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# The Boston University Pre-Law Review

## Volume XXIV Issue 1, Fall 2014

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Vol. XXIV, Issue 1  
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# Pre-Law Review

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# The Evolution of Reproductive Rights in the United States

By Janki Viroja  
CAS '16

This past summer saw many of the following phrases on bright posters: "Get a new hobby."<sup>1</sup> "Keep your religion off my prescription."<sup>2</sup> "Supreme failure."<sup>3</sup> "I am the CEO of my health care decisions!"<sup>4</sup>

These statements reflect the sentiments of many Americans after the Supreme Court decision in *Burwell v. Hobby Lobby Stores* on June 30, 2014. The statements are emotionally charged and do not necessarily reflect the facts of the case, but they definitely illustrate the discontent many individuals felt with the decision.

Although in the spotlight right now, the debate on reproductive rights began much earlier. Almost 50 years ago in 1965, the case *Griswold v. Connecticut* appeared before the Supreme Court.

In 1879, a law was passed in Connecticut making it illegal for someone to promote or use birth control. According to the law, offenders would be fined a minimum of \$40 or put in jail for a minimum of six days.<sup>5</sup> The state law became a topic of much debate after the Planned Parenthood League of Connecticut was established in New Haven in 1961. Estelle Griswold and Dr. C. Lee Buxton were behind the opening of Planned Parenthood. Buxton was an obstetrician at the Yale School of Medicine and Griswold was a social activist.<sup>6</sup> The pair worked to provide contraceptives and counseling and as a result, they were arrested and fined \$100. They were both found guilty in court under the 1879 statute.<sup>7</sup>

The Supreme Court heard the case

in 1965 and came to a decision about whether or not to "allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives."<sup>8</sup> The majority voted in favor of *Griswold and Buxton*.<sup>9</sup>

Although not clearly stated in the Constitution, the Supreme Court held that there is a right to privacy in marital relations derived from the different assurances listed in the Bill of Rights.<sup>10</sup> The *Griswold v. Connecticut* decision served as precedent for *Burwell v. Hobby Lobby*.

The spark of much debate this past summer, the Supreme Court heard a case based on contraception called *Burwell v. Hobby Lobby Stores*. The Green family, who privately own Hobby Lobby, decided to go to court because they believed that the Affordable Care Act requirement to provide their employees with a health care plan that covers contraception was against the Religious Freedom Restoration Act of 1993 (RFRA).<sup>11</sup>

Congress passed RFRA in an effort to protect the "religious liberty of all Americans" by providing "religious exemptions from generally applicable laws."<sup>12</sup> According to the Green family, they run their for-profit company on Christian values, according to which, four of the 20 FDA approved contraceptives should not be allowed.<sup>13</sup> Religious employers and nonprofit religious organizations already had exemptions to the health care requirement for contraception, but no such exemptions existed in relation to for-profit organizations. The Supreme Court ruled that a for-profit company can in fact refuse to provide comprehensive contraceptive coverage for their employees based on religious grounds.<sup>14</sup>

Even today, the debate on the privacy of using contraception remains alive and raging. Posters reading, "Bosses – keep your business in the boardroom, not our bedrooms," summarize the issue succinctly.<sup>15</sup>

Can employers really dictate which forms of contraception they will and will not provide coverage for based on their religious beliefs? As the outcry this summer indicated, this is a heated topic for many. The legal debate on the matter is likely to continue for years to come until another landmark case arises with a course-changing decision.

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## Sources

<sup>1</sup>"VIDEO: Hobby Lobby protesters bash religious liberty at Supreme Court," The Pulse, accessed Oct. 7, 2014, [www.lifesitenews.com/pulse/video-hobby-lobby-protesters-bash-religious-liberty-at-supreme-court](http://www.lifesitenews.com/pulse/video-hobby-lobby-protesters-bash-religious-liberty-at-supreme-court).

<sup>2</sup>Mabel Wadsworth Center holds Saturday protests outside Bangor Hobby Lobby – Bangor – Bangor Daily News," BDN Maine, accessed Oct. 7, 2014, [bangordailynews.com/slideshow/mabel-wadsworth-center-holds-saturday-protest-outside-bangor-hobby-lobby/](http://bangordailynews.com/slideshow/mabel-wadsworth-center-holds-saturday-protest-outside-bangor-hobby-lobby/).

<sup>3</sup>Ibid.

<sup>4</sup>"Hobby Lobby Supreme Court Ruling," Unabashedly Conservative, accessed Oct. 7, 2014, [www.unabashedlyconservative.com/hobby-lobby-supreme-court-ruling/](http://www.unabashedlyconservative.com/hobby-lobby-supreme-court-ruling/).

<sup>5</sup>The Supreme Court. Expanding Civil Rights. Landmark Cases. *Griswold v. Connecticut* (1965). PBS, accessed Oct. 8, 2014, [www.pbs.org/wnet/supremecourt/rights/landmark\\_griswold.html](http://www.pbs.org/wnet/supremecourt/rights/landmark_griswold.html).

<sup>6</sup>Planned Parenthood League of Connecticut – Today in History: Nov. 1," ConnecticutHistory.org, accessed Oct. 8, 2014, [connecticuthistory.org/planned-parenthood-league-of-connecticut-november-today-in-history/](http://connecticuthistory.org/planned-parenthood-league-of-connecticut-november-today-in-history/).

<sup>7</sup>Ibid.

<sup>8</sup>Opinion, Douglas, *Griswold v. Connecticut*," Legal Information Institute at Cornell University Law School, accessed Oct. 8, 2014, [www.law.cornell.edu/supremecourt/text/381/479#writing-USSC\\_CR\\_0381\\_0479\\_ZO](http://www.law.cornell.edu/supremecourt/text/381/479#writing-USSC_CR_0381_0479_ZO).

<sup>9</sup>*Griswold v. Connecticut*," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 8, 2014, [www.oyez.org/cases/1960-1969/1964/1964\\_496](http://www.oyez.org/cases/1960-1969/1964/1964_496).

<sup>10</sup>Ibid.

<sup>11</sup>"*Burwell v. Hobby Lobby Stores*," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 8, 2014, [www.oyez.org/cases/2010-2019/2013/2013\\_13\\_354](http://www.oyez.org/cases/2010-2019/2013/2013_13_354).

<sup>12</sup>"Supreme Court's Hobby Lobby Ruling Ignites Debate Over Religious-Freedom Law," The Wall Street Journal, accessed Oct. 25, 2014, [online.wsj.com/articles/supreme-courts-hobby-lobby-ruling-ignites-debate-over-religious-freedom-law-1404155510](http://online.wsj.com/articles/supreme-courts-hobby-lobby-ruling-ignites-debate-over-religious-freedom-law-1404155510).

<sup>13</sup>"*Burwell v. Hobby Lobby*," The Becket Fund for Religious Liberty, accessed Oct. 25, 2014, [www.becketfund.org/hobbylobby/](http://www.becketfund.org/hobbylobby/).

<sup>14</sup>Ibid.

<sup>15</sup>"The Political Repercussions of the Hobby Lobby Decision," The New York Times, accessed Oct. 9, 2014, [takingnote.blogs.nytimes.com/2014/06/30/the-political-repercussions-of-the-hobby-lobby-decision/?\\_php=true&type=blogs&r=0](http://takingnote.blogs.nytimes.com/2014/06/30/the-political-repercussions-of-the-hobby-lobby-decision/?_php=true&type=blogs&r=0).

# Massachusetts Responds to Supreme Court With a *New Reproductive Healthcare Act*

By Hannah Fikar  
CAS '15

Over the summer, the U.S. Supreme Court issued an opinion involving reproductive health facilities in Massachusetts. The law, instated in 2007, restricted expression rights for all protestors outside reproductive health care facilities by banning any demonstration within 35 feet of the entrance.<sup>1</sup> The petitioners believe the 35-foot buffer zone outside of the Planned Parenthood facility near Boston University's campus unfairly restricted their right to speak to women and calmly distribute information to them about alternatives to abortion. The unanimous decision ruled in favor of the plaintiffs, who felt the state of Massachusetts violated their right to disseminate information regarding alternatives to abortion with excessive buffer zone laws.

the impeding parties to move more than 25 feet from the entrance to the building, as denoted by the new white buffer zone line outside of Planned Parenthood.<sup>6</sup> The 25-foot ban also only lasts for eight hours or until the facility closes, allowing anyone to move back into the zone after the facility closes for business for the day.<sup>7</sup>

However, anyone may now demonstrate peacefully within the 25-foot zone so long as the building's entrance and exit path remain clear and easy to navigate. Only when demonstrators too aggressively try to spread their message or gain patients' attention must they move a certain distance from the facility's doors. The earlier law forbade any sort of demonstration within a wider range, regardless of the nature of the protest.

The new law resembles a national act called the Freedom of Access to Clinic Entries. This federal version prohibits

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“...the speech burden does more harm to a group's civil liberties than it does to protect against a possible safety or comfort threat to some women”

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Chief Justice John Roberts' opinion interpreted the law as an overly broad restriction on the demonstrators' First Amendment rights to free speech and peaceful assembly.<sup>2</sup> He, with the support of four other justices, explained that the speech burden does more harm to a group's civil liberties than it does to protect against a possible safety or comfort threat to some women. While all nine justices agreed on the decision, several concurring opinions offered different interpretations of the law. Justice Antonin Scalia wrote a concurrence on the grounds that the law restricts speech based on its content and therefore must meet stricter standards, which it did not.<sup>3</sup> Justice Samuel Alito agreed with the judgment, but felt the law unfairly exempted those supporting the clinic.<sup>4</sup>

In response to this decision, Massachusetts Gov. Deval Patrick signed into law An Act to Promote Public Safety and Protect Access to Reproductive Health Care nearly a month after the Supreme Court handed down its opinion. The bill gives law enforcement the ability to remove any demonstrators that “substantially impeded access to or departure from the reproductive health care facility” while voicing their opinion.<sup>5</sup> However, the law only requires

any interference with access to reproductive health care facilities' entrances or forcefully preventing them from obtaining desired services.<sup>8</sup> Consequences for violating the Act include financial penalties and incarceration, which appear more stringent than those enumerated in the Massachusetts Act.<sup>9</sup>

The less aggressive law still affords protection to women and allows all people to freely express their views so long as they remain peaceful and respectful of the facility. While it may not create as much of a distance between potential patients and demonstrators, it allows for all to express their civil liberties freely and in an environment protected by law.

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## Sources

<sup>1</sup>Reproductive Health Clinic Buffer Zones Act, S.B. 1353 (2007).

<sup>2</sup>McCullen v. Coakley, 573 U.S. \_\_\_ (2014).

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>An Act to Promote Public Safety and Protect Access to Reproductive Health Care, S. 2283 (2014).

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Freedom of Access to Clinic Entrances, 18 U.S. Code § 248 (1994).

<sup>9</sup>Ibid.

# Is Our Court System Swiping *Right*?

## Modern Controversy Over the Establishment Clause

By Elizabeth Silverman

CAS '18

The concept of separation of church and state was established long ago, yet is still controversial. This is largely due to the fact that no single person can determine the exact degree of separation necessary without any criticism. The Establishment Clause of the First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."<sup>1,2</sup>

A recent 2013 Supreme Court case titled *Town of Greece v. Galloway* brings forth the question of whether a local clergy should be allowed to open and close town meetings in prayer.<sup>3</sup> The people of the town who attend these meetings constitute all religions, no religion, and all ages.<sup>4</sup> Although this specific practice of prayer began in 1999, Mrs. Galloway and Ms. Stephens sued the town of Greece in 2007 arguing that "the town's practices violated the Establishment Clause by preferring Christianity over other faiths."<sup>5</sup>

A comparable situation was portrayed in the 1984 case *Lynch v. Donnelly*. In this case, Donnelly sued the city of Pawtucket, R.I., for erecting a crèche, or Nativity Scene, in a public Christmas display that had been used for 40 years.<sup>6</sup> The court ruled that the city did not violate the Establishment Clause.<sup>7</sup> In the concurring opinion, Supreme Court Justice Sandra Day O'Connor delineated the Endorsement test that stated, "In order for a government action to comply with the Establishment Clause, it must have neither the purpose nor the effect of endorsing or disapproving of religion from the perspective of a reasonable observer."<sup>8</sup>

*Engel v. Vitale* (1962) is yet another landmark case for the U.S. Supreme Court. In this case, the court invalidated a policy that allowed the voluntary recitation of a brief generic prayer at the beginning of each school day. The court ruled that this country had no business composing official prayers for any group of Americans to recite as part of a government program. The court decided that this was in fact a violation of the establishment clause reasoning that in "providing the prayer, New York officially approved religion."<sup>9</sup> This is also not unlike the case at hand in which a prayer was said before every official town meeting that occurred no matter the religion of attendees.

The defendant's argument that she believed the town was endorsing religion by having a clergy open in prayer is given legal ground by the precedents of the aforementioned cases. The circuit court held that the "town board's use of legislative prayer was an endorsement of a particular religious viewpoint and therefore a violation of the Establishment Clause."<sup>10</sup> Another argument concerns undue coercion, which can accompany the act of opening town meetings in prayer. The children present at these meetings are impressionable and therefore cannot disregard any material that they do not agree with like adults can.<sup>11</sup> The court agreed that the town should do more to include other faiths. Justice Elena Kagan found that this missing effort leads to the preference of one religion over another, which is unconstitutional.<sup>12</sup>

In a surprising decision made by a 5-4 majority, the Supreme Court did in fact rule in favor of the Town of Greece. The majority opinion by Justice Kennedy reflects that the language of the Establishment Clause in the First Amendment does not ban "legislative prayer," which therefore "acknowledges religion's role in society."<sup>13</sup> Justice Kennedy further argues that the prayer is predominantly for the participants of the legislative group and therefore does not force the public into "religious observance."<sup>14</sup> The court found that although the defendants claimed offense in response to these prayers, this does not constitute a violation of the establishment clause because offense and coercion are distinguishably different in the context of law.<sup>15</sup>

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### Sources

<sup>1</sup>"Establishment Clause Overview," First Amendment Center, accessed Oct. 9, 2014, [www.firstamendmentcenter.org/establishment-clause](http://www.firstamendmentcenter.org/establishment-clause).

<sup>2</sup>U. S. Const. Amend. I.

<sup>3</sup>"TOWN OF GREECE v. GALLOWAY," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 9, 2014, [www.oyez.org/cases/2010-2019/2013/2013\\_12\\_696](http://www.oyez.org/cases/2010-2019/2013/2013_12_696).

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

<sup>6</sup>"LYNCH v. DONNELLY," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 9, 2014, [www.oyez.org/cases/1980-1989/1983/1983\\_82\\_1256](http://www.oyez.org/cases/1980-1989/1983/1983_82_1256).

<sup>7</sup>*Ibid.*

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

<sup>9</sup>"ENGEL v. VITALE," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 9, 2014, [www.oyez.org/cases/1960-1969/1961/1961\\_468/](http://www.oyez.org/cases/1960-1969/1961/1961_468/).

<sup>10</sup>"Town of Greece v. Galloway," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 9, 2014, [www.oyez.org/town-of-greece](http://www.oyez.org/town-of-greece).

<sup>11</sup>Marianna Moss, "How Are Reasonable Children Coerced? The Difficulty of Applying the Establishment Clause to Minors," UC Davis Journal of Juvenile Law and Policy 10, no. 2 (2006): 381-428.

<sup>12</sup>"TOWN OF GREECE v. GALLOWAY," The Oyez Project at IIT Chicago-Kent College of Law, accessed Oct. 9, 2014, [www.oyez.org/cases/2010-2019/2013/2013\\_12\\_696](http://www.oyez.org/cases/2010-2019/2013/2013_12_696).

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup>*Ibid.*

# Policing for Profit: Civil Forfeiture and Due Process

By Bill Cavena  
CAS '18

Imagine you have been deprived of your property by police. You are not worried, though, because you know your constitutional rights. You are aware that you cannot be divested of your life, liberty or property without due process.

However, when you go to court, you find out that your belongings, not you, are on trial and that you are not charged and therefore do not have the same rights as a defendant in a criminal case. This is the situation many people confront when faced with Civil Asset Forfeiture.

Civil Asset Forfeiture is a program designed to seize assets that were ill-gotten through criminal means or helped to facilitate criminal activity. The forfeiture program has two very distinct types. One is Criminal Asset Forfeiture, where the property subject to forfeiture is named in the same indictment that charges the defendant with a criminal violation. The government must meet the legal burden of proof, beyond a reasonable doubt, necessary to convict the defendant in order to seize the property.<sup>1</sup> The other type, Civil Asset Forfeiture, occurs when the government does not have to prove beyond a reasonable doubt that the defendant is guilty, because the defendant in this process is the possession, not the owner. Seized assets are held by the government and must be proven not to be from an illegal activity by the third party claimant from whom the asset was taken, in this case the owner of the asset. Furthermore, because property does not have a right to due process, the government is not required to appoint a lawyer to the owner. This process often leads to court cases with strange names such as *United States v. Eight Thousand Eight Hundred and Fifty Dollars in US Currency*.<sup>2</sup> Proponents of Civil Asset Forfeiture argue that, due to the nature of organized crime, asset forfeiture can be enforced civilly so criminals are not able to access money and other assets.<sup>3</sup>

Many people are shocked and appalled to learn that a person can be deprived of their property without ever having been charged or convicted of a crime, which is the case under the civil branch of asset forfeiture.<sup>4</sup> Many also find this a questionable practice because of its troubling relationship with civil liberties.<sup>5</sup> The American Civil Liberties Union is one of many organizations to point out that in many jurisdictions, the money seized through this program is used toward salaries, advanced equipment, and

other perks for the agencies that helped seize the assets.<sup>6</sup> When salaries and perks are on the line, officers have a strong incentive to increase the seizures, as evidenced by an increase in the regularity and size of such seizures in recent years.<sup>7</sup>

This program and the policies it practices has led The Institute for Justice, a leading civil liberties law firm, to file a class action lawsuit against this policy in Philadelphia. The suit was filed on Aug. 11, 2014, in the U.S. District Court in Pennsylvania on behalf of several people who have been, in their opinions, wronged by Civil Asset Forfeiture.<sup>8</sup>

The case originates in the story of the Sourovelis family whose son was caught and arrested on drug charges. After the arrest, the police came back and seized the Sourovelis's house. Authorities claimed the house was tied to illegal drugs and therefore subject to civil forfeiture.<sup>9</sup> In the class-action civil rights lawsuit, *Sourovelis v. City of Philadelphia*, the Institute for Justice argues that in order to deprive owners of their property, the state must present evidence beyond a reasonable doubt that the assets in question were involved in wrongdoing. The firm is also advocating for the state to give citizens their rights to due process.

While the government attempts to root out and deter crime, many people are concerned with Civil Asset Forfeiture. The program's shaky relationship with civil rights, potential incentive to corrupt police forces, and the perceived subterfuge of the Due Process Clause of the Constitution have created a growing divide between the government and its citizens.

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## Sources

<sup>1</sup>"Asset Forfeiture," The Federal Bureau of Investigation, accessed Sept. 29, 2014, [www.fbi.gov/about-us/investigate/white\\_collar/asset-forfeiture](http://www.fbi.gov/about-us/investigate/white_collar/asset-forfeiture).

<sup>2</sup>*United States v Eight Thousand Eight Hundred and Fifty Dollars in United States Currency* 461 U.S. (1983).

<sup>3</sup>"Asset Forfeiture," The Federal Bureau of Investigation.

<sup>4</sup>Sarah Stillman, "Taken," *The New Yorker*, Aug. 12, 2013, accessed Sept. 25, 2014, [www.newyorker.com/magazine/2013/08/12/taken](http://www.newyorker.com/magazine/2013/08/12/taken).

<sup>5</sup>Alice Crites, "Stop and Seize" *The Washington Post*, Sept. 6, 2014, accessed Sept. 20, 2014, [www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/?hpid=z2](http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/?hpid=z2).

<sup>6</sup>"Civil Asset Forfeiture," American Civil Liberties Union, accessed Sept. 24, 2014, [www.aclu.org/criminal-law-reform/civil-asset-forfeiture](http://www.aclu.org/criminal-law-reform/civil-asset-forfeiture).

<sup>7</sup>*Ibid.*

<sup>8</sup>"Philadelphia Forfeiture," Institute for Justice, accessed Sept. 24, 2014, <http://ij.org/philadelphia-forfeiture>.

<sup>9</sup>Pamela Brown, "Parents' house seized after son's drug bust," *CNN*, accessed Sept. 24, 2014, [www.cnn.com/2014/09/03/us/philadelphia-drug-bust-house-seizure/](http://www.cnn.com/2014/09/03/us/philadelphia-drug-bust-house-seizure/).

