did not commit,\(^{19}\) testified at the Congressional Hearing that he watched men come into prison sane, and after an extended stay in solitary confinement, he watched them lose their mind.\(^{20}\)

Solitary confinement, even for relatively short periods of time, can cause serious, and often irreversible, psychological harm.\(^{21}\) Professor Craig Haney, an expert on the psychological effects of solitary confinement, argues that “[a]lthough solitary confinement certainly does not drive everyone who experiences it crazy, we do know that time spent in these places is often more than merely painful . . . placing prisoners at grave risk of psychological harm.”\(^{22}\)

Dr. Terry Kupers, an expert on the psychological effects of solitary confinement, argues that prisoners with preexisting mental illness are more likely to be selectively consigned to solitary confinement because of their inability to conform to prison rules.\(^{23}\) This is especially alarming given that 50 percent of inmate suicides are committed by the 2 to 8 percent of inmates held in solitary confinement.\(^{24}\)

Human rights experts agree that the use of solitary confinement, especially on those with serious mental illness, violates basic human rights standards.\(^{25}\) It is entirely counterproductive, Bret Grote, an investigator with the Pennsylvania based Human Rights Coalition argues, to attempt to prevent harm or prevent people from acting out because “these units create madness; they’re designed to break people.”\(^{26}\)

“These are disposable people,” Grote argues, “and there is no system within the prison, just like there isn’t one outside the prison, to appropriately deal with people whose behavior is ill-suited to adapt to the rigidity of the prison regimen.”\(^{27}\)
COURTS AND STATES RECOGNIZE THE DETERIMENTAL EFFECTS OF SOLITARY CONFINEMENT

The U.S. Supreme Court has stated that prison officials must provide adequate care for prisoners’ “serious medical needs” and failure to do so violates the prohibition of cruel and unusual punishment under the Eighth Amendment. International law also provides that all prisoners should have access to mental health care, including treatment in adequate mental health facilities.

U.S. courts have also recognized that solitary confinement can have negative effects on those with no pre-existing mental illness and can particularly harm those who already suffer from mental illness. For example, a California court found that “many, if not most [inmates in solitary confinement] experience some degree of psychological trauma in reaction to their extreme social isolation.”

Lawsuits nationwide continue to allege that the rights of mentally ill inmates in solitary confinement are being violated. For example, a class action lawsuit in South Carolina alleges that nearly half of all inmates in the state who suffer from mental illness were held in solitary confinement in South Carolina for an average of two years.

As a result of lobbying and court decisions, a growing number of states have begun to exclude the seriously mentally ill from solitary confinement. The Congressional hearings have provided legitimacy to many human rights groups fighting against the use of solitary confinement and, Grote argues, have helped “force this human rights crisis into the spotlight and getting it the public attention it deserves.”

NOTES

2 Id. at 69, 71.
3 Mr. Powers witnessed the murder in a medium-security federal prison in Atlanta. Once he agreed to testify, he was placed in protective custody throughout the trials. Four years after testifying, and after being diagnosed with post-traumatic stress disorder, he learned that he
would be placed in the general population, where he was likely to encounter members of the Aryan Brotherhood. *Id.* at 69–71.

4. *Id.* at 71.

5. *Id.* 72–3.

6. *Id.* at 73.

7. Craig Haney, Professor of Psychology at University of California Santa Cruz, Testifying at Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences, at 84:45–85:02 (June 19, 2012) [hereinafter “SJC”]


10. Telephone interview with Bret Grote, investigator with the Human Rights Coalition, to author (Oct. 21, 2012).

11. *Id.*

12. *Id.*


16. *Id.* at 59:06–59:25.


18. *Id.* at 5.


21. Amnesty International, supra note 9, at 8 (citing Dr. Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 JOURNAL OF LAW AND POLICY 325, 333 and 349 (2006)).


24. *Id.*


27. *Id.*

29 Amnesty International, supra note 9, at 15 (Treaties include the International Covenant on Civil and Political Rights, the Convention against Torture). The respective monitoring bodies, the UN Human Rights Committee and the UN Committee Against Torture, have criticized the use of solitary confinement in U.S. prisons. Id.
30 Madrid v. Gomez 889 F. Supp. 1146, 1235 (N.D. Cal. 1995); Grassian, supra note 21, at 327 and 349.
31 Madrid, 889 F. Supp. at 1235.
34 Amnesty International, supra note 9, at 8, 18 (these states include California, Connecticut, Illinois, Maine, Mississippi, New York, Ohio and Wisconsin).
35 Grote, supra note 10.
The Patient Protection and Affordable Care Act ("PPACA") is a history-making piece of legislation that aims to decrease the number of uninsured Americans and allows young adults to stay on their parents’ insurance plans as dependents until the age of 26. After the passing of the PPACA, dependent status can no longer be determined on factors such as whether that
person lives with their parent, is financially dependent on a parent, is a student, unemployed, or unmarried.\(^2\) The only requirement under the new law is that the dependent must be the child of the subscriber.\(^3\) While this increase in dependent age has expanded coverage, the new provisions provided by the PPACA have excluded crucial language that will enforce maternity coverage for dependents currently under their parents’ plans.\(^4\)

Until relatively recently, women’s health has not been a great concern of the government and was not always considered an essential right.\(^5\) The first step towards healthcare equality amongst men and women began with Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination on the basis of pregnancy.\(^6\) The Pregnancy Discrimination Act of 1978, which amends Title VII of the Civil Rights Act, furthered a woman’s right to healthcare by declaring that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs,” forcing an employer to provide the same insurance coverage for women as it did men.\(^7\) After the passing of this act, insurers could no longer deny women benefits because of pregnancy or other sex-related reasons.\(^8\) While this act was a monumental step towards women’s health equality, the act’s provisions did not address the coverage of dependents of those subscribers on health insurance plans.\(^9\)

Under the recently upheld PPACA and starting in 2014, maternity and newborn care will be one of ten “essential health benefits” that must be offered by individual and small group health insurance plans.\(^10\) Large insurance groups, which are those that cover more than 100 employees, and grandfathered insurance plans, those insurance plans that have “continuously covered at least one person” since March 2010, are not effected by this specific provision of the PPACA.\(^11\)

This loophole in requirements for large group insurance and grandfathered plans has provided insurance companies and employers the option to decide whether they will provide dependents of subscribers with maternity coverage.\(^12\) Although there are no clear-cut numbers on maternity coverage of dependents, it is estimated “that roughly 70 percent of companies that pay their employees’ health-care claims directly choose not to provide dependent maternity benefits.”\(^13\) Dania Palanker, a senior health policy adviser at the National Women’s Law Center “believes this number could grow with the recent expansion of coverage to children under 26.”\(^14\)
HOW THE GAP IN COVERAGE WILL EFFECT YOUNG MOTHERS

Without any maternity coverage or state-related aid, the average cost of maternity care without complications was $10,652 in 2007. As if a medical bill of over $10,000 is not expensive enough, the cost of a pregnancy that ends in a caesarean delivery could cost a young mother nearly $25,000.

For young mothers dependent on their parent’s insurance plans, lack of maternity coverage may mean this population is forced to pay for their care out-of-pocket. Professor Lawrence Singer, Director of the Beazley Institute of Health Law and Policy at Loyola University Chicago School of Law, pointed to Medicare, state run women’s health programs, and charity care as alternative options for payment in a situation like this. However, Singer concluded that the “best case here is to secure independent, private coverage,” explaining that the healthier the mother, the better the chances of her delivering a healthy baby.

When asked about other healthcare systems that the United States could use as a model when it comes to maternity care, Singer pointed to Sweden, which offers full coverage for maternity care to its citizens and gives the mother up to a full year of paid maternity leave after giving birth. In Sweden, all care delivered in a maternity hospital is free of charge and the cost of maternity care is covered by the government if an individual does not have private insurance.

Canada, another international leader in maternity coverage and benefits, allows for full maternity care benefits under its national health insurance program, which the Canadian government refers to as “Medicare.” This universal coverage is mandated by the Canada Health Act and is delivered “through 13 interlocking provincial and territorial health insurance plans, all of which share certain common features and basic standards of coverage.”

While the PPACA has made great strides concerning a woman’s access to healthcare, there is still work to be done on this matter. A simple correction of this loophole could solve the issue and make the PPACA a healthcare act that is truly comprehensive.
NOTES


3 Marietta, supra note 2.


6 Id.

7 Id.


9 Id.


12 Lawrence Singer, Addressing PPACA and Gap in Maternity Coverage at Loyola University Chicago School of Law (Oct. 25, 2012).


14 Id.


16 Id.

17 Singer, supra note 12.

18 Singer, supra note 12.

19 Singer, supra note 12.; The 10 Best Countries for Maternity Care, Medical Billing & Coding (Jan. 22, 2012), http://www.medicalbillingandcoding.org/blog/the-10-best-countries-for-maternity-care.


21 Id.

22 Id.
FEATURE ARTICLE

SEEING A FUTURE FOR ACCESSIBLE READING MATERIALS: THE WIPO TREATY FOR THE VISUALLY DISABLED

by Marjorie Kennedy

When the final installment of the Harry Potter series was released in 2007, children stayed up all night to read the book. The employees of Bookshare, a nonprofit organization that provides accessible reading materials
for the blind, were also up all night, working to create an accessible version of the book for America’s visually disabled.¹

Exceptions to copyright laws in the United States and many other countries allow organizations, like Bookshare, to create accessible reading materials for the blind, but these exceptions do not apply internationally.² Without copyright exceptions, these organizations cannot share the files with the visually impaired in other countries.³ As a result, five separate organizations around the world spent time and money to create identical accessible versions of *Harry Potter and the Deathly Hallows*.⁴

To address this issue, the World Intellectual Property Organization (WIPO) has proposed the creation of a treaty or international instrument to facilitate the creation and sharing of accessible books worldwide.⁵
WORLDWIDE BOOK FAMINE

There is a book famine that impacts the world’s 285 million blind or visually disabled people. Approximately 90% of the world’s visually disabled populations live in developing countries. And for these people, only 1% of published works are available in accessible formats.

