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Preface

The journey of creating a legal journal was a tedious one, which the American Constitutional Law class of Spring 2012 accepted the challenge very early in the semester. Studying constitutional law concepts for the first three months was intense and applying those ideas into the legal journal became a deeper challenge. I am very proud of those students who saw this project to the end. Their creation was not just a legal journal, but also the start of a journey for current and future pre-law students at Savannah State University. Each semester students in courses with the pre-law concentration will contribute to the legal journal. This is only the beginning. We have set the groundwork for future legal scholarship at Savannah State University. Without further adieu the class of American Constitutional Law proudly presents the first edition of the *Jurisprudence Legal Review*.

Legalizing Marijuana: Medicinal Purposes

Karrina Allen, Sophomore

Abstract

Scientific study has proven that marijuana is an effective treatment for many types of medical conditions including HIV, cancer, and multiple sclerosis. However, out of 50 states, only 16 states and D.C. have legalized the use of medical marijuana to treat these conditions. Similar to the restrictions and taxes on alcohol, restrictions and taxes should also be placed on the use and sale of medical marijuana, in order to weed out recreational marijuana users. The legalization of marijuana would benefit America by providing those with medical treatment, adding tax money, revenue, and regulations, and allowing society to focus on violent crimes. Research has determined the medical value of marijuana; therefore, the use of medical marijuana should not be abstained.

Legalizing Marijuana: Medicinal Purposes

A drug can be defined as a substance that has a physiological effect when it is introduced to the body. It is used for its narcotic or stimulant effects. A drug can also be defined as a pharmaceutical preparation, or medicines, which like many other drugs; marijuana fits both of these drug definitions. Marijuana can be used for recreational purposes, but it can be also be used for medical purposes in states, such as Alaska, Arizona, California, Colorado, D.C., Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington where they have already legalized the use of medical marijuana.

Defending the Right to Preserve Life

The Fifth and Fourteenth Amendments to the U.S. Constitution states, that "no person shall be deprived of life, liberty, or property, without due process of law" (U.S. Const. Amend.

V, XIV). Accordingly, U.S. citizens are guaranteed the right to life. Medical marijuana has been used in order to treat the pain caused by a number of medical conditions such as HIV and AIDS, Alzheimer's, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, Hepatitis C, migraine, muscle spasms, Myasthenia Gravis, seizures, and severe nausea. Marijuana contains Tetrahydrocannabinol (THC), which is the main active ingredient. THC is medically beneficial because it stimulates an appetite, improves nausea and vomiting, as well as minimizes eye pressure. Since marijuana is illegal, it contravenes the U.S. Constitution because it deprives citizens of life due to the fact that these citizens are unable to be treated for illness.

In the case *Gonzales v. Raich*, 545 U.S. 1 (1995), Angel Raich sought relief due to the federal ban on the use of medical marijuana. Raich argued that the ban deteriorated her fundamental right to preserve life because of the several medical conditions she suffers from. Like many other U.S. citizens, Raich further argued that marijuana kept her alive by easing her pain and stimulating her appetite. However, the Court ruled that the Commerce Clause gave Congress authority to prohibit the local cultivation and use of marijuana. The Court also found that "the activity in question substantially affect[s] interstate commerce, even though no such substantial effect [is] visible to the naked eye." Although Raich's medical marijuana was prescribed by a doctor, the Drug Enforcement Agency (DEA) seized the marijuana from his home.

The issue in *Raich* is that it constitutionally deprives a citizen of their right to preserve life. Medical care is already a major issue in the United States. If medical marijuana use were legal in each state, millions of citizens would be able to improve their conditions and diseases. As a result, more lives would be spared and the health of citizens would improve.

Tax and Regulation

Article 1, Section 2, Clause 3 of the U.S. Constitution states that, "representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers" (U.S. Const. art. 1, § 2). The states have the power to tax their residence based on the population of that state. Article 1, Section 8, Clause 1 states that, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States," that allows Congress to raise revenues in order to support the government (U.S. Const. art. 1, § 8).

Taxation on medical marijuana would accumulate higher amounts of revenue. Michael Cooper of the New York Times explained that since California raised the tax on marijuana, the state "collected $1.4 million in taxes from [medical marijuana]" (Cooper, 2012). Several states that have legalized medical marijuana have also benefited from the tax revenues. Just last year in 2011, Colorado collected $5 million in sales tax and medical marijuana license fees, while Oregon raised an estimate of $6.7 million (Cooper, 2012). Oregon's tax revenue is used to support other health programs as well.

While taxing medical marijuana is just a start, rules and regulations must be established, in order to provide a secure, safe, dependable, and liable process for the production and distribution of medical marijuana. Regulations similar to those of alcohol should be established. For instance, a person cannot purchase alcohol products unless they have a valid state identification card that proves they are over the age of twenty-one. Similar to the laws of the states that have already legalized medical marijuana, a person should not be able to obtain

medical marijuana unless they have the proper identification from a doctor. A person cannot distribute alcohol products unless they have the proper paper work; therefore, the same regulations should apply to medical marijuana vendors.

In the case of *Pincourt et al. v. Palmer*, 190 F.2d 390 (1954), petitioners Arthur K. Pincourt and Dorothy Pincourt sought review after being denied a permit that would enable them to distribute alcohol products. Under the Federal Alcohol Administration Act, the Court concluded that "the applicant was, by reason of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with federal law, and that petitioner's unsavory business associations, past violations, and admitted perjury amply supported respondent's denial of his application." It was determined by the Court that the petitioners failed to meet the regulations in order to obtain an alcohol permit; therefore, the Court denied the request.

Since the Food and Drug Administration (FDA) is in charge of regulating prescription drugs, physicians cannot prescribe medical marijuana to patients. They can, however legally recommend medical marijuana to those with serious medical conditions. *Conant v. Walters*, 309 F.3d 629 (2002) was a case in which physicians and civil rights groups sued the Director of the White House Office of National Drug Control Policy, the Drug Enforcement Administration Administrator, the Attorney General of the United States, and the Secretary of the Department of Health and Human Services. They sought relief based on the First Amendment right to freedom of speech. The doctors defended their right to recommend medical marijuana to patients. Although the federal government had the right to regulate the distribution and use of marijuana, the United States District Court held that "it could not interfere with First Amendment interests by precluding doctors and patients from discussing marijuana as a treatment for medical

conditions." A physician should only recommend medical marijuana; therefore, regulating access to medical marijuana in order to refrain from recreational use of the drug.

Society Advantages

The government raises revenue, in order to ensure the well being of society and to protect individual freedoms. The funds from taxes are used to effectuate the functions of government. These functions include construction of infrastructure, education, enforcement of public order, health care, military defense, pensions for the elderly, and public services. In the case of *Hemi Group vs. City of New York*, 130 S. Ct. 983 (2009), the City of New York sued several out-of-state cigarette vendors due to their failure to report sales purchased via the web. The State and City of New York acquired sales information, in order to collect taxes assessed on cigarettes sold within the state and city. The City of New York also alleged that Hemi Group's "failure to report cigarette sales to the state caused the city to lose tax revenue." Even though the Court reversed and remanded the case because the City of New York could not prove their loss of revenue, it is safe to say that if no person ever reported such sales purchases, the loss of revenue would indeed be severely noticeable.

Taxes placed on medical marijuana would generate higher revenue that would be used to establish safer communities and save taxpayers billions of dollars. According to the Marijuana Policy Project Foundation, "[e]ach year, the government spends $7.7 billion to arrest and lock up nonviolent marijuana users" (Marijuana Policy Project Foundation, 2008). By legalizing, taxing, and regulating medical marijuana, that tax money could then be used to improve education, health care programs, highways, and most importantly – the economy. Law enforcement would be enabled to focus on more violent crimes. According to Collins & Collins, "the United States has 2.3 million people behind bars, by far the largest prison population in the world" (Collins &

Collins, 2011). Since billions of taxpayer's money is used to house inmates charged with "petty" crimes, the prison and jail systems in the United States are overcrowded. The effects of marijuana do not cause one to act in a violent manner; therefore, the use of marijuana is not considered to be a violent crime. "We spend $68 billion per year on corrections, and one-third of those being corrected are serving time for nonviolent drug crimes. We spend about $150 billion on policing and courts, and 47.5% of all drug arrests are marijuana-related," explained Joe Klein of the New York Times (Klein, 2009).

Conclusion

In order to ensure the quality of life of American citizens, the use of medical marijuana should be legalized throughout the entire United States. However, the legalization of medical marijuana is a time consuming process, which requires intense thought in order to counterbalance rules and regulations. The capital accumulated from the taxation of medical marijuana would be used to benefit the American economy and society as a whole. Despite the recreational use of marijuana, the medicinal purposes have been scientifically proven to aid many medical conditions.

References

130 S. Ct. 983; 175 L. Ed. 2d 943; 2010 U.S. LEXIS 768; 78 U.S.L.W. 4130; 22 Fla. L. Weekly Fed. S 113. Retrieved from http://www.lexisnexis.com/hottopics/lnacademic.

190 F.2d 390; 1951 U.S. App. LEXIS 2433. Retrieved from http://www.lexisnexis.com/hottopics/lnacademic.

309 F.3d 629; 2002 U.S. App. LEXIS 22492; 2002 Cal. Daily Op. Service 10709; 2002 Daily Journal DAR 12411. Retrieved from http://www.lexisnexis.com/hottopics/lnacademic.

545 U.S. 1; 125 S. Ct. 2195; 162 L. Ed. 2d 1; 2005 U.S. LEXIS 4656; 73 U.S.L.W. 4407; 18 Fla. L. Weekly Fed. S 327. Retrieved from http://www.lexisnexis.com/hottopics/lnacademic.