# Legal Ramifications of Police Force

By Carolyn Downs  
CAS '16

When Eric Garner, a 43-year-old black man from Staten Island, was killed by police chokehold, questions about the use of excessive force by police arose across the country. Was this amount of force legal? How does the justice system determine the boundary between appropriate force and unreasonable force?

The United States legal system places few restraints on the use of force by police; those it does place are either difficult to apply or are acted

There is little evidence to support the claim that Officer Pantaleo was trying to deprive Mr. Garner of his civil rights ensuring Mr. Garner of safety and protection from discrimination. The main issue in this case's criminal proceedings is Officer Pantaleo's use of a chokehold, a practice long ago prohibited by the New York Police Department. As defined by the NYPD, a chokehold is "any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."<sup>3</sup> According to eyewitness accounts and video footage of the incident, Mr. Garner appeared to have been placed in a chokehold by Officer Pantaleo. However, since the episode with Mr. Garner began as a routine arrest, it appears unlikely that Officer

deprived Mr. Garner of his civil rights.<sup>6</sup> However, under the law, there is no private right of action, meaning that the family of Mr. Garner would not be able to file a suit of their own against the police department.<sup>7</sup> Because the police use of a chokehold in New York is technically legal, the Garner family is not able to bring private suit since the police officer did not break a New York state law.

Within the current legal system, the legal consequences of police brutality appear to be virtually nonexistent. In order to bring a suit against a police officer who has exhibited excessive force, there must be evidence of the intention to deprive another person of their civil rights; even then, the

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“Within the current legal system, the legal consequences of police brutality appear to be virtually nonexistent.”

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on by a federal prosecutor. Among the few legal limitations is 18 U.S.C. §§ 241, 242, a law enacted by Congress that states, “It is a crime for one or more persons acting under the color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States.”<sup>1</sup> Officer Daniel Pantaleo, the officer who placed Mr. Garner in the fatal chokehold, was acting under the “color of law,” meaning he was committing the act using the power given to him by a government agency, in this case the New York Police Department. In order for a case to be brought against Officer Pantaleo, a federal prosecutor must find reasonable evidence that Officer Pantaleo acted with the intent to deprive Mr. Garner of his civil rights based on his race, a reasoning born out of the Civil Rights Act of 1866.<sup>2</sup>

Pantaleo will be indicted for murder.<sup>4</sup>

Despite the police regulation ban in the State of New York, there is no state law forbidding a police officer from placing a suspect in a chokehold. Since there is only a ban against the use of chokeholds, there is no legal repercussion against a police officer or any criminal penalty for using a chokehold. Police officers are given liberty to use force based on their professional judgment. Both of these factors make it increasingly difficult to bring murder charges against Officer Pantaleo.<sup>5</sup> Although he violated the chokehold ban set forth by the police department, he was acting entirely within his legal limits to use force. In order to find a remedy under the law, evidence must be shown to a willing federal prosecutor who would then prove that Officer Pantaleo's actions

case must be brought by a federal prosecutor. Police in the U.S. are given extensive latitude to act within their idea of appropriate use of force in any given arrest, leaving the American people with little opportunity to fight back against police brutality that results in death.

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## Sources

<sup>1</sup>“Addressing Police Misconduct Laws Enforced by the Department of Justice,” Department of Justice, accessed Oct. 7, 2014, [www.justice.gov/crt/about/spl/documents/polmis.php](http://www.justice.gov/crt/about/spl/documents/polmis.php).

<sup>2</sup>Eugene Gressman, “The Unhappy History of Civil Rights Legislation,” *Michigan Law Review* 50, no. 8 (1952): 1350. <sup>3</sup>*Ibid.*

<sup>4</sup>J. David Goodman and Joseph Goldstein, “Grand Jury to Take Up Death Linked to Police Chokehold in Staten Island,” *New York Times*, Aug. 19, 2014, accessed Sept. 16, 2014.

<sup>5</sup>J. David Goodman, “Difficult Decisions Ahead in Responding to Police Chokehold Homicide,” *New York Times*, Aug. 4, 2014. <sup>6</sup>*Ibid.*

<sup>7</sup>“Addressing Police Misconduct,” Department of Justice.

# Wolf Brigades:

## The Upsurge of Police Militarization

By Daniel Rollins  
CAS '16

Ever since that fateful shooting of teenager Michael Brown by police on August 8, 2014 in Ferguson, Missouri, civil unrest has permeated throughout the United States and abroad as a result of the insensitivity and militarized response from the Ferguson police department. In the United States, the normative conception of police protection is slowly deteriorating into that of distrust and even resentment. Over the past few years, police departments throughout the United States have been purchasing repurposed military equipment in conjunction with employing more aggressive tactics. Lawsuits against police departments are on the rise, as aggressive tactics such as no-knock warrants and asset forfeitures are becoming increasingly common. The line between police and paramilitary are blurring.<sup>1</sup>

Proliferation of military equipment amongst police departments traces its roots back to the 1960s, when the very first SWAT unit was created by the Los Angeles Police Department to deal with anti-Vietnam protests.<sup>2</sup> Additionally, with the War on Drugs declared by the Nixon Administration in the early 70s, police began adopting more militaristic measures to combat situations they were ill-equipped to handle. Over the past decade, federal agencies have been increasingly providing former wartime weaponry and equipment to police departments with virtually no training, in addition to federal taxes being used to pay the tab worth billions of dollars.

Recently, it has become much easier for local police and special district police departments to obtain military

equipment through the Department of Defense's 1033 program. Since the 1990s, this program has provided local police departments with more than \$5 billion worth of surplus military equipment, including high-caliber assault rifles, protective armor, and reinforced vehicles.<sup>3</sup> Law enforcement agencies can also purchase military-style gear with their own money or through grants issued by the Department of Homeland Security or Department of Justice.<sup>4</sup> While police using SWAT gear and military tactics may be necessary for addressing civil disobedience they should be used primarily for situations in which criminal activity critically endangers the community at large. As a Freedom of Information Act (FOIA) request by The New York Times revealed, police from Suffolk County, Massachusetts were able to purchase such items as two inflatable boats for \$5,135 each, a trailer-mounted diesel engine generator for \$20,039, and 24 telescope subassemblies for \$102.21 each.<sup>5</sup> While police agencies should be armed and equipped to deal with ever-changing and complex situations, the habitual use of said equipment may lead to a confirmation bias where these tools are seen as the only means of solving a crisis.

Furthermore, police raids have increased increased substantially over the years. As a study conducted by criminologist Peter Kraska revealed, in the 1970s, there were just a few hundred SWAT raids a year; by 2005, however, there were approximately 50,000 raids.<sup>6</sup> Mix a militarized police with a war on drugs and accidents are bound to happen. In Habersham County, Georgia, for example, a no-knock drug raid resulted in an officer throwing a flash-bang grenade into the crib of a 19-month old infant.<sup>7</sup>

Introduced in The House of

Representatives, steps have been taken to mitigate police militarization. As of September, Senator Henry Johnson (D-GA) has already referred H.R. 5478: Stop Militarizing Law Enforcement Act to the House Committee on Armed Services. If passed, this bill would "end the free transfers of certain aggressive military equipment to local law enforcement and ensure that all equipment can be accounted for."<sup>8</sup> The results of excessive militarization are tragic. Without proper regulations in place, cases of accidents relating to abuses of power will only continue to proliferate. With police officers outfitted to look like soldiers, fear and civil unrest could inevitably spread throughout the community. This could lead to people being too afraid to call the police in times of dire need, possibly leading to uncooperative behavior from the citizens the police are meant to protect.

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### Sources

<sup>1</sup>Chelsea Gorrow, "Blurring the line between police, military," *The Register-Guard*, Aug. 24, 2014, accessed Oct. 19, 2014, [registerguard.com/rg/staging/32033648-110/story.csp](http://registerguard.com/rg/staging/32033648-110/story.csp).

<sup>2</sup>Clyde Haberman, "The Rise of the SWAT Team in American Policing," *The New York Times*, Sept. 7, 2014, accessed Oct. 10 2014, [www.nytimes.com/2014/09/08/us/the-rise-of-the-swat-team-in-american-policing.html?\\_r=0](http://www.nytimes.com/2014/09/08/us/the-rise-of-the-swat-team-in-american-policing.html?_r=0).

<sup>3</sup>Tim Devaney, "Senators blast DOD program that 'militarized police,'" *The Hill*, Sept. 9, 2014, accessed Oct. 9, 2014, [thehill.com/regulation/217136-senators-blast-dod-program-to-militarize-police](http://thehill.com/regulation/217136-senators-blast-dod-program-to-militarize-police).

<sup>4</sup>Department of Defense, "The Upshot/Military-Surplus-Gear," *GitHub*, May 2014, accessed Oct. 9, 2014, [github.com/TheUpshot/Military-Surplus-Gear](https://github.com/TheUpshot/Military-Surplus-Gear).

<sup>5</sup>Ibid.

<sup>6</sup>Radley Balko, "Rise of the Warrior Cop," *The Wall Street Journal*, Aug. 7, 2013, accessed Oct. 19, 2014, [online.wsj.com/news/articles/SB10001424127887323848804578608040780519904](http://online.wsj.com/news/articles/SB10001424127887323848804578608040780519904).

<sup>7</sup>Kara Dansky, "How Many People Must Be Maimed Or Killed Before We End The Militarization Of Our Police Forces?," *American Civil Liberties Union*, Sept. 10, 2014, accessed Oct. 10 2014, [www.aclu.org/blog/criminal-law-reform-free-speech/how-many-people-must-be-maimed-or-killed-we-end-militarization](http://www.aclu.org/blog/criminal-law-reform-free-speech/how-many-people-must-be-maimed-or-killed-we-end-militarization).

<sup>8</sup>Jennifer Benders, "House Democrat Readies Bill to Demilitarize Local Police," *The Huffington Post*, Aug. 14, 2014, accessed Oct. 10 2014, [www.huffingtonpost.com/2014/08/14/police-militarization-bill\\_n\\_5679707.html](http://www.huffingtonpost.com/2014/08/14/police-militarization-bill_n_5679707.html).

# Part-Time Faculty Rights

By Jung Hyun Park  
CAS '18

**O**n Oct. 15, 2014, about a hundred members of the part-time faculty and the part-time maintenance staff collaborated with the Service Employees International Union (SEIU) to protest for their worker's rights in front of the Metcalf Trustee Center of Boston University.

The part-time faculty, often referred to as the adjunct faculty, comprises a significant part of the BU community—approximately 41 percent of the entire faculty; ironically, however, their rights are largely ignored. They are not given equal teaching standards and number of hours compared to those of the full-time faculty, have low job security, are not given fair opportunity to negotiate for better pay, and are deprived of benefits such as maternity/paternity leave, health insurance and retirement pay.<sup>1</sup>

Regrettably, this situation is not limited to Boston University, or to Massachusetts. In the U.S., about 46 percent of faculty are part-time professors, who are undergoing similar circumstances.<sup>2</sup> Tirelessly the adjunct faculty work without protection of the law to guarantee consistently fair treatment.

There are pre-existing laws such as *Fair Labor Standards Act* (FLSA) that were established to secure minimum wage, prevent child labor, and eliminate overtime pay, but factors like insurance are still very hard for part-time workers to access.<sup>3</sup> In fact, the website of the U.S. Department of Labor explicitly states, "*The Fair Labor Standards Act* does not address part-time employment."<sup>4</sup> There have been noticeable efforts, however, from both the U.S. government and labor unions to raise awareness over unfair treatment of the adjunct faculty. *The Occupational Safety and Health Act* (OSHA) was established in an effort to expand medical coverage for all kinds of workers; nevertheless, much of their work has been futile since part-time workers still receive very little coverage, if any at all. Furthermore, the *Affordable Care Act* (ACA) was passed in 2010 to mandate health insurance to all Americans without discrimination. Unfortunately though, the ACA became effective on Jan.1, 2014, and hence its legal implications

had not been fully observed until now.<sup>5</sup>

The case of *Massachusetts Community College Council et al. [MCCC] v. Board of Higher Education et al.* of 2013 serves as the repercussion of the failure to observe the pre-established law.<sup>6</sup> In the aforementioned case, approximately 400-500 part-time college professors sued their colleges in the Suffolk County Supreme Court because they were not treated fairly even though they worked as much as the full-time workers. For example, they were deprived of health insurance plans, despite the fact that they work for 18 hours and 45 minutes a week, which qualifies for state employee health insurance.<sup>7</sup>

The result was not so favorable to the adjunct faculty, however. The court ruled that the adjunct faculty should not be awarded health insurance because there is no concrete evidence proving that the part-time professors were expected to work regularly for 18 hours and 45 minutes a week.<sup>8</sup>

This phenomenon can be attributed to three causes. Firstly, the criteria that determine part-time employment are not coherent and are not strictly observed. Several part-time employees are subjected to workload beyond that indicated in their contract—it also should be noted that the majority of part-time employees do not even have contracts. Secondly, the law does not elaborate on part-time employment issues and the existing laws, such as OSHA and ACA are not appropriately implemented. Thirdly, violating the abovementioned laws is not well administered. In reality, most of the lawsuits filed by the adjunct faculty do not reach the Supreme Court, leading to a dearth of cases to serve as precedence.

The adjunct faculty is working increasingly more hours; however, the benefits they should be receiving are far behind the increasing rate of part-time workers' hours. Though several reasons behind their current situation were previously mentioned, they all fall under one category: society's lack of attention. Therefore, the essential first step to resolving the issue of the adjunct faculty is to raise awareness, which this article seeks to achieve.

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## Sources

<sup>1</sup>Boston University Part-time Faculty Union, "Buadjuncts," accessed on Oct. 26, 2014, [www.buadjuncts.org/](http://www.buadjuncts.org/).

<sup>2</sup>Kristin Palpini, "Part-time state college profs sue for equity," *Daily Hampshire Gazette*, accessed on Oct. 9, 2014, [mccc-union.org/TD/P%20art-Time%20Benefits%20Lawsuit.html](http://mccc-union.org/TD/P%20art-Time%20Benefits%20Lawsuit.html).

<sup>3</sup>"Wage and hour division (WHD)," United States Department of Labor, accessed on Oct. 9, 2014, [www.dol.gov/whd/flsa/](http://www.dol.gov/whd/flsa/).

<sup>4</sup>"Work Hours," U.S. Department of Labor, accessed on Oct. 26, 2014, [www.dol.gov/dol/topic/workhours/parttimeemployment.htm](http://www.dol.gov/dol/topic/workhours/parttimeemployment.htm).

<sup>5</sup>Loreen M. Keller, "Adjunct Faculty and the Affordable Care Act," *Social Sciences Directory 3* (2014): 20-30.

<sup>6</sup>*Ibid.*

<sup>7</sup>Kristin Palpini, "Part-time state college profs sue for equity."

<sup>8</sup>Loreen M. Keller, "Adjunct Faculty and the Affordable Care Act."

# Paycheck **Fairness** Act

By Disha Patel

CAS '17

Lilly Ledbetter was a product supervisor at a Goodyear Tire plant in Alabama who came across the information that she was not being paid the same as her male co-workers for about 20 years. She subsequently fought to get equal pay laws enacted in the US.<sup>1</sup> President Obama formed the Lilly Ledbetter Fair Pay Act in 2009 to make it clear that each discriminatory paycheck resets the 180-day limit to file a claim, overturning the Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which stated that a complaint must be filed within 180 days of an employer's committing an act of pay discrimination if the employee wants to be compensated.<sup>2</sup>

To further this cause of pay equity, President Obama then introduced the Paycheck Fairness Act which would "expand the scope of the Equal Pay Act" and punish employers for retaliating against workers who share wage information and would allow workers to sue for punitive damages for wage discrimination, among other things.<sup>3</sup> Furthermore, it "would require the Department of Labor to increase outreach and training with employers to eliminate pay inequality" as well as create a grant program to train women on wage negotiation skills.<sup>4</sup>

Simply put, the Act would make it easier to talk about wages with employers and also force employers to justify why two similarly qualified workers of the opposite gender do not make the same amount of money.<sup>5</sup> "Fundamental fairness for tens of millions of working women compels equal pay for equal work, and pay equity for women is long overdue," says Roberta Liebenberg, the ABA Commission on Women in the Profession's chair and a large proponent for this Act.<sup>6</sup> Moreover, the lead sponsor of the House Bill, Representative Rosa L. DeLauro (D-CT), considers equal pay an issue not just for females, but

also for families, making it clear that "women make up half the workforce and two-thirds of women are either the sole breadwinner or co-breadwinner in their families."<sup>7</sup> As stated by the National Alliance for Partnerships in Equity, "society loses additional tax revenue because of the wage gap while having to increase spending on safety net programs for women who are not making a living wage. From individuals, to families, to society at large, all parties lose with a gender pay gap."<sup>8</sup>

The Paycheck Fairness Act has been brought up and then struck down multiple times, most recently in 2014. Opponents say the Act would lower the amount of opportunities for women to get hired, since proving an employee's firing was unrelated to their gender would require proof by meticulous records and "each pay decision made by the employer would be scrutinized."<sup>9</sup> It is not so much a shock that the Paycheck Fairness Act has been rejected several times as much as the realization that women make up a strong opposition to the Act itself, which can mean that they act against their self-interest.<sup>10</sup>

Republican senators have generally voted down this bill every time it has been brought up, and this time although every Democrat voted in favor of the bill - all Republican senators (including all four female Republican) voted against the bill this year, leaving it at only 52 votes instead of the needed 60.<sup>11</sup> This is a point to be noted, because the issue surrounding the bill mainly concerns women, and these women senators did not "cross the aisle" to vote in favor of it.<sup>12</sup>

Kelly Ayotte, the Republican senator from New Hampshire stated "she worried it would prohibit merit-based pay - one of the main Republican gripes against the bill."<sup>13</sup> Susan Collins, the Republican senator from Maine, stated, "the Civil Rights Act and the 1963 Equal Pay Act provide enough protection."<sup>14</sup> I think this bill would result in excessive litigation that would

impose a real burden, particularly on small businesses. So I think existing laws are adequate."<sup>15</sup> She went on to state that perhaps women are getting paid less because of the decision they make to leave the workforce to raise children, implying that assuming discrimination is not fair when looking at pay disparities.<sup>16</sup> Many respondents to the Republican senators voting this Act down state that perhaps because these women earn 4.6 times the women workers' median yearly income, that they can afford to "play politics with other women's security."<sup>17</sup>

The Paycheck Fairness Act has received its fair share of publicity, but the debate still remains very much alive on both sides. If it were to be passed, perhaps there would be a change in the mobility of women economically, which is seen by many as long overdue. After all, it has been 50 years since President Kennedy passed the Equal Pay Act, but women still make 77 cents to a man's dollar, meaning that in a woman's lifetime she loses anywhere from \$700,000 to \$2 million.<sup>18</sup>

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## Sources

<sup>1</sup>National Alliance for Partnerships in Equity, "Paycheck Fairness Act and Lilly Ledbetter Fair Pay Act." Accessed Oct. 3, 2014. [www.napequity.org/public-policy/current-laws-and-bills/paycheck-fairness-act/](http://www.napequity.org/public-policy/current-laws-and-bills/paycheck-fairness-act/).

<sup>2</sup>Ibid.

<sup>3</sup>Ramsey Cox, "Senate GOP blocks Paycheck Fairness Act for the second time," The Hill, September 15, 2014, accessed Oct. 3, 2014. [thehill.com/blogs/floor-action/senate/217775-senate-gop-blocks-equal-pay-bill-again](http://thehill.com/blogs/floor-action/senate/217775-senate-gop-blocks-equal-pay-bill-again)

<sup>4</sup>Ibid.

<sup>5</sup>Nicole Pasulka, "Why These Republican Women Voted Against Equal Pay For All," TakePart, Sept. 16, 2014, accessed Oct. 3, 2014. [www.takepart.com/feature/2014/09/16/republican-women-equal-pay](http://www.takepart.com/feature/2014/09/16/republican-women-equal-pay).

<sup>6</sup>R McMillion, "Payday Equality," ABA Journal, May 1, 2010, accessed Oct. 3, 2014. [www.abajournal.com/magazine/article/payday\\_equality](http://www.abajournal.com/magazine/article/payday_equality).

<sup>7</sup>Ibid.

<sup>8</sup>National Alliance for Partnerships in Equity, "Paycheck Fairness Act and Lilly Ledbetter Fair Pay Act." Accessed Oct. 3, 2014. [www.napequity.org/public-policy/current-laws-and-bills/paycheck-fairness-act/](http://www.napequity.org/public-policy/current-laws-and-bills/paycheck-fairness-act/).