Similarly, the other 10% of visually disabled persons living in more modern countries can only access 5% of books. While non-profit organizations in the United States, Europe, and other countries around the world are creating databases of accessible reading materials, these materials cannot be shared with other countries without a treaty or international agreement.

Accessible books are necessary not only for the blind, but also for any person who cannot use print for a variety of reasons, including visual impairment, dyslexia, developmental delays, or physical disabilities that interfere with holding a book. Because these disabilities vary, different formats are required to make documents accessible. Non-profit organizations provide versions of works in audio format, text-to-speech format, Braille Ready Format, and Digital Accessible Information System format. These organizations use software to create accessible formats of published materials, but they must work within their country’s copyright laws.

COPYRIGHT EXCEPTIONS WORLDWIDE

Currently, the international enforcement of copyright laws is governed by the World Intellectual Property Organization’s (WIPO) Berne Convention and World Intellectual Property Organization Copyright Treaty (WCT). The Berne Convention establishes that “[w]orks originating in one of the contracting States [. . .] must be given the same protection in each of the other contracting States as the latter grants to the works of its own nationals,” and sets a minimum level of rights that are automatically reserved to the author and will be protected for a minimum duration of 50 years after the author’s death. The Berne Convention also establishes a three-step test for copyright exceptions. The WTC updates the Berne Convention to cover technological advances and the Internet.
The European Union issued a policy directive in 2001 stating that EU member states may create exceptions in copyright law for accessible materials. The directive also urged that it is “important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats.”

The 2006 United Nations Convention on the Rights of Persons with Disabilities lists access to cultural materials in accessible formats as a human right and states that States Parties shall “take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.” Worldwide, “only 57 countries—representing fewer than half of WIPO’s 184 Member States—[have created] specific exceptions in their national laws for the benefit of the visually impaired.”

Many European nations, including Great Britain and Spain, have exceptions to intellectual property laws that allow for accessible materials for the visually impaired. While this is a step in the right direction, the problem is “[a]bout ninety percent of the world’s visually impaired live in developing countries.” Without a treaty or international agreement, the accessible reading materials in the United States, Europe, and Australia cannot reach the vast majority of the world’s print disabled. Although the Spanish accessibility organization ONCE “has more than 100,000 titles in accessible formats and Argentina has over 50,000, these titles cannot be shared with the 19 Spanish-speaking countries across Latin America.” Libraries in Colombia, Nicaragua, Mexico, Uruguay and Chile have fewer than 9,000 accessible books—combined.

Copyright Exceptions in the United States

The United States is one of the countries that has created an exception for accessible reading materials. Within the United States, non-profits are able to create and distribute accessible versions of copyrighted works under the Chafee Amendment. The Chafee Amendment, named after Senator John Chafee who proposed it, provides an exception from intellectual property laws for reproductions for the visually disabled. The amendment states that “it is not an infringement of copyright for an authorized entity to reproduce or to dis-
tribute copies or phonorecords of a previously published, nondramatic literary work [. . .] in specialized formats exclusively for use by blind or other persons with disabilities.”

Operating under the Chafee Amendment, the nonprofit organization Benetech runs Bookshare, an accessible digital library with more than 160,000 accessible titles available. The creator of Bookshare, Jim Fruchterman, was inspired when his teenage son showed him the music sharing software Napster. Fruchterman was then running Arkenstone, the largest maker of reading systems for the blind. He realized that “[h]undreds of Arkenstone users were scanning the exact same book over and over again. What if they could share the books they scanned over the Internet? Then we’d save many, many hours of effort and greatly increase the availability of books”. Fruchterman’s shorthand description of Bookshare was “Amazon.com meets Napster meets Talking Books for the Blind, but legal!”

Bookshare has grown to serve 230,000 people and works with 10,000 schools, school districts and other nonprofits and agencies. Many publishers provide digital copies so Bookshare does not have to scan. Currently, Bookshare distributes about 50,000 titles internationally through publisher agreements, but it is “where Bookshare was in the U.S. 8 or 9 years ago.”

A WIPO treaty would allow Bookshare to spread its mission by enabling more countries to participate in the book sharing process and make locally relevant works available. Fruchterman states that with a WIPO treaty “we would be able to provide the technical infrastructure for many countries to build their own accessible libraries [. . .] with the books published in their countries, in their languages.” The treaty would also legalize cross-border sharing, “which would both greatly reduce duplicative work in developed countries, and make huge libraries (Bookshare, but also other digitized libraries) available to developing countries.”

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS
DISCUSSIONS

A formal discussion of the creation of exceptions and limitation for production of copyrighted works in accessible formats re-emerged during the Twenty
Fourth Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in July 2012.

In early October, members at the WIPO General Assembly approved the treaty proposed by the SCCR, creating a path toward a diplomatic conference in 2013. The issue and proposed treaty was discussed at the SCCR intersessional meeting in October and is on the agenda for the intersessional in late November. An extraordinary General Assembly is scheduled for December 2012 to vote on whether the treaty will be subject to negotiation at a diplomatic conference in 2013.

The working document from the intersessional talks in October shows that many portions of the text are in dispute. Progress was slow, and it is difficult to get consensus on issues because countries have varying goals for the instrument. The talks have been mainly closed to the public, but sources report that the United States and European Union are standing in the way of the treaty.

The Obama administration supported the treaty in 2009, but has since been accused of bowing to the will of the publishing industry. James Love of Knowledge Ecology International stated that “if blind people were financing [Obama’s] campaign, they would have had a treaty a year ago.” Fruchterman believes that if the U.S. came out in strong support of a treaty, “the global consensus would move to pass an effective treaty that helped people with disabilities while protecting the interests of the publishing industry.”

Publishing agencies have long been opposed to the treaty, and the International Publishers Association stated in 2006 that copyright exceptions are “the crudest and the bluntest tool in a large toolbox” and are “19th century solutions to 21st century problems.” The United States Chamber of Commerce also spoke out in opposition, stating that “[w]here resources are already scarce, the existence of copyright-exemptions further reduces incentives to invest in the production and distribution of works in accessible formats to market.”

However, Matthew Sag, associate professor at Loyola University Chicago School of Law specializing in Intellectual Property law, states that the treaty “will not hurt authors, will not hurt publishers, and will be an enormous benefit to people who have been underserved for so long.”
Opponents of the treaty are not against accessible reading materials for the print disabled, but they “really don’t want to establish a precedent of developing a series of treaties that specifically focus on trying to set forth minimal limitations and exceptions to the rights of copyright owners.”56 Their concern is that they do not want the treaty to become “the precedent that is the nose of the camel under the tent.”57 Nineteen rightholders’ organizations issued a joint statement urging that the instrument be flexible, narrowly construed, and adhere to the Berne Convention.58

The countries have not agreed on whether this instrument would be a binding treaty or a soft approach such as a joint recommendation.59 A joint recommendation is a nonbinding set of recommendations that do not need to be ratified by the states.60 Those countries opposed to a treaty are more likely to support a nonbinding instrument because countries could construe the exception more narrowly.61

Proponents of the treaty want the instrument to be binding, and the World Blind Union is “not after a trophy treaty.”62 A 2011 Yale University study found that a binding treaty is necessary in this case to keep the treaty from becoming a dead letter agreement.63 There are three consequences to a nonbinding treaty: (1) many nations will never get around to enacting the legislation, (2) nations may view the suggested legislation as a ceiling, and (3) countries will negotiate away the power in international agreements.64

CONCLUSION

As urged by musician Stevie Wonder in his address to the WIPO in 2010, we must “declare a state of emergency and end the information deprivation that continues to keep the visually impaired in the dark.”65 The lack of reading materials for the visually disabled has been ignored far too long, and it is time for worldwide action.

There is broad support for providing accessible reading materials for the visually disabled, and nations must collaborate to create a workable treaty.
NOTES

3 Id.
7 Id.
8 Brief on WIPO Treaty, supra note 2.
10 Limitations and Exceptions, supra note 4.
12 Gangal, supra note 11.
13 Id.
17 Id.
20 Id. at 13.
22 Rossini, supra note 9.
24 Blindness Factsheet, supra note 6.
25 Fruchterman, supra note 11.
26 Limitations and Exceptions, supra note 4.
28 Fruchterman, supra note 11.
29 Id.
30 17 U.S.C. § 121; Fruchterman, supra note 11.
31 Id.
33 Jim Fruchterman, Developing Information Technology to Meet Social Needs, INNOVATIONS, vol. 3, no. 3 at 95 (Summer 2008)
34 Email interview with Jim Fruchterman, founder of Benetech Technologies (Oct. 12, 2012) [hereinafter Fruchterman Interview].
35 Fruchterman, supra note 33.
36 Fruchterman Interview, supra note 34.
38 Fruchterman, supra note 11; Fruchterman Interview, supra note 34.
39 Fruchterman, supra note 11.
40 Fruchterman Interview, supra note 34.
41 Id.
44 Id.
45 New, supra note 42.
47 Slow Progress, supra note 5.
50 Id.
51 Id.
52 Fruchterman, supra note 11.
55 Interview with Matthew Sag, Professor at Loyola University Chicago School of Law (Oct. 24, 2012) [hereinafter Sag Interview].
56 Interview by James Love with Allan Adler, Vice President for Legal and Governmental Affairs, Association of American Publishers, in Geneva, Switzerland (July 18, 2012), http://www.youtube.com/watch?v=DXVcmOwBAcY at 6:45.
57 Id at 8:40.
59 Slow Progress, supra note 5.
61 Sag Interview, supra note 55.
63 Kaminski, supra note 60.
64 Sag Interview, supra note 55.
IN OR OUT: STATES OFFER DIFFERENT TUITION RATES BASED ON CITIZENSHIP

by Michael J. Lorden

Wendy Ruiz is an American citizen, born to undocumented immigrant parents in Florida. After high school, Wendy was accepted to Miami Dade College, but discovered that Florida law required her to pay out-of-state tuition. Even as a live-long resident of Florida, Ruiz was required to pay out-of-state tuition, $6,500 more per year, solely because her parents lacked legal immigration status.