Collins & Collins, P.C. (2011, May 27). *Crime down, jails and prisons are overflowing*. Retrieved from http://www.jdsupra.com/post/documentViewer.aspx?fid=7289e762-fc74-445b-90ec-c5aafc3e63b7.

Cooper, M. (2012, February 11). *Struggling cities turn to a crop for cash*. Retrieved from http://www.nytimes.com/2012/02/12/us/cities-turn-to-a-crop-for-cash-medical-marijuana.html?_r=2.

Denson, E. (1997). *The constitution and marijuana*. Retrieved from http://www.civilliberties.org/spr97const.html.

Dietrich, M. (2003, November 13). *Medical marijuana used to treat ms patients*. Retrieved from http://badgerherald.com/news/2003/11/13/medical_marijuana_us.php.

Downing, N. (2012, February 17). *Medical marijuana and the constitution panel*. Retrieved from http://www.denverlawreview.org/marijuana-at-the-crossroads/2012/2/17/medical-marijuana-and-the-constitution-panel.html.

Drug. (n.d.). *Dictionary.com Unabridged*. Retrieved from http://dictionary.reference.com/browse/drug.

iCap.org. (2006, May). *Alcohol taxation*. Retrieved from http://www.icap.org/LinkClick.aspx?fileticket=Gf4%2BQD%2BX1hU%3D&tabid=75.

Klein, J. (2009, April 2). *Why legalizing marijuana makes sense*. Retrieved from http://www.time.com/time/magazine/article/0,9171,1889166,00.html.

Miron, J. (2005, June). *Milton Friedman, 500 economists call for marijuana regulation debate; new report projects $10-14 billion annual savings and revenues*. Retrieved from http://www.prohibitioncosts.org/.

MPP.org. (2008, December). *Our marijuana laws aren't working. It's time for a new approach.* Retrieved from http://www.mpp.org/assets/pdfs/download-materials/TAX-AND-REGULATE.PDF.

ProCon.org. (2012, February 22). 16 Legal Medical Marijuana States and DC. *MedicalMarijuana.ProCon.org*. Retrieved from http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881.

Sorrel, A. (2007, April 9). *Court rejects constitutional right to marijuana*. Retrieved from http://www.ama-assn.org/amednews/2007/04/09/gvsc0409.htm.

U.S. Code. (2004, September 20). *The United States Constitution.* Retrieved from http://www.house.gov/house/constitution/constitution.html.

U.S. Code. (2004, September 20). *Amendments to the constitution.* Retrieved from http://www.house.gov/house/constitution/amend.html.

No Child Left Behind: Past and Present

Danniela Taylor, Senior

Abstract

The No Child Left Behind Act (NCLB) concerns the education of children in all public schools, as it was proposed by the Bush administration in 2001 passing through the U.S. Congress with limited bipartisan support. NCLB is an Act used to support a based form of education by setting extremely high standards and creating a measurable set of goals developed by government-based standardized tests. In order for public schools to obtain federal funding, they must adhere to the NCLB standards. By expanding the federal government's role into the states through public education services, testing has increased, report cards are sent home, and teacher qualifications are enhanced accordingly.

No Child Left Behind: Past and Present

President George W. Bush signed the No Child Left Behind Act of 2001 into law on January 8, 2002, which was a reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. The ESEA was reauthorized in 1994, which was part of the federal government's aid program for disadvantaged students. The ESEA came about the same time as a growing concern within the state of education, so the NCLB created a multitude of requirements for every public school in America. It became the federal role within education with its goal to improve the education of disadvantaged students of all races. In October of 2008 the U.S. Department of Education created new regulations requiring schools to provide an even calculation for all high school graduation rates, which enhanced the parent's ability to decide on which school and tutoring abilities their child would have. The NCLB has many advocates that claim the law can only hold schools accountable, which will then empower parents and eventually close the achievement gap in the American school system.

Ethnic and Racial Disparities

One of the main issues within the public school system has always been equal education for all students regardless of their races. Dating back in history *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) is a major U.S. Supreme Court case that assisted in breaking the gap in racial discrimination within the public systems. *Brown* happened to be a consolidation of many cases stemming from South Carolina, Delaware, and Kansas. Several black children were seeking admission into public schools that would require or permit segregation based on the race of their students. The plaintiffs claimed that segregation was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. In all of the cases except one, the judges in the federal district court actually cited *Plessy v. Ferguson*, 163 U.S. 537 (1896) when denying the separate but equal doctrine. In an appeal to the U.S. Supreme Court, all of the plaintiffs felt that segregated schools could never be made equal, and if they were made equal, they would actually be deprived of their equal protection of the laws. For the actual ruling the segregation of children in public schools, based mainly on the fact of race, was actually denying black children their rights to equal protection that is actually guaranteed by the Fourteenth Amendment. Education within public schools was then seen as a right, which has to be made available to every individual on all terms.

The separation of black children from other children was mainly due to their race, which could have caused them to feel inferior within their communities and caused an impact that could not be reversed. Ultimately the impact of segregation was greater when it was under a sanction of law. In today's public school systems, feeling inferior to other students can cause children to not be motivated when it comes to learning and they will actually fall further behind than when they started in the first place. Segregation with the sanction of law tends to lower the educational

and mental development of black children and then deprives them of many benefits they would receive if they were in integrated school systems. One of the main purposes of NCLB is to make sure that a case like *Brown v. Board of Education* does not come up again. The Act is in place to ensure that all children receive the same education. The issue with the NCLB is that not all children live in big cities where it is guaranteed that the law is followed. Numerous public schools in states like Mississippi, Louisiana, and Tennessee have actually gone through the process of being controlled by the government because they could not meet the requirements of the NCLB. Change needs to occur within the Act to make sure that this particular issue is resolved, as a majority of those public schools are and were attended by black students. If they are not as advanced as the Caucasian students, then it becomes a mute point in them transferring to another school to receive a better education.

Funding in Public and Private Schools

In the case of *Allen v. Wright*, 468 U.S. 737 (1984) the Internal Revenue Service (IRS) actually went to the limits of denying tax-exempted status to any racially, discriminatory private schools, and they decided to establish guidelines on whether certain schools were racially nondiscriminatory. Wright who was the plaintiff along with other parents who had children attending public schools which was going through desegregation decided to start a lawsuit against the IRS and multiple private schools within the federal district court.

The major issue with the NCLB is that funding for schools has actually dropped significantly within public schools. If the schools do not meet the requirements that have been set by the government it causes them to lose funding that they need to continue their particular curriculum. Most of the time the schools that lose the funding happen to be predominately black schools and that causes multiple issues for the school and students. Then the student leaves the

public schools to go to private schools, but most of the time the parents do not actually have the funds to send their child to private school, so they have to suffer in public school. The issue with this scenario is that, even today, most private schools are predominately white requiring the funding to come from the parents. These same parents also received a tax exemption, which allows them to get better materials for their students; whereas, public schools do not have this ability.

The ruling in the *Allen* case claims that the plaintiff must have personal injury that can be traced back to the defendant being unlawful in some way. Wright claimed that she was harmed directly by the fact that government financial aid to discriminatory private schools was actually failing because it was not judicially correct. The problem with this issue is that, although Wright claimed the injury was that her children were not given the ability to receive an education in a racially integrated school, it was not necessarily true because it was not traceable to the Government's conduct. Therefore, it does not make it unlawful. The other issue was that there were not enough racially discriminatory private schools receiving tax exemptions to actually cause a difference in public school integration.

In the end it was decided that the whole case was just speculation, because regardless of whether a particular school lost their tax exemption or not, there was no guarantee that it would actually have an impact on the racial barriers of public schools. The *Allen* case kept returning to the U.S. Constitution being judicially correct, when the constitution actually assigns the executive branch, and not the judicial branch. The U.S. Constitution actually gives the duty to take care of all laws and make sure they are executed not only at the federal level, but at the state level as well. The problem is that the process needs to be equal across the board, as every child is in school to receive an education regardless of whether they are in private or public school. If the

private schools are receiving tax exemptions, so should the public schools as a way to break the barrier that the schools now have between them.

The Effects on Higher Education

With all the issues that have actually come along with the NCLB, one of the main concerns is higher education. There is supposed to be change within education between elementary and high school grade levels, however, the dropout rate has actually increased across the country. The children that make it to college actually have issues because have been taught standardized tests, instead of learning outcomes that would be fundamental to them when they reach college; therefore, they actually end up struggling in college. A prime example is the Regent's Exam in the State of Georgia, as well as the 99 level courses a student must take to reach a higher level to obtain college credit. Another issue with education is that prestigious universities can no longer be as selective as they were in the past, because test scores have plummeted. This new selection process can cause an issue with applicants that actually worked hard to get into school and did not get selected to their university of choice. This scenario is compared to an applicant that did not work as hard in high school accepting the admission slot of an applicant that did.

A case where selection became an issue is *DeFunis v. Odegaard*, 416 U.S. 312 (1974). DeFunis was actually a white applicant to the University of Washington School of Law. He sued the Board of Regents of the university in state court because they denied him admission. He accused the university of being discriminatory against applicants of certain races and ethnicities, including whites, because they were known for admitting applicants with lower undergraduate grades and LSAT scores. These lower test scores and grades go back to when those same

students where in elementary and high school, and the majority of those students went through the public school system.

The court decided that all his claims may have been true, but because the controversy that he was discussing in his claim no longer existed when he developed his particular suit, the case was considered moot and the trial did not proceed. The case then ties into *Brown v. Board of Education,* Brown also claimed that he was racially discriminated against and that was in violation of the Equal Protection Clause of the Fourteenth Amendment.