<sup>9</sup>Nena Bartlett, "Why the Paycheck Fairness Act hurts women," Daily Caller, Apr. 9, 2014, accessed Oct. 3, 2014. [dailycaller.com/2014/04/09/why-the-paycheck-fairness-act-hurts-women/](http://dailycaller.com/2014/04/09/why-the-paycheck-fairness-act-hurts-women/).

<sup>10</sup>Nicole Pasulka, "Why These Republican Women Voted Against Equal Pay For All," TakePart, Sept. 16, 2014, accessed Oct. 3, 2014. [www.takepart.com/feature/2014/09/16/republican-women-equal-pay](http://www.takepart.com/feature/2014/09/16/republican-women-equal-pay).

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Laurel Bellows, "Gender inequity in pay diminishes women's prospects-and the law profession," ABA Journal, June 1, 2013, accessed Oct. 3, 2014. [www.abajournal.com/magazine/article/gender\\_inequity\\_in\\_pay\\_diminishes\\_womens\\_prospectsand\\_the\\_law\\_profession](http://www.abajournal.com/magazine/article/gender_inequity_in_pay_diminishes_womens_prospectsand_the_law_profession)

# The Debate to *D.R.E.A.M*

By Lola Adeosun  
CGS '16

The United States is a nation built on immigration. Yet each time a new wave of immigrants arrives at its borders, America vehemently resists. Even though the country is often referred to as "The Melting Pot," it takes a considerable amount of effort for immigrants (undocumented or not) to not only reach the nation, but to assimilate and receive proper accommodations and rights that most citizens are granted at birth.

Examples of the aforementioned denied to undocumented immigrants include the ability to attend a college or university, join the military, or even work. Life after secondary education usually follows one of those three paths, and without those opportunities it is extremely difficult for immigrants to achieve the 'American Dream.' In order to counter this problem, Senators Dick Durbin (D-IL) and Orrin Hatch (R-UT) introduced the D.R.E.A.M Act to the Senate on Aug. 1, 2010.<sup>1</sup>

The D.R.E.A.M Act - which stands for Developmental, Relief, and Education for Alien Minors - is a legislative proposal that is aimed at solving the problems an immense number of illegal minors face in America.<sup>2</sup> It recognizes the dilemma undocumented immigrants who have grown up in the United States have that prevents them from going to college or acquiring some sort of lawful employment. The bill allows current, former, and future undocumented high school graduates and GED recipients a pathway to U.S. citizenship through college or the armed services. It would take into account an illegal immigrant's good

standing when determining if they could not only stay in the country, but also earn legal citizenship.<sup>3</sup>

There are certain requirements the beneficiaries must satisfy. The recipient must be between the ages of 12 and 35 at the time of bill's enactment and have graduated from an American high school, obtained a GED, or have been admitted to an institution of higher education.<sup>4</sup> They must additionally provide proof of residence in the U.S. for at least five consecutive years since their date of arrival.<sup>5</sup> For those who are fully compliant with the conditions, the bill would give them the opportunity to become contributing members of society. Albeit, this cannot be a reality until the act passes through Congress.

Many versions of this bill have meandered through the Senate but fail to receive the necessary number of votes, the most recent being the 2010 version.<sup>6</sup> Many members of the government - specifically those comprising the Republican Party - feel as if this act would grant amnesty to illegal aliens and provide an incentive for illegal immigration.<sup>7</sup> They are opposed to the kind of influx this act might bring and therefore vote against it, create lobbyist groups to dissuade others, and propose legislature that would deport most of the would be recipients.

On the other hand, supporters advocate that there would be many economic benefits if this act were to become law. If implemented it would produce thousands of college graduates, who would then go on to work and expand the job market.<sup>8</sup> The North American Integration & Development Center estimates that D.R.E.A.M Act beneficiaries would earn \$1.4 trillion over a 40-year

period.<sup>9</sup> These immigrants would be able to invest in the economy and the act might also decrease the dropout rate and keep talented students in America.<sup>10</sup>

Despite all these potential benefits, those opposing the bill have asserted that the negative effects would far outweigh the positive. One especially disconcerting effect mentioned was that the D.R.E.A.M Act provides safe harbor for *any* illegal immigrant, including criminals, which would in turn increase the rate of criminal activity.<sup>11</sup> Another was that it could provide amnesty for illegal immigrants from high-risk countries, providing leeway for terrorists.<sup>12</sup>

For the most part, the students who require eligibility for citizenship do not think of themselves as immigrants from another country, but as Americans. The United States is their home and they desire the legal paperwork to evidently show it. Nonetheless, like most proposed legislation, the D.R.E.A.M Act is exceedingly more complex than 'good or bad.' The passage of the bill would have consequences; whether or not those consequences would be significantly more positive than negative (or vice versa) is just a hypothetical until some sort of progress is made in Congress.

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## Sources

<sup>1</sup>"The DREAM Act," Immigration Policy Center. Nov. 18, 2010, accessed Oct. 23, 2014, [www.immigrationpolicy.org/just-facts/dream-act#congress](http://www.immigrationpolicy.org/just-facts/dream-act#congress).

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>7</sup>"Sen. Sessions: 10 Reasons to Oppose DREAM Act," Immigration Numbers, NumbersUSA: For Lower Immigration Levels, Dec. 17, 2010, accessed Oct. 24, 2014, [www.numbersusa.com/content/news/december-17-2010/sen-sessions-10-reasons-oppose-dream-act.html](http://www.numbersusa.com/content/news/december-17-2010/sen-sessions-10-reasons-oppose-dream-act.html).

<sup>8</sup>"No DREAMers Left Behind," Naid.ucla.edu, accessed Oct. 13, 2014, [www.immigrationpolicy.org/sites/default/files/docs/No%20DREAMers%20Left%20Behind.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/No%20DREAMers%20Left%20Behind.pdf).

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

# Documenting the Undocumented

By Benjamin St. Laurent  
*CGS '15, CAS '17*

While the state of New Jersey looks to become the 12<sup>th</sup> state to provide undocumented immigrants with the opportunity to apply for driver's licenses, states such as Arizona and Nebraska are still holding back.<sup>1</sup> Both states are the only two that have denied granting driver's licenses to immigrants approved for DACA (Deferred Action for Childhood Arrivals).<sup>2</sup> On July 7, 2014, a disagreement heightened, between Arizona and the U.S. Court of Appeals, when the U.S. Court of Appeals struck down the Arizona law that prevented young immigrants from obtaining licenses.<sup>3</sup>

Individuals are able to apply for driver's licenses regardless of immigration status in 11 states. "The court said it could find 'no legitimate state interest' to justify treating those immigrants any different from other non-citizens whose work permits the state had traditionally accepted as proof of authorized presence in the United States."<sup>4</sup> The states' interest in allowing undocumented immigrants to apply for driver's licenses is derived from an effort to "improve road safety by having more licensed and insured drivers on the road"<sup>5</sup> and by properly training drivers who may already be on the road without a license. "Our state would be safer, immigrant families could better raise their families with increased mobility, and our economy – struggling as it is – would benefit from more economic activity and higher public revenues."<sup>6</sup> Providing immigrants the chance to legally drive allows

them to participate more actively in the American economy. Licenses also ensure that individuals pay tickets and take driver's education courses designed to instill safe driving habits such as driving sober.

Proponents of the legislation argue that transportation is a basic necessity. In many areas of this country, cars are required in order to shop for groceries, commute to both school and work, and receive proper health care among other needs. Withholding the ability to drive from undocumented immigrants denies them access to health care, education, and food, and also "limits their employment opportunities, given Arizona's inadequate public transportation network."<sup>7</sup>

Prohibiting undocumented immigrants from driving once they have already been granted the ability to remain in the country through DACA undermines the purpose of deferred action. To be granted DACA, undocumented immigrants must either be enrolled in school, have graduated secondary school, or obtained a GED.<sup>8</sup> Immigrants who are granted DACA are legally able to work in the United States. However, they face the challenge of commuting to work or school due to the lack of a license.

Resistance to legislation that would allow undocumented immigrants to apply for licenses often stems from their unlawful entry into the U.S. Undocumented immigrants are benefiting from living in the U.S. while not fully paying into the American system. Arizona Governor Jan Brewer "condemned the federal deferred-deportation program as 'lawless' and the appellate court's

decision ... as 'a blow to Arizona's ability to enforce its laws.'"<sup>9</sup> Allowing those who have entered the country illegally to apply for driver's licenses rewards them for their actions and encourages more immigrants to do the same. Poll workers could mistake a license for proof of U.S. citizenship, a problem that could lead to widespread voter fraud. New Jersey Assemblywoman Annette Quijano states, "undocumented drivers most likely lack the proper insurance and registered vehicles,"<sup>10</sup> causing issues in the aftermath of an accident. These drivers face the risk of being held liable for all forms of compensation associated with the accident, which they may be unable to pay. The ability to drive is a privilege, not a right, however the courts are moving in the direction of changing this.

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## Sources

<sup>1</sup>"Driver's License Map," National Immigration Law Center, last modified September 8, 2014, accessed October 17, 2014, [nilc.org/driverlicensemap.html](http://nilc.org/driverlicensemap.html).

<sup>2</sup>Ibid.

<sup>3</sup>Fernanda Santos, "Court Blocks Arizona Policy of Denying Driver's Licenses to Some Immigrants," *The New York Times*, July 7, 2014, accessed October 17, 2014, [www.nytimes.com/2014/07/08/us/08arizona.html?\\_r=0](http://www.nytimes.com/2014/07/08/us/08arizona.html?_r=0).

<sup>4</sup>Ibid.

<sup>5</sup>Amanda Peterson Beadle, "Could New Jersey Be the 12th State to Offer Driver's Licenses to Undocumented Immigrants?" *Immigration Impact*, October 7, 2014, accessed October 17, 2014, [immigrationimpact.com/2014/10/07/could-new-jersey-be-the-12th-state-to-offer-drivers-licenses-to-undocumented-immigrants/](http://immigrationimpact.com/2014/10/07/could-new-jersey-be-the-12th-state-to-offer-drivers-licenses-to-undocumented-immigrants/).

<sup>6</sup>Ibid.

<sup>7</sup>Fernanda Santos, "Court Blocks Arizona Policy of Denying Driver's Licenses to Some Immigrants."

<sup>8</sup>"Consideration of Deferred Action for Childhood Arrivals (DACA)." U.S. Citizen and Immigration Services, September 9, 2014, accessed October 18, 2014, [www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca](http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca).

<sup>9</sup>Fernanda Santos, "Court Blocks Arizona Policy of Denying Driver's Licenses to Some Immigrants."

<sup>10</sup>Beadle, Amanda Peterson. "Could New Jersey Be the 12th State to Offer Driver's Licenses to Undocumented Immigrants?"

# The Debate Over *Affirmative Action* in College Admissions

By Shreya Ramesh  
CAS '18

**N**early 50 years ago, when affirmative action was introduced in the thick of the Civil Rights Movement, its merits seemed commendable and it had a clear goal: to prevent discrimination based on race. However, over the last few years, public debate in the United States has included an increased focus on these policies and whether they should continue to stand today, especially with regard to increasingly competitive college admissions.<sup>1</sup>

Proponents of affirmative action stand firmly by their guiding principle of promoting diversity and a strong cultural environment on campuses. In the 1978 landmark Supreme Court case *Regents of University of California Davis v. Bakke*, Justice Lewis Powell writes in his opinion that generally seeking out minority students for a more culturally rich environment will eventually benefit the school, as long as strict quotas are not upheld.<sup>2</sup> So far as its intention is not to negatively impact minority groups, the government can discriminate based on race in order to “remedy disadvantages cast on minorities by past racial prejudice.”<sup>3</sup> This argument accounts for the lack of privilege that precludes many minorities of opportunities because of the great amount of institutionalized racism.

Opponents of affirmative action argue that the Constitution forbids discrimination based on race in more than one way. Justice Antonin Scalia asserts in the concurring opinion of *Fisher v. University of Texas*, (2013) that per the Fourteenth Amendment, government discrimination based on race is prohibited and exceptions cannot be made for state-provided education.<sup>4</sup> Furthermore, Justice Clarence Thomas explains, writing another concurring opinion for *Fisher v. University of Texas*, that such policies violate the Equal Protection Clause, as there is no concrete proof that diversity ensures educational benefits. He further elaborates that this discrimination places minority students in a position where poor academic performance is inevitable because of a lack of such qualification, therefore furthering the dichotomy between white students and minority students (where white students’

performance is superior to that of minority students).<sup>5</sup> However, in *Bakke*, Justice Harry Blackmun points out that invoking the Equal Protection Clause perpetuates racial superiority. He supports affirmative action by claiming that racism cannot be rectified without addressing the core issue, and in order to do that race must be taken into account now.<sup>6</sup>

The future of affirmative action in the college admissions process undoubtedly looks bleak, simply because universities are applying different criteria, such as applicants’ socioeconomic backgrounds, to ensure diversity and because the Supreme Court believes it will not be necessary in the long term. In the case *Grutter v. Bolinger* in 2003, Justice Sandra Day O’Connor writes in her majority opinion that race-conscious decisions were and are necessary now but should be eliminated “in 25 years.”<sup>7</sup> Moreover, looking to applicants’ socioeconomic background is becoming a more acceptable way of ensuring diversity in universities. One of the key arguments in opposition to California’s proposed Senate Constitutional Amendment 5 in 2013 was the success seen in the University of California system. The UC system is one of the foremost in percentage of talented, socioeconomically disadvantaged students thus promoting diversity as well as academic qualifications.<sup>8</sup> Essentially, affirmative action as a mechanism of promoting diversity has its merits and disadvantages, but may soon become extinct in the admissions of public universities.

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## Sources

<sup>1</sup>“A Brief History of Affirmative Action,” Office of Equal Opportunity and Diversity, May 3, 2010, accessed Oct. 9, 2014, [www.oeod.uci.edu/aa.html](http://www.oeod.uci.edu/aa.html).

<sup>2</sup>*Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

<sup>3</sup>*Ibid.*

<sup>4</sup>*Fisher v. University of Texas*, 570 S. Ct. (2013).

<sup>5</sup>*Ibid.*

<sup>6</sup>*Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

<sup>7</sup>*Grutter v. Bolinger*, 539 U. S. 306 (2003).

<sup>8</sup>Richard Sander, “The Use of Socioeconomic Affirmative Action in the UC System,” *The Future of Affirmative Action* (New York: The Century Foundation, 2014), 99-109.

# Is U.S. Military Involvement in ISIS Constitutional?

By Stella Sy  
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Newspaper headlines across the country have written that the United States is “at war” with the Islamic State in Iraq and Syria (ISIS or ISIL). President Obama and Congress, however, have yet to issue a formal declaration of war. ISIS, the organization that has taken over large swathes of Syria and Iraq, is attempting to enforce its extremist view of Islam with hopes of creating “citizenship and state-building in a region almost completely bereft of either.”<sup>1</sup> In September of this year, President Obama stated his plans to help end the conflict with military action against ISIS with airstrikes and equipping allies, Iraqis and the Kurdish Peshmerga forces with necessary training and armor.<sup>2</sup>

In the U.S., the President needs congressional approval before issuing a formal declaration of war. Since the founding of the U.S., war has only been officially declared 11 times.<sup>3</sup> According to the President, a war with ISIS could last three years; former Secretary of Defense Leon Panetta believes fighting could last for up to 30 years.<sup>5,6</sup>

There are two paths that the U.S. government could pursue in its conflict with ISIS: an authorization for the use of force or a declaration of war. Authorized use of force grants the President the authority to use the armed forces with necessary and appropriate force against “a named country or unnamed hostile nations in a given region,”<sup>7</sup> while a declaration of war creates “a state of war under international law and legitimates the killing of enemy combatants, the seizure of enemy property, and the apprehension of enemy allies.”<sup>8</sup> As of right now, neither path has been pursued.

Congress, however, recently approved of the training and arming of Syrian rebels – an act vigorously advocated for by Obama – but has yet to make a decision on how to directly handle the issue with ISIS. Many have claimed that this lack of action is a result of the “lame duck session.” A “lame duck session” is the period of time between which Congress meets with the elected successors, but before the successors’ term begins. This transition period is not the appropriate time to debate authorization for war against ISIS.<sup>9</sup>

Despite a lack of debate and agreement between Congress and the President, Obama has issued airstrikes against ISIS targets in the region. As the President, Obama

has the legal authority to issue airstrikes either through the War Powers Resolution or the “2001 Authorization for Use of Military Force against al-Qaeda and associated forces.”<sup>10</sup> The 2001 Authorization for Use allows for the prevention of any future acts of terrorism against the U.S., but such prevention must be directed towards nations, organizations, or persons involved with the September 11<sup>th</sup> attacks.<sup>11</sup> The 9/11 attacks were orchestrated by the terrorist organization al-Qaeda, but the group officially dissociated itself from ISIS in February of this year, raising the question of whether or not the Obama administration has the right to command airstrikes against ISIS.

Maybe the War Powers Resolution could better justify the actions taken by the Obama administration. The War Powers Resolution resulted in the aftermath of the Vietnam War to address concerns and provide set procedures for both the President and Congress to follow in situations where U.S. forces abroad could lead to their involvement in armed conflict. Currently, it would seem they do not have the right to carry out commands against ISIS. Obama has said repeatedly that U.S. troops will not be used as ground troops against ISIS, especially because of support from Egypt.<sup>12</sup> This invalidates the claim that the War Powers Resolution is a good reason for continued U.S. involvement in the fight against ISIS. However, the U.S. continues to be involved. Hopefully, Congress and the President can come to a decision on how to proceed and whether this conflict will turn out to be a war or not.

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## Sources

<sup>1</sup>Thanassis Cambanis, “The surprising appeal of ISIS - The Boston Globe.” BostonGlobe.com, [www.bostonglobe.com/ideas/2014/06/28/the-surprising-appeal-isis/](http://www.bostonglobe.com/ideas/2014/06/28/the-surprising-appeal-isis/) 19YwC0GVPQ3i4eBxt1o0h1/story.html (accessed Oct. 8, 2014).

<sup>2</sup>“No safe haven”: Obama declares airstrikes on Islamic State ‘wherever it exists’ - RT USA, [rt.com/usa/186840-obama-islamic-state-address/](http://rt.com/usa/186840-obama-islamic-state-address/) (accessed Oct. 8, 2014).

<sup>3</sup>Matthew C. Weed, and Jennifer K. Elsea, “Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications.” Federation of American Scientists. [fas.org/sgp/crs/natsec/RL31133.pdf](http://fas.org/sgp/crs/natsec/RL31133.pdf) (accessed Oct. 7, 2014).

<sup>4</sup>Christopher Harress, “U.S. Airstrikes In Syria Against ISIS May Cost As Much As \$10 Billion,” International Business Times, [www.ibtimes.com/us-airstrikes-syria-against-isis-may-cost-much-10-billion-1694475](http://www.ibtimes.com/us-airstrikes-syria-against-isis-may-cost-much-10-billion-1694475) (accessed Oct. 6, 2014).

<sup>5</sup>Ex-Pentagon chief predicts 30-year ISIS war,” Al Arabiya News, [english.alarabiya.net/en/News/middle-east/2014/10/06/Ex-Pentagon-chief-predicts-30-year-ISIS-war.html](http://english.alarabiya.net/en/News/middle-east/2014/10/06/Ex-Pentagon-chief-predicts-30-year-ISIS-war.html) (accessed Oct. 8, 2014).

<sup>6</sup>Matthew C. Weed and Jennifer K. Elsea, “Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications.”  
<sup>7</sup>Ibid.

<sup>8</sup>Alex Rogers, “Congress Won’t Debate War on ISIS Until Next Year.” Time, [time.com/3429797/boehner-congress-authority-isis/](http://time.com/3429797/boehner-congress-authority-isis/) (accessed Oct. 6, 2014).  
<sup>9</sup>Ibid.

<sup>10</sup>Matthew C. Weed, “The 2001 Authorization for Use of Military Force: Background in Brief” Fas, [fas.org/sgp/crs/natsec/aumf-071013.pdf](http://fas.org/sgp/crs/natsec/aumf-071013.pdf) (accessed Oct. 8, 2014).