According to a study published by the Pew Hispanic Center in 2012, a non-partisan research group in Washington, roughly 340,000 children are born each year to at least one parent of undocumented immigration status.
As a result of state budget cuts, college tuition rose at an average rate of 15% nationally between 2008 and 2010. Just in 2012, tuition rose an additional 4%. Struggling with how to resolve their budget crises, several states are looking to further increase state college tuition costs, specifically for those with undocumented immigration status.

STATE LAWS SHIFT FOR CITIZEN-STUDENTS WITH UNDOCUMENTED PARENTS

In 2007, California officials ended policies that denied in-state tuition to American students with undocumented parents. That decision was challenged and ultimately upheld by the California Supreme Court. The court held that in-state tuition must be given to any United States citizen, lawful alien or unlawful alien that met California’s requirements for in-state tuition.

On August 8, 2012, New Jersey followed California’s lead. Anonymous petitioner, known as A.Z., a U.S. citizen born to an undocumented mother, had been accepted to a four-year college. A state agency denied her tuition aid because she lacked residency under New Jersey law. The Superior Court of New Jersey, Appellate Division, held that the agency inappropriately based A.Z.’s residency on her mother’s status.

Additionally, in five Florida residents, all of whom are U.S. citizens with undocumented parents, brought suit when they were denied in-state tuition rates. Like Wendy Ruiz’s case, the schools were complying with a regulation issued by the State Board of Education that required residents with undocumented parents to pay out-of-state tuition. However, on August 31, 2012, a U.S. district judge ruled that the State Board of Education’s regulation violated the Equal Protection Clause. While this ruling could cost Florida approximately $200 million of annual revenue, the ruling is poised to impact between 9,000 and 12,000 students who would have previously been charged, but could cost Florida around $200 million annually.

California, New Jersey, and Florida ended policies that charged American citizens higher tuition rates based on their parents’ status. Courts appear unwilling to attribute the parents’ status to the student, but what if the student is undocumented?
THE NEXT BATTLE: UNDOCUMENTED STUDENTS

A growing controversy also surrounds charging America’s 11 million undocumented immigrants\(^{19}\) out-of-state tuition even if they reside in the state for the requisite period. For example, three of Michigan’s largest universities charge undocumented students out-of-state tuition, even if they went to a Michigan high school.\(^{20}\)

However, this issue has gained attention as student groups have protested this policy at the University of Michigan and Eastern Michigan University.\(^{21}\) The Board of Regents at Eastern Michigan University upheld their policy of denying in-state tuition to all undocumented students.\(^{22}\) “Undocumented students pay sales tax, and between half and two-thirds pay state and federal income tax. These are people that grew up in the state of Michigan and are very likely to contribute to the state of Michigan after they earn their degrees,” said Sanjay Jolly of the Coalition for Tuition Equality.\(^{23}\)

Currently, thirteen states have some form of a policy that offers in-state tuition to undocumented students.\(^{24}\) In other states, such as Michigan and Colorado, the decision is made on a school-by-school basis. Metro State University of Denver recently allowed undocumented residents of Colorado to pay tuition rates that are close to in-state tuition by offering a third category of tuition for undocumented students who attended at least three years of high school in Colorado and graduated or obtained a GED.\(^{25}\)

Former Congressman Tom Tancredo currently seeks plaintiffs to challenge Metro State’s policy.\(^{26}\) Tancredo stated, “If you’re not legally present in the country, and therefore in violation of national law, you get a special law, and that’s certainly unfair.”\(^{27}\) He further said, “Somebody’s going to pick up the tab here, and those somebodies are the taxpayers of the State of Colorado.”\(^{28}\)

Maryland voters will soon decide whether to give in-state tuition to undocumented students.\(^{29}\) One study showed that this population could eventually generate $66 million a year for the state and businesses if they receive access to higher education.\(^{30}\) However, some opposition to this proposal exists. Kristen Williamson of the Federation for American Immigration Reform said of the proposed law, “It rewards law breaking, it invites future law breaking and it is fundamentally unfair to those who have played by the rules.”\(^{31}\)
GOING FORWARD

While it is unclear whether other states will attempt to deny in-state tuition to American citizens with undocumented parents, the recent decision in California, New Jersey, and Florida suggest that there is a strong potential that other state courts will curb such action by their state universities.

Undocumented students, on the other hand, may not be entitled to in-state tuition rates. Various states feel justified to impose a separate tuition rate for this group of students. Given the controversy surrounding such a decision, litigation is likely on the horizon. One fact remains clear, however - the continuing rise of tuition rates makes the classification of in- or out-of-state that much more important for all parties involved.

NOTES

2 Id.
3 Id.
8 Id.
10 Id. at 864.
13 A.Z. ex rel. B.Z., 48 A.3d at 1159.
15 Id.
16 Id. at 10.


23 Interview with Sanjay Jolly, Coalition for Tuition Equality (Oct. 19, 2012).


26 Id.

27 Id.

28 Id.


30 Id.

31 Simkins, *supra* note 19.
THE LONDON PARALYMPIC GAMES ‘INSPIRE A GENERATION’ AND SPARK ABORTION CONTROVERSY

by Emily Hardy

The Stoke Mandeville Games was the first athletic competition held for wheelchair athletes.¹ Held in London in 1948, the games were used to help rehabilitate veterans of World War II.² While the first official Paralympics was held twelve years later in Rome, the Stoke Mandeville Games in London signaled the growth of athletic competitions for disabled members of the community.³ The Paralympics of today hosts over 20 sports and 500 events;⁴ and during the summer of 2012, the Paralympics returned to London and was one of the most successful games to date.⁵
This year’s games have brought an unprecedented level of attention and focus to the abilities of people with disabilities, with 204 countries and territories attending the Olympic and Paralympic games. London Organizing Committee of the Olympic and Paralympic Games (“LOGOC”) Chair, Sebastian Coe, spoke to the impact of the games on the people viewing around the world. He indicated that the games showed that it was “possible to triumph over adversity, to challenge and then change circumstances and to achieve great things.” The theme of the game was to ‘inspire a generation,’ and the unprecedented viewership and commitment to the games helped achieve this goal.

As the Paralympic athletes astonished their audience with their abilities and accomplishments, questions were raised by pro-life groups over the ‘contradiction’ of the United Kingdom’s late-term disability abortion law when viewed against the accomplishments of the many athletes. The Catholic Coordinator of the games, James Parker, stated “any society that wishes to be healthy needs to increasingly value disability and non-disability equally.”

**Abortion Laws in the United Kingdom**

In the United Kingdom, with the agreement of two registered medical practitioners, a pregnancy may be terminated at any point if there is a “substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.” As such, the Abortion Act of 1967 did not legalize abortions but created a legal defense for carrying them out. As Dr. Garwood-Gowers stated it is a “case of the general practitioner meeting. . . the legal criteria for a [defense] to the relevant offenses. . .

Evidence of severe fetal abnormalities allow a legal defense to abortions after the 24 week cutoff that limits most other abortions.

There is no specification by law of what level of disability can be grounds for abortion after the 24-week cut off; rather the disability merely needs to be considered severe by two doctors and the operation is deemed warranted. This includes both physical and mental disabilities. In addition, they consider the totality of the circumstances of each case. Medical decisions such as these are difficult to challenge, because it is hard to show a deviation from the good faith standard.
Nevertheless, in 2011 there were only 146 late term abortions after the 24-week limit occurred out of almost 190,000 total. This means that 90% of abortions are carried out under provision (a) of the Act, which covers pregnancies within the first 24-weeks where the continuance would risk the physical or mental health of the pregnant woman or her children. But most tests that identify disabilities in the fetus happen well before the 24-week period.

**Disability Discrimination?**

Although the total number of late terms abortions in the U.K. is smaller than one-percent of the total yearly abortions, groups such as Life and Pro-Life Alliance argue that the current law creates a "form of disability discrimination." They view methods that lead women to seek abortions, like screenings for Down’s syndrome as forms of eugenics used to weed out undesirable characteristics such as disabilities.

The Disability Rights Commission ("DRC") views abortion law as "not inconsistent with the [Act] since [they] are concerned with the rights of the living person;" however, they do view the disability portion as offensive to many people and "incompatible with valuing disability and non-disability equally.” The DRC would prefer that the disability not be part of the discussion. Although pro-life organizations and the DRC do not consider abortion in the same way, they both find the focus on a child’s physical disability as against equality and human rights.

**Other Factors to Consider**

Notwithstanding the moral and social concerns surrounding disability related abortion, one must also remember the substantial financial and personal concerns of the parents. Jill Dressner of the Special Education Advocacy Center Non-Profit in Chicago, finds that many of the families that have children with disabilities suffer hardships including separation of families, a need for Medicaid and food stamps to offset education and medical costs, and an inability to interact with their children in social situations.