Conclusion

Our federal and state governments, as well as our public and private education systems, have not worked with the NCLB Act, resulting in unresolved issues still ailing our students and their parents. The Act is meant to broaden the horizons of the youth and it does not seem to be performing at the level required for student success. Our world is continuously changing, but the textbooks our children happen to be studying from do not depict this change. The gap between black and white students has not changed at all, which could an individual to believe discrimination and segregation is still a major issue in the United States. The abilities children are bringing with them into the adult world are slim to none because all they are learning to do is take government-standardized tests. If these particular issues are not resolved in the upcoming years, then No Child Left Behind Act has actually become a failure.

References

Allen v. Wright, 468 U.S. 737 (1984)

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

Care to vote. (2008). Retrieved from http://www.carleton.edu/departments/educ/vote/pages/pros_and-cons.html.

DeFunis v. Odegaard, 416 U.S. 312 (1974)

Ed.gov. (2010, December 06). Retrieved from http://www2.ed.gov/policy/elsec/leg/esea02/index.html.

Plessy v. Ferguson, 163 U.S. 537 (1896)

White, D. (2011). About. Com Retrieved from http://usliberals.about.com/od/education/i/NCLBProsCons.htm.

Affordable and Private Birth Control

Deonney Williams, Junior

Abstract

Birth control is a huge part of the intense future 2012 presidential election. Stopping birth control and making it mandatory to purchase healthcare is in the eyes of certain people as unconstitutional. To solve this problem there are protest, as people are finally standing up for what they believe is supposed to stop this healthcare bill from happening. The answer to this question is not to force people to purchase health when some people do not have the income to purchase healthcare but, to work with their situation give them a form of free healthcare. This situation is changing the world and the economy as we know it. This bill is showing how the country we live in is no longer living by the laws and the amendments that were set for us to follow years ago. The "Obamacare" bill is supposed to better the United States; however, it is causing a big problem to the United States. People rights are being taking away and people are being told how they should live and it is not supposed to be this way.

Affordable and Private Birth Control

Birth control is supposed to be a contraceptive that a woman should have the opportunity to take on her own free will. No one should be able to tell a woman what she can take, and why she cannot take birth control. The Patient Protection and Affordable Care Act of 2010 (a.k.a. "Obamacare") is breaking the law because of the implied right of privacy we have in our constitutional amendments. The cost of the Obamacare is another issue because not everyone can afford health care and birth control. The mothers of young girls who get their menstruations early normally want their daughters to start on birth control shortly afterwards. Birth control should be up to the parents on when they child should take it or if the child takes it at all.

Right to Privacy

Trying to dictate to women that they cannot use birth control is unconstitutional, as the government is breaking the implied right to privacy that is implemented in several amendments of the U.S. Constitution, such as the First, Ninth, and Fourteenth amendments. In the landmark case *Griswold v. Connecticut,* 381 U.S. 479 (1965), the U.S. Supreme Court ruled that the U.S. Constitution protected an individual's right to privacy. The case involved a Connecticut law that prohibited the use of contraceptives, and with a vote of 7–2, the U.S. Supreme Court invalidated the law on the grounds that it violated the "right to marital privacy". "Griswold was an Executive Director of the Planned Parenthood League of Connecticut. Griswold and her colleague were convicted under a Connecticut law which criminalized the provision of counseling, and other medical treatment, to married persons for purposes of preventing conception". Appellants were charged with violating a statute preventing the distribution of advice to married couples regarding the prevention of conception. Appellants argued that the statute violated their 14th Amendment to the U.S Constitution. The right to privacy in marriage is not precisely protected in either the Bill of Rights or the U.S. Constitution.

The First Amendment has a penumbra where privacy is protected from governmental intrusion, which although not expressly included in the amendment, is necessary to make the express guarantees meaningful. The association of marriage is a privacy right older than the Bill of Rights, and the effort of the states to control marital activities in this case is unnecessarily broad, and therefore, impinges on protected constitutional freedoms. This case proves that birth control should be used by anyone who wishes to use it. When a couple gets married, it does not mean that they are immediately ready to produce a child. The right of a married couple to privacy is protected by the U.S. Constitution; therefore, telling a woman that she cannot take

birth control is out of the federal government jurisdiction. It is up to women if they want to bring a child into the world. Having a child is not easy and it is not cheap. The government cannot tell a couple they have to bring an infant in this world when they cannot afford their own healthcare.

Civil Rights Discrimination

In the case of *Eisenstadt v. Baird,* 405 U.S. 438 (1972), it was an important U.S. Supreme Court case that established the "right of unmarried people to possess contraception on the same basis as married couples and, by implication, the right of unmarried couples to engage in potentially no procreative sexual intercourse (though not the right of unmarried people to engage in any type of sexual intercourse)." William Baird was convicted under a Massachusetts state law for "exhibiting contraceptive articles and for giving a woman a package of Emko vaginal foam. The law permitted married persons to obtain contraceptives to prevent pregnancy, but forbid single persons from obtaining them."

The *Eisenstad* case demonstrates how the right of taking birth control has been part of discrimination. Justice Brennan reasoned that, since Massachusetts did not enforce its law against married couples, and could not under *Griswold v. Connecticut*, the law worked irrational discrimination by denying the right to possess contraceptives by unmarried couples. He found that Massachusetts' law was not designed to protect public health and lacked a rational basis. Brennan's ruling recognizing rights of single people to procreate or not on the same basis, as married couples was not immediately taken to its logical conclusion: all sex between consenting adults is constitutionally protected. Birth control should be something that anyone who wishes to take should have the right to take it. It should not matter if you are married, single, or divorced. The United States as a whole should step back and review some of these cases before this law is

passed. The right of privacy is the right of the individual, married or single, to be free from unwarranted government intrusion.

State Regulations

The states should have all right on what happens to the human beings that live it that state. In the case of *Carey v. Population Services International*, 431 U.S. 678 (1977), it demonstrates what a state cannot do, as the federal government and its states have their roles confused. The nature of the case *Carey* was a dispute over the state regulation of the sale of contraceptives. "New York had a law that imposed criminal penalties on the sale or distribution of any type of contraceptive to a minor under the age of 16, or the advertising or display of over-the-counter nonprescription contraceptives."

States should not have the right to tell a parent how to raise his/her daughter and tell them when they child should take birth control. It should be up to the parents as to what age should the child should be able to use birth control. If the parent wants their child to start using birth control before the age of 16, then the parents should be able to go buy it. A state may not ban the advertising of nonprescription over-the-counter contraceptives, prohibit sales to minors less than 16 years of age, or require that licensed pharmacist make sales only. The right to privacy for procreation extends to those areas of life necessary and proper to exercise those rights. "Restrictions on the distribution of contraceptives clearly burden the freedom of to make decisions with respect to contraception."

Conclusion

The Obamacare healthcare bill is unconstitutional and is out of its U.S. federal jurisdiction. The *Griswold v. Connecticut* case discusses the rights of privacy; however, the Obamacare healthcare system is showing that the federal government does not care about your

privacy. If a woman decides that she wants to take a contraceptive so she will not produce a child, that is her decision. A woman does not need the federal government making her decisions for her.

Discrimination plays a huge role in the Obamacare healthcare system. If an individual does not purchase healthcare insurance, a fine of $25,000 dollars will be assessed. If the poor could afford healthcare, they will purchase it; however, studies have shown that they cannot afford it and they will be fined. In *Eisenstadt,* she was discriminated against because she was married. The government believed that since she was married, she should not be taking contraception. It should be up to the woman if she wants to take birth control or not.

This case mainly focused on the fact that it is up to the state to issue out these jurisdictions. The U.S. government does not have the right to enforce this healthcare bill. The case *Carey v. Population Services International* proved that the state tried to take the role of the federal government. The Obamacare healthcare bill and *Carey v. Population Services International* jurisdictions should switch jurisdictions. The Obamacare healthcare bill is in the jurisdiction of the states, but the federal government is taking over, and *Carey v. Population Services International* should be discussed in the federal jurisdictions.

References

Carey v. Population Services International. 1. Supreme Court. 14 May 2009. Nymatlaw. Web. 9 Apr. 2012. http://www.nymatlaw.com/carey-population-services-431-us-678/.

Eisenstadt v. Baird. 2. Supreme Court. 1972. Case briefs. Web. 9 Apr. 2012. http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/fundamental-fights-under-due-process-and-equal-protection/eisenstadt-v- baird-2.

Griswold v. Connecticut. 2. Supreme Court. 1965. Case Brief. Web. 9 Apr. 2012. http://www.casebriefs.com/blog/law/family-law/family-law-keyed-to-weisberg/private-family-choices-constitutional-protection-for-the-family-and-its-members/griswold-v-connecticut-2/.

Sexual Harassment: Who's Really at Fault?

Courtney Savage, Senior

Abstract

According to the U.S. Equal Opportunity Commission, it is unlawful to harass a person (applicant or employee) because of that person's sex. In the work environment when sexual harassment occurs rules for resignation should be exempt. In the case of Pennsylvania State Police v. Sueders, Ms. Sueders left her job without following the proper protocol for resignation. Sueders claimed that the sexual harassment she endured was unbearable and she sought quitting as an option of relief. This case clearly violated the Employment Discrimination clause under the Civil Rights Act of 1964. An employee should not have to adhere to resignation protocols in a hostile and unsafe work environment.

Sexual Harassment: Who's Really at Fault?

Since the beginning of World War I, women have found jobs outside of their homes for equal opportunities. In the male dominant work environment, women are constantly reminded of their inferiority based on gender. The Civil Rights of 1964 prohibits an employer for discriminating against an employee based on race, color, and religion. However, today in the 21st century, women are still subjected to this issue of sexual harassment. Some scholars argue that sexual harassment in the work place is an act of men gaining power (Uggen and Blackstone, 2004). In the case of, *Pennsylvania State Police v. Suders,* 542 U.S. 129 (2004), the respondent was sued for not following and utilizing the proper protocol for resignation. In 2003, Ms. Suders informally resigned from the Pennsylvania State Police Department because she was sexually harassed. Ms. Suders alleged that when she tried to make a formal report to human resources she was unsuccessful because of the sexually charged comments made at the time. Ms. Suders sought the only way to end this violation of her civil rights was to informally resign. Later Ms.