<sup>11</sup>“No safe haven”: Obama declares airstrikes on Islamic State ‘wherever it exists’”

# In Light of Vermont's Labeling Law: *GMOs*

By Catherine Willis  
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On May 8, Vermont became the first state in America to pass legislation mandating the labeling of genetically modified organisms (GMOs). The bill, slated to take effect in 2016, requires food items containing genetically engineered (GE) ingredients or genetically modified organisms (GMOs) to be labeled as such.<sup>1</sup>

Vermont's actions involve the continuing debate over the use and labeling of GEs or GMOs. In recent history, Americans have moved from traditional selective breeding of plants to more direct, scientific approaches to alter the genes. Genetically modified crops are increasingly common, from nectarines, which are genetically altered versions of peaches,<sup>2</sup> to corn modified to resist herbicides, allowing it to withstand the spraying of weed-killer.<sup>3</sup> While the possible adverse health effects of GMO products are still in contention, the dispute at hand is not whether or not GMOs are a good thing, but whether or not they should be labeled. A number of studies have found no proof of negative health implications, yet pundits and consumers point out that lack of proof of harm does not mean that no harm exists: there is no consensus on the issue.<sup>4</sup>

The goal of Vermont's legislation is to give the consumer the choice of what to consume. The law aims to provide information about what products contain, as well as the origins of foods. The "VT Right to Know GMOs" campaign states the belief that "all should be able to make informed choices, and have the ability to choose whether to buy genetically engineered food or not."<sup>5</sup> While the

reaction to the law from Vermonters was extremely positive, the response from major food corporations has been less supportive. The Grocery Manufacturers Association (GMA) argues that under the Constitution, the facilitation of interstate commerce is solely the job of the federal government, and Vermont has no power to impose labeling regulations. Vermont counters that the law avoids infringing on interstate commerce because "labeling adds no burden that outweighs the benefits."<sup>6</sup> Additionally, companies want to sue as they maintain that the labeling law infringes on speech rights.

The GMA's position is that "the First Amendment dictates that when speech is involved, Vermont policymakers cannot merely act as a pass-through for the fads and controversies of the day ... It must point to a truly 'governmental' interest, not just a political one."<sup>7</sup> In the wake of the Vermont legislation on June 12, the GMA, the Snack Food Association, International Dairy Foods Association, and the National Association of Manufacturers filed a suit against Vermont.<sup>8</sup>

The topic calls for the weighing of rights – those of consumers and those of food producers. Does the government have the right to mandate labeling when the Food and Drug Administration has no current proof of adverse health effects? At the moment, the FDA has determined GMOs to be generally recognized as safe, and as the law stands labeling can be required only if there is a safety concern and is done for the greater good of society.<sup>9</sup> Thus, the requirement of labeling foods boils down to an issue of free speech.

Currently these issues are being addressed at the national level

and across the country. California and Washington legislatures have both narrowly voted down similar bills.<sup>10,11</sup> Alternatively, Connecticut and Maine have passed labeling laws with the caveat that they do not go into effect until four other states in the surrounding area pass similar legislation.<sup>12,13</sup> The Center for Food Safety reports that "more than 60 bills have been introduced in over 20 states to require GE labeling or prohibiting genetically engineered food."<sup>14</sup> Vermont is not alone in its labeling efforts, and the issue will be sure to evolve further as the first steps have now been made by Vermont and the issuing parties. In addition, over 60 countries have either banned GMOs or require mandatory labeling of foods that contain them.<sup>15</sup> For now, all eyes are on the Vermont case to lead America's stance on labeling laws and further GMO debates.

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## Sources

- <sup>1</sup>"We Labeled GMOs! - Vermont Right to Know GMOs," *Vermont Right to Know GMOs*, May 9, 2014, accessed Oct. 9, 2014, [www.vtrighttoknowgmos.org/labelled-gmos/](http://www.vtrighttoknowgmos.org/labelled-gmos/).
- <sup>2</sup>"Genetically Engineered Foods", Food and Drug Administration, Oct. 19, 1999, accessed Oct. 13, 2014, [www.fda.gov/newsevents/testimony/ucm115032.htm](http://www.fda.gov/newsevents/testimony/ucm115032.htm).
- <sup>3</sup>Mark Perry, "7 Most Common Genetically Modified Foods," *The Huffington Post*, Dec. 3, 2013, Oct. 10, 2014.
- <sup>4</sup>ENSSER, "No Scientific Consensus on GMO Safety," *European Network of Scientists for Social and Environmental Responsibility*, Oct. 21, 2013, accessed Oct. 13, 2014.
- <sup>5</sup>"About the VT Right to Know GMOs Campaign," Vermont Right to Know GMOs, accessed Oct. 13, 2014, [www.vtrighttoknowgmos.org/more/](http://www.vtrighttoknowgmos.org/more/).
- <sup>6</sup>Terri Hallenbeck, Vermont Defends GMO Labeling Law (Burlington: Burlington Free Press, 2014).
- <sup>7</sup>*Ibid.*
- <sup>8</sup>*Ibid.*
- <sup>9</sup>*Ibid.*
- <sup>10</sup>Jennifer Chausse, "California GMO Labeling Push Fails A Second Time After Lawmakers Reject Bill," *The Huffington Post*, May 29, 2014, Oct. 13, 2014, [www.huffingtonpost.com/2014/05/29/california-gmo-bill\\_n\\_5408147.html](http://www.huffingtonpost.com/2014/05/29/california-gmo-bill_n_5408147.html).
- <sup>11</sup>Elizabeth Weise, "Washington State Voters Reject Labeling of GMO Foods," *USA Today*, Nov. 6, 2013, Oct. 13, 2014.
- <sup>12</sup>Substitute House Bill No 6527, "AN ACT CONCERNING GENETICALLY-ENGINEERED FOOD," *Public Act No. 13-183*, Connecticut General Assembly.
- <sup>13</sup>"Public Policy Initiatives, Right To Know GMO," Maine Organic Farmers and Gardeners Association, accessed Oct. 13, 2014.
- <sup>14</sup>"GE Food Labeling | State Labeling Initiatives," *Center for Food Safety*, accessed Oct. 13, 2014.
- <sup>15</sup>*Ibid.*

# The Personhood of a Chimpanzee

By Cheryl Gartsbeyn  
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In Gombe in 1960, when Jane Goodall first saw chimpanzee David Greybeard use the stem of a leaf as a tool to catch termites, thus making a tool, archaeologist and paleontologist Louis Leakey responded: "Now we must redefine tool, redefine Man, or accept chimpanzees as humans."<sup>1</sup>

Fifty-four years after Goodall disproved that only humans are capable of tool use, the question of a chimpanzee's "personhood" remains a controversial subject in law. Consider the legal case of Tommy, a chimpanzee that, like many other chimpanzees, is

raise awareness, as two chimpanzees, Merlin and Reba, died before the trial.<sup>2</sup>

How is it possible to help a chimpanzee through the human judicial system? By finding a loophole in the Common Law Writ of Habeas Corpus. Habeas corpus allows a person who is held captive to object to his own imprisonment in court.<sup>3</sup>

The controversial issue is that habeas corpus was written with regard to people, not chimpanzees. Ultimately, the chimpanzees were denied legal right of freedom to their bodies. However, Judge Joseph Sise, who presided over the case, was sympathetic in saying: "As an animal lover, I appreciate your work."<sup>4</sup> Now in 2014, Tommy is headed back to court

to create a technological innovation that eliminates the need for animal testing.<sup>7</sup> Many critics, who do not want to stop animal testing, refer to animals as non-sentient beings. However, ask any primatologist, or take a trip to the zoo and, if you look without bias, you will be surprised by the human-like actions and emotions animals exhibit. For example, chimpanzees live in multi-male, multi-female communities and can teach each other behaviors like nut-cracking.<sup>8</sup>

It is important to balance ethical and judicial concerns when defending those with no human voice. In protecting animals we not only appeal to our moral code, but also allow for research in the diversity of nature.

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held captive in terrible conditions rather than set free into a wildlife sanctuary.

The Nonhuman Rights Project in New York filed lawsuits in 2013 on behalf of chimpanzees that were kept in intolerable living conditions. The first lawsuit was for Tommy, a chimpanzee isolated in a cage in a used trailer lot. Similarly, lawsuits for other chimpanzees living in cages such as Kiko, a deaf chimpanzee, as well as Hercules and Leo, which are used in experiments, followed.

One of the goals of the lawyers was to allow the chimpanzees to be moved to a sanctuary, which provides an environment close to the chimpanzee's natural habitat. Furthermore, the lawyers wanted to represent many chimpanzees to

as an appeal date has been set for the first lawsuit.

This case should not be seen as a question of whether or not a chimpanzee is human. It should be seen as a case of animal cruelty. Chimpanzees are endangered animals, which in the United States, are protected by the Endangered Species Act. This act makes it illegal for a person to import, export, sell or take the listed endangered species.<sup>5</sup> By "to take," the document is referring to the harassment, harm, hunting, shooting, wounding, killing, capturing, or trapping animals.<sup>6</sup> Although this law exists, we find it difficult to control human actions. This brings to light the importance of education.

Goodall provides another answer to protecting chimpanzees, which is

This article narrows the topic of animal rights and conservation to the case of Chimpanzee Tommy. However, these are important topics that call for further research and awareness.

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## Sources

- <sup>1</sup>Jane Goodall, *Through a Window*, (Boston: Houghton Mifflin Company, 1990).
- <sup>2</sup>Michael Mountain, "Lawsuit Filed Today on Behalf of Chimpanzee Seeking Legal Personhood," Nonhuman Rights Project, last modified Dec. 2, 2013, accessed Oct. 5, 2014, [www.nonhumanrightsproject.org/2013/12/02/lawsuit-filed-today-on-behalf-of-chimpanzee-seeking-legal-personhood/](http://www.nonhumanrightsproject.org/2013/12/02/lawsuit-filed-today-on-behalf-of-chimpanzee-seeking-legal-personhood/).
- <sup>3</sup>"Habeas Corpus," Legal Information Institute, accessed Oct. 5, 2014, [www.law.cornell.edu/wex/habeas\\_corpus](http://www.law.cornell.edu/wex/habeas_corpus).
- <sup>4</sup>Michael Mountain, "New York Cases - Judges' Decisions and Next Steps," Nonhuman Rights Project, last modified Dec. 10, 2013, accessed Oct. 5, 2014, [www.nonhumanrightsproject.org/2013/12/10/new-york-cases-judges-decisions-and-next-steps/](http://www.nonhumanrightsproject.org/2013/12/10/new-york-cases-judges-decisions-and-next-steps/).
- <sup>5</sup>Endangered Species Act | Section 9," Endangered Species Program, last modified July 15, 2013, accessed Oct. 25, 2014, [www.fws.gov/endangered/laws-policies/section-9.html](http://www.fws.gov/endangered/laws-policies/section-9.html).
- <sup>6</sup>Endangered Species Act: Section 3," U.S. Fish and Wildlife Service, last modified July 15, 2013, accessed Sept. 28, 2014, [www.fws.gov/endangered/laws-policies/section-3.html](http://www.fws.gov/endangered/laws-policies/section-3.html).
- <sup>7</sup>Goodall, 247.
- <sup>8</sup>Christophe Boesch, "Is Culture a Golden Barrier Between Human and Chimpanzee?," *Evolutionary Anthropology* 12 (2003): 82-91.

# Going Green

## Energy Codes and Their Potential

By Paige Dolci  
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The United States is currently experiencing a net population gain of 1 person every 15 seconds. Accommodating such a gain requires, logically, an increase in land use, including the construction and utilization of buildings.<sup>1</sup>

A large amount of the energy consumed through these practices is highly inefficient, which furthers the negative effects of climate change.<sup>2</sup> Local land use laws such as energy codes, however, promise the hope of achieving at least partial energy conservation and sustainability when it comes to providing for our ever-growing society.

The energy code, a comparatively new development for sustainability, is meant to reduce energy consumption by new and renovated buildings. Eighty-five percent of states use the International Energy Conservation Code (IECC). The IECC is composed of two parts: the regulation of smaller residential buildings and the regulation of larger, commercial buildings.<sup>3</sup> Today, these commercial buildings conform to what is known as "Standard 90.1," which addresses all of the following: heating, air conditioning, ventilation, lighting, water heating, boiler efficiency, and the building envelope that separates a structure's interior and exterior.<sup>4</sup>

The actual implementation of energy codes is a tedious but crucial process. Architects and engineers are required to provide plans for new or renovated buildings that comply with all applicable standards before a building permit is issued.<sup>5</sup> Once building commences, code-enforcement personnel monitor construction closely, and a certificate of occupancy is awarded only if the finished building is shown to be compliant. If code-enforcement personnel find that codes are being violated, a stop work order may be issued to the developer. At this point, if work is not halted and the violations are not fixed, the state could bring the local government to court for civil or even criminal penalties.<sup>6</sup>

Unfortunately, the violation of code standards by local governments is all too common. Most building departments regard energy codes as less critical to safety in comparison to fire codes, for example, and the

ensuing enforcement is inadequate for many states.<sup>7</sup>

Efforts are currently under way to reduce these excessive violations. The Massachusetts Code Compliance Support Initiative, which will run into 2016, for example, provides for extensive energy code training and the development of tools to support code compliance.<sup>8</sup> At the head of this initiative is the U.S.'s leading residential energy efficiency division, the Conservation Services Group. With this strong leadership, the proposal could serve as a model for the entire country's use of energy codes.<sup>9</sup>

Why are energy codes important? According to the Department of Energy, residential and commercial buildings will account for 76.5% of the total electricity use in the U.S. by 2035.<sup>10</sup> The large amount of consumed electricity caused by this land use change will produce a significant volume of greenhouse gases.<sup>11</sup> Energy codes have the potential to reduce this volume as well as positively affect the economy. According to Stephen Cowell, CEO of the Conservation Services Group, "If we had 100 percent compliance with energy codes on the books, we'd see dramatic increases in energy savings nationwide."<sup>12</sup> Considering the potential environmental and economic benefits, energy code compliance should continue to be addressed, and the innovation of other sustainable practices should continue to be pursued.

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### Sources

<sup>1</sup>John R. Nolan. "Land Use For Energy Conservation and Sustainable Development: A New Path Toward Climate Change Mitigation," Florida State University College of Law, no. 27 (2011): 297-306. accessed Sept. 25, 2014, [www.law.fsu.edu/journals/landuse/vol27\\_2/nolan.pdf](http://www.law.fsu.edu/journals/landuse/vol27_2/nolan.pdf).  
<sup>2</sup>Ibid, 298.  
<sup>3</sup>Ibid, 304.  
<sup>4</sup>Ibid, 305.  
<sup>5</sup>Ibid, 305.  
<sup>6</sup>Ibid, 306.  
<sup>7</sup>Ibid, 306.

<sup>8</sup>"Massachusetts and Rhode Island Programs Close Gaps in Energy Code Compliance," Business Wire, Oct. 8, 2014, accessed Oct. 8, 2014, [www.businesswire.com/news/home/20141008005075/en/Massachusetts-Rhode-Island-Programs-Close-Gaps-Energy#\\_YDc84VZRFg0](http://www.businesswire.com/news/home/20141008005075/en/Massachusetts-Rhode-Island-Programs-Close-Gaps-Energy#_YDc84VZRFg0).  
<sup>9</sup>Ibid.

<sup>10</sup>Nolan, "Land Use For Energy Conservation and Sustainable Development," 299.  
<sup>11</sup>Ibid.

<sup>12</sup>"Massachusetts and Rhode Island Programs."

# Keystone XL: The *National* Debate

By Jennifer Bourne  
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As the focus of national environmental issues shifts in favor of sustainability and the environment, the Keystone Pipeline proves to be a recurrent issue of debate.

The Keystone Pipeline consists of four projects by TransCanada: the original Keystone Pipeline, Cushing Extension, Gulf Coast Project, Houston Lateral Project and Keystone XL.<sup>1</sup> The United States government has given approval to all projects with the exception of Keystone XL, which was proposed in 2008. After six years of environmental impact reports and application rejections from President Obama, the extension of Keystone has spread to a national debate with strong roots in the state of Nebraska.

The people of Nebraska have filed a lawsuit against Nebraska's governor, opposing the extension of this pipeline in *Thompson v. Heineman*.<sup>2</sup> The people claim that Governor Heineman exploited his power of eminent domain by approving the project. Under the Nebraska state constitution, the Public Service Commission asserts the right of eminent domain over pipelines, therefore, Heineman cannot approve the route.<sup>3</sup>

The Supreme Court of Nebraska accepted appeal of the original decision, which sided with the people of Nebraska, and is presumably delaying until midterm elections.<sup>4</sup> Even though this issue is currently at the state level, the Keystone pipeline extension is a national policy problem. It is important to understand both sides of this argument in order to better comprehend the problems presented in *Thompson v. Heineman*

and their national implications.

Many proponents of the extension argue that the United States will enjoy the perks if Keystone XL is approved. TransCanada already has numerous projects throughout many states in the U.S. and this extension would simply connect them, thus making the transfer of these oils much more efficient and simplified.

Since the tar oil from Alberta, Canada will be produced regardless of this extension, the nation would be able to accept this proposal with little guilt about furthering environmental repercussions. In fact, advocates of the extension claim this project would actually benefit the environment because the tar sands would be transported by pipeline, which is more environmentally friendly than rail transportation. Additionally, pipelines by TransCanada already exist in many states. The proposal awaiting approval is simply an extension of the pipeline through another leg of a "bullet pipeline."<sup>5</sup> The "bullet pipeline" in this statement refers to the extension of the already existing TransCanada project of the Keystone Pipeline, which will run from Alberta, Canada through Steele City, Nebraska.<sup>6</sup>

It is not a matter of whether or not a pipeline is the safest route because they already have evidence of its benefits through the functioning legs. Also, the proponents argue that the economic benefits are too enormous to ignore. This project would increase job market opportunities for Americans in the Midwest as well as increase the United States' manufacturing industry.

However, environmentalists state that Obama should adhere to his promises of focusing on environmental sustainability. The process for extracting these tar sands

requires an incredible amount of energy input. The use of these oils has increased carbon emissions, which have further increased due to the tar oils' extraction process. The extension of Keystone will also exponentially increase U.S. oil imports through Canada, thus exposing the U.S. to even more carbon emissions.

Additionally the proposed route for this phase will run through the Ogallala Aquifer, which threatens a major supply of clean drinking water in the High Plains region of the United States. According to environmentalist perspective, the economic benefits may be great, but if we are going to create a better world for our future then we need to reject the proposal.

Both sides present strong arguments. Delaying a decision is no longer an option. The Keystone XL issue is becoming far too political and we must act. For example, many argue that the delay of the pipeline decision is conveniently close to the midterm elections where it is predicted that the possible GOP takeover of the Senate will approve Keystone extension.<sup>7</sup> If there is to be any progress, the Nebraska Supreme Court must make their decision so that the United States government can follow suit.

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## Sources

<sup>1</sup>Keystone XL Pipeline Maps and Information," TransCanada, accessed November 6, 2014, [keystone-xl.com/about/the-keystone-xl-oil-pipeline-project/](http://keystone-xl.com/about/the-keystone-xl-oil-pipeline-project/).

<sup>2</sup>Thompson v. Heineman, 12-2060. (D. Nebraska, 2013).

<sup>3</sup>Keystone Pipeline Nebraska Path Argued at Top State Court," Bloomberg, accessed Oct. 10, 2014, [www.bloomberg.com/news/2014-09-05/keystone-pipeline-nebraska-path-argued-at-top-state-court.html](http://www.bloomberg.com/news/2014-09-05/keystone-pipeline-nebraska-path-argued-at-top-state-court.html).

<sup>4</sup>Maria Gallucci. "Keystone XL Pipeline: Landowners, State Attorneys Square Off In Nebraska Supreme Court Over Proposed Pipeline Route," International Business Times, Sept. 5, 2014, accessed Oct. 10, 2014, [www.ibtimes.com/keystone-xl-pipeline-landowners-state-attorneys-square-nebraska-supreme-court-over-1679884](http://www.ibtimes.com/keystone-xl-pipeline-landowners-state-attorneys-square-nebraska-supreme-court-over-1679884).

<sup>5</sup>Ryan Lizza. "The President and the Pipeline," New Yorker, Sept. 16, 2013, accessed Oct. 10, 2014, [www.newyorker.com/magazine/2013/09/16/the-president-and-the-pipeline](http://www.newyorker.com/magazine/2013/09/16/the-president-and-the-pipeline).

<sup>6</sup>Maria Gallucci. "Keystone XL Pipeline: Landowners, State Attorneys Square Off In Nebraska Supreme Court Over Proposed Pipeline Route."

<sup>7</sup>Thomas Pyle. "Six Years of Politics, Pandering and Broken Promises on the Keystone Pipeline," Forbes, Sept. 19, 2014, accessed Oct. 10, 2014, [www.forbes.com/sites/realspin/2014/09/19/six-years-of-politics-pandering-and-broken-promises-on-the-keystone-pipeline/](http://www.forbes.com/sites/realspin/2014/09/19/six-years-of-politics-pandering-and-broken-promises-on-the-keystone-pipeline/).

# Ebola, Emergency Preparedness, and Public Health Law in the United States

By Ryan Knox  
SAR '16

The 2014 Ebola outbreak in West Africa is not only a concern to the international public health community; it has also brought national health policies to public attention.