These same financial concerns apply to children in the U.K., where the cost of raising a child with disabilities can be three times greater than the amount for a
child without a disability.\textsuperscript{29} The burden of raising a child with disabilities often prohibits parents from working full time; moreover, a recent study has shown that one-in-six parents cannot afford to heat their homes.\textsuperscript{30} Where parents were unable to work due to their responsibilities, almost a third were unable to pay heating bills and around a quarter admitted to going without food occasionally.\textsuperscript{31}

These concerns about housing and feeding kids are compounded by any medical services not provided for by government assistance.\textsuperscript{32} Free healthcare and educational needs are met by the State in the U.K.; however, health services will not cover every treatment that might be useful.\textsuperscript{33} In the U.K. some disability benefits are restricted by age, including the mobility component of the Disability Living Allowance which is only available after the age of five.\textsuperscript{34} In these cases, the parents can suffer financial hardships where they cannot receive the benefit even if the child may need it; instead, the parents must finance it out of pocket.\textsuperscript{35}

The Paralympics highlighted the ability of people who have disabilities to overcome enormous obstacles, but the decision to have an abortion based on a child’s disability can often be based on financial or family concerns that face a reality not shown in those competitions. Raising a child with a disability causes financial and personal struggles that have long lasting effect. There is no easy answer, and the question moving forward is how this heightened awareness, financial constraints, and laws that separate based on disability can coexist in a world that is becoming more and more aware of the abilities of those who are disabled.

\section*{Notes}

2 \textit{Id}.
3 \textit{Id}.
4 \textit{About Us}, \textsc{Official Website of the Paralympic Movement}, http://www.paralympic.org/Events/London2012/AboutUs (last visited Nov. 16, 2012).
5 \textit{History of the Movement}, supra note 1.
7 \textit{Id}.


15 ZENIT, supra note 11.


18 Bingham, supra note 10.

19 Garwood-Gowers, supra note 14 (the good faith standard requires that the operation be carried out with regards to general medical law criteria in the areas of consent, appropriate justification, and sufficient care).
In 1990, the world was appalled by vivid images of the “forgotten children” of Romania. These images depicted malnourished orphans, tied to steel cribs and stacked on steel carts, living in squalor in Romanian orphanages. At that time, over a hundred thousand Romanian children lived in these orphanages—abandoned by parents who were too poor to support them after Communist policies banned abortion and contraceptives.
Under the world’s watchful eye, the new Romanian government invested significantly in reforming the child welfare system. The government adopted the United Nations Convention on the Rights of the Child in 1990 and later created the National Committee for Child Protection, a committee responsible for enacting the National Plan of Action legislation to protect children’s rights.

Twenty years later, as Romania continues to undergo massive legislative reform, the government continues to address the rights of children. With new legal procedures in place, most notably specialized judges who focus exclusively on matters involving children, Romania is positioned to better serve the needs of their children.

**Romania’s Legislative Reform**

Operating under the same Civil Code from 1864 until 2011, the Romanian legal system has long been out of touch with modern issues and has become increasingly fragmented with conflicting code provisions.

Recognizing the need to modernize substantive law and to create clear and efficient judicial procedure, the Romanian Legislature repealed the old Civil Code in 2007 and wrote the New Civil Code (“NCC”), which went into effect
October 2011. The legislature also plans to enact a New Code of Civil Procedure (“NCPC”) in February 2013, which amends the procedural institutions that enforce the Civil Code.

Both the NCC and NCPC introduce new social, moral, cultural, economic and technical-scientific values, which provide greater flexibility and clarity for the legal norms. Included among those values is a desire to continue developing and improving the rights of children.

While Romania’s former Civil Code, Constitution, and supplemental regulations recognized children’s right, there was minimal protection of these rights. Children’s rights, available in theory, went unrecognized in reality. Maria Roth and Mihai Bogdan Iovu, coordinators for the Children’s Rights and the Social Context at the Romanian Sociological Association International Conference, explained that, “although social actors at several levels are committing themselves to generous initiatives in child welfare, indicators demonstrate that the measures taken have not led to the expected improvements in frontline practice.”

Similarly, the legal process itself did not protect the rights of children. Andrei Vartires, a law student in his final year at the University of Bucharest in Romania, indicated the “in general, there were a lot of laws that gave children rights, and the rights exist, but a child’s right was not protected as it should be by the procedural system.”

Specialized Judges to Protect the Superior Interest of the Child

Under the NCC and NCPC, the Romanian legislature attempts to implement procedures that will help safeguard children’s rights during legal proceedings. Under the new codes, “the rights are more or less the same, yet how the rights are granted is changing; the new laws are working to ensure that the rights are actually recognized,” Vartires notes.

To ensure that the “superior interest of the child” is the guiding principle in child law matters, the NCC creates new institutions that will provide enhanced procedural guarantees. Guardianship courts are one such institution, given authority in Article 107 of the NCC.
Judges who choose to specialize in children and family cases will lead the Guardianship courts. These specialized judges will concentrate on child-related matters and will undergo continuous training that focuses on this area of law.

Because prior judicial decisions do not have a binding effect in Romania’s civil law system, dedicated and well-trained judges will help guarantee that the child’s superior interest is the primary concern in cases involving children. Magistrate Madalina Jebelean further explained that guardianship courts and specialized judges eliminate the potential that an unprepared or insensitive judge will decide important matters for children. The judge will remain with the child throughout the entire case, as well as any and all matters the child has in court.

“These steps will help the judge develop a stronger bond with the child,” Magistrate Madalina Jebelean emphasized, and in turn, “the judge has a better and more continuous grasp of the evolution of the child, and can ensure the child’s best interest is met in the decision making process.”

Under the NCPC, children will have access to “smoother procedural means” which will lead to expedite case settlement. Specialized judges will be a critical component in the administration of these new procedures. Magistrate Jebelean said, “you can never be 100 percent sure something will turn out well, but having a judge who has special training and experience, and who is familiar with the child, increases the chances that the child will have a good outcome.”

CHALLENGES FOR THE FUTURE

While massive legislative reform was long overdue, implementation will present a challenge. Vartires notes that, “while there has been huge progress made in the last few years, this is a tricky period in our legal system – things are not yet verified.”

Once the NCPC is official enacted in February 2013, the cost of the infrastructure needed to implement the new code’s procedures is of great concern. Varties explains that, “the system needs more people so it can work properly – more clerks and more magistrates.” The new procedural changes that call
for specialized judges and quicker procedures will require approximately 1,391 more judges, 3,883 court clerks, and more court rooms. This will require the Institutes that train and educate magistrates to accept more people to handle the new procedural effects.

Moreover, lawyers will have to learn the new code and will play a significant role in presenting best theories and methods for implementing the new laws. Currently, the Society of Legal Sciences is organizing a conference with legal experts to discuss the challenges they see in the various areas of law that will arise with the new codes.

Romania has used the legislative reform as an opportunity to continue improving children’s rights. The Government, however, must react to the potential weaknesses quickly in order to ensure the new codes have the intended positive impact on the lives of children. How judges and lawyers implement these codes with regards to children’s matters, and how the State responds to challenges and weaknesses, is crucial to the future of children’s rights development in Romania.

NOTES

3 Id. at 2, 4.
7 See generally Iolanda Boti & Victor Boti, The Best Interest of the Child: Concept Analysis From the Perspective of the Regulations of the New Romanian Civil Code, JURNALUL DE STUDII JURIDICE
8 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).
10 Id.
11 Anamaria Corbescu, Update: Doing Legal Research in Romania, Hauser Global Law School Program at NYU School of Law (Oct. 25, 2012), http://www.nyulawglobal.org/globalex/romania1.htm#_5.4_Civil_law
12 Id.
15 Buda, supra note 9.
16 See generally Boti & Boti, supra note 7.
19 Id.
20 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
22 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
24 Boti & Boti, supra note 7, at 283, 284 (referring to the Tutelage Court, the name of the guardianship court in Romania).
25 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012) (In some larger courts, there are currently specialized judges that hear family matters; under the New Code of Civil Procedure, these judges will most likely become guardianship specialized judges, and will engage in more strict rules regarding training.)
26 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).
27 Id.
28 Id.
29 Id.
30 Id.
32 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).
33 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
35 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
36 Implementation of the new civil, criminal and procedure codes costs approximately EUR 157 M, Nine O’Clock.Ro, supra note 34.
38 Rosa, supra note 31.
As worldwide spending on nuclear weapons passes 1 trillion per decade,\(^1\) Global Zero is leading the international movement to reduce nuclear arsenals. To remind countries that “their citizens care about this issue and expect them to take action,”\(^2\) Global Zero’s campaigns are found anywhere from music festivals to the Oval Office.\(^3\) Additionally, in 2010, Global Zero developed the Global Zero Action Plan that requires all nuclear weapons countries to
“commit to participate in multilateral negotiations for proportionate reductions of stockpiles” by 2014.4

While international tensions over Iran’s nuclear program intensify, Israel and the U.S. are taking different approaches, begging the question of whether Global Zero’s plan for peaceful disarmament is realistic.

Beginning in 2002, Iran began construction of the country’s first nuclear reactor in Bushehr.5 In the subsequent years, Iran’s relationship with the International Atomic Energy Agency (“IAEA”), an international organization charged with promoting nuclear peace and safety, deteriorated significantly.6 Iran’s refusal to suspend its uranium conversion, insisting the program is for peaceful purposes, is partially the reason for this deterioration, which caused resolutions and sanctions to be passed by the United Nations (“UN”) and the United States.7

The UN’s first resolution demanded Iran “suspend all enrichment-related and reprocessing activities, including research development.”8 When Iran failed to comply, the UN passed four subsequent resolutions, each implementing economic and diplomatic sanctions. These sanctions included import and export blocks of all “sensitive nuclear material and equipment,” tougher rules on financial transaction with Iranian banks, and frozen financial assets of those involved in Iran’s nuclear activities.9

Economic Sanctions Issued By the United States

In October 2007, the U.S. passed “sweeping new sanctions against Iran,”10 over growing concerns that Iran seeks to build a nuclear warhead. The U.S. Congress and President stated, Iran’s nuclear program “represent[s] a serious threat to the security of the US and its allies around the world.”11 Recently, municipal sanctions prohibit businesses that invest in Iran from bidding or submitting proposals to any political subdivision of the state or any public department or agency.12

However, sanctions often have little impact, and the conventional wisdom in the international community is “sanctions don’t work.”13 To support this opinion, many experts cite examples such as “the failure of the American trade
embargo to topple Fidel Castro for half a century, or the failure of sanctions to remove Saddam Hussein from power.”