Suders filed a suit for sexual harassment; however, as a countersuit, the Pennsylvania State Police Department filed on the grounds of improper resignation. As a result, Justice Ginsburg declared that the Pennsylvania State Police Department was not liable for Ms. Suders sexual harassment; furthermore, she stated that there are protocols put in place to address sexual harassment.

Constructive Discharge Doctrine

Title VII of the Civil Rights Act of 1964 prohibits discrimination by employers on the basis of race, color, religion, sex or national origin. Yet in the case of *Pennsylvania State Police v. Suders*, the police department was successful in their countersuit over the alleged victim. The U.S. Supreme Court ruled in favor of the police department because the alleged victim failed to follow the proper protocols set for sexual harassment by the Pennsylvania State Police Department. According to Justice Ginsburg, the employee was able to file a suit for sexual harassment; however, because Suders did not use the safeguards for sexual harassment, the Pennsylvania State Police Department was not liable for her sexual harassment suit.

In the case of *Whitten v. Fred's Inc*., 601 F.3d 231 (2010), the employee resigned improperly; however, Whitten was able to file suit based on the Constructive Discharge Doctrine. The Constructive Discharged Doctrine allows an employee's reasonable decision to resign because of endurable working conditions is assimilated to formal discharge. In plain terms, an employee has the right to resign without going through the regular resignation process, if subjected to a hostile environment. Furthermore, Whitten was then able to file for sexual harassment under the Constructive Discharge Doctrine. In the case *of Pennsylvania v. Suders*, Suders could have filed under the Constructive Discharge Doctrine and then attached the sexual harassment suit in lieu of her improper resignation.

Civil Rights Act of 1964

The Civil Right Act of 1964 prohibited discrimination against race, sex, and religion. Title VII of the act prohibited employers from discriminating based on sex, race, and religion. To ensure the act, The Equal Employment Opportunity Commission (EEOC) was created. The EEOC sets guidelines for which employers have to abide by. In doing so, the EEOC has the right to lawfully file suits against employers who discriminate against their employees.

In the case of *Suders v. Easton,* 325 F.3d 432 (2003)*,* Ms. Suders filed suit for sexual harassment against her former employer. In this case, the court ruled in favor with Suders for sexual harassment. As a result the Pennsylvania State Police Department filed suit against Ms. Suders. In *Pennsylvania State Police v. Suders*, Ms. Suders was counter sued for improper resignation from the police department, from which she was sexually harassed. According to the Civil Rights Act of 1964, Ms. Suders rights were clearly violated. Furthermore, the U.S. Supreme Court ruled in favor of the Pennsylvania State Police Department on the basis that the police department provided safeguards to ensure the safety of their employees; however, Ms. Suders refused to file protocols and the Pennsylvania Police Department was not liable for her suit of sexual harassment.

Yet under Title VII of the Civil Rights Act of 1964, it clearly states that it is illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. *Pennsylvania State Police v. Suders* was a case of retaliation against Suders for her sexual harassment claim. Not only did the Pennsylvania State Police Department excuse the behavior of their employees, but also violated a basic civil right of one of their employees, Ms. Suders.

"Turning a Blind Eye to Sexual Harassment"

The *Pennsylvania State Police* case worked around the EEOC's main objective, which was to protect employees from discrimination demonstrated by employers. According to jurist scholar, Ammal Bass, this case simply illustrated the judicial system turning their head on sexual harassment in certain occupations (Bass, 2006). Bass explores the background of *Suders v. Easton* and declares that Suders allegation of sexual harassment was legit and sustainable in court. Bass argument does not contend *Pennsylvania v. Suders* ruling as unlawful; however, she argues that it set a perimeter for employers to be biases against employees without violating their civil rights.

To further support Bass's claim one can consider Justice Ginsburg opinion in the case of *Pennsylvania State Police.* Justice Ginsburg stated that "Suders suit for sexual harassment would have held the Pennsylvania State Police Department liable; however, since the department set procedures in place and Suders fail to follow through with them, it was no longer a liability of the Pennsylvania State Police Department."

Bass's argument supports the general claim that sexual allegations should be investigated differently from other resignations reasons. If an employee works in a hostile environment in which the supervisor is the cause of harassment, the employee resignation process should be different.

Conclusion

The U.S. Constitution clearly states that, "all men are created equal." If all human kind is created equal then there would not be a need for the Equal Employment Opportunity Commission. Yet in the 21st century, the EEOC has to set regulations for employers to prevent harassment. In the case of *Pennsylvania State Police v. Suders,* an employee was countersued for

not following the proper protocols for resignation. Suders was subjected to a hostile environment in which she sought quitting as a method of relief. The U.S. Supreme Court ruled in favor of the Pennsylvania Police Department.

The Civil Rights Act of 1964, Title VII clearly states that an employee or applicant should not be discriminated against based on religion, race, and sex. The premises of *Suders* v. *Easton* were to seek justice for sexual harassment in her work environment. Also under Title VII it states that an employer is prohibited from retaliating against an employee because of a complaint. However, in *Pennsylvania State Police v. Suders,* it was a simple case of retaliating within their legal rights (Bass, 2006).

Suders' defense of Constructive Discharge Doctrine was vacated after the *Pennsylvania State Police* ruling. However, in the case of *Whitten v. Fred's, Inc.* 601 F.3d 231 (2010), the plaintiff was lawfully able to file under the Constructive Discharge Doctrine and use her sexual harassment evidence as reason for vacating her job without resignation. The Court ruled in favor of Whitten and she was allotted her pensions.

Sexual harassment is unlawful and immoral. When an employee is subjected to sexual harassment immediate action should take place. A sexually harassed employee should not have to follow the same resignation process, as someone who is resigning on free will. Also, employer's regulations for harassment should work more in favor of the employee and not the employer.

References

Bass, A. (2005). Pennsylvania State Police v. Suders: Turning a Blind Eye to the Reality of Sexual Harassment. *Harvard Journal of Law and Gender*, 28-37.

Blackstone, C. U. (2004). Sexual Harassment as a Gendered Expression of Power. *American Sociological Review*, 64-92.

Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)

Suders v. Easton, 325 F.3d 432 (2003)

Whitten v. Fred's Inc., 601 F.3d (2010)

SOPA, PIPA, & ACTA: How They Can Be Stopped?

Markevis Greene, Junior

Abstract

In January 2012 the U.S. government decided on a bill that would prevent Internet users from committing copyright infringement. The Stop Online Piracy Act (SOPA) was a bill that would allow the government to take control over all media sharing websites, such as YouTube and Facebook, as well as provide a maximum sentence of five years in jail. The bill caused many problems in which Internet users said it violated their First Amendment freedom of speech rights to the U.S. Constitution. Many Americans, especially White and African-Americans, approached this cause in protest by shutting down their websites, as well signing a petition to stop the SOPA Act from becoming law. Even websites, such as Wikipedia and Google, blocked their websites as a way to support and put on end to the Act. As a result, they succeeded and the bill was never passed.

Stop Online Piracy Act (SOPA)

The U.S. government is desperately trying to figure out certain ways in which they can diminish our rights. One of those of those ways is to censor Internet usage altogether through a bill called the Stop Online Piracy Act, or the SOPA Act. This bill allows the government to take control over any websites, such as YouTube, MegaVideo, and Facebook, for any disputes of illegal file and media sharing, as it is displayed as copyright infringement. A recent incident occurred in which a mother was sued for copyright infringement after she uploaded a video of her daughter with a copyrighted song that was not approved through the Federal Communications Commission (FCC), as well through the Recording Industry Association of America (RIAA).

Internet users who are caught violating this Act will be given a maximum jail sentence of up to five years. As the government planned to sign the bill into law, Internet users from countries such as England, France, Spain and the United States protested against the bill claiming that the bill violated their First Amendment rights to the U.S. Constitution. Millions of protesters and Internet companies planned a petition on January 18, 2012 by blocking or shutting down their websites within a 24-hour format, in order to fight against the cause. By having people and companies stand up for a case, it can be confirmed that people of all nationalities do have a right to freedom of speech.

The Right to Freedom of Speech

The First Amendment to the U.S. Constitution "protects the right to freedom of religion and freedom of expression from government interference" (Cornell, 2010). However, the government wants to break that amendment and take control of our freedom of speech by having absolute control over the Internet. In a recent article by Alec Liu, he claimed that by establishing a blackout of the Internet, many of the world's websites such as Google, Firefox, and Amazon could easily vanish (Liu, 2011). In the midst of the bill, one call provided a case that is quite similar and current to the issue at hand.

In *Sony Corp. of America v. Universal City Studios, Inc.,* 464 U.S. 417 (1984), also known as the "Betamax case", it was argued and decided by the U.S. Supreme Court that the making of individual copies of television shows on video home systems or VHS was in no doubt breaking copyright infringement rules; however, only fair use was given to the Sony Corporation for usage of the tapes. In addition, the Court also ruled that the manufacturers of VHS are also not liable for copyright infringement. In relation to the SOPA Act, this case shows how well copyright infringement is well represented within freedom of speech, though the videos were

only intended for fair use only. Moreover, though this case is aimed towards the current issue and is a U.S. Supreme Court case, nevertheless, the case is still considered to be unconstitutional. In other words, *Sony Corp. of America v. Universal City Studios, Inc.* cannot be used to determine the outcome of the SOPA Act.