Following the transport of two infected American doctors from Liberia to Emory University in Atlanta, and the first identified cases of Ebola in Dallas, fear of a similar outbreak in the U.S. spread quickly.<sup>1</sup> Criticism of laws about emergency preparedness has been also widespread, particularly in relation to individual rights. What do the emergency preparedness and prevention policies of the U.S. involve, and do these infringe upon a person's civil rights? The answers to these questions will bring insight into how the government can control an outbreak and what Ebola could look like in the U.S.

In the case of an emergency concerning a communicable disease such as Ebola, the key duty of the government is to prevent the spread of disease among the population. These responsibilities are divided between the federal and state governments. Responsibilities of the federal government, carried out by the Centers for Disease Control and Prevention (CDC), include preventing the spread of the disease between countries and across state borders, as described by the Public Health Service Act.<sup>2</sup> This is typically done, as it is for Ebola, by isolation and quarantine, which are both regulated on the state level. Specific laws vary from state to state, but the principles regarding civil rights are the same.

There is an important distinction between isolation and quarantine, which impacts the argument over civil rights violations. Isolation is when an individual already infected with a contagious disease is separated from the rest of society.<sup>3</sup> Often this is done in a hospital setting accompanied by treatment for the disease, and is therefore not usually objected to by the patient. Quarantine is when individuals who are suspected of having been exposed to the disease are separated from the rest of society, usually in their home.<sup>4</sup> Because they may not show symptoms and quarantines are sometimes enforced by police or military, people sometimes oppose the practice. This may seem at first to be a violation of civil rights, but this is not in fact the case.

State governments have the power to quarantine individuals who are suspected of having been exposed to

a dangerous communicable disease, such as tuberculosis or Ebola. However, there are limitations to how they can do this, as dictated by state laws and as discussed by Sarah Pope, and Elizabeth Webster, Law and Policy Analysts at the University of Maryland, and Nisha Sherry, a student at the University of Maryland School of Law, in their analysis of public health emergencies.<sup>5</sup> First, the government must have reasonable cause to believe the individual has been exposed and is contagious in order to exhibit a state interest, allowing them to quarantine the individual.<sup>6</sup> Quarantine and isolation must also be carried out in the least restrictive way possible, with due process. Furthermore, the government must provide individuals with adequate care and compensation. Overall, quarantine and isolation must protect an individual's basic human rights and any limitations of civil rights must be done in a manner that is both "legal and as minimally restrictive as reasonably possible."<sup>7</sup> This is consistent with the guidelines set forth by the Universal Declaration of Human Rights.<sup>8</sup>

These laws give a fairly clear indication of how the United States may deal with cases of Ebola. It is undeniable that isolation and quarantine have been and will continue to be used. However, patients will not be left isolated without necessities and those who are sick will be treated. Any impositions on rights should and will be done only as necessary and to prevent the spread of Ebola. Quarantine and isolation are not in themselves violations of human and civil rights, as long as they are done legally and in the least invasive way. With the health infrastructure in the United States, it is both hopeful and likely that the spread of Ebola will be controlled and public health policies will prove effective. Above all, this outbreak has stressed to the global health community the need for cooperation, infrastructure, and emergency preparedness policy.

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## Sources

<sup>1</sup>Polly J. Price, "Ebola and the Law," *Emory Law News Center*, last modified Sept. 2, 2014, law.emory.edu/news-center/releases/2014/09/ebola-and-the-law.html#VDWZGu90zIX.

<sup>2</sup>Public Health Service Act, 42 United States Code §264 (1999).

<sup>3</sup>"Legal Authorities for Isolation and Quarantine," Center for Disease Control and Prevention, accessed Oct. 8, 2014, www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html.

<sup>4</sup>*Ibid.*

<sup>5</sup>Sarah Pope, Nisha Sherry, and Elizabeth Webster, "Protecting Civil Liberties During Quarantine and Isolation in Public Health Emergencies," *Law Practice Today*, Apr. 2011, accessed Oct. 8, 2014, www.americanbar.org/publications/law\_practice\_today\_home/law\_practice\_today\_archive/april11/protecting\_civil\_liberties\_during\_quarantine\_and\_isolation\_in\_public\_health\_emergencies.html.

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

<sup>8</sup>"The Universal Declaration of Human Rights," The United Nations, accessed Nov. 11, 2014, www.un.org/en/documents/udhr/.

# Government Pressure on Tech Enterprises

By Alexandra Marcus  
CAS '17

In 2013, Edward Snowden released confidential government documents to the public and the greater world. These documents included papers containing national surveillance programs. This breach of confidential information caused not only national shock, but global uproar on behalf of our blindsided allies. Of the documents released were the NSA's Prism surveillance program.<sup>1</sup> Recently, more than 1,500 documents were released about a clash between this program and the well-known tech company, Yahoo.<sup>2</sup>

In 2010, the NSA's Prism Surveillance program hounded the well-known tech company, Yahoo, for confidential information that resided in many of the company's customer accounts.<sup>3</sup> This, Yahoo believed, was against what the company stood for - customer confidentiality. Yahoo's management team abstained from releasing any information, viewing the stipulation as unconstitutional. A year later, Yahoo went to FISA (federal intelligence surveillance court) with the matter and lost the case. After this, the government placed even more pressure on the company by threatening to implement a hefty fine of \$250,000 for each day Yahoo refused to hand over the information.<sup>4</sup> However, the company remained persistent in its refusal to surrender customer data until the government program to extract information from these major tech companies came to a close in 2011.<sup>5</sup>

Recently, the U.S. courts allowed for the release of the documents that contained details regarding this incident.<sup>6</sup> This proved to be an important piece of information for many reasons. First, the American public has now been made aware of these events that transpired years ago. In addition, Yahoo can now retain a trustworthy reputation amongst its customers. Third, and most importantly, the government's release of these documents allows them to take responsibility for the incident. Through taking responsibility for their duplicitous actions, the government is preventing potential future backlash in case the events were ever to be publicized.

Why did the government suddenly feel pressure to allow for the release of these documents? Perhaps the reason the government allowed for the public to access the documents about their request for customer information was to salvage what was left of its reputation, and not hide

another incident from the American public.

As the public is made aware of the federal government's pressure against companies to hand over confidential information, many are left questioning whether or not this is constitutional. Perhaps the problem with this specific circumstance is that the government did not offer any specifics as to why they needed the information. If our security were at risk, would it be okay to breach our privacy? This debate can be additionally correlated with the Snowden case. Did the American public and the greater world have the right to know about NSA privacy breaches if they were initiated to offer greater security?

Many believe the government needs valid reasons to request such information from companies, and/or spy on phone conversations and access private matters (as seen in the NSA scandal). Their assertion is that if no security threat is at hand, it is a complete abuse of power on behalf of the federal government to request such private information. However, if the safety of the American people is at hand (in a terror situation, etc.) then the government has the right to access this information to help its people.

In the end, most would argue that it all comes down to motive. If the motive behind the action is to better secure the American people, more people are willing to support it. However, if there is no definitive transparency to their reasoning, more are likely to oppose it.

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## Sources

<sup>1</sup>“How the US Spy Scandal Unravelling,” BBC News, Jan. 17, 2014, accessed Oct. 30, 2014, [www.bbc.com/news/world-us-canada-23123964](http://www.bbc.com/news/world-us-canada-23123964).

<sup>2</sup>Martha Neil, “US threatened \$250K daily fine to get Yahoo to turn over users’ email information,” *ABA Journal*, Sept. 12, 2014, accessed Oct. 3, 2014, [www.abajournal.com/news/article/us\\_threatened\\_250k\\_daily\\_fine\\_to\\_get\\_yahoo\\_to\\_turn\\_over\\_email?utm\\_source=internal&utm\\_medium=navigation&utm\\_campaign=navbar](http://www.abajournal.com/news/article/us_threatened_250k_daily_fine_to_get_yahoo_to_turn_over_email?utm_source=internal&utm_medium=navigation&utm_campaign=navbar).

<sup>3</sup>James Ball and Dominic Rushe, “NSA Program Taps into User Data of Apple, Google, and Others,” *The Guardian*, June 13, 2013, accessed Oct. 30, 2014, [www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data](http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data).

<sup>4</sup>“Yahoo \$250,000 Daily Fine over NSA Data Refusal Was Set to Double ‘every Week’” *The Guardian*, Sept. 12, 2014, accessed Oct. 24, 2014, [www.theguardian.com/world/2014/sep/11/yahoo-nsa-lawsuit-documents-fine-user-data-refusal](http://www.theguardian.com/world/2014/sep/11/yahoo-nsa-lawsuit-documents-fine-user-data-refusal).

<sup>5</sup>Martha Neil, “US threatened \$250K daily fine to get Yahoo to turn over users’ email information.”

# Behind the Screen

By Ana Paula Amatuzzi  
CAS '18

In 2013, Emily Orlando and her husband received a letter informing them that they were among the 371 people from Oregon accused of using the BitTorrent protocol - the set of rules for transferring file - to illegally download *Maximum Conviction*, the 2012 Steven Seagal thriller, produced by Voltage Pictures.<sup>1</sup>

Orlando stated, however, that she had never watched the movie she was accused of torrenting.<sup>2</sup> Voltage Pictures' lawyer gave Orlando two weeks to pay \$7,500 or she would face a \$150,000 judgment.<sup>3</sup>

Tracking the IP number associated with the illegal download or sharing makes it possible to discover

thousands of dollars for a movie which is sold on amazon.com for approximately \$12.<sup>7</sup> Additionally, defendants are publicly named in these suits along with the names of the content they allegedly downloaded. Kenan Farrell, a copyright lawyer, says that "People understood their name would be out there in a public record that's probably going to stay on Google for a long, long time whether they'd done anything or not."<sup>8</sup> Because of that, whether they downloaded it or not, people are more willing to pay if the content is pornography or hurts their reputation, just so the content is not associated with their name.<sup>9</sup>

The cases of Oregon were taken to the district's court and some are still open. For the others, Judge Ann L. Aiken denied the defendant's motion to dismiss and the plaintiff's motion to strike.<sup>10</sup> Arguments such as the use of the wireless connection by a roommate were employed

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"It is premature to assign the IP address to the owner of the wireless connection, as the owner may be one of many users."

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copyright infringement cases.<sup>4</sup> However, who is behind those devices is unknown, so all of the infringers are essentially John Does.<sup>5</sup> Therefore, associating an IP number with a person can lead to situations where people are unfairly sued for infringing copyrights. As a result, people such as Emily Orlando and her husband are forced to hire lawyers and defend themselves against these partially legitimate allegations.

IP addresses can prove that content was downloaded illegally, though; it is premature to assign the IP address to the owner of the wireless connection, as the owner may be one of many users. For example, among the Oregon cases, one of the defendants had more than 100 people using his wireless connection.<sup>6</sup> In Orlando's case, the wireless connection she used was connected to more than one modem. Therefore, IP addresses alone were not sufficient evidence of copyright infringement.

The ambiguity of the copyright infringement law creates an environment where film and music companies can make a lot of money. In the Oregon case, Voltage Pictures simply introduced hundreds of IP addresses to the court, without name or accuracy and asked for

by the defendant; and the proof that the defendant's IP downloaded illegal content was stated by the plaintiff.<sup>11</sup>

Although technology provides benefits, it can also generate conflicts and threats to those who are part of shared Internet networks. Authors', actors', singers' and other composers' works must be respected; nonetheless, there should be a high evidence standard in order to claim infringement so that innocent people are not wrongfully sued.

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## Sources

<sup>1</sup>Laura Gunderson, "Estacada Woman among 371 Oregonians Accused of Illegally Downloading Steven Seagal Movie," Oregon Live, April 8, 2013, accessed September 30, 2014, [http://www.oregonlive.com/business/index.ssf/2013/04/estacada\\_woman\\_accused\\_of\\_ille.html](http://www.oregonlive.com/business/index.ssf/2013/04/estacada_woman_accused_of_ille.html).

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.

<sup>10</sup>"Voltage Pictures, LLC v. Doe", Justia Dockets & Filings, accessed October 7, 2014, <http://law.justia.com/cases/federal/district-courts/oregon/ordce/3:2013cv00836/112073/22>.

<sup>11</sup>Laura Gunderson, "Steven Seagal Movie Lawsuit Booted by Oregon Federal Judge," Oregon Live, May 7, 2013, accessed September 30, 2014, [http://www.oregonlive.com/business/index.ssf/2013/05/steven\\_seagal\\_movie\\_lawsuit\\_bo.html](http://www.oregonlive.com/business/index.ssf/2013/05/steven_seagal_movie_lawsuit_bo.html).

# Cutting the Cord

By Merissa Pico  
COM '15

Prior to June 2014, an Aereo subscriber could stream live broadcast television over the Internet for \$8 to \$12 per month.<sup>1</sup> Almost too good to be true, Aereo not only eliminated expensive cable bills and bundling, but also provided customers the ability to watch live television from any device.<sup>2</sup>

Essentially a cloud-based DVR, Aereo's system was made up of servers, transcoders, and thousands of dime-sized antennae. When a consumer selected a show on Aereo's site, he or she was assigned a personal antenna for the remainder of that show. The antenna received the broadcast content, and then stored the programming on Aereo's servers, where it was streamed to the viewer after a few-second delay.<sup>3</sup>

One reason Aereo was so affordable was that the company consciously did not pay retransmission fees (fees that cable and satellite companies pay to rebroadcast the network's content) for the copyrighted content. As a result, several broadcast television networks sued Aereo for copyright infringement, and after a series of lower court decisions, the U.S. Supreme Court heard the case in July 2014. In *ABC, Inc., v. Aereo, Inc.* the Court ruled against Aereo in a 6-3 decision, holding that Aereo's service was in fact infringing upon the rights of the copyright holders.<sup>4</sup> According to the Court, Aereo was essentially acting as a cable company by rebroadcasting the copyrighted content, but failing to pay the fees.

Delivering the Supreme Court's majority opinion, Justice Stephen Breyer turned to the Copyright Act of 1976, which states that the copyright owner has the "exclusive right" to "perform the copyrighted work publicly."<sup>5</sup> While the Act does not specifically address transmission

of content, the Court deemed that "perform" includes the act of transmission.<sup>6</sup> Therefore, in order to determine if Aereo was guilty of infringement, two questions were before the court: Did Aereo perform? If so, did it perform publicly?<sup>7</sup>

Since Aereo's system only responds to the subscriber's directive and did not continuously transmit content, Aereo argued that it did not perform/transmit. Rather, the company argued that it simply provided the equipment for its users to perform/stream the content, as the viewers were entirely in control when it came to directing and demanding content.

However, according to Justice Breyer, Aereo is more than just an equipment provider because it rebroadcasts, just as a cable company does. Aereo's service has the same effects that the amended Copyright Act of 1976 was trying to target, and its technical differences do not change the fact that copyright infringement is occurring. Breyer stated, "A user's involvement ... may well bear on whether the provider performs ... But the many similarities between Aereo and cable companies ... convince us that this difference is not critical here."<sup>8</sup>

Aereo also denied it performed publicly, arguing that its transmission is a new performance in and of itself. Only one subscriber can receive a performance, thus it cannot be public performance if it is not to more than one person each time. Assigning one antenna to each subscriber and creating subscriber's own "personal" copies of the content allows for completely separate transmissions/private performances.<sup>9</sup> However, the majority disagreed with Aereo's argument, and held that "the subscribers to whom Aereo transmits television programs constitute "the public."<sup>10</sup> Furthermore, the Court held that the Act is applicable to any transmission "by means of any device or process," which renders Aereo's argument about individual

transmissions moot.<sup>11</sup>

Dissenting, Justice Antonin Scalia did not believe that the Copyright Act fully addressed the case at hand. Justice Scalia argued that the majority wrongfully employed "an improvised standard ("looks-like-cable-TV") that will sow confusion for years to come."<sup>12</sup> Justice Scalia further argued that Aereo's circumvention of the law is a legal loophole, but "It is not the role of this Court to identify and plug loopholes. It is the role of good lawyers to identify and exploit them, and the role of Congress to eliminate them if it wishes."<sup>13</sup>

This decision was a huge victory for all of existing broadcast television, as we know it. If Aereo had won its Supreme Court case, it would have essentially destroyed the networks' paid business model. In only three years, Aereo had amassed hundreds of thousands of subscribers, and had expanded into almost all major U.S. cities. In addition to stopping Aereo in its tracks, the Court's ruling called into question the future of cloud-based technology. While the Supreme Court ruled narrowly this time and preserved the cable television business of today, it will be interesting to see how the law adapts to new and emerging technology. As for Aereo, its future is uncertain, as its case was sent back to the lower court where the company is consulting with the court on what to do next. Until that question is answered, Aereo has suspended all services indefinitely.

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## Sources

<sup>1</sup>Aereo: Everything You Need to Know," PC Mag, accessed Oct. 12, 2014, [www.pcmag.com/article2/0,2817,2417555,00.asp](http://www.pcmag.com/article2/0,2817,2417555,00.asp).

<sup>2</sup>Ibid.

<sup>3</sup>"Supreme Court Kills TV Service Aereo," National Journal, accessed Oct. 12, 2014, [www.nationaljournal.com/tech/supreme-court-kills-tv-service-aereo-20140625](http://www.nationaljournal.com/tech/supreme-court-kills-tv-service-aereo-20140625).

<sup>4</sup>*ABC v. Aereo*, 573 U.S. (2014).

<sup>5</sup>Ibid at 1.

<sup>6</sup>Ibid at 4.

<sup>7</sup>Ibid.

<sup>8</sup>*ABC v. Aereo*, 573 U.S., at 10.

<sup>9</sup>*ABC v. Aereo*, 573 U.S., at 14.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid at 1.

<sup>12</sup>*ABC v. Aereo*, 573 U.S., at 23.

<sup>13</sup>Ibid at 34.

# O'Bannon v. NCAA:

## Implications and the Future of College Sports

By Martin Yim  
CAS '17

The past few years have been tumultuous for the National Collegiate Athletic Association's (NCAA) public image and reputation. Recently, Ed O'Bannon, a former NCAA athlete, filed a class action lawsuit against the NCAA and EA Sports. The lawsuit was focused on the use of O'Bannon's name and likeness in video games made by EA Sports based on NCAA athletics, but its implications stretched far beyond virtual reality.

The U.S. District Court determined that there was no substitute for the "bundle of goods and services that Football Bowl Subdivisions and Division I basketball schools provide."<sup>1</sup> This determination, in accordance with the nature of the accusations provided the justification to classify the case as an "antitrust" case. As a result, the court had to judge whether or not the NCAA's use of an athlete's likeness and name for promotional or commercial purposes was a form of anti-competitive business practice within the context of the case.

The NCAA's system currently only financially compensates college athletes with scholarships for their services.<sup>2</sup> The organization has strict rules regarding any other sources of revenue for student-athletes, even though players' names and likenesses are used to generate billions of dollars in revenue for the NCAA and other business partners, such as EA Sports, who settled out of court, awarding \$40 million to those plaintiffs in the class action suit.<sup>3</sup> Contrarily, the NCAA did not settle, and lost its case, as the court decided that student-athletes have the right to a share of the revenue created by the use of their names and likeness for commercial purposes, yet the NCAA capped compensation at \$5,000 per student athlete after the court decision was made.<sup>4</sup> This could be an early sign of future legal fights to come, as ESPN writer Tom Farrey wrote, "Next up in the legal pipeline is a separate lawsuit challenging the NCAA's policy of capping compensation at any level."<sup>5</sup>

Other cases are now being brought forth that may continue to alter the way the NCAA interacts with its student-athletes. In one such case, football players at Northwestern University have been granted the ability to unionize by the National Labor Relations Board. This effectively recognizes the football players as employees

of the state.<sup>6</sup> Whether or not the players vote to form the union, the ability to do so as granted by the NLRB is within itself a significant decision that further alters the way the NCAA will interact with its players.

Contrary to the court's opinion in the O'Bannon case, many believe that players are already fairly compensated. The compensation comes in the form of scholarships that cover tuition and housing, as well as access to superior medical care, training facilities, coaching staff, and the fame that comes with performing in a \$4 billion industry. Others point out that players can choose to play basketball or football overseas or in other leagues in order to develop their skills or make the money they believe they are entitled to, rather than attending NCAA-sanctioned programs.

Although the O'Bannon case only covers a select group of former NCAA athletes who would receive some kind of compensation from this lawsuit, and those players surrendered claims to compensation in order to have trial by judge and not by a jury, which has forced change in the way the NCAA will be required to compensate athletes for their future services. Many believe the NCAA will begin to have to confront hard questions in the face of new legal challenges. Furthermore, sportswriters have expressed that although O'Bannon was an important ruling, it does not change everything yet. It will be interesting to see how the ruling will affect the idea of amateurism in the NCAA.<sup>7</sup>

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### Sources

<sup>1</sup>O'Bannon Case Decision," The New York Times, Aug. 8, 2014, accessed Oct. 7, 2014, [www.nytimes.com/interactive/2014/08/09/sports/09obannondoc.html](http://www.nytimes.com/interactive/2014/08/09/sports/09obannondoc.html).