Similarly, economic sanctions by the U.S. have had little impact on Iran’s nuclear program. Professor Alexandru Balas from Loyola University Chicago commented that although these sanctions have dealt a blow to the regime’s income from oil exportation, it has not changed the desire of the current administration to obtain nuclear energy or a nuclear weapon.

Currently, as a result of the sanctions, Iran’s “oil production and currency have both plummeted 40%.” However, officials in Israel admit the sanctions have “fallen short of their intended effect.” According to Professor Balas, who noted the failure of U.S. sanctions on North Korea’s nuclear program, it is likely Iran will simply find other customers to purchase their oil. Iran’s problems may be exacerbated by the sanctions, but they “will not stop [Iran’s] nuclear pursuit.”

ISRAEL’S RED LINE

Believing these sanctions are not working, Israeli Prime Minister Binyamin Netanyahu is using a different approach by establishing a “clear red line” between peace and war with Iran.

Netanyahu told delegates at a UN summit that Iran was “already 70 percent of the way through the process of enriching enough uranium to fuel a bomb.” Hoping Iran will back down if faced with an ultimatum, Netanyahu’s clear red line is a specified level of uranium enrichment that, if exceeded, would cause Israel to take military action against Iran. Israel has set this nuclear threshold at 90 percent uranium enrichment. Netanyahu believes this is the only “way to peacefully prevent Iran from getting atomic bombs.”

In response to Israel’s ultimatum, Iranian President Mahmoud Ahmadinejad says this “continued threat by the uncivilised [sic] Zionists [Israel] to resort to military action is a clear example” of nuclear intimidation.

In the event Israel attacks, Iran vowed it is “strong enough to defend itself and reserves its full right to retaliate with full force against any attack.” Believing Israel would not attack Iran without help from the U.S., Iran told news media,
“U.S. military bases in Qatar, Bahrain, and Afghanistan are legitimate targets.”

Additionally, although Iran is not looking to start a war, it would not hesitate to “launch a pre-emptive attack if it was sure that the enemies [were] putting the final touches to attack.”

MOVING FORWARD: WHERE DO WE GO FROM HERE?

Iran continues to maintain that their nuclear program is for peaceful purposes, such as energy and medical use. Even if Iran is pursuing a nuclear warhead, according to Professor Balas, it is highly unlikely that Iran will use it. If anything, Iran having a nuclear warhead may bring a greater “balance of power to the Middle East”. Moreover, because Iran invested millions of dollars into their nuclear program, it is unlikely Iran would give it to terrorists or the Hezbollah, a political organization in Lebanon comprised mainly of Shia Muslims.

As for Israel, “its credibility and deterrent capacity is undermined” the more it talks about red lines and very few countries are willing to follow Israel’s approach, including the United States.

Although the “Obama administration has not ruled out a military option,” the U.S. believes the “sanctions and multilateral negotiations with Iran must still be given time to work.” Moreover, now that elections are over, Israel has announced “they will continue to follow the lead of the U.S.”

In the end, according to Professor Balas, the U.S. could most likely live with a nuclear Iran. For right now, it is important to “just keep talking” so that we can eventually “tear down those red lines.”

NOTES

6 Id.
7 Id.
9 Id.
10 Iran’s Nuclear Timeline, supra note 5.
12 See, e.g., N.Y. GEN. MUN. LAW § 103-g (McKinney).
14 Id. at 72–73.
15 Interview with Alexandru Balas, Professor, Comparative Politics and International Relations at Loyola Univ. Chi. (Oct. 18, 2012).
16 Id.
18 Id.
19 Balas, supra note 15.
20 Id.
22 Id.
23 Id.
24 Id.
25 Id.
27 Id.
29 Id.
31 Balas, supra note 15.
32 Id.
33 Id.
34 Who are Hezbollah? BBC NEWS (July 4, 2010), http://news.bbc.co.uk/2/hi/middle_east/4314423.stm.
36 Id.
37 Iran Claims Right to Retaliate, supra note 26.

39 Balas, *supra* note 15.

40 *Id.*
Forty percent of New Jersey teachers who begin in a district, in a given year, never receive tenure in that district.¹ Despite this statistic, New Jersey legislators, educators, and organizations perceived a need for tenure reform within the public school system and collaborated to create the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACH NJ) – which was signed into law on August 6, 2012.²
“There is a general public perception that it is difficult to remove ineffective teachers from their classrooms,” said Carol Ashley, Legal Professor of Education at Loyola University Chicago School of Law, “[c]hanging teacher evaluation procedures . . . is a district’s response to this perception.”3 As school systems across the country grapple with how best to remove ineffective teachers, TEACH NJ exemplifies ideas of prolonging tenure acquisition and revoking tenure due to poor evaluations.4

COMPONENTS OF THE NEW LAW

TEACH NJ ties tenure acquisition directly to teacher effectiveness, rather than solely the number of years a teacher has been in the profession; restricts tenure acquisition to new teachers who have received two consecutive years of positive evaluations; and increases the number of years of teaching required to attain tenure from three to four years.5

New Jersey’s model for retaining quality teachers under TEACH NJ encompasses (1) recognition of seniority, (2) reduction of test score importance to instructor performance; (3) strengthening administrative responsibility; and (4) lessening the cost of litigation associated with teacher termination.6

There is a catch, however. Although the law is in place, it is dependent upon an evaluation system that is currently not implemented, but instead is being tested in 30 pilot districts.7 In this backwards approach to education reform, New Jersey aims to use the successes and failures experienced by teachers in the pilot schools to heavily influence its forthcoming formalized evaluation criteria.8

Some questioned the effectiveness of TEACH NJ without an established evaluation plan and have urged the Senate Education Committee (to no avail) to stay the implementation of the law until the necessary entities agreed upon an evaluation system.9

CHANGES IMPOSED BY TEACH NJ & CHALLENGES AHEAD

The governor, as well as other politicians and some educators, strongly oppose the “Last In, First Out” (LIFO) policy - requiring newer teachers to be laid off before those with more teaching experience - because it fails to account teacher
The New Jersey Education Association (NJEA), on the other hand, argues that experienced teachers must remain in schools to mentor younger teachers. Further, NJEA believes a repeal of LIFO motivates districts to save money by dismissing effective senior teachers. “When layoffs become necessary, [LIFO] protects effective teachers from being targeted simply because of their age or salaries,” said Steve Baker of the NJEA.

Due to reduced enrollment, teachers in New Jersey’s largest district, Newark County, will face hundreds of layoffs over the next few years, and many remain frustrated by LIFO and advocate that principals should be able to retain and reward top teachers regardless of seniority. Others also foresee many stellar, but young teachers losing their jobs through the implementation of TEACH NJ, which they claim is not in the best interest of New Jersey students.

Despite this reality, the governor, in an effort to gain NJEA’s support, ultimately abandoned plans to eliminate the LIFO policy. But a New Jersey lawmaker introduced a bill to eliminate the policy just days after TEACH NJ became law.

Beyond disagreement with the LIFO policy, teachers and parents are likely to disagree with government entities on the importance of standardized test scores in determining a teacher performance, as well. In New Jersey, the governor heavily stressed tying teacher performance to standardized test scores. NJEA argues that regardless of a teacher’s motivation and experience, systemic and environmental issues negatively affect student performance on standardized tests and in the classroom and that quality teachers should not be punished for this reality.

Some New Jersey parents, concerned that there is too much focus on helping students succeed on standardized tests rather than providing a well-rounded curriculum, also voiced their concerns. As Baker stated, “There is no test score short-cut. To improve test scores, there must be comprehensive curriculum taught in the classroom.”

To ease these concerns, the new law provides that teacher evaluations will not be predominantly determined on standardized test scores, and will include other factors such as teacher and district-developed assessments. “In schools with large proportions of at-risk students, it may be fairer to measure teacher effectiveness based on whether students make a year’s worth of academic
growth rather than if they meet statewide [standardized] test averages,” said Ashley. 23

However, critics continue to stress TEACH NJ fails to address the large achievement gap between affluent students and low-income students on standardized tests. 24 In the 2010-2011 school year, low-income students scored 31 points lower than their peers on the New Jersey Assessment of Skills and Knowledge (NJ ASK) test in language arts, and 24 points below their peers in math. 25

Who evaluates teacher performance is another critical component to retaining quality teachers. TEACH NJ provides that an in-district principal or other administrator, rather than teachers, must conduct evaluations. 26 “This action could influence principals to be more adamant and involved in the mentoring and success of their teachers,” said Ashley. 27

Lastly, the financial burden of increased litigation as a result of the new law is an issue that NJEA brought to the forefront to ensure fair due process for teachers charged with ineffectiveness at a reasonable cost to taxpayers. 28 To meet this goal, TEACH NJ requires that all legal actions associated with tenure be dealt with in arbitration proceedings, and not the courts. 29 Before TEACH NJ the removal of a teacher could take years and cost over $100,000. 30 Now, through arbitration a dismissal proceeding is limited to 100 days and capped at $7,500. 31

LOOKING TO THE FUTURE

New Jersey lawmakers and educators view TEACH NJ as an important step toward education reform, but certainly not the ultimate goal. 32 Since the implementation of the Act, merit pay reform in Newark, which financially awards highly effective teachers up to $12,500 annually in bonus pay, became a reality. 33 The governor anticipates this reform will lead to further academic improvement in the state’s lowest performing schools. 34 The future of LIFO, however, still hangs in the balance.