Intellectual Property Protection

After recent discussions of the SOPA Act, there had been numerous rumors of a second bill that would comply with the Act. The Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act, or PIPA Act, was yet another bill proposed by the government in order to protect companies' intellectual property (IP) from hackers who were trying to steal important information such as music downloads, movies, and more in exchange for illegal copies, counterfeit goods, and illegal technology. So far, the bill has received support from members of the Senate, including Senator Patrick Leahy.

Internet companies, on the other hand, do not approve of this behavior, as the SOPA bill could cause them millions of dollars in their companies. To avoid further conflict with the PIPA Act, some social media websites, such as YouTube and Google, decided to update their privacy policies as of March 1, 2012. With YouTube, not only did they change their policy, but also updated the layout to avoid any confrontation with the bill. Google took action as well by only updating their privacy policy. As of January 20, 2012, both the SOPA and PIPA Act have been postponed until a compromise can be breached. Though the PIPA Act may be forgotten, it is important for people to know the bill can resurface within the Congress at any time. It is of utmost importance that while they are online, Internet users protect their identities and passwords at all times.

As users of the social media network, people tend to get careless as they upload or share videos online, download music, or send video clips and they are not fully aware that they are advancing copyright infringement as a deadly force. While most people are on the Internet, they do not have the intention that they could be committing an act of copyright law by uploading clips of songs or videos that are not fully admitted by the Motion Picture Association of America (MPAA) or the Recording Industry Association of America (RIAA) if whether they upload videos on website or not. With the proposal of the PIPA Act, the issue of protecting the identities and passwords everyday Internet users will prevent anyone from using any illegal footage whether audio or video to use for counterfeit goods. However, when the government stated the PIPA would not only put an end to copyright law, but also block the usage of social media networks, tensions rose as more controversy came into effect as two bills that could decide the future of the Internet came into public view.

In a recent article, it is stated that if the PIPA bill should pass, then it would allow the government to seize and remove unauthorized content from the Internet (Condon, 2012). In addition, the bill would also allow the Justice Department to attack foreign websites that may also be committing or facilitating intellectual property theft in any sort of way (Condon, 2012). A court that was quite similar to this case was *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (Oyez.org, 2012). During this case, all nine justices of the U.S. Supreme Court voted to strike down the provisions of the Communications Decency Act (CDA) as it violated the freedom of speech revisions of the First Amendment (Oyez.org, 2012). The Court then ruled that the rules of the CDA "are unconstitutional and unenforceable, except for cases of obscenity or child pornography, because they abridge the freedom of speech protected by the First Amendment and are substantially overbroad" (Oyez.org, 2012).

Copyright Infringement and Intellectual Property

After the SOPA and the PIPA certainly settled down, a new bill, or rather agreement, would certainly take its place and nearly dominate over SOPA and PIPA. The Anti-Counterfeiting Trade Agreement (ACTA) has almost the same details and information as the PIPA Act; however, the bill is set on a global scale. The purpose of the agreement is to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet (Kain, 2012).

The Internet companies, however, do not approve of this behavior like the SOPA and PIPA bills, as it would cost them millions of dollars in their companies. Millions of people protested on the steps of Washington D.C.'s U.S. Supreme Court building in support of eliminating the bill. Others in cities such as New York, Philadelphia, and Boston have also made their share of protesting as well. Whether it is one bill or three, people should protest against both copyright and intellectual property.

Both copyright infringement and intellectual property play a unique part in the ACTA, as it shares some of the same information as PIPA. While most people are on the Internet, they do not have the intention that they could be committing an act of copyright law infringement by uploading clips of songs or videos that are not fully admitted by the Motion Picture Association of America or the Recording Industry Association of America. A case that was quite similar to this case was *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (Oyez.org, 2012). During this case, all nine justices of the Supreme Court voted to strike down the provisions of the Communications Decency Act as it violated the freedom of speech revisions of the First Amendment (Oyez.org, 2012). The Court then ruled that the rules of the CDA "are unconstitutional and unenforceable, except for cases of obscenity or child pornography, because

they abridge the freedom of speech protected by the First Amendment and are substantially overbroad" (Oyez.org, 2012).

Conclusion

Freedom of speech is quite natural in today's society; however, when the opportunity of freedom of speech is taken away from us to prevent copyright crimes, it is when this issue becomes personal. Though the SOPA Act does allow the government to obtain the right to control other websites in response to copyright infringement, it does not have absolute control over the website itself. With that thought in mind, Internet users must be aware and knowledgeable of rights when expressing their freedom of speech. By Internet users controlling their interaction with the social media networks, as well as being aware of the copyright laws, it is assured that their opportunity to express themselves can go on without receiving a lawsuit.

Everyone uploads information on the Internet nowadays; however, when the information that is uploaded is not properly authorized, it is when the issue suddenly becomes a key factor. Internet users must understand the concepts of uploading and sharing files with others. Before uploading media to the Internet, it is imperative to make sure to obtain permission from the authoritative structure. In addition, anything that uploaded must be taken with the movie and record companies for further investigation before actual posting. In short, Internet users must keep a conscious and sharp eye out on how they wish to post and share information amongst their peers to avoid intellectual property theft.

Copyright infringement and intellectual property is quite common on the Internet nowadays. When the uploaded information is not properly authorized, this issue suddenly becomes a key factor. Internet users must understand the concepts of copyright infringement and intellectual property with its boundaries.

References

Alexander, A. (2012, January 20). *What is the PIPA bill?*. Retrieved from http://ansonalex.com/technology/what-is-pipa/.

Condon, S. (2012, January 18). *SOPA, PIPA: What you need to know*. Retrieved from http://www.cbsnews.com/8301-503544_162-57360665-503544/sopa-pipa-what-you-need-to-know/.

First amendment: An overview. (2010, August 19). Retrieved from http://www.law.cornell.edu/wex/First_amendment.

Kain, E. (2012, January 23). *If you thought SOPA was bad, just wait until you meet acta*. Retrieved from http://www.forbes.com/sites/erikkain/2012/01/23/if-you-thought-sopa-was-bad-just-wait-until-you-meet-acta/.

Liu, A. (2011, December 30). *Will Google, Amazon, and Facebook black out the net?*. Retrieved from http://www.foxnews.com/scitech/2011/12/30/will-google-amazon-and-facebook-blackout-net/.

Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) *The Oyez Project at IIT Chicago-Kent College of law*. (2012, April 09). Retrieved from http://www.oyez.org/cases/1990-1999/1996/1996_96_511.

Sony Corp v. Universal City Studios, Inc. 464 U.S. 417 (1984). *The Oyez Project at IIT Chicago-Kent College of law*. (2012, April 09). Retrieved from http://www.oyez.org/cases/1980-1989/1982/1982_81_1687.

Roe v. Wade: A Constitutional Review

Kiara Fabian, Junior

Abstract

A baby's heartbeat begins at only twenty-one days after conception, which is five weeks into pregnancy. A woman can become aware of pregnancy within two weeks with a urine test and seven to twelve days with a blood test. Society may draw their own opinion of pregnancy and the stages, which take place within it, but those who are pro-choice must accept it is real life in the process, regardless of the stages. The issue most people face is determining when the embryo becomes a "baby." Although the point of gestation becomes irrelevant, regardless if is considered, the end result is that a baby will be born. Eliminating abortion all together maybe a drastic social change for society to accept, however, research will show how a woman can keep her constitutional rights while being aware that abortion is the death of a child. Abortion is by all means not acceptable, unless in certain circumstances, which fall to be extreme.

A Review of the Case Roe v. Wade

The U.S. Constitution grants all the citizens of this nation the freedom of speech. When speaking about abortion the question of concern is whether an unborn child is granted constitutional rights and what makes one a citizen. Then we begin to question what makes one a member of a state or nation. The interpretation of the 14th Amendment has played a great role into the consideration of equal protection of the unborn. The word "*persons"* is the primary word, which is in question for interpretation. The amendment begins "*all persons born"* which has been interoperated in a way that such does not consider the unborn as a "person."

Abortion: A Question of Constitutionality

By the mid 1960's abortion was banned in all 50 states with the exception to save the life

of the mother and rape. By 1972 thirty-three states independently debated abortion, but it continued to remain illegal. In 1973 everything changed when the U.S. Supreme Court issued a ruling for *Roe v. Wade,* 410 U.S. 113 (1973). In the decision the justices stated that, "If the suggestion of personhood [for the unborn] is established, the appellant's case [for abortion] of course, collapses, for the fetus' right to life is then guaranteed specifically by the fourteenth amendment." The case went on to not only define viability, but personhood as well. Personhood was defined "potentially able to life outside the mother's womb, albeit with artificial aid" (*Roe*).

The famous but yet controversial ruling was welcomed by many organizations, but the Roman Catholic Church opposed the decision. There became a widespread reaction of what we now know as “Pro-life” and “Pro-choice”. This landmark case, *Roe v. Wade,* set forth the ruling that there would be no legislative interference in the first trimester of pregnancy. It was the 1976 case *Planned Parenthood of Central Missouri (PPOCM) v. Danforth,* 428 U.S. 52 (1976), which would place a “right to know” standard with abortion, declaring that a woman be required to receive information when considering abortion and that a male have no right to interfere with a mothers right to abortion (*PPOCM*).

Fourteen years later in the case of *Hodgson v. Minnesota*, 497 U.S. 417 (1990), the U.S. Supreme Court overturned a Minnesota statue claiming that “if a minor was interested in receiving an abortion both parents must be notified within 48 hours of the producer.” Dr. Hodgson challenged the law by stating that more than half the children in the state of Minnesota lived with only one parent. The parental notice law that was set in place in 1981 was found to be unconstitutional. However, it was an amendment under the Minors' Consent to Health Services Act, which requires consent of a parent for any medical procedure performed on a minor.