<sup>2</sup>Summary of NCAA Regulations – NCAA Division I, accessed Oct.30, 2014, [fs.ncaa.org/Docs/AMA/compliance\\_forms/DI/DI%20Summary%20of%20NCAA%20Regulations.pdf](http://fs.ncaa.org/Docs/AMA/compliance_forms/DI/DI%20Summary%20of%20NCAA%20Regulations.pdf).

<sup>3</sup>Tom Farrey, "Players, Game Makers Settle For \$40M," ESPN, May 31, 2014, accessed Oct. 7, 2014, [espn.go.com/espn/otl/story/\\_/id/11010455/college-athletes-reach-40-million-settlement-ea-sports-ncaa-licensing-arm](http://espn.go.com/espn/otl/story/_/id/11010455/college-athletes-reach-40-million-settlement-ea-sports-ncaa-licensing-arm).

<sup>4</sup>Patrick Hruby, "The O'Bannon Decision Changes Nothing," SportsonEarth.com, Aug. 11, 2014, accessed Oct. 7, 2014, [www.sportsonearth.com/article/89036154/historic-obannon-ncaa-lawsuit-decision-changes-everything-and-nothing](http://www.sportsonearth.com/article/89036154/historic-obannon-ncaa-lawsuit-decision-changes-everything-and-nothing).

<sup>5</sup>Tom Farrey, "Ed O'Bannon: Ruling Is Tip Of Iceberg," ESPN, Aug. 10, 2014, accessed Oct. 7, 2014, [espn.go.com/espn/otl/story/\\_/id/11332816/ed-obannon-says-antitrust-ruling-only-beginning-change](http://espn.go.com/espn/otl/story/_/id/11332816/ed-obannon-says-antitrust-ruling-only-beginning-change).

<sup>6</sup>Tom Farrey and Lester Munson, "NU Players Cast Historic vote," ESPN, April 25, 2014, accessed Oct. 7, 2014, [espn.go.com/chicago/college-football/story/\\_/id/10833981/northwestern-football-players-poised-historic-vote-whether-unionize](http://espn.go.com/chicago/college-football/story/_/id/10833981/northwestern-football-players-poised-historic-vote-whether-unionize).

<sup>7</sup>Patrick Hruby, "The O'Bannon Decision Changes Nothing."

# Campaign Finance, Corruption and *McCutcheon v. Federal Election Commission*

By Andrew Keuler  
CAS '17

“The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Congress may regulate campaign contributions to protect against corruption or the appearance of corruption.”<sup>1</sup> With these words, Chief Justice John Roberts began the Supreme Court’s April 2 decision in the recent case *McCutcheon v. Federal Election Commission*.<sup>2</sup> In *McCutcheon*, Shaun McCutcheon, an Alabama businessman, and the Republican National Committee brought suit against the Federal Election Commission. The plaintiffs claimed that aggregate limits on campaign donations infringe upon First Amendment rights, and, more importantly for their argument, do not further the government’s interest in reducing corruption.<sup>3</sup>

The Court, splitting 5-4 on its usual ideological lines, broke with 40 years of precedence in declaring these combined limits on individual campaign spending unconstitutional. While individuals will still be limited to \$2,600 of donations to an individual candidate per election cycle, previous FEC rules that capped total donations to any number of candidates at \$48,600 and to political party committees at \$74,600 no longer apply.<sup>4</sup> In throwing out these aggregate limits on political contributions, the Court overturned its 1976 decision in *Buckley v. Valeo*, which upheld the constitutionality of both overall and candidate-specific limits on individual contributions.<sup>5</sup>

The ultimate consequence of striking down these limits will be an even greater concentration of political donations. As it stands, the landscape of campaign finance is already heavily concentrated. In 2010, less than 0.1 percent of Americans contributed more than 60 percent of

total individual campaign donations.<sup>6</sup> Also in 2010, the Court’s decision in *Citizens United v. Federal Election Commission* declared limits on campaign spending by corporations and unions unconstitutional, somehow citing First Amendment rights for these non-person entities.<sup>7</sup> This decision opened up the election process to increased influence by large amounts of money from special interest spending, specifically from Political Action Committees, and sparked an increased urgency in the debate surrounding campaign finance. The midterm election in November 2014 highlighted the importance of the campaign finance issue.

Although *McCutcheon* will further increase the influence of hard money on the political process and thus may make our society less equal and less democratic, moral concerns such as these are not and should not be considerations for the judiciary. As Chief Justice Roberts says, “[The Court] may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others.”<sup>8</sup> In other words, the role of the judiciary is to evaluate the legality or constitutionality of a law, not to determine whether the law fits some particular conception of morality or equality.

In this light, the Court’s focus on corruption makes sense. Previously, the Court has found that political donations are protected by the First Amendment but must be balanced against the government’s interest in eliminating corruption.<sup>9</sup> As Roberts notes in his opening sentences, the key question becomes, as is often the case, a weighing of individual rights versus government interests. In other words, how far can the government go in attempting to reduce corruption before it ends up infringing upon First Amendment rights? On a related note,

what exactly constitutes corruption? Is it simply *quid pro quo* bribery, or is it something more?

The logic underpinning Roberts’s decision is that corruption is primarily a specific exchange of money for political favors or influence. Justice Stephen Breyer, who wrote the dissenting opinion, chose to look at corruption in a different way. “The anticorruption interest that drives Congress to regulate campaign contributions is far broader. It is an interest in maintaining the integrity of our public governmental institutions,” he writes.<sup>10</sup> In support of that view, some have suggested that the writings of the Founding Fathers indicated that they viewed corruption as any inordinate influence on the political process by wealth or other means, rather than the *quid pro quo* corruption Roberts describes.<sup>11</sup> For now, however, the Court has decided to view corruption in the narrow way espoused by Chief Justice Roberts, meaning that aggregate limits on campaign donations do not serve a rational purpose in reducing corruption. That particular conception of corruption ultimately was the deciding factor in *McCutcheon*. Whether that was the right call, however, remains up for debate.

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## Sources

<sup>1</sup> *McCutcheon v. Federal Election Commission*, 572 U.S. \_\_\_ (2014).

<sup>2</sup> Adam Liptak, “Supreme Court Strikes Down Overall Political Donation Cap,” *New York Times*, 2 Apr. 2014, accessed 10 Oct. 2014, [www.nytimes.com/2014/04/03/us/politics/supreme-court-ruling-on-campaign-contributions.html](http://www.nytimes.com/2014/04/03/us/politics/supreme-court-ruling-on-campaign-contributions.html).

<sup>3</sup> *McCutcheon v. Federal Election Commission*, 572 U.S. \_\_\_ (2014).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>6</sup> “Money in Politics: Who Gives,” *Americans for Campaign Reform*, accessed 10 Oct. 2014, [www.acreform.org/wp-content/uploads/2010/12/Fact-Sheet-Who-Gives.pdf](http://www.acreform.org/wp-content/uploads/2010/12/Fact-Sheet-Who-Gives.pdf).

<sup>7</sup> *Citizens United v. FEC*, 558 U.S. \_\_\_ (2010).

<sup>8</sup> *McCutcheon v. Federal Election Commission*, 572 U.S. \_\_\_ (2014).

<sup>9</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>10</sup> *McCutcheon v. Federal Election Commission*, 572 U.S. \_\_\_ (2014).

<sup>11</sup> Lawrence Lessig, “Originalists Making It Up Again: *McCutcheon* and Corruption,” *Moyers & Company*, 3 Apr. 2014, accessed 10 Oct. 2014, [billmoyers.com/2014/04/03/originalists-making-it-up-again-mccutcheon-and-corruption](http://billmoyers.com/2014/04/03/originalists-making-it-up-again-mccutcheon-and-corruption).

# LICRA v. Yahoo! Inc. and *Internet Jurisdiction*

By Manasa Chinni  
CAS '17

Internet jurisdiction arose as a real issue for concern during the 2000 *LICRA v. Yahoo!, Inc.* case. The premise for the case dealt with Yahoo!, Inc.'s ("Yahoo") auction website hosting the sale of Nazi memorabilia, which is illegal in France. The French courts, called to attention by LICRA, also known as Ligue Internationale Contre le Racisme et l'Antisémitisme, or the International League against Racism and Anti-Semitism, swiftly and justly issued a case against Yahoo. There is no doubt that Yahoo's

separate websites for France and the United States that abide by each country's respective laws, tailoring each website's content for the specified users.<sup>4</sup> The French court, therefore, decided that Yahoo did in fact violate French law.

Fortunately or not, a technical point, the use of targeted advertisements, saved the court from making a real decision regarding which country has complete jurisdiction over Yahoo. Instead, in a sense, Yahoo was split in half. No international standards governing content regulation over the Internet, and, by proxy, who has the jurisdiction to regulate content over the

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“There is no doubt that Yahoo’s auction website was engaging in illegal activities according to French law.”

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auction website was engaging in illegal activities according to French law. However, at the same time, restricting the auction of certain items would be restricting one's First Amendment rights, which violates the United States Constitution. The problem, not specifically about the content regulation itself, was in determining who had the authority to regulate Yahoo's content. Did France have such authority, or did the authority belong solely to the United States, since Yahoo is an American company?<sup>1</sup> *LICRA v. Yahoo!, Inc.* led to a direct opening for this jurisdictional question.

There were two foreseeable outcomes for the case: 1) Yahoo is required to follow French law, or 2) Yahoo follows U.S. law. Understandably, Yahoo did not want option one to be enforced, as it would set a precedent for other countries to dictate what Yahoo can and cannot do.<sup>2</sup> Yahoo was hoping for the second outcome, but what the case resulted in was a third, and completely unprecedented, outcome. LICRA was able to prove in French court that Yahoo was able to distinguish French citizens from U.S. citizens. This was established by the fact that Yahoo in France targeted French citizens with only French advertisements, which alludes to the point that Yahoo can, and does, filter content for its users on its websites.<sup>3</sup> Hence, Yahoo should be able to maintain

Internet, were set. While establishing such guidelines is undeniably difficult, the inevitability that cases similar to the LICRA-Yahoo dispute will continue to challenge the international legal system is certain. This mandates that the international community undertake the effort to set some guidelines, if only so that the principles of international comity that may be fundamentally endangered due to the uncertainties of Internet jurisdiction may be preserved.<sup>5</sup> This is especially important as, in the past decade, an increase in the number of Internet and cyber-related concerns establishes the need for determined Internet jurisdiction, so that the issues can be further resolved.

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## Sources

<sup>1</sup>Mark H. Greenberg, "A Return to Lilliput: The LICRA v. Yahoo! Case and the Regulation of Online Content in the World Market," *Berkeley Technology Law Journal* Vol. 18 (2003): 1192-1199, accessed September 28, 2014, [http://www.btlj.org/data/articles/18\\_04\\_05.pdf](http://www.btlj.org/data/articles/18_04_05.pdf).

<sup>2</sup>Jack Goldsmith and Tim Wu, "Who Controls the Internet? Illusions of a Borderless World," (New York: Oxford University Press, 2006), 2.  
<sup>3</sup>*Ibid.*, 8.

<sup>4</sup>Mark H. Greenberg, "A Return to Lilliput: The LICRA v. Yahoo! Case and the Regulation of Online Content in the World Market."

# The Consequence of Advertisement:

## Should a Consumer Trust Yelp's Reviews?

By Cassandra Finnegan  
CAS '17

In this day and age, it is easy for people to publicize their opinions on the Web for all to see. This is a handy resource for shoppers because it should, in theory, provide the most honest reviews of businesses. Yet, this is not always the case.

This year, Yelp, the popular customer based review site faced several class action lawsuits. Small business owners claimed that Yelp had extorted money from them through paid advertisements. They alleged that the company had done so by bribing the owners with incentives to opt in to buy expensive ads and punishing the businesses if they decided not to pay for the advertisements on Yelp. The case, *Levitt v. Yelp!*, began in early 2010 and was finally decided by the U.S. Court of Appeals for the Ninth Circuit this year.<sup>1</sup>

Consumers frequently utilize the website Yelp to see if a business is reputable based on reviews made by other consumers. It is vital that these reviews are accurate so that the customers can appropriately decide if the goods and services they intend to purchase will be worth the cost. It is also of high importance to the producers that their businesses are portrayed in a positive light because these reviews could potentially be the deciding factor for a customer choosing between one business and its competitor. Therefore, both consumers and most producers (the ones that do not believe in paying for fabricated positive reviews) hope that

the reviews on Yelp are honest and truthful.

The plaintiffs were four different businesses that all claimed maltreatment by the company in their reviews: Boris Levitt, who owns a furniture restoration business; Cats and Dogs Animal Hospital operating in Santa Barbara; John Mercurio, who owns Wheel Techniques; and dentist Dr. Tracy Chan.<sup>2</sup> All of these businesses alleged very similar cases of extortion and manipulation, which led to a negative impact on the economic health of their respective organizations. They claimed that Yelp deleted good reviews on their listings, showcased the negative reviews at the top of the list, and fabricated false reviews bashing their businesses.

The U.S. Appeals Court decided that the plaintiffs had insufficient evidence to prove the allegations made against Yelp. In her decision, Judge Marsha Berzon of the 9th U.S. Circuit Court of Appeals wrote that "As Yelp has the right to charge for legitimate advertising services, the alleged threat of economic harm ... is, at most, hard bargaining."<sup>3</sup>

The court ruled that Yelp did not directly economically harm the businesses involved with the lawsuit. Also, the businesses assessed on Yelp do not have any contractual right to having positive reviews posted. Yelp is therefore allowed to remove reviews if it wishes to do so. In addition, Yelp is entitled to charge the businesses to advertise on their website because it is a legitimate source of publicity. Furthermore, Yelp has the freedom to rearrange published reviews, so if it wants to place negative reviews

before positive rules, there is no law against this. Finally, the small business owners were not able to come up with sufficient proof that it was Yelp who had created the negative reviews, rather than just displeased customers or deceitful competitors.<sup>4</sup>

This class action lawsuit was drawn out and highly publicized, so it forced people to question the validity of the reviews on Yelp. The outcome of this case could potentially lead to a prevailing distrust of customer based review websites, because the court ruled that companies like Yelp are allowed to take liberties with reviews posted on their website. As a result, the general public should take this fact into account the next time they are searching the web trying to decide into which business they want to invest their time and money.

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### Sources

<sup>1</sup>Eric Goldman, "Court Says Yelp Doesn't Extort Businesses," *Forbes*, Sept. 3, 2014, accessed Oct. 3, 2014, [www.forbes.com/sites/ericgoldman/2014/09/03/court-says-yelp-doesnt-extort-businesses/](http://www.forbes.com/sites/ericgoldman/2014/09/03/court-says-yelp-doesnt-extort-businesses/).

<sup>2</sup>*Levitt v. YELP! INC.*, Court of Appeals, 9th Circuit 2014.

<sup>3</sup>Bob Egelko, "Yelp can manipulate ratings, court rules," *SFGate*, Sept. 4, 2014, accessed Oct. 3, 2014, [www.sfgate.com/news/article/Yelp-can-give-paying-clients-better-ratings-5731200.php](http://www.sfgate.com/news/article/Yelp-can-give-paying-clients-better-ratings-5731200.php).

<sup>4</sup>*Levitt v. YELP! INC.*, Court of Appeals, 9th Circuit 2014.

# Redefining False Advertising

By Natalie Goldberg  
CAS '17

Tests formerly used to detect false or misleading advertisement have been unclear. Hoping to form more concrete rules, Congress enacted the Lanham Act in 1946 to protect businesses from unfair competition through trademarks, patents, and copyright laws.<sup>1</sup> It helps prevent harms incurred through injuries of reputation on present and future sales.

On March 25, 2014, the Supreme Court ruled to grant power to companies that are not direct competitors to sue under the Lanham Act in the case *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. \_\_\_ (2014).<sup>2</sup>

In this case, the petitioner Lexmark produces and manufactures laser printers and accompanying new and refurbished ink cartridges. It formed a “Prebate” program where customers agree to return used ink cartridges to Lexmark upon opening the box in exchange for a discount on new ones. The cartridges in these programs contain a microchip that disables refurbishing of the ink unless Lexmark itself replaces the chip. The defendant, Static Control, makes and sells components for remanufacturing Lexmark cartridges. It created a microchip that functions just like Lexmark’s microchip, which made it possible for other companies to refurbish cartridges in the Prebate program.<sup>3</sup>

In response, Lexmark sued Static Control in 2002 for violating the Copyright Act of 1976 and the Digital Millennium Copyright Act, which protect businesses from duplications of intellectual and technological property rights, by producing the copied microchips.<sup>4</sup> Static Control countersued on the Lanham Act. First, it asserted that Lexmark misled users who bought Prebate cartridges by implying that opening the package binds consumers in a contract to return the used cartridges. Second, Lexmark had sent letters to many companies in the cartridge manufacturing industry explaining that refurbishing Prebate cartridges with Static Control’s microchips was illegal. This false statement harmed Static Control’s profits, with an estimated loss of 10,000 cartridges and 10,000 microchips.<sup>5</sup>

The District Court originally allowed Lexmark to dismiss Static Control’s claim about the Lanham Act because Static Control lacked “prudential standing.”<sup>6</sup>

This doctrine dictates that the court can dismiss a case if it believes that the plaintiff does not have the right to sue. The court claimed that because Static Control was not a direct competitor, the harm done to profits and reputation was too remote from Lexmark to gain compensation for. The Sixth Circuit overruled this, calling into question when a company can charge another for false advertising under the Lanham Act. In response, the Supreme Court replaced the prudential standing doctrine with that of a “zone of interest.”<sup>7</sup> This greatly expands the limitations that companies once had in being able to sue for harm created as a consequence of false advertising. This brings in the notion of proximate causality, which questions whether harm done has a close enough connection to the defendant’s actions. Since Static Control passes both of these tests, the Court unanimously ruled that it has the right to countersue Lexmark. Whether it wins the countersuit is another matter.<sup>8</sup>

This ruling redefined when companies have a case to sue for false advertising under the Lanham Act, which has implications that affect both businesses and consumers. For businesses, eliminating the prudential standing doctrine expands limits of those who can sue to a standard of zone of interests.<sup>9</sup> This may cause an increase in competitors bringing Lanham Act claims against each other over minor false or misleading statements.

For example, the implications of this case appeared later this year in *POM Wonderful v. Coca-Cola*. For consumers, this may help them make better purchases since companies may be more cautious in statements and claims on packaging and advertisements.<sup>10</sup>

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## Sources

<sup>1</sup>Lanham Act, 15 U.S.C., (1946).

<sup>2</sup>Daniel Fisher, “*Lexmark May Be Liable For Attacking Printer-Cartridge Rivals, Supreme Court Says*,” *Forbes*, Mar. 25, 2014.

<sup>3</sup>*Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. \_\_\_ (2014).

<sup>4</sup>Digital Millennium Copyright Act, 17 U.S.C. (1998).

<sup>5</sup>*Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. \_\_\_ (2014), 21.

<sup>6</sup>*Ibid.*, 4.

<sup>7</sup>*Ibid.*, 8.

<sup>8</sup>*Ibid.*, 13.

<sup>9</sup>*Ibid.*, 10.

<sup>10</sup>John Duffy, “*Opinion Analysis: The Triumph of the Lanham Act (and of Federal Private Rights of Action)*,” *SCOTUS Blog*, June 14, 2014.

# POM Wonderful v. Coca Cola:

## Healthy Competition or False Advertising?

By Catherine Harper  
CAS '18

**O**n April 21, 2014, the United States Supreme Court heard arguments in *POM Wonderful LLC v. Coca-Cola Co.* POM Wonderful wanted to bring suit against Coca-Cola under the Lanham Act, a law intended to protect competing companies by permitting one company to sue another for false advertising, thereby ensuring fair competition for

of products.<sup>4</sup> While POM Wonderful claims that Coca-Cola violated this section of the Lanham Act, Coca-Cola argued that their actions were protected under the FDCA, which regulates the production, labeling, and selling of food and beverages such as Coca-Cola's berry-pomegranate juice. The company argued that in keeping with the regulations of FDCA, POM Wonderful had no grounds to sue under the Lanham Act.

The case was finally argued in front of the Supreme Court in April, and was decided on June 12, 2014. Justice

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“POM Wonderful also manufactures and sells blueberry-pomegranate juice, and claims that Coca-Cola’s apparently inaccurate labeling puts them at an unfair advantage over POM Wonderful’s own product”

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companies and their products.<sup>1</sup> Though the Act is intended to help companies, it also helps consumers. However, Coca-Cola argued that only the Food and Drug Administration could punish them for violating the Federal Drug and Cosmetic Act (FDCA). A violation of the FDCA would bring a federal suit against Coca-Cola, while violating the Lanham Act involves a private suit between two companies.