Although the long-term effects of TEACH NJ have yet to be seen, it has set a starting point for critical education reform.
NOTES

1 Interview with Steve Baker, Associate Director for Public Relations, New Jersey Education Association (Nov. 15, 2012).
3 Interview with Carol Ashley, Legal Professor of Education, Loyola University School of Law (Oct. 5, 2012).
6 Id.
7 Id.
8 Baker, supra note 1.
12 Baker, supra note 1.
13 Id.
15 Star Ledger Editorial Board, supra note 14.
16 Shumay, supra note 10.
19 Id.
20 Id.
21 Baker, supra note 1.
23 Ashley, supra note 2.


27 Ashley, *supra* note 2.

28 Office of the Governor, *supra* note 5.


30 Office of the Governor, *supra* note 5.

31 *Id.*


34 *Id.*
FEATURE ARTICLE

MODERN COURTS AND THE OLDEST PROFESSION: THE LITIGIOUS DEVELOPMENT OF LEGALIZED BROTHELS IN ONTARIO AND NEVADA

by MARGARET DAVIS

A recent study examining global prostitution laws revealed that 61% of 100 studied countries allow some form of legal prostitution.1 The United States and Canada both fall within this majority, but both countries place strict limits on prostitution.2 In the U.S., prostitution is only legal within a
licensed brothel in one of twelve counties in Nevada. In Canada, prostitution laws are in a state of flux following *Bedford v. Canada*, a recent decision by the Supreme Court of Ontario. In March of 2012, an appellate court affirmed a lower court’s ruling that certain parts of the Criminal Code, such as a ban on brothels, are unconstitutional. This case has the potential to reframe Canadian prostitution laws. On October 25, 2012, the Supreme Court of Canada announced that it will hear the final appeal of the case.

**A Brief History of Legal Prostitution in Canada**

Even before the *Bedford* decision, the exchange of money for consensual sex was not illegal, per se, in Canada. However, the Canadian Criminal Code prohibits many activities that are related to prostitution, making it difficult to engage in prostitution without violating one of these provisions. For example, it is illegal to work in a “bawdy house” (brothel), to solicit for sexual services, or for an individual to profit from the prostitution of another (such as a pimp, brothel owner, or security guard).

Three plaintiffs, Terrie Bedford, Annie Lebovitch, and Valerie Scott, filed suit against the Attorney Generals of Canada and Ontario, and the case was heard by the Superior Court of Justice in October of 2009. The plaintiffs sought to
show that three sections of the Criminal Code are unconstitutional. The “bawdy house provision” found in section 210, prohibits people from owning or entering brothels or from regularly engaging in prostitution in a certain location, such as one’s home. The “living on the avails” provision in 212(1)(j) bans profiting from the prostitution of another individual. Finally, section 213(1)(c) outlaws communication (solicitation) of sexual acts for money, in public.

The plaintiffs argued that these provisions violate various sections of the Canadian Charter of Rights and Freedoms, part of the Canadian Constitution. Most notably, the plaintiffs argue that these provisions violate Section 7, which ensures the right to life, liberty, and security. The plaintiffs’ argued that the criminal code has the effect of prohibiting prostitution in its safer forms, while permitting its most dangerous manifestations. In other words, “the cumulative effect of the legislative scheme may actually exacerbate the social problems caused by the prostitution,” and this is a violation of an individual’s Section 7 rights. The judge in the Supreme Court of Justice agreed with the plaintiff’s argument, and the appellate court affirmed.

All three of the plaintiffs have worked as prostitutes in the past. Two of the three women reported experiencing more violence when working on the streets than in brothels or in their homes. Since the bawdy house provision prevents individuals from using these indoor locations, prostitutes are pushed into the potentially more dangerous conditions of the streets.

In analyzing this claim, the lower court considered a wide range of sources including expert testimony about human trafficking, studies on violence against prostitutes, The Fraser Report, which “mapped the ideological landscape, and philosophical and ethical traditions” surrounding prostitution, the Department of Justice’s synthesis report, which reviewed the effects of past legislation on street prostitution, and the plaintiff’s own stories. The court also studied a variety of countries where legal brothels exist, including the United States. The decision discusses the efficacy of different methods used by Nevada brothels to keep their prostitutes safe, such as having a panic button in each room and allowing management to monitor monetary negotiations between prostitutes and clients. The breadth and depth of the court’s consideration of international sources seems to point to a desire to make a decision that benefits the well-being of prostitutes and the Canadian community as a whole.
The next issue is the “living on the avails” provision, which forbids anyone from living partially or wholly off the profits of a prostitute. Plaintiffs argue that their safety is jeopardized by this provision, because it renders them unable to hire security guards for protection, managers to screen clients in advance, or drivers to escort them safely. The appellate court agreed and felt that this provision should only ban people from benefiting from prostitution in an exploitive manner.

**Development of Legal Prostitution in Nevada**

In the United States, brothels are legal in only one state: Nevada. Nevada was granted statehood in 1864, and the newly formed Nevada State Legislature passed laws that permitted cities to regulate their own brothels and prostitution laws. In 1942, Clark County (home of Las Vegas) attempted to shut down a local brothel, deeming it a public nuisance. The resulting lawsuit went to the Nevada Supreme Court, which upheld Clark County’s right to close the brothel. The court’s reasoning centered on county supremacy in local governmental matters, and the state’s inability to infringe upon that authority.

Five years later, in *Cunningham v. Washoe County*, the Nevada Supreme Court explained that state laws on prostitution are simply a foundation on which counties are permitted to build.

The Nevada State Legislature took up the issue in 1971 by enacting a ban on brothels for any county with a population in excess of 200,000. At that time, only one county exceeded that total, but the cap has since been increased to 400,000, and two counties are currently over the limit (those encompassing Las Vegas and Reno).

The tide changed in 1978 when the Nevada Supreme Court overruled its previous decision in the *Cunningham* case. This time, the court explained that the statute enacted in 1971 rendered counties unable to close a brothel under the guise of nuisance. However, Counties have since been permitted to shut down brothels under alternative theories. For example, the Nevada Supreme Court allowed Lincoln County to shut down a brothel in 1980 because regulating and overseeing the brothel was too much of a burden for the county.

In recent years, the number of brothels in operation in Nevada has fluctuated between 25 and 35. Most authority to regulate brothels is left to individual
Some counties have chosen to permit them in only rural areas, and other counties simply retain the right to use their discretion in permitting individual brothels, deciding on a case by case basis.43

COMPARISON: ONTARIO AND NEVADA

Except for the province of Quebec, which operates under Civil Law, Canada has a fairly similar court system to that of the U.S.44 A Canadian Supreme Court Ruling has similar precedential value over the provinces of Canada, as a comparative United States Supreme Court decision has over the states.45 In both Nevada and Ontario, litigation has led to legalized brothels (although the Canadian system is in flux, awaiting a Supreme Court determination). The way in which courts arrived at these decisions, and the reasoning that the court used to rationalize this legalization, has been very different.

Both courts considered the specificity of certain provisions. The Ontario court did this in regards to the “living on the avails” prohibition. The plaintiffs felt that by banning all people who live wholly or partially on the avails of prostitutes, it was eliminating not only those who exploit sex workers, but also those who could ensure the safety of sex workers—a notion that the court agreed with.46 The Nevada Supreme Court also heard a case alleging that the ban on solicitation was overly broad. This court agreed, but based the decision on procedural grounds and not on policy ramifications.47

The Ontario case and a few Nevada cases have discussed nuisance theories. The Nevada court did a more thorough consideration of nuisance, and historically used nuisance law as a means for counties to shut down brothels.48 Many of these Nevada decisions were concerned with nuisance deriving from the physical building of the brothel, its location in the community, and the negative effects of its presence there.49 In the Bedford decision, the Ontario court discussed nuisance, but in relation to solicitation by prostitutes, and concluded that legalizing brothels could be beneficial because solicitation would then occur within the brothel, not on the streets.50

Regarding communication, the Nevada courts took a First Amendment standpoint, debating whether or not it should be legal to advertise brothels in the counties where they illegal.51 The Ontario court primarily discussed communication from an on-street solicitation standpoint.52 This court said the status
quo puts sex workers in a more dangerous position, since they had to retreat to hidden or dangerous places to do their negotiations, and because they often hurried through negotiations for fear of getting caught. The hurried nature meant prostitutes did not have ample time to screen the client or to ensure that they felt safe in the transaction. While communication and solicitation was considered by both Ontario and Nevada courts, Nevada was more concerned with the relationship between counties, whereas Ontario’s court discussed the in-county effect.

Overall, the Ontario court framed its Bedford decision from a policy standpoint, advocating for the safety of sex workers and from an overall community health standpoint. It also considered many external and international sources, and attempted to maximize practicality and safety. In contrast, the Nevada court has focused on the legal theories by which a particular county can allow or ban a brothel, the problems that a brothel can cause to the community it surrounds, and the relationship between county and state lawmaking prerogatives. Although the Ontario Supreme Court will have the ultimate say on the legality of Ontario’s brothels, the discussion that has been prompted by the Bedford decisions thus far provides an interesting comparison for how two different legal systems can arrive in a similar place through very different means.