The controversy on abortion grew and people became more and more passionate whether

they were pro-life or pro-choice. It may have only been one instance where both parties agreed on the same thing, partial birth abortion. In 2000, the U.S. Supreme Court held that a Nebraska law banning partial birth abortion was unconstitutional, if the law did not make an exception for the woman's health in the *Stenberg v. Carhart,* 530 U. S. 914 (2000) case.

President George W. Bush finally signed the Partial Birth Abortion Ban Act into law in 2003. Former President Bill Clinton vetoed this Act in 1995 and 1997. The law's constitutionally was brought into question in the case of *Gonzales v. Carhart*, 550 U.S. 124 (2007) where the court upheld Congress's Partial Birth Abortion Ban Act of 2003. The case was later classified as landmark making it the first case where the court prohibited a physician from using or performing a medical procedure necessary to health of the patient. Those who are pro-life and pro-choice may never see eye to eye. Some topics such as abortion, gay rights, and capital punishment are too controversial that one becomes irrational, as you can neither argue with them nor convince them.

In the 2006 article, *Abortion and the Niketa Mehta Case by Lekhni,* an Indian woman wishes to abort her "fetus" at 26 weeks after becoming aware that her "fetus" had a congenital heart disorder. Placing fetus in quotations is to emphasize that people who are for abortion struggle with calling the fetus a baby. Yet in the society we live in, it is uncommon for a mother to refer to her unborn child as a fetus. "My fetus is 6 months old" is not among the vocabulary of an impregnated woman. If satisfied with your pregnancy, a woman would refer to her unborn fetus as a "baby". Up until the day the woman changes her mind, and wishes to abort it, only then would a woman refer to an unborn child as a fetus. Fetus is not a common term used by a mother when pregnant.

Pregnancy is a Personal Choice

The woman in India intended to her have her baby until being informed of her baby's condition. She was not granted the right to abort at 26 weeks, where the law in India states you can only abort before 20 weeks, as the "fetus" will not feel any pain. The author stated that,

> "If we continue to take the position that the fetus is an independent legal entity (even though it cannot survive independent of its mother), then extending that argument, by requiring a mother to complete her pregnancy for a fetus she ***doesn't want,*** we are ***forcing*** her to provide prenatal care (using her own body) which is not of her own choice, and for which she is obviously not being compensated either. The question is, is that a fair and just law?" (Lekhni, 2008).

Appalled to believe that one would justify a personal choice to become pregnant with being forced to care for fetus, which is not of her choice. Mind you, that pregnancy is in all cases, except for rape, is a choice. A choice made by an individual, such as committing a crime, pregnancy and other actions come with consequences. Whether it is something "we want " or "don't want" as human beings, we are held to a certain standard to be responsible for our actions. One cannot act, and when faced with consequences, feel forced or proclaim they "do not want them."

It is most defiantly not moral to be satisfied and fulfilled within your pregnancy, and to only wish to abort based on a physical defect. Who are we as a society to decide who lives and who dies? Surely not the life of an innocent, rights or no rights, the fetus has no choice. Almost half of all pregnancies are unplanned. In the year 2012 there are more than ten forms of contraceptive today and still half of all pregnancies are unplanned. For many the procedure of an abortion is merely a way out.

A Word from President Obama

On the 39th anniversary of *Roe v. Wade* President Obama stated that,

> "While this is a sensitive and often divisive issue -- no matter what our views, we must stay united in our determination to prevent unintended pregnancies, support pregnant woman and mothers, reduce the need for abortion, encourage healthy relationships, and promote adoption." Obama said. Obama is currently in support of abortion, and believes it gives our daughters a change to fulfill their dreams he said (Lucas, 2012).

In agreement with President Obama, that no matter the view, we must come together and focus on things that could possibly prevent abortion, then abortion alone. The need to overturn *Roe v. Wade* is ever so prevalent. Without the option to abort, unless in case of rape, women will take more pride in themselves and their action. They will be more responsible and make wiser choices. Be more selective with the company they keep, and the men they sleep with. A means to provide contraceptives, such as condoms and birth control, is prevalent. Teach teenagers, how to have safe sex and not just what sex is. Educate young adults on the responsibility that comes with having a child and not only showing them the option out of the responsibility.

Conclusion

Roe v. Wade could definitely use a second look. The legality of the situation is when the embryo becomes a fetus, and then the fetus becomes a baby. The technological terms are important, for the different stages of pregnancy, but whether an embryo, a fetus or a baby, we as humans and a society cannot deny that we are aware that the end result will produce a child. We as a society cherish our children and refer to them as "the next generation". Crime on a child is beyond frown upon; therefore, one must almost be amoral to commit such act. We then place them at the mere bottom of society with not only no rights, no voice, but no choice.

References

Gonzales v. Carhart, 550 U.S. 124 (2007)

Hodgson v. Minnesota, 497 U.S. 417 (1990)

Leknhi. (2008, August 08). *Abortion and the Niketa Mehta case*. Retrieved from http://elekhni.com/2008/08/abortion-and-the-niketa-mehta-case/.

Lucas, F. (2012, January 23). *Obama: Roe v. Wade helps 'our daughters' to have same chance as sons to 'fulfill their dreams'*. Retrieved from http://nation.foxnews.com/roe-v-wade/2012/01/23/obama-roe-v-wade-helps-our-daughters-fulfill-their-dreams.

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)

Roe v. Wade, 410 U.S. 113 (1973)

Stenberg v. Carhart, 530 U. S. 914 (2000)

Financial Aid: Overcoming the Burden

Shara Bennett, Sophomore

Abstract

Free Application for Federal Student Aid (FAFSA) is one of the largest sources of student aid in America providing over billions of dollars a year in grants, loans, and work-study assistance. Financial aid is financial assistance for eligible students to pay for educational expenses at an eligible postsecondary school (e.g., college, vocational school, graduate school). There are three categories of federal student aid: grants, work-study, and loans. Federal student aid can help cover expenses such as tuition and fees, room and board, books and supplies, and transportation. These expenses affects almost every individual who is enrolled in college based on "need" rather than "merit". With the drastic changes of federal financial aid, the issue is what will young adults do to fulfill their educational goals in a time of financial need.

Aid Programs at Risk

Many of the very aid programs that society uses are being cut drastically. The Free Application for Federal Student Aid (FAFSA), Pell grants and subsidized loans are currently undergoing change. Students are forced to obtain unnecessary loans in which one may barely qualify for. Cutting budgets and aid programs was not a well thought out idea and was not decided with student's education at heart. Students will never be guaranteed the education deserved of them, if they are not even able to make decisions about their very education. Many questions go unanswered, with no one to turn to, such as whether this issue should be a state or federal decision, whether students should be offered summer Pell Grants, and whether unsubsidized loans should be diminished. These questions go unanswered, but decisions are continuously being made at the federal government level.

Cuts in Aid Programs to Preserve Pell Grant

Beginning summer 2011, Pell grant was cut for the summer term, so those who desire to take classes in the summer will either have to pay out of pocket or obtain a private loan. Those whom desire to enroll in summer classes will be required to find other means to pay for summer school. In addition many other suggestions are to be implemented including, but not limited to, requiring that students take a minimum of fifteen credit hours rather than twelve. Altering eligibility from six years to eight years, and attempting to ensure only those who qualify upon need-based, will get the maximum amount of funds for a student. Though this will ensure matriculation and graduation, it may be overwhelming to some students. Nevertheless, the elimination of subsidized interest benefits on the subsidized Stafford loans, which means it will be altered to the unsubsidized. In other words, interest will not be deferred while enrolled in school. Many students use this very loan to get through college and will no longer be given this advantage. If President Obama continues to cut aid programs, students of need will not be able to obtain the education loans entitled to them.

The U.S. Department of Education characterizes these cuts as "making tough choices to put the Pell Grant program on a sustainable fiscal path" (Kantrowitz, 2011). This may be efficient for President Obama to attempt to sustain and enhance the living and education of African Americans, but it is diminishing the very budget many African Americans use today. As tuition continues to increase, individuals will never be able to afford the education guaranteed to them. The issue remains whether need-based grants can have adequate funding for those who desperately rely on the Pell Grant as their only means of educational funding. Thus President Obama needs to re-evaluate the very plan that is detrimental to our society.

In reference to the Elementary and Secondary Education Act (ESEA), which primarily discusses Lyndon B. Johnson's war on poverty, he "believed that equal access to education was vital to a child's ability to lead a productive life" (Elementary and Secondary Education Act, n.d.). Every child deserves a valued education and according to Title IV which "provides funding for college and university research on education" (Elementary and Secondary Education Act, n.d.). Johnson's proposal of ESEA was implemented to address inequality in education, and if were not even being offered minimum funds to attend school, it further violates the Civil Rights Act of 1964.

Federal Funding with the Tenth Amendment

"The Tenth Amendment to the United States Constitution states 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'" (U.S. Constitution, n.d.). Education is not a vital aspect of federal government, but rather state governments. Thus, states have plenary, or absolute, power in the area of education. If federal government considers closing the Department of Education and leaves it up to the states to make these final decisions, our very government may crumble. The states themselves do not gain enough revenue to provide for Pell grants and loans. The states would not be able to fund for students to attend school; therefore, forcing even more students to obtain private loans at higher interest rates. The issue is whether or not this practice is considered constitutional. Each student is given the basic right to obtain an education, but the government would be limiting the opportunity from current and potential students.