The problem between POM Wonderful and Coca-Cola arose with Coca-Cola's pomegranate-blueberry juice, which is manufactured and marketed through Minute Maid, a company owned by Coca-Cola. While the juice is labeled as “pomegranate-blueberry juice,” the juice actually contains five different juices, and the pomegranate and blueberry juice makes up less than one percent.<sup>2</sup> POM Wonderful also manufactures and sells blueberry-pomegranate juice, and claims that Coca-Cola's apparently inaccurate labeling puts them at an unfair advantage over POM Wonderful's own product,<sup>3</sup> citing the Lanham Act in their argument against Coca-Cola and for the Supreme Court.

The Lanham Act is designed to enforce the prevention of mislabeling of and false advertising

Anthony Kennedy, writing for the Court, concluded that the Lanham Act and FDCA completed each other, rather than the FDCA precluding the Lanham Act, thus POM Wonderful is well within their right to take legal action against Coca-Cola as they see fit.<sup>5</sup>

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### Sources

<sup>1</sup>Sal Rodriguez, “FAQ,” Solitary Watch: News from a Nation in Lockdown, 2012, accessed March 17, 2014, <http://solitary-watch.com/facts/faq>.

<sup>2</sup>*Ibid.*

<sup>3</sup>“Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,” United States Senate: Committee on the Judiciary (2014), accessed March 17, 2014, <http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary022514p>.

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

<sup>6</sup>“Use of Solitary Confinement in U.S. Prisons Under Scrutiny,” Free Speech Radio News (2014), <http://fsrn.org/2014/03/use-of-solitary-confinement-in-u-s-prisons-under-scrutiny/>.

<sup>7</sup>Sal Rodriguez, “FAQ,” Solitary Watch: News from a Nation in Lockdown, 2012,

accessed March 17, 2014, <http://solitary-watch.com/facts/faq>.

<sup>8</sup>*Peoples v. Fischer* (Challenging policies governing use of solitary confinement in New York's prisons), New York Civil Liberties Union, accessed March 17, 2014, <http://www.nyclu.org/case/peoples-v-fischer-challenging-policies-governing-use-of-solitary-confinement-new-yorks-prisons>.

<sup>9</sup>*Ibid.*

<sup>10</sup>*Ibid.*

<sup>11</sup>Martha Neil, “New York promises sweeping reform of solitary confinement rules to settle prison suit,” *ABA Journal* (2014), accessed March 17, 2014, <http://www.abajournal.com/news/article/new-york-promises-sweeping-solitary-confinement-reform-in-settlement-of-acl/>.

<sup>12</sup>DeLands, “The Debate Over Solitary Confinement,” National Sheriffs' Association: Institute for Jail Operations, accessed March 17, 2014, <http://www.jailtraining.org/node/671>.

# Mental Health in Today's Prison System:

## Lack of Treatment Creates a Systemic Cycle of Recidivism

By Neha Narula

SMG '16

**M**ental illness in prisons is a largely overlooked issue in today's society. According to a report released by the Treatment Advocacy Center, there are 10 times more mentally ill Americans in jails and prisons than in state psychiatric hospitals. In 44 states, any given jail or prison contains more individuals with serious mental illness than the largest remaining state psychiatric hospital in that state.<sup>1</sup>

The report explains that most inmates suffering from varying degrees of mental illness leave prison in a more vulnerable condition than when they entered. A wide range of issues such as depression, bipolar disorder, schizophrenia, and substance abuse affects these prisoners. The rates of these disorders are two- to four-times higher in the incarcerated population than members of the general public, which suggests that prisons may create an environment that exacerbates people's predispositions to mental illness.<sup>2</sup> Many of these individuals report being raped or otherwise victimized, being disproportionately held in solitary confinement, and some frequently attempt suicide. In addition, some may resort to self-mutilation as a means of coping. This decline in health is largely due to a lack of proper treatment options for those who have been marginalized by society.<sup>1</sup>

Some structural causes that may explain the increasing prevalence of mental health issues among the incarcerated population are the past recession's budget cuts. Robert Glover, the Executive Director of the National Association of State Mental Health Program Directors, testified that the U.S. cut \$5 billion in mental health services from 2009 to 2012. In addition, the country eliminated around 4,500 public psychiatric hospital beds, which constituted nearly 10% of the total supply.<sup>3</sup>

Due to these budget cuts, many of those living with mental impairments received minimal to no care. Ron Manderscheid, the Executive Director of the National Association of County Behavioral Health and Developmental Disability Directors, stated that these

people are casualties of our disorganized system" that treats those with mental disabilities like second-class citizens" who are neglected and blocked from care.<sup>3</sup> This restricted treatment perpetuates a "cycle of recidivism," ultimately leaving prisoners devoid of healthy coping techniques and susceptible to future criminal behavior – leading to multiple arrests.<sup>4</sup>

Although commonly ignored, the mental health issue is perhaps of greater significance to the average taxpayer. The government spends nearly \$444 billion per year on the prison system. These tax dollars are put toward isolating those who are deemed a danger to our society away from everyone else. However, the inmates suffering from serious mental health conditions are not going to improve merely by continuing to be isolated. They do not receive treatment that could help them learn to manage their symptoms and give them the ability to make different decisions when they get out of jail. As a result, the seemingly inescapable cycle of recidivism continues.<sup>3</sup>

Today, with increasing budgetary constraints, the government often finds it easiest to eliminate programs that would help those prisoners who have mental health problems. Moreover, since most former prisoners have very little political influence, politicians are slow to take up their cause. However, the consequences of neglecting those with mental illness are becoming more prominent as the percentage of those incarcerated continues to rapidly grow. It is clear that this system will not be forever sustainable and significant changes must be made in order to move forward.

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### Sources

<sup>1</sup>"The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey (abridged)," Treatment Advocacy Center, 2014, accessed Oct. 19, 2014, [www.tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-barsabridged.pdf](http://www.tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-barsabridged.pdf).

<sup>2</sup>"Mental Illness, Human Rights, and US Prisons." Human Rights Watch. Sept. 22, 2009, accessed Oct. 4, 2014, [www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons](http://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons).

<sup>3</sup>Liz Szabo, "Cost of Not Caring: Nowhere to Go," USA Today, July 21, 2014, accessed Oct. 8, 2014, [www.usatoday.com/story/news/nation/2014/05/12/mental-health-system-crisis/7746535/](http://www.usatoday.com/story/news/nation/2014/05/12/mental-health-system-crisis/7746535/).

<sup>4</sup>Ed Merriman, "Treatment Key to Ending Prison Cycle," Baker City Herald, Aug. 18, 2010, accessed Oct. 8, 2014, [www.bakercityherald.com/Local-News/Treatment-key-to-ending-prison-cycle](http://www.bakercityherald.com/Local-News/Treatment-key-to-ending-prison-cycle).

# Are No-drop Policies No Fair?

By India Mazzarelli  
SMG '17

Society makes little attempt to masquerade its fascination with domestic violence, especially highly profiled ones.

The 1995 O.J. Simpson case prompted immense amounts of coverage for the 142 million Americans that tuned in to watch the proceedings.<sup>1</sup> Twenty years later, America, captivated, watched as Janay Rice publicly defended her husband, Ray Rice, following the release of controversial footage that explicitly displayed his abusive behavior.

The media's glamorization of these events often distracts the public. Consequently, Americans have become oblivious to the legal complications that suffocate both the accused and the victims.

Domestic violence, or intimate partner violence, is a pattern of abusive behavior in a relationship where one partner tries to gain and maintain power over another.<sup>2</sup> The abuse can extend from a need for physical, sexual, verbal, emotional, psychological, or economic control.<sup>3</sup> Although both genders fall victim to these crimes, four out of every five domestic assault victims are female.<sup>4</sup> Despite law enforcement's success in pursuing harsher punishments and no-drop policies for the perpetrators, the prudent level of involvement for the victim remains a gray area.

Mandatory arrest policies permit and often require a responding officer to make an arrest when called to a domestic violence disturbance.<sup>5</sup> No-

drop policies prohibit the victim from dropping charges once they have been brought against the defendant, even if the victim wishes to recant or refuses to testify. In states with strict no-drop policies, prosecutors will often subpoena the victims to testify against his or her will, and in instances will arrest victims who fail to comply with the subpoenas.<sup>6</sup>

Opponents of the no-drop policy allege that it removes power from the victims, which places the domestic abuse victim in an uncomfortably familiar situation.<sup>7</sup> Often times, because of the severe and permanent consequences, no-drop policies discourage victims from reporting his or her abuser; subsequently, domestic violence is one of the most underreported crimes. This creates an especially dangerous situation for victims who are financially dependent on their partners, as the greater the dependence, the more intense may be the abuse.<sup>8</sup> Since victims have a heightened awareness of the potential loss of control, their decision whether to involve police becomes even more complex.<sup>9</sup> While these laws were constituted to protect victims, they have become counter effective, often preventing domestic abuse from being reported to the authorities.

Supporters of the no-drop policy advocate that, despite a victim's hesitation or apprehension, it is in his or her best interest to pursue prosecution. Domestic attacks are often violent crimes, which indicate aggressive behavior and often an underlying psychological problem.<sup>10</sup> These characteristics pose a threat to more than the victim, as they also become a danger to a community's well being. There is a

high correlation between domestic violence and child abuse – children who are victim to or witness domestic assault are often hindered by these experiences and are more susceptible to committing crime, thus perpetuating a cycle.<sup>11</sup> There are more stakeholders in domestic assault cases than just the victims. Law enforcement and the legal justice system have a sworn duty to protect and serve all the inhabitants of each community in spite of some potential inconveniences.

Although this enforced cooperation negates society's increasingly libertarian views, it has become increasingly common to enforce no-drop policies in order to successfully prosecute assault cases. Despite the immense legal and social progress that has accompanied domestic assault cases, the necessity of no-drop policies remains controversial.

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## Sources

- <sup>1</sup>Crime Library, *The Muder Trial of O.J. Simpson*, accessed Oct. 23, 2014, [www.crimelibrary.com/notorious\\_murders/famous/simpson/index\\_1.html](http://www.crimelibrary.com/notorious_murders/famous/simpson/index_1.html).
- <sup>2</sup>"Domestic Violence," US Department of Justice, accessed Oct. 9, 2014, [www.justice.gov/ovw/domestic-violence](http://www.justice.gov/ovw/domestic-violence).
- <sup>3</sup>*Ibid.*
- <sup>4</sup>The US Department of Justice, *Intimate Partner Violence, 1993-2010*, by Shannan Catalano, ncj 239203, (2012) 16.
- <sup>5</sup>Mitchell Horwitz et al., "An Inside View of Police Officers' Experience with Domestic Violence," *Journal of Family Violence*, Volume:26 (Nov. 2011): Pages:617-626, accessed Oct. 17, 2014, [www.ncjrs.gov](http://www.ncjrs.gov).
- <sup>6</sup>Hanna Cheryl, "Domestic Violence," *Encyclopedia of Crime and Justice*, 2002, accessed Oct. 23, 2014, [www.encyclopedia.com/topic/Domestic\\_violence.aspx](http://www.encyclopedia.com/topic/Domestic_violence.aspx).
- <sup>7</sup>Mitchell Horwitz et al., "An Inside View of Police Officers' Experience with Domestic Violence."
- <sup>8</sup>Collin O'Rourke, *Financial Capability and Domestic Violence Prevention*, 10.1 (2010).
- <sup>9</sup>Mitchell Horwitz et al., "An Inside View of Police Officers' Experience with Domestic Violence," (619).
- <sup>10</sup>The Florida Psychological Association, *The Mind of the Batterer*, by Carolyn Stimmel (Tallahassee, FL) 10.
- <sup>11</sup>"Domestic Violence, Child Abuse, and Youth Violence: Strategies for Prevention and Early Intervention," last modified Nov. 2, 2012, [www.mincava.umn.edu/link/documents/fvfp2/fvfp2.shtml](http://www.mincava.umn.edu/link/documents/fvfp2/fvfp2.shtml).

# Religion in Politics:

## Justice Scalia's View on a Secularist System

By Victoria LeCates

CAS '17

The Supreme Court has long upheld the constitutional separation of church and state, but a recent attack on this secularist approach by a presiding Justice is cause for concern nonetheless. On Oct. 2, 2014, Justice Antonin Scalia gave a speech at Colorado Christian University criticizing the Court's stance on the First Amendment. According to Scalia, secularists are wrong to believe that "the separation of church and state means that the government cannot favor religion over non-religion."<sup>1</sup> Essentially, Scalia believes that the government cannot

through the Constitution."<sup>6</sup> In other words, Scalia believes that government endorsed displays of religion are not only constitutional, but an integral part of American culture.

Justice Scalia has demonstrated his beliefs in recent Supreme Court Rulings. In *Town of Greece v. Galloway* (2014), the Court held that prayer before public meetings was not in violation of the Establishment Clause.<sup>7</sup> Scalia, of course, was in the majority. This ruling is controversial because it could be used to defend prayer in schools and other public establishments, both of which Scalia supports. In another case, *Elmbrook School District v. Doe*, the Court decided against reviewing the decision of a lower court, which ruled that holding a high school graduation ceremony in

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“While Scalia believes the Constitution protects the religious freedoms of individuals, he disagrees with the notion that the government cannot favor religion in general.”

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favor a specific religion, but it can still endorse the idea of God in general.

The term “separation of church and state” was coined in 1802 by Thomas Jefferson, who wrote in a letter to the Danbury Baptist Association that there must be a “wall of separation between church and state.”<sup>2</sup> This idea is outlined in the Establishment Clause of the First Amendment, which asserts, “Congress shall make no law respecting an establishment of religion.”<sup>3</sup> In *Everson v. Board of Education* (1947), the Supreme Court unanimously voted to uphold this separation, and referenced Jefferson's letter, stating, “The wall must be kept high and impregnable.”<sup>4</sup> The *Everson* Court ruled that the state was allowed to provide subsidies to both Catholic school and public school students that used public transportation to get to school. The Court reasoned that the state was not directly supporting Catholic institutions and therefore was not in violation of the Establishment Clause.<sup>5</sup>

While Scalia believes the Constitution protects the religious freedoms of individuals, he disagrees with the notion that the government cannot favor religion in general. When talking about references to God in the pledge of allegiance and in public ceremonies, Scalia said that “it is in the best of American traditions, and don't let anybody tell you otherwise. I think we have to fight that tendency of the secularists to impose it on all of us

a church violates the Establishment Clause. In his dissent Scalia wrote that the Court should have reviewed the case, claiming, “the First Amendment explicitly favors religion.”<sup>8</sup>

Scalia is correct in his assertion that religion has long been a part of American culture. However, the strict separation of religious institutions and government is the basis of our democracy. Tolerance of all religions, or the absence of religion, is what makes our country a refuge for people all around the world. The kind of religious demonstrations Scalia endorses are undeniably associated with Christianity, and exclude those Americans who hold a different faith, or none at all.

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### Sources

<sup>1</sup>Shadee Ashtari, “Antonin Scalia Says Constitution Permits Court To Favor Religion Over Non-Religion,” *The Huffington Post*, Oct. 2, 2014, accessed Oct. 13, 2014, [www.huffingtonpost.com/2014/10/02/antonin-scalia-religion-government\\_n\\_5922944.html](http://www.huffingtonpost.com/2014/10/02/antonin-scalia-religion-government_n_5922944.html).

<sup>2</sup>“Separating Church and State,” PBS, accessed Oct. 13, 2014, [www.pbs.org/now/politics/churchandstate.html](http://www.pbs.org/now/politics/churchandstate.html).

<sup>3</sup>“Establishment Clause Overview,” First Amendment Center, Oct. 26, 2014, [www.firstamendmentcenter.org/establishment-clause](http://www.firstamendmentcenter.org/establishment-clause).

<sup>4</sup>“Separating Church and State,” PBS.

<sup>5</sup>“*Everson v. Board of Education*,” *The Oyez Project*, Oct. 13, 2014, [www.oyez.org/cases/1940-1949/1946/1946\\_52](http://www.oyez.org/cases/1940-1949/1946/1946_52).

<sup>6</sup>Shadee Ashtari, “Antonin Scalia Says Constitution Permits Court To Favor Religion Over Non-Religion”.

<sup>7</sup>“*Town of Greece v. Galloway*,” *The Oyez Project*, Oct. 13, 2014, [www.oyez.org/cases/2010-2019/2013/2013\\_12\\_696](http://www.oyez.org/cases/2010-2019/2013/2013_12_696).

<sup>8</sup>“*Elmbrook School Dist. v. Doe*,” *Legal Information Institute*, accessed Oct. 14, 2014, [www.law.cornell.edu/supremecourt/text/12-755](http://www.law.cornell.edu/supremecourt/text/12-755).

# A Legislative Debate:

## *Tort Reform in the United States*

By Aleksandra Boots  
CAS '17

**T**ort reform has been a heated subject in the U.S. legal system for many years now. The controversy surrounding the reforms is due to its placement of caps over damages an individual can be awarded through a jury trial. In civil lawsuits, plaintiffs are allowed to receive economic damages and non-economic damages.<sup>1</sup> “Economic damages” include the reimbursement for lost wages and the cost of medical bills, while “non-economic damages” include compensation for pain and suffering, injuries, and loss of life.<sup>2</sup>

Since most of the tort reform debate revolves around medical malpractice torts, many of its proponents contend that it will lead to lower health care costs.<sup>3</sup> Economic and non-economic damages are exceptionally high in medical malpractice cases. These high damage awards increase medical insurance for doctors, which in turn cause doctors to charge more for their services.<sup>4</sup> The burden is then passed onto patients, who have to cover these expenses when they receive care and treatment.<sup>5</sup> Capping the amount of damages a person may be awarded would allow doctors to spend less money on medical insurance policies. As a result, people would pay less when obtaining medical assistance and this would decrease the overall cost of health care in America. Additionally, supporters of tort reform also claim that the threat of being sued and the potential for high damages influences doctors’ decisions.<sup>6</sup> Doctors rely on “defensive medicine,” performing procedures that are not necessary.

According to a 2005 study, 93 percent of physicians responding to a survey reported practicing some form of defensive medicine.<sup>7</sup> The threat of legal action is causing doctors to accept fewer cases to protect themselves from medical malpractice.

One of the main arguments against tort reform is that it violates the constitutional right of a jury to determine the amount of damages, as tort reform places limits on the amount of damages juries may award. For U.S. jury trials, the jury has the sole power to hear and determine the outcome of cases, as well as the appropriate damage award. Placing caps on damage awards removes the power of the jury to freely decide that amount, as awarding an amount that exceeds the cap would violate the law.

Another argument against tort reform concerns its unfairness toward patients who experience pain, suffering, high medical costs, and a loss of wages after they have been wrongfully harmed or died.<sup>8</sup> Why should a patient receive unfair compensation for his or her suffering? Placing caps on damages means placing a fixed price on a person’s losses. Some injuries are more serious than others, while some are permanent. Therefore, it would be unfair to cap the amount of damages a plaintiff can receive.

Moreover, those who oppose tort reform claim that it actually does not save a lot of money. A new study led by Michael B. Rothberg of the Cleveland Clinic, published in the *Journal of the American Medical Association*, concluded that defensive medicine accounts for about 2.9% of health care spending.<sup>9</sup> Out of the estimated \$2.7 trillion U.S. healthcare

bill, defensive medicine accounts for \$78 billion.<sup>10</sup> The minimal impact of defensive medicine on health care costs supports the point that tort reform will not save a significant amount of money of the total health care costs.

Legislative achievements in tort reform have been passed at the state level in the past, but there has been recent debate led by the Republican Party to enact tort reform on a federal level.<sup>11</sup> The federal health care law today encourages states to come up with alternatives to tort reform. Some new ideas include specialized medical judges, neutral experts, and settlements within 180 days.<sup>12</sup> For more than half a century, tort reform has been a controversial issue because tort laws are different in every state, and may soon be addressed on a national stage.