NOTES

2 Id.
9 Robertson, supra note 7.
12 Id. ¶ 3.
13 Id.
14 Id.
15 Id.
18 Id. at 18.
19 Id. ¶ 37.
20 Id. ¶ 374.
21 Id. ¶ 10–12.
25 Id. ¶¶ 178–213.
26 Id.
31 Kelley v. Clark County, 127 P.2d 221, 224 (Nev. 1942).
32 Id.
33 Snadowsky, supra note 30, at 221.
34 Cunningham v. Washoe County, 203 P.2d 611 (Nev. 1949).
36 Snadowsky supra note 30.
38 Id.
40 Id.
42 Snadowsky, supra note 30.
43 Id.
44 Interview with Dr. Barry Sullivan, Loyola University of Chicago School of Law Professor, in Chi., Ill. (Oct. 2012).
45 Id.
48 Kelley v. Clark County, 127 P.2d 221, 224 (Nev. 1942).
52  *Bedford*, 2012 ONCA 186 ¶ 364.
53  *Bedford v. Canada*, 2012 ONCA 186 ¶ 312(Can. Ont. C.A.)
54  *Id.* ¶ 312.
APPLYING HOLDER IN AN IRREGULAR WAR

by Ellen Porter

“Military aircraft bombed a town held by insurgents... killing more than 40.”¹ “Artillery gunners shelled a bread bakery full of workers and customers... killing at least 20.”²

As the conflict in Syria rages on, we question what the international community — specifically humanitarian organizations — can do to alleviate the devastating effects of civil war. Is direct aid the most effective form of assistance?³ Holder v. Humanitarian Law Project complicates the US’s ability to provide humanitarian aid during irregular warfare.⁴
CURRENT STATE OF AID

After a series of student revolts in March 2011, violence in Syria morphed into full-blown civil war. At a meeting of the General Assembly in Autumn 2012, United Nations Secretary General Ban Ki-moon called the crisis “grave and deteriorating,” noting that the situation had taken a “particularly brutal turn” in August, 2012.

Recent numbers from the U.N. approximate that 2.5 million Syrians inside the country are in need of aid and 1.2 million are internally displaced. Nevertheless, the international community has taken little action to combat the situation.

The U.N. Security Council has not been able to make substantial progress towards a solution. All members of the Security Council need to approve any U.N.-authorized action in Syria, but Russia and China are stalling attempts to move forward. In August 2012, Kofi Annan retired from his position as UN Arab League envoy to Syria, citing inaction and a “lack of unity” among members of the Security Council as his main reasons for stepping down. Annan claimed the Council was too preoccupied with “finger-pointing and name calling” and not focused on quelling the escalating violence.

U.S. action has not proven much more effective. The U.S. has formally condemned Syrian president Bashar al-Assad, but the condemnation was primarily an act of geopolitical significance and had little actual consequence in Syria.

While it is clear that humanitarian organizations can do more, a recent Supreme Court case may force them to reconsider their next steps.

HOLDER V. HUMANITARIAN LAW PROJECT

In the 2010 case, Holder v. Humanitarian Law Project, the Supreme Court upheld a federal law that made it a crime to “knowingly provid[e] material support or resources to a foreign terror organization (FTO).” Critics of the opinion fear that prosecution under this law will deter sources of aid. The American Civil Liberties Union claims that the holding, “hinders the ability of human rights and humanitarian aid organizations to do their work” in that it
“thwarts the efforts” of those groups to use their resources to persuade and influence violent actors.\textsuperscript{16}

Complicating the holding is the fact that, while the Court ultimately held that “the plaintiffs’ claims of vagueness lack merit,”\textsuperscript{17} transcripts from the oral argument expose the Justices’ reluctance to fully consider all of the possible permutations of the ruling.\textsuperscript{18} As a result, the decision ultimately favors national security over humanitarian interests.\textsuperscript{19}

\textit{Holder and Syria}

Applied to Syria, \textit{Holder} certainly complicates the future of foreign aid from the U.S.\textsuperscript{20} Currently, there are no Syrian organizations on the list of foreign terrorist organizations,\textsuperscript{21} and therefore no risk of prosecution for agencies and organizations directing aid into the country.\textsuperscript{22}

However, the situation in Syria is an example of an irregular war, a new form of warfare characterized by “a method of fighting . . . linked to many different agendas, including revolutionary, separatist, or purely opportunistic” in which the actors are difficult to identify, and the battle lines are blurred and fluid.\textsuperscript{23}

Humanitarian groups face an identification problem and are often unable to clearly distinguish between ally and enemy.\textsuperscript{24} Aid intended for one side may easily end up in the hands of another, or at a minimum, it might indirectly benefit the opposition.\textsuperscript{25} This problem is exacerbated when the perpetrators in a war are rebel groups starved for resources like ammunition and intelligence.\textsuperscript{26}

Although \textit{Holder} may not directly apply to the war in Syria at this time, the principles from the case may still be applicable. A brief case study of the Red Cross illustrates \textit{Holder’s} potential implications were it to be applied to Syria. The Red Cross operates under the tenets of “neutrality” and “impartiality.”\textsuperscript{27} The Red Cross provides assistance in an international crisis without considering the fault of the potential recipient.\textsuperscript{28} If the Red Cross were to act in Syria, it would begin administration of assistance and act without regard to fault.\textsuperscript{29}

However, if it were discovered that one of the Syrian rebel groups was on the list of FTOs, \textit{Holder} would prohibit the Red Cross from administering aid to all.\textsuperscript{30} While \textit{Holder} requires that an organization cannot \textit{knowingly} support an
FTO, the situation in Syria is an irregular war. The identification problem inherent to irregular wars create the possibility that aid could easily be diverted into rebels’ hands. Is that possibility enough to invoke Holder and prevent a humanitarian aid group from acting in Syria at all, lest its effort come to benefit rebel organizations?

It is hard to say if this extraction is stretching the principles of Holder too far. But one thing is certainly clear; moving forward, humanitarian organizations sending aid to Syria, while not bound by Holder, should be cognizant of its principles in order to guarantee that aid efforts result in their intended purpose: helping people in need.

NOTES

5 Syria, supra note 1.
7 Syria, supra note 1.
8 UN raises humanitarian appeal to $347 million to help growing number of Syrians in need, UN News Cent. (Sept. 7, 2012). http://www.un.org/apps/news/story.asp?NewsID=42827&Cr=Syria&Cr1=#.UEzS6KRWpTo; Syria: UNICEF scales up health and nutrition response for children affected by crisis, UN News Cent. (Sept. 6, 2012), http://www.un.org/apps/news/story.asp?NewsID=42817&Cr=Syria&Cr1=#.UIhFb2k.(The U.N. developed a Syrian Response Plan, but it is severely under-funded; the U.N. recently made an appeal for $347 million, however, the plan is currently only funded at $90 million.)
11 Id.
12 Id.
13 Syria, supra note 1.
16 Id.
17 Holder, 130 S.Ct. at 2720.
18 See Interview with John Nowak, Professor of constitutional law at Loyola University Chicago School of Law (Oct. 25, 2012) (citing Professor Ronald Rotunda). Professor Nowak points out that, when presented with the respondent's hypothetical that, following the court's theory, newspapers publishing op-ed articles by Hamas (an FTO) should be punished under the statute, Justice Scalia responded, "We can cross that bridge when we come to it." Id. See also Ronald D. Rotunda, Modern Constitutional Law Cases and Notes, 975 (Thomson Reuters, 10th ed. 2012).
19 Nowak, supra note 19.
20 American Civil Liberties Union, supra note 16.
24 Id.
27 Fiona Terry, Condemned to Repeat?: The Paradox of Humanitarian Action 18 (Cornell Univ. Press 2002).
28 Id. at 19.
29 Id.
31 Id. Kalyvas and Kocher, supra note 24.
32 Id.
THE PRIVATE PRISON DILEMMA

by Adriana Ballines

In September 2009, Tanya Guzman-Martinez, a transgender woman, was placed in removal proceedings and held for eight months at the Eloy Detention Center. Eloy Detention Center is a private prison operated by Corrections Corporations of America (“CCA”), the largest private-prison corporation in the United States.

Despite her requests for protection, Guzman-Martinez was placed in the male housing unit. There, she was subjected to verbal abuse and harassment, was patted down by male officers, and was forced by a CCA officer to perform sexual acts. Guzman-Martinez filed a lawsuit against CCA, but her case was dismissed. She re-filed her case in August of 2012.
THE GROWTH OF PRIVATE PRISONS

In 2012, the Department of Homeland Security spent a record-high, $2 billion, in tax dollars on detaining immigrants. Approximately 34,000 immigrants are detained every night. Like Guzman-Martinez, about half of these detained immigrants are held in privately run prisons.

Since the opening of the first private prison in 1984, the industry has expanded rapidly throughout both state and federal corrections. Supporters of prison privatizations argue that the significant cost savings that private prisons purport to offer - lower wage and benefit costs for labor, lower procurement costs, and more efficient administration and operation – warrant their continued growth. However, a recent nationwide research study indicated that "average savings from prison privatization was only about 1 percent, rather than the projected 20-percent savings."

Moreover, in the last decade, "the three largest corporations with stakes in immigration detention," CCA, the GEO Group, and Management and Training Co. together spent “at least $45 million. . . on campaign donations and lobbyists at the state and federal level.”

Several sources suggest a correlation between campaign contributions and lobbying, and an increase in profits and contracts with US Immigration and Customs Enforcement (“ICE”). For example, between 1999 and 2009, CCA alone spent $18,002,000 on federal lobbying. Of its 43 lobbying disclosures [filed between 2008 and 2010]. . . only five do not expressly state [an] intent. . . to. . . influence immigration reform policy. . ." In 2010, CCA reported a gross revenue of $1.7 billion.

The correlation “is definitely not coincidental” said Alexis Perlmutter, acting director of policy for the National Immigrant Justice Center. “I think [private prison corporations] lobby to make more money, and they have been very good at it up to this point.” The result is an “incarceration rate that is not justified legally with the realities of immigrant detainees,” said the Assistant Director at UC Davis Immigration Law Clinic, Holly S. Cooper.