In order for the state of Georgia to begin to provide for students to attend school, it would start by raising taxes including, but not limited to property taxes. Tax increases will cause drastic

change within our economy and further violates the commerce clause, which is a grant of power to Congress, not an express limitation on the power of the states to regulate the economy, which is mentioned in Article 1 of the U.S. Constitution. The government has removed its privileges giving students of need rather than merit the opportunity to obtain a quality education. Although this amendment does not specifically direct the states to assume the responsibility for providing education its effect has been no less. As a result financial aid for students of need should be of relevance giving each individual the quality education deserved.

Making Education Work in Georgia

Governor Nathan Deal believes that "In good times or bad, education will be the top spending priority in every budget" thus it is very costly and should not be taken lightly (Office of the Governor, 2012). On a hot summer day in July of 2011, Governor Deal officially alters the Helping Outstanding Pupils Educationally scholarship (HOPE). The HOPE scholarship was implemented in 1993 in honor of Zell Miller for Georgia residents who have demonstrated academic achievement. Many residents in the state of Georgia rely on this very scholarship to assist in paying expenditures for their institution of higher learning. Deal has made a minor setback for many students. Those who have a "minimum 3.7 GPA and minimum 1200 SAT score will receive a full ride, including books and fees" and a those with a minimum 3.0 GPA can will receive "90 percent of this year's tuition rate" not including books and fees (Chen & Crawley, 2011). Prior to this drastic change, it was minimum GPA 3.0 you receive 100% tuition as well as a book scholarship. Many may question discussing that ten percent is not a lot, but it surely makes a difference, which further forces many students to rely on governmental and private loans.

Although the book scholarship only consisted of $150, every penny counts and now that students are not offered it, they are forced to come out of pocket. With many of the drastic changes students went without letting their voices be heard. On the other hand, the system that helps Georgia flourish and stand apart from the rest, many students take for granted. As a citizen we were given our basic human rights of an education and an experience of higher learning is simply a privilege and not a right. HOPE is neither an entitlement nor an advancement, but an award to commend those with good grades. Increasing the GPA many have harmed some students, but it further caused students to strive and work diligently.

Conclusion

Free Application for Federal Student Aid (FAFSA) is an imperative part of our government and state. It continues to help those students of need in funding for expenses such as tuition and fees, room and board, books and supplies, and transportation. If the state and federal governments continuously make alterations to aid programs, those individuals who are unable to pay for an education will not have the opportunity. This is not only to African Americans, but society at large who consistently struggle each August and January, in order to obtain funding to earn a higher education. There must be an alternative way, and it cannot be done over tonight, but ultimately change is necessary. As a result, FASFA is not only imperative and essential, but guaranteeing each student with a quality education deserved to current and future students.

References

Chen, E., & Crawley, P. (11, March 2011). Governor to approve reductions to Georgia hope scholarship. Retrieved from http://host53.242.54.159.gannett.com/news/article/181904/454/Governor-to-approve-reductions-to-Georgia-HOPE-scholarship.

Elementary and secondary education act of 1965. (n.d.). Retrieved from http://www.socialwelfarehistory.com/events/elementary-and-secondary-education-act-of-1965/.

Georgia.gov, Official portal for the state of Georgia. (n.d.). On the issues. Retrieved from website: http://gov.georgia.gov/00/channel_title/0,2094,165937316_165941802,00.

Kantrowitz, M. (2011, February 14). President Obama proposes cuts in aid programs to preserve pell grant. Retrieved from http://www.fastweb.com/financial-aid/articles/3009-president-obama-proposes-cuts-in-aid-programs-to-preserve-pell-grant?print=truehttp://www.departments.bucknell.edu/edu/ed370/federal.html.

Office of the governor: On the issue. (2012). Retrieved from http://gov.georgia.gov/00/channel_title/0,2094,165937316_165941802,00.html.

U.S. Constitution - Tenth Amendment. (n.d.). Retrieved from http://caselaw.lp.findlaw.com/data/constitution/amendment10/.

Birth Control: Offering and its Privacy to Women

DaShona Robinson, Junior

Abstract

Birth control is a controversial issue in the United States and has been for many years. Birth control is considered a contraceptive to help women prevent unwanted pregnancies. The controversy is that some believe women should not be allowed to obtain contraceptives to prevent pregnancy, but that violates a woman's right to choose, which is stated in the U.S. Constitution. It is considered to be unconstitutional to deny woman oral contraceptives, such as birth control under health insurance. There are many effects that denying women birth control can have some of which are unwanted pregnancies, financial binds and seeking welfare from the government.

Birth Control: Offering and its Privacy to Women

The U.S. population is on the rise, and as a result, the U.S. has the highest pregnancy rate in the western world. Four out of ten women become pregnant at least once before the age of twenty with nearly one million teen girls become pregnant each year (Casey, 2012). Each year the federal government spends about $40 billion dollars to help these families with. Eighty percent of unmarried mothers end up on welfare as a result, which is costing the government an excessive amount of money. Majority age for unwanted pregnancies is to women between the ages of 16-21 (Casey, 2012). Research has determined that women who wait to have children later on in life typically make higher wages as a result. The issue is whether or not birth control is offered to those who do not have health insurance or at least affordable. The constitutionality of this issue stems from the fact that "more than half of prescriptions for the anti-impotence drug Viagra received health insurance coverage" (Health Insurance Rates, 2012). Further research will

explore birth control's place in an individual's right to privacy, private and public markets and health insurance industry.

Right to Privacy

The U.S. Supreme Court case of *Griswold v. Connecticut*, 381 U.S. 479 (1965) directly relates to the right to privacy. In this case Griswold the defendant was a director of a medical clinic and a doctor who was convicted of violating a state law that forbid the dispensing or use of birth control to or by married couples. The U.S. Supreme Court reversed their conviction due to the inconsistency of the Connecticut birth control law claiming that "the power of a state to prohibit the use of contraceptives by married persons is currently being tested before the U.S. supreme court." Plaintiffs challenged the constitutionally of a Connecticut anticontraceptive statute on the grounds that it violates the due process provision of the Fourteenth Amendment (The Yale Law Journal, 1960).

> The Fourteenth Amendment of the U.S. Constitution states that
>
> "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The Connecticut statute provides that "any person who uses any drug, medical article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days, nor more than one year both fines and imprisoned" (The Yale Law Journal, 1960). Furthermore, the court also found the right to privacy in the Fourth

Amendment right of people to be secure in their persons, Fifth Amendment right against self-incrimination and the Ninth Amendment right to retain rights not enumerated in the U. S. constitution. Resulting from the above arguments was what the U.S. Supreme Court came to the conclusion when the justices deemed that denying women the right to take contraceptives unconstitutional.

Health Insurance

The refusal of health insurance companies to cover birth control for women is one of the oldest controversies in the health insurance industry. One reason resulting from this is as stated above health insurance companies covered a prescription for Viagra for men but 49 percent of large group health plans do not routinely cover birth control (Health Insurance Rates, 2012). Ninety-seven percent of large group plans cover prescription drugs, but only 33% of those plans cover oral contraceptives, which are the most popular method of reversible female birth control in the United States (Health Insurance Rates, 2012). In the U.S. Supreme Court case *Planned Parenthood v Casey*, 505 U.S. 833 (1992), abortion clinics and physicians sued the governor and more to try and change five provisions of the Pennsylvania Abortion Control Act of 1982 because they claimed it was unconstitutional. The Pennsylvania Abortion Act of 1982 states that, "the woman was to have informed consent and a 24 hour waiting period prior to the procedure." The Act also stated that a minor seeking an abortion required the consent of one parent. Women seeking an abortion had to indicate that she notified her husband of her intention to abort the fetus. In the case of *Planned Parenthood*, it argued that the court could not make the woman have informed consent and wait 24 hours because it violated their "right to choose". As for minors to obtain consent from their parents, it violated their rights to have an abortion granted by the U.S. Supreme Court case *Roe V. Wade,* 410 U.S. 113 (1973).

Private / Public Market

The difference between private market and public market is private markets are transactions made directly between two people or entities. Private market has limited rules due to this issue. However, public markets are different as their transactions occur on an organized exchange and typically have contracts because multiple people or entities are involved. In the case of *Eisenstadt v. Baird,* 405 U.S. 438 (1972), William Baird was convicted under a Massachusetts state law for displaying contraceptive articles and for giving a woman a package of Emko vaginal foam. The Court claimed that Baird violated the First Amendment by displaying. The First Amendment of the U.S. Constitution states that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. In regards to the other chargers on giving a woman Emko vaginal foam, the court charged Baird with a felony because he distributed contraceptives to unmarried women under a Massachusetts state law that only allowed married people to receive them. Baird argued that his conviction violated the right to privacy as acknowledged in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Conclusion

Birth control is a contraceptive used to prevent unwanted pregnancies and it is considered unconstitutional to deny women the right to obtain them. Women are protected under the Fourth, Fifth, and Ninth Amendments in the U.S. Constitution discussed in the Supreme Court case *Griswold v. Connecticut*. Also stated in the Supreme Court case *Planned Parenthood v. Casey,* it was argued that denying unmarried women the right to obtain birth control violated their right to choose.

References

Casey, K. L. (2012, March 13). *American pregnancy association*. Retrieved from http://www.americanpregnancy.org/main/statistics.html.

Cornell University law school. (1992, June 29). Retrieved from http://www.law.cornell.edu/supct/html/91-744.ZS.html.

Health insurance rates. (2012). Retrieved from http://www.healthinsurancerates.com/56-birth-control-and-health-insurance.html.

Oyez. (17, November 20). Retrieved from http://www.oyez.org/cases/1960-1969/1964/1964_496.

University of Missouri-Kansas City. (2001). Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/conlaw/griswold.html.