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### Sources

- <sup>1</sup>Justinian Lane, “Damages,” What Is Tort Reform, January 7, 2005, accessed October 2, 2014, [www.whatistortreform.com/2005/01/damages.html](http://www.whatistortreform.com/2005/01/damages.html).  
<sup>2</sup>Ibid.
- <sup>3</sup>Mike Simpson, “Tort Reform Will Reduce Health Care Costs,” U.S. Congressman Mike Simpson, November 12, 2013, accessed October 2, 2014, [simpson.house.gov/news/documentsingle.aspx?DocumentID=361069](http://simpson.house.gov/news/documentsingle.aspx?DocumentID=361069).  
<sup>4</sup>Ibid.  
<sup>5</sup>Ibid.
- <sup>6</sup>Glenn V. Braunstein, “Medical Malpractice and Tort Reform: Yes, Deal With the Issues but Don’t Get Sidelined From More Costly, Needed Health Care Reforms,” *The Huffington Post*, August 13, 2012, accessed October 1, 2014, [www.huffingtonpost.com/glenn-d-braunstein-md/medical-malpractice\\_b\\_1761443.html](http://www.huffingtonpost.com/glenn-d-braunstein-md/medical-malpractice_b_1761443.html).  
<sup>7</sup>Ibid.
- <sup>8</sup>Paul Simon, “Reality of Tort Reform Is An Unfair System,” *Houston Chronicle*, March 6, 2011, accessed October 1, [www.chron.com/opinion/outlook/article/Reality-of-tort-reform-is-an-unfair-system-1688859.php](http://www.chron.com/opinion/outlook/article/Reality-of-tort-reform-is-an-unfair-system-1688859.php).
- <sup>9</sup>Michael Hiltzik, “New study shows that the savings from ‘tort reform’ are mythical,” *The Los Angeles Times*, September 20, 2014, accessed October 1, 2014, [www.latimes.com/business/hiltzik/la-fi-mh-another-study-shows-why-tort-reform--20140919-column.html](http://www.latimes.com/business/hiltzik/la-fi-mh-another-study-shows-why-tort-reform--20140919-column.html).  
<sup>10</sup>Ibid.
- <sup>11</sup>Justinian Lane, “What Is Tort Reform, Anyway? A Guide For The Average Citizen,” What Is Tort Reform, accessed October 2, 2014, [www.whatistortreform.com](http://www.whatistortreform.com).
- <sup>12</sup>Amy Lynn Sorrell, “Health Reform has Liability Insurers Looking at Tort Alternatives,” *American Medical News*, June 7, 2010, accessed October 1, 2014, [www.amednews.com/article/20100607/profession/306079957/2/](http://www.amednews.com/article/20100607/profession/306079957/2/).

# A Look at the Status of Women in U.S. Courts

By Evan Bailey  
CAS '15

As American society has become more sensitive to the issues facing women, it is important to consider the way women interact with the larger social institutions in that society. This is particularly true for the American legal system, since the foundation of any egalitarian society is a fair and impartial judiciary.

As of July 2014 nearly half of all law students in the U.S. are women.<sup>1</sup> This demonstrates considerable progress in accessibility of the legal system, considering

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HOWEVER, THERE IS STILL A **DEARTH** OF WOMEN IN THE HIGHER, MORE **AUTHORITATIVE** POSITIONS WITHIN THE **LEGAL SYSTEM.**

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that there were almost no women attending law school in the early part of the 20<sup>th</sup> century. There is still room for improvement, particularly in private practice. Examining the gender diversity of newly hired associates employed by private practice law firms reveals that women make up roughly 45% of the group.<sup>2</sup> However, as lawyers are promoted to partner, the number of women decreases, with only 20% of partners being female.<sup>3</sup> For equity partners, 17% are women; for managing partners at the top 200 law firms, only 4% are women.<sup>4</sup>

Fortunately, the presence of women improves in the judiciary. In the United States, the most gender-diverse level of the court system is the Supreme Court, which is one-third female.<sup>5</sup> The number of women in both state and federal levels of appeals courts also tends to fluctuate around this number. Unfortunately, the percentage of women in the judiciary decreases to 24% for federal court judges and 27% for state court judges.<sup>6</sup> However, there is one point where there are as many, if not more, women than men – clerkships, but only at the state and

local level.<sup>7</sup> At the federal level men once again greatly outnumber women.<sup>8</sup>

These numbers indicate that significant progress has been made in minimizing both the gender gap in law schools and in the employment of new attorneys. However, there is still a dearth of women in the higher, more authoritative positions within the legal system. While this is certainly an improvement given that until recently women were not found in law schools or at any level of the judicial system, such a distinct gender gap would suggest that there might be some larger bias still present in the legal community. The Pennsylvania Supreme Court Committee on Racial and Gender Bias recently conducted a study whose results support this claim.<sup>9</sup>

The committee's research found that women working in the law (including attorneys, judges, and court employees) were much more likely to be called by their first names, to be exposed to comments about their physical appearance, and to be excluded from professional conversations with other professionals of the law than their male colleagues.<sup>10</sup> This suggests that there is some sort of systematic lack of respect for women in the legal system, which could easily play a role in creating the sort of gender disparity that is seen in the *status quo*.

Further information is necessary to draw a more solid conclusion regarding any unspoken institutional problems. However, research that takes such a strong stance – like the study above – may incentivize people to perform further research, thereby increasing the likelihood of a possible change in the near future.

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## Sources

<sup>1</sup>American Bar Association, "A Current Glance at Women in the Law 2014," Commission on Women in the Profession, July 2014, accessed Oct. 5, 2014.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System," accessed Oct. 5, 2014, [www.pa-interbranchcommission.com/\\_pdfs/FinalReport.pdf](http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf).

<sup>10</sup>Ibid.

# The Four Stages of LSAT

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## A Student's Perspective

By Katherine Peluso  
CAS '15

**T**he Law School Admissions Test (LSAT) – also known as the one hurdle separating you from your dream school and the career you most desire.

No one will say studying for the LSAT is easy; it takes time, dedication and a lot of patience, and unless you are in the 1%,<sup>1</sup> all three of these elements will need to be exercised in order to master the test. During my own study experience I came up with something called “The Four Stages of LSAT,” all four of which I encountered from Day One of studying in May to September 27<sup>th</sup> — test day. The faster you recognize which stage you are in, the sooner you can move to the next and become one step closer to dominating the LSAT.

### Stage One: Confidence

The confidence stage begins after taking your first practice diagnostic test and receiving a base score. In this phase you will eagerly grade the test after finishing, hoping and praying by some miracle you beat the average student score of about 150.<sup>2</sup> If you scored better, your confidence levels will likely be sky-high. If you did not reach the average score, there is only one attitude to take, “the only direction from the bottom is up” and with that outlook you will become confident. During this stage, I took an approach that made the LSAT my enemy and my only job was to defeat and destroy it. This seemed to be a common approach among LSAT students during my experience, but will fade quickly once you reach the next phase. Do not despair, the appropriate level of confidence will return before test day arrives.

### Stage Two: Discouragement

This is by far the worst stage during your LSAT study period. By this time you have taken several practice diagnostic tests, you have been enrolled in an LSAT class and have consistently remained in the same score range. There is no worse feeling than a lack of improvement after so many hours of diligent study. I was stuck in this phase for too long, and it proved to be a major obstacle. What I have taken away

from this experience is to escape discouragement as fast as possible! The more you become dispirited, the further your study period will be set back; move to the next stage and everything will become more positive.

### Stage Three: Indifference

Some people like to say, “third time’s the charm.” I like to say, “Third stage is the charm.” Indifference is the best thing that can happen to an LSAT student at this point in the study process. You have already been on a rollercoaster ride from warrior mode to near depression and now you have finally recognized that the date will arrive, you will show up and you will take the exam — period. By no means should this phase be considered giving up. You are simply removing yourself from the stresses connected to the exam, for instance, the fact that it stands between you and your dream school. This is the stage where your inner monologue should be telling you, “Calm down! It’s just the LSAT. Life will go on.” As long as you keep a consistent study schedule including practice tests you will prevail.

### Stage Four: Test Day

This is it — the day you have been confident, discouraged and indifferent about for the past three to four months. There is no disregarding the nervous tension in the air, but if you can honestly say you put in the hours and stuck to a consistent study schedule, then all that can be done is your best. No one, including yourself, can ask for anything more than your best effort. Walk into the room, hold your head high, take your seat and focus. Though the Law School Admissions Test was designed to create a high-stress testing environment, the exam is beatable and you have been provided the tools to defeat it. Good luck and happy testing.

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#### Sources

<sup>1</sup>“LSAT—Scoring a Perfect 180.” Law School Numbers, accessed Oct. 14, 2014, [lawschoolnumbers.com/lsat-prep/lsat-perfect-score](http://lawschoolnumbers.com/lsat-prep/lsat-perfect-score).

<sup>2</sup>“LSAT Scores, Average LSAT Score,” The LSAT Center, accessed Oct. 14, 2014, [www.lsatscenter.com/lsat-page2.html](http://www.lsatscenter.com/lsat-page2.html).

# Do Two Wrongs Make a *Right*?

By Yvette Pollack

CGS '15

**W**eigh stations are rest stops that dot the sides of important highways such as Interstate 95, designed to relieve truck drivers from long hours of driving. When used correctly, these barren parking lots can save lives.

Unfortunately, a weigh station did not come soon enough for the Wal-Mart truck driver who rear-ended the limo of comedian Tracy Morgan. The resulting accident led to Morgan being critically injured, one death, and a six-car pileup. Morgan and the survivors

in an attempt to diminish punitive damage claims brought by the plaintiffs, Wal-Mart's attorneys have put forth the claim that members of Morgan's party were breaking the law. New Jersey law (NJS 39:3-76.2f) states that everyone riding in a car must wear a seatbelt. The law requires " ... all occupants to buckle up, regardless of their seating position in a vehicle."<sup>9</sup> As it turns out, nobody in Mr. Morgan's party was wearing a seatbelt at the time of the accident.<sup>10</sup>

Wal-Mart's lawyers requested a specification of how much damage Morgan's party had sustained for their punitive claims and a trial by jury was requested by Wal-Mart's lawyers.

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“Evidence has also emerged that Roper had not slept in 24 hours, and consequently fell asleep at the wheel.”

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have subsequently sued Wal-Mart for negligence.<sup>1</sup>

Kevin Roper, the Wal-Mart truck driver responsible for the crash, was reportedly going 20 miles over the posted speed limit at the time of the accident.<sup>2</sup> Evidence has also emerged that Roper had not slept in 24 hours, and that he had fallen asleep at the wheel.<sup>3</sup> Roper, a native of Georgia, was driving his truck to Delaware, a job that would have taken him over 700 miles from his home to complete.<sup>45</sup>

Roper has since pleaded not guilty to the charges of reckless driving, vehicular homicide, and assault.<sup>6</sup> Authorities later discovered in their investigations that the truck's 2011 Peterbilt Automatic Braking System had been compromised at the time of the accident.<sup>7</sup> There is no question that Roper was not in good condition to be driving.<sup>8</sup>

Wal-Mart asserts that it had no knowledge of anything having to do with the circumstances of this incident and thus had no wanton or willful conduct, on which the punitive claims can stand. Additionally,

Wal-Mart could successfully defend itself and not have to pay punitive damages; however the mere existence of the lawsuit would damage the image of the company from a public relations standpoint. Furthermore, as past lawsuits have shown, plaintiffs usually win cases against trucking companies and are awarded large sums of money for punitive damages. Wal-Mart would be better off settling with Morgan and his colleagues out of court than continue to publicly argue and further damage the reputation of the corporation.

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## Sources

<sup>1</sup>Lauren Smith-Park and Carolyn Sung, "Tracy Morgan sues Walmart over deadly crash; comic released from rehab center," CNN Entertainment, July 5, 2014, accessed Oct. 9, 2014, [www.cnn.com/2014/07/12/showbiz/tracy-morgan-crash-lawsuit/](http://www.cnn.com/2014/07/12/showbiz/tracy-morgan-crash-lawsuit/).

<sup>2</sup>Ibid.

<sup>3</sup>Justin Bachman, "Tracy Morgan Sues Wal-Mart over I-95 Crash," Bloomberg Businessweek, July 14, 2014, accessed Oct. 9, 2014, [www.businessweek.com/articles/2014-07-14/tracy-morgan-sues-wal-mart-over-i-95-crash](http://www.businessweek.com/articles/2014-07-14/tracy-morgan-sues-wal-mart-over-i-95-crash).

<sup>4</sup>Bachman, Wal-Mart Says Tracy Morgan Should Have Been Wearing a Seatbelt," [www.businessweek.com/articles/2014-09-30/wal-mart-says-tracy-morgan-should-have-been-wearing-a-seatbelt](http://www.businessweek.com/articles/2014-09-30/wal-mart-says-tracy-morgan-should-have-been-wearing-a-seatbelt).

<sup>5</sup>Justin Bachman, "Tracy Morgan Sues Wal-Mart over I-95 Crash," [www.businessweek.com/articles/2014-07-14/tracy-morgan-sues-wal-mart-over-i-95-crash](http://www.businessweek.com/articles/2014-07-14/tracy-morgan-sues-wal-mart-over-i-95-crash).

<sup>6</sup>Smith-Park and Sung, "Tracy Morgan sues Walmart," [www.cnn.com/2014/07/12/showbiz/tracy-morgan-crash-lawsuit/](http://www.cnn.com/2014/07/12/showbiz/tracy-morgan-crash-lawsuit/).

<sup>7</sup>"Seat/Belt Laws" The State of New Jersey Department of Law & Public Safety. [www.nj.gov/oag/hts/seatbelts.html](http://www.nj.gov/oag/hts/seatbelts.html).

<sup>8</sup>Ibid.

# Affluenza: A True Affliction?

By Patricia Broe  
CAS '17

At the time of the collision that claimed four lives and injured nine others, the driver Ethan Couch had a blood alcohol content of 0.24, three times above the legal limit.<sup>1</sup>

Couch had been at a party where he reportedly imbibed Everclear, vodka, and Miller Lite,<sup>2</sup> when he and his friends decided to pile into a pickup truck that belonged to his father's company.<sup>3</sup>

At the same time, Hollie Boyles and her daughter Shelby, Brian Jennings, and Breanna Mitchell were gathering in the road in response to Mitchell's car breaking down.<sup>4</sup> All four were killed when Couch came down the road at a speed of 70 mph in an area where the speed limit was only 40 mph.<sup>5</sup> One of the nine injured in the accident was Sergio Molina, who was ejected from the bed of the pickup.<sup>6</sup> Couch clearly changed the course of more than just his own life when he chose to get in his truck that night.

Couch was potentially facing a 20-year sentence for manslaughter<sup>6</sup> due to his involvement in the June 15 accident.<sup>7</sup> Instead, on Dec. 10, 2013, Judge Jean Hudson Boyd sentenced 16-year-old Ethan Couch to 10 years' probation.<sup>8</sup> Ethan will be spending his time in a treatment center in California that costs \$450,000 a year, paid for in full by his father.<sup>9</sup>

A separate settlement was negotiated in May between Couch and the family of Molina, who was severely injured while riding in the back of the truck during the crash.<sup>10</sup> Because Ethan was driving a truck that belonged to his father's company, the lawsuit was filed jointly against

the company. Couch agreed to pay \$1 million to the Molina family and provide incremental support for Sergio's care through a liability insurance provider.<sup>11</sup>

The fact that Couch was able to avoid jail time and seemingly use money to solve his problems was met with outrage. Patricia J. Williams, a professor at Columbia University, stated that the judge's decision "makes a mockery of equality and equal standing before the law."<sup>12</sup> Judge Boyd's decision even spurred a petition on change.org to have her disbarred that has amassed 30,000 signatures.<sup>13</sup>

Equality is a major issue in this case because many feel Couch was awarded privileges because of his wealth. The media has fixated on the word "affluenza," which psychologist G. Dick Miller used to describe Couch's flawed sense of morality. Miller said during the trial that Couch was afforded "freedoms no young person should have" and was therefore unable to understand that his actions could have real, tragic consequences in the world.<sup>14</sup> Miller admitted that he regrets using the word in his testimony (the word was never mentioned by the defense lawyers)<sup>15</sup> because of the way his ideas are being construed.<sup>16</sup> He equates affluenza to "what we used to call spoiled brats, it's not a diagnosis."<sup>17</sup> He thinks Couch's real problem was that he was socially anxious and depressed and that "alcohol was his medicine."<sup>18</sup> Miller also controversially stated, "Rich kids who commit crimes should be treated differently than poor kids."<sup>18</sup>

One thing to consider, given Couch's light sentence, is his past record. He was previously fined \$423 in March (three months before the accident) and ordered to volunteer in his community for 12 hours as well

as complete an alcohol awareness class after he was cited for going 89 in a 40 mph zone with alcohol in his system.<sup>19</sup> Did this have an effect on his behavior?

It is clear that this case will have ramifications far beyond the Texas town as it brings to light the issue of affluent youths who may feel that they are above the law. The decision of the judge does not change the fact that four lives were ended abruptly, leaving the door open for crucial policy changes (such as a law that makes jail time mandatory if the accused has already committed the same crime) and improvements to the justice system that ensure that all people are treated equally before the law, without regard to their financial background.

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## Sources

<sup>1</sup>Dana Ford and Suzanne Presto, "Brain-injured teen receives \$2 million in 'affluenza' case settlement," Cable News Network, May 8, 2014, [www.cnn.com/2014/05/07/us/texas-affluenza-teen/](http://www.cnn.com/2014/05/07/us/texas-affluenza-teen/).

<sup>2</sup>Tristan Hallman, "Teen witnesses at fatal wreck scene stunned by Ethan Couch's sentence," The Dallas Morning News, Dec. 13, 2013, accessed Oct. 1, 2014, [crimeblog.dallasnews.com/2013/12/teen-witnesses-at-fatal-wreck-scene-stunned-by-ethan-couchs-sentence.html/](http://crimeblog.dallasnews.com/2013/12/teen-witnesses-at-fatal-wreck-scene-stunned-by-ethan-couchs-sentence.html/).

<sup>3</sup>Dana Ford and Suzanne Presto, "Brain-injured teen receives \$2 million in 'affluenza' case settlement."

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>"Outrage follows probation for teen who killed four in crash," WFAA.com, Dec. 12, 2013, [www.wfaa.com/story/news/crime/2014/08/19/14140396/](http://www.wfaa.com/story/news/crime/2014/08/19/14140396/).

<sup>8</sup>Tristan Hallman, "Teen witnesses at fatal wreck scene stunned by Ethan Couch's Sentence."

<sup>9</sup>James McCauley, "The Affluenza Society," The New York Times, Dec. 22, 2013, [www.nytimes.com/2013/12/23/opinion/the-affluenza-society.html?\\_r=0](http://www.nytimes.com/2013/12/23/opinion/the-affluenza-society.html?_r=0)

<sup>10</sup>Dana Ford and Suzanne Presto, "Brain-injured teen receives \$2 million in 'affluenza' case settlement."

<sup>11</sup>Ibid.

<sup>12</sup>Claire St. Amant, "Drunk driving teen could still end up in jail, says Tarrant County DA," CultureMap Dallas, Dec. 18, 2013, accessed Oct. 1, 2014, [www.usatoday.com/story/news/city-life/12-18-13-drunk-driving-teen-ethan-couch-jail-probation-tarrant-county-district-attorney/](http://www.usatoday.com/story/news/city-life/12-18-13-drunk-driving-teen-ethan-couch-jail-probation-tarrant-county-district-attorney/)

<sup>13</sup>"Take Judge Jean Boyd off the Bench," Change.org, [www.change.org/p/governor-rick-perry-take-judge-jean-boyd-off-the-bench](http://www.change.org/p/governor-rick-perry-take-judge-jean-boyd-off-the-bench).

<sup>14</sup>Gary Strauss, "No jail for 'affluenza' teen in fatal crash draws outrage," USA Today, Feb. 6, 2014, accessed Oct. 1, 2014, <http://www.usatoday.com/story/news/nation/2014/02/05/no-jail-for-teen/5242173/>

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Claire St. Amant, "Drunk driving teen could still end up in jail, says Tarrant County DA."

<sup>19</sup>Ibid.

# About the Boston University Pre-Law Review

The Boston University Pre-Law Review is a student-run law journal, open to all Boston University undergraduates. Founded in 1991, the Pre-Law Review has continued to foster awareness and provide commentary on major issues facing the law and the legal profession through its publication. The Pre-Law Review is published once per semester and features a wide range of topics, as our authors are given the freedom to write about anything as long as it pertains to the law.

All of our contributors and staff are undergraduates, many of whom will be applying to law school. However, the Pre-Law Review staff spans a variety of majors, schools, and class years, as no specific academic or experiential requirements are necessary to work on the Pre-Law Review. All that is expected of members is an interest in learning more about the law and a commitment to furthering the publication's objectives by contributing one article per semester or assisting in the other aspects of the publication.

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The Pre-Law Review accepts submissions year round. All essays must be between 500-2000 words. Applicants must also include their full name, college, and graduation year in their submission.

Essays submitted to the Pre-Law Review must be objective, and cover both sides of the issue at hand. The Pre-Law Review reserves the right to edit any submissions. All revisions are submitted to the author for approval before being authorized for final printing.

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