This is problematic because, as the United Nations Special Rapporteur on the Human Rights of Migrant, François Crépeau, explains, “the level of accounta-
bility and the level of transparency that are required for proper supervision of
detention facilities are usually not present in the case of privately-run corpora-
tions. When you have a private corporation with its profit-generating bottom
line, you have a significant interference with public policy outcomes,” said
Crépeau.20 For instance, in 2011 CCA “lobbied heavily against a bill that
would force them to comply with the same open records requirements gov-
erning public facilities.”21

DETENTION CONDITIONS

In a report published in May, 2012, the American Civil Liberties Union
(ACLU) of Georgia interviewed 68 immigrant detainees and visited four dif-
ferent immigrant detention facilities under investigation.22 Three of the four
facilities visited, including Stewart, North Georgia Detention Center
(NGDC), and Irwin, were privately run prisons. Stewart and NGDC are both
managed by CCA, while Irwin is operated by Detention Management, LLC.23

Stewart had the highest deportation rate in the country – at 98.8%.24 Yet, only
two out of the 28 detainees interviewed at Stewart had legal representation.25
 “[B]ecause the majority of immigrant detainees are housed in facilities in rural
locations far away from their homes,” legal representation for them is scarce
and cost-prohibitive.26

In response to the report, Steve Owen, CCA spokesman and operator of Stew-
art and the NGDC, said that “ACLU ignored or underplayed CCA responses
to some of the criticisms of its facilities.”27 “Some of the allegations were un-
substantiated or incorrect,” argued Owen.28

“I wouldn’t say that detainees are more at risk of human rights abuses” in
private prisons, said Perlmutter.29 In fact, those prisons “could be doing things
better” but it is difficult to know because it is “very challenging to find out
information from them without suing.”30

ALTERNATIVES TO DETENTION

While detaining an individual costs the US government about $166 per day,
more humane and efficient alternatives to detention (“ATD”) cost only about
$8.88 per day.31 Yet, the Obama administration requested only $111.59 mil-
lion for ATD for fiscal year 2013.32 This amount is much lower than the $2.026 billion that the U.S. House of Representatives appropriated for the detention of immigrants.33

“We encounter people all the time who do not need to be detained,” said Perlmutter.34 Perlmutter explains that “Congress determines the immigration detention bed space every year, the problem is that DHS interprets this number as a mandatory requirement that they have to hold in custody.”35

In fact, when the Director of Intergovernmental Affairs, Cecilia Muñoz, was asked whether it was true that ICE agents who do not meet the goal of deporting 400,000 individuals every year pay a very high price in Washington,” she responded, “Congress passes the laws, appropriates the funds for implementing the laws, and the federal agency’s job is to do what Congress has told them to do. That is how a democracy works.”36

“There are two elements that affect the lack of use of ATD,” explained Crépeau. One is that “ATD are not sufficiently developed.”37 The other element is “the fact that irregular migrants are not a political constituency. [Thus], politicians are not incentivized to protect them, and this is a structural failure of our democracies.”38 Because the courts are not subject to the same electoral pressure, “access to the justice system for migrants is extremely important.”39

The case of Guzman-Martinez exemplifies many of the difficulties that individuals and attorneys face when seeking legal remedies against private-prisons corporations. As Cooper explained, “the weakness of private prisons is the lack of transparency and the fact that they are using their resources to advocate for increased incarceration rates.”40

NOTES

3 Guzman-Martinez, supra note 1, at 2–3.
4 Id. at 4.
5 Id. at 9, 13, 16.
6 Phone interview with Holly S. Cooper, Assistant Director UC Davis Immigration Law Clinic (Oct. 23, 2012).
7 Shahshani, supra, note 2.
8 Alexis Perlmutter et al., Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention 8 (Holly Cooper et al. eds., 2012).
11 Id.
12 Id.
13 Id. See also Perlmutter, supra note 8; The Influence of Private Prison Industry in Immigration Detention, Detention Watch Network, http://www.detentionwatchnetwork.org/privateprisons.
14 Detention Watch Network, supra note 13.
17 Phone interview with Alexis Perlmutter, acting director of policy for the National Immigrant Justice Center (Oct. 25, 2012).
18 Id.
19 Cooper, supra note 6.
20 Phone Interview with François Crépeau, the United Nations Special Rapporteur on the Human Rights of Migrant (Oct. 9, 2012).
21 Perlmutter, supra note 8.
22 Cole, supra note 16.
23 Id. at 28.
24 Id. at 13.
25 Id. at 37.
26 Id.
28 Id.
29 Perlmutter, supra note 8.
30 Id.
31 Shahshani, supra note 2.
32 Perlmutter, supra note 8, at 30.
33 Id.
34 Perlmutter, supra note 8.
35 Id.
37 Crépeau, supra note 20.
38 Id.
39 Id.
40 Cooper, supra note 6.
A BROKEN AMERICAN DREAM: THE CURRENT STATE OF U.S. IMMIGRATION LAWS AND ITS ADVERSE EFFECT ON STUDENTS, EDUCATION, AND THE ECONOMY

by Sabena Auyeung

"They are Americans in their heart, in their minds, in very single way but one: on paper."1 These are the words President Obama used to describe the plight of young Americans who face the threat of deportation because “of the action of their parents or the inaction of Congress.”2 Every year in the United States, countless immigrant students are being denied work per-
mits or face deportation simply because of their undocumented status in the country.³

Raised and educated on American soil, many students find themselves suddenly uprooted upon the expiration of their student visa.⁴ Many of these student immigrants built their lives in America, but now have no options as they face deportation.

THE EDUCATIONAL AND ECONOMICAL IMPACT

Young students, active in their school, communities and elsewhere, have been denied work permits or deported for their undocumented status in the country. Fred Tsao, policy director of the Illinois Coalition for Immigrant and Refugee Rights, highlights this problem, stating “these are young people who are pursuing their education and many have bright futures ahead of them. . .these are by definition, Americans, and many times, they do not know about their undocumented status until they are denied financial aid or a driver’s license.”⁵

One such individual, Mohammad Abdollahi, came to the United States at the age of three.⁶ Never questioning the legality of his presence in the US, Abdollahi learned years later that his parents had overstayed their student visa, and that the whole family was facing deportation.⁷ In hopes of continuing the life he had built in Michigan and saving his family from deportation to Iran, he has made his story public – hoping that drawing attention to this issue would not only spare his family, but impact the thousands of other similarly-situated young immigrants.⁸

Even with legal status, young immigrants encounter discrimination in the job market.⁹ “The challenges of finding a job after graduation are exacerbated by the difficulty thousands face in finding an employer open to hiring non-U.S. nationals.”¹⁰ Unwanted and unemployed, immigrant students are offered little opportunity to succeed, though they possess the degree, the desire, and determination. Professor Alexander Tsesis asserts that immigrants should be considered a “brain trust that enriches the workforce benefitting economy and culture by increasing multiculturalism.”¹¹
THE DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

In June 2012, President Obama issued a deferred action he hopes will further the goals of the Dream Act and offer illegal immigrants immunity from deportation.12 The Deferred Action for Childhood Arrivals (“DACA”) aims to protect certain undocumented immigrants.13 Those who meet the criteria are granted immunity from deportation and allowed to apply for a two-year work permit without any limitations on renewal. President Obama announced, “[T]his is not amnesty; this is not immunity; this is a temporary stopgap measure that will allow us to focus our resources wisely while giving a degree of relief and hope to talented, driven patriotic young people. . . [it is] the right thing to do.”14

Opponents of DACA, like Lamar Smith, the House Judiciary Committee Chairman of Texas, stated that “President Obama’s decision to grant amnesty to millions of illegal immigrants is a breach of faith with the American people.”15 Others have suggested the policy is a magnet for fraud, predicting many illegal immigrants will falsely claim they came here as children while the federal government has no means to verify whether their claims are true.16

Supporters in Congress, however, believe that the proposal is a start toward improving the nation’s immigration laws.17 Illinois Democratic Representative, Luis Gutierrez, believes that with the DREAM Act, students are being protected today, which may eventually fix the system for their families and for the country.18

STEPS BEYOND DACA

Though DACA is meant only as a supplemental “stop-gap” measure, and not as a replacement of the Dream Act of 2001, many supporters agree that this is a step in the right direction. Democratic Senator Dick Durbin of Illinois has repeatedly called for Congress to pass immigration reform legislation.19 Though there is uncertainty in Congress, Senator Durbin welcomed the announcement of DACA by stating this “will give these young immigrants their chance to come out of the shadows and be part of the only country they’ve ever called home.”20
In May 2010, young immigrant students protested all over the nation – even purposely getting themselves arrested in order to make the issue public.\textsuperscript{21} These students are paying a large price so others do not have to face deportation.\textsuperscript{22} DACA may be a testament to their efforts, offering hope to many immigrants who believe that the administration is working to improve immigration policies.\textsuperscript{23} As President Obama stated, "this is just one step to mend out nation’s immigration policy and to make it more fair and more just."\textsuperscript{24}

NOTES

2 Id.
5 Interview with Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights (October 19, 2012).
6 Gomez, supra note 4.
7 Id.
8 Id.
10 Id.
11 Interview with Alexander Tsesis, Professor of Law, Loyola University Chicago School of Law (Oct. 24, 2012).
12 Sala, supra note 1.
13 It aims to protect those immigrants who were brought to the United States before they turned 16, younger than 30, been in the country for at least five continuous years, have no criminal history, and have graduated from a U.S. high school or earned a GED or served in the military. USCIS Consideration of Deferred Action for Childhood Arrivals Process, U.S. Citizenship and Immigration Services (Sept. 14, 2012) available at http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.eb1d4c2a3e5b9a89243c6a75436f61a/?vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD.
15 Id.
16 Id.
17 Id.
21 Gomez, supra note 4.
22 Id.
23 The 2001 DREAM Act was originally designed to provide conditional permanent residency to certain undocumented residents of good moral character who graduate from U.S. high schools as minors.
24 Sala, supra note 1.