Death Penalty and Juveniles: The Controversial Issue

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Abstract

Nationwide statistics in America indicate that there is a steady increase in juvenile crime. This is a worrisome trend, especially when the youth are expected to be more responsible, as they prepare to take up positions of responsibility in the near future. Juvenile crime reports indicate that the increase may be attributed to the deterioration of morals within the society. Parents are often busy working away from home and lack ample time to sit and advise their children. The American criminal justice system is challenged with finding new ways of dealing with this increase. Probations are no longer effective, incarceration sounds too extreme, and the death penalty is deemed unconstitutional by the United States Supreme Court. There have been many cases of young juvenile offenders being considered for the death penalty, but with them being so young, they are too young-minded and simple-minded of not knowing what they do.

Death Penalty and Juveniles: The Controversial Issue

Juveniles are committing more serious crimes, which means harsher sentencing and punishments to include the death penalty. The first juvenile offender that was executed happened in Plymouth Colony, Massachusetts in the year of 1942 was named Thomas Graunger. He was tried and found guilty of bestiality. “In the 360 years since that time, a total of approximately 365 persons have been executed for juvenile crimes, constituting 1.8% of roughly 20,000 confirmed American executions since 1608” (Truell, 2002). In April of 1899 in Cook County, Illinois, the first juvenile justice system was created. “The juvenile justice system is responsible for keeping citizens safe from young offenders and for also rehabilitating delinquent juveniles” (Truell, 2002, p. 2).

Juveniles should not be given the death penalty, as individuals feel that during the age of kids under 18 the minds of these children can easily be compromised. Parents are also another reason children act out and commit crimes that make them juvenile delinquents. These events can happen by the child's environment that they were raised in rather than if there was domestic violence between their parents, poverty, and peer pressure. Juveniles' receiving the death penalty is deemed unconstitutional. Due to age, no juvenile should be put on death row. At their young ages they deserve time for rehabilitation and deterrence instead of being on death row, which time should be given to them to better themselves. Individuals feel that the eight amendment of cruel and unusual punishment is not protecting juveniles.

Child Welfare League of America

The Child Welfare League of America (CWLA) addresses critical issues affecting the juvenile justice system and the well being of our nation's children, youth, and families. "The Juvenile Justice division and neighboring agencies is taking the position of national leadership in supporting efforts to stop or decrease the imposition of the death penalty on any person for crimes committed while younger than 18 years of age (Truell, 2002)." They are doing this initiative by putting more alternatives and programming options in place for juvenile capital offenders through many different youth organizations, youth serving systems, and division programs.

Family interventions, which include parents and elementary school children, is a program to prevent a child from being antisocial at a young age, and parents and young children, which includes an expecting mother and he intervention discusses health, and environmental effect on the mother depending on what is going on with the mother's brain development during pregnancy can have lifelong consequences.

Cases Dealing with the Death Penalty

In the case of *Roper v. Simmons,* 543 U.S. 551 (2005), it abolished the death penalty for minors. The death penalty is forbidden in all states for those under the age of 18 at the time of the crime the behavior following the ruling of *Roper*. The U.S. Supreme Court decided its first juvenile case in *Kent v. United States*, 383 U. S. 541 (1996), which limited the waiver discretion of juvenile courts in 1966 (Cothem, 2002, p.2). This case held that juveniles were entitled to a hearing, representation by counsel, access to information upon which the waiver decision was based, and a statement of reasons justifying the waiver decision. During the 1980's, the U.S. Supreme Court was having problems with debating if a juvenile offender would be permissible under the Constitution.

The first case the U.S. Supreme Court decided to see due to the death penalty was *Edding v. Oklahoma,* 455 U. S. 104 (1978). This case dealt with a juvenile murdering a highway patrol officer, which Edding was only 16 at the time of the meeting. "Without ruling on the constitutionality of the juvenile death penalty, the court vacated the juvenile's death sentence on the grounds that the trial court failed to consider additional mitigating circumstances." Edding's was important, however, because the court held that the chronological age of a minor is a relevant mitigating factor that must be considered at sentencing (Lynn, 2002, p.3). Between the years of 1983 and 1986, the U.S. Supreme Court rejected five requests to consider the constitutionality of imposing death penalties upon a juvenile.

The next case the U.S. Supreme Court was *Thompson v. Oklahoma*, 487 U. S. 815 (1988), which dealt with 15-year-old Thompson participating in the murder of a former brother-in-law. His death sentence was vacated, by applying the 8th Amendment of cruel and unusual punishment due to his age under all circumstances. "Applying the standard 8th Amendment

analysis Justices Stevens, Brennan, Marshall, and Blackmon opined that the execution would constitute cruel and unusual punishment because it was inconsistent with standards of decency and failed to contribute to the two social groups of the death penalty-retribution and deterrence" (Lynn, 2002, p.4).

Since so many teenagers are committing harsh crimes, such as murder, more than 2,200 juvenile offenders are serving life in prison without parole. "Because of the tough state laws such as charging murder suspects as adults regardless of age, Pennsylvania tops the nation in the number of young offenders condemned to life in prison without parole…" (Berman, 2006). "Queensland Parliament has passed legislation giving the courts more power over juvenile offenders. The legislation will allow judges to impose curfew on dangerous young people and courts will have the discretion to name underage criminals. The bill also extends the minimum mandatory detention period for young people from 15 to 20 years. The opposition moved amendments, including a change in name from juvenile justice bill to young offenders bill. But the Queensland government used its numbers to pass the legislation unaltered" (Binnie, 2009). In the northern part of the United States, tougher laws are being given to juvenile offenders. Chief Minister and Minister of Police, Paul Henderson, announced that diversion programs would no longer be an option for serious juvenile offenders.

Factors of Juvenile Behavior

Many teenagers are under a bad influence because of their environment. Juveniles may see an adult in the neighborhood that has the type of clothes he desires, the type of car he dreams of, and the type of jewelry he wants to have, thus causing the teen to want to be like this adult rather he is a drug dealer, a pimp, or a gigolo. This teen then will do whatever it takes to get the money in this negative way verses his mother not being able to give him what he desires.

Theories can help describe why children commit crimes and have such deviant and aggressive violent behavior. Many teenagers use the rational choice theory. “Those who espouse the rational choice theory believe that the individual is responsible for himself, and blame can't be put on other environmental factors” (Bryan, 2000, p.1). “Labeling theory holds that society, by placing labels on juvenile delinquents, stigmatizes them, leading to a negative label for a youth to develop into a negative self-image. A court of law, some other agency, a youth's family and supervisors, and/or the youth's peers give a name - or a "label" - to the youth, often in ‘degradation ceremonies’” (Vandelay, 2009). “Social structure theorists believe that the cause of juvenile (and other) crime is not within the person themselves but is due to external factors” (Bryan, 2000, l). For example, if a child was to grow up with an alcoholic father, the chances are the child would grow up to be an alcoholic as well. This person may start out as a casual drinker to a happy drunk, which can spiral into being a violent drunk.

Conclusion

Juvenile crimes are on the increase in the American society. Such crimes should therefore be dealt with firmly to avert future problems that they pose to the society. Innocent lives are being lost in the hands of juvenile criminals. Parents have been blamed for the increase in the number of juvenile crimes. This is because most American parents do not sit their children down to correct them. The busy work schedule that the parent runs on a daily basis is the main contributor to this menace.

The U.S. government should come up with trainers who would be able to help such children to grow in good morals. Juvenile crimes are a huge cost to America healthcare budget since many of the victims will require medical attention. It is therefore imperative that the rise in the number of juvenile crimes be addressed urgently to save the future of the American society.

References

Berman, D. A. (2006, February 15). [Web log message]. Retrieved from http://sentencing.typepad.com/sentencing_law_and_policy/2006/02/life_without_pa.html

Binnie, K. (2009, September 03). *Queensland toughens laws for juvenile offenders*. Retrieved from http://www.abc.net.au/news/2009-09-03/qld-toughens-laws-for-juvenile-offenders/1415554.

Bryan, S. What is the cause and effect of juvenile delinquency? Copyright 1999-2009 ehow, inc.http://www.ehow.com/how-does-4922973_what-cause-effect-juvenile-delinquency.html.

Cothern, L. Juveniles and the Death Penalty. 2002. Copyright 2002, Death Penalty Information Center. http://www.ncjrs.gov/pdffiles 1/Ojjj/dp/184748.PDF.

Moon, Sundt, Cullen, Wright. http://www.cad.sagepub.com/cgi/content/absract/46/1/38

Strieb, L. V. Death Penalty Information Center. 2009. Copyright 2009. http://www.deathpenaltyinfo.org/execution-justice-us-and-other-country.

Truell, A. J. Juveniles offenders and the death penalty. 2002. Copyright 2002, Child Warfare League of America. http://www.cwla.org/programs/juvenilejustice/juveniledeathpenalty.pdf.

Vandelay, A. Evaluating Labeling Theory of Juvenile Delinquency. Copyright 2002-2009 Helium, Inc.http://www.helium.com/items/596339-evaluating-labeling-theory-of-juvenile-delinquency.

Watts, L. The Impact of Public Policy on Juvenile Crime. August 9, 2009. Copyright Socyberty. http://www.socyberty.com/crime/the-impact-of-public-on-juvenile-crime.

Oxymoron: Commerce Clause Regulator of Local Issues

William Coleman, Senior

Abstract

The spirit of racism is a preservation of traditional and nontraditional hatred of individuals or groups, as it is a directed concentration of discrimination against individuals, groups or affiliation. But, when it inhibits interstate commerce, Congress has a vested interest to use regulatory provisions to rectify the incident accordingly. The enthusiastic nature to protect one's heritage can clash with the duty to comply with provisions that have been established to protect national interest outlined in the Constitution. For this reason there is a particular interest in using the adaptability and flexibility of the Commerce Clause to abolish discrepancies of any kind concerning public accommodations including hotels, motels, and restaurants. The Commerce Clause and its use has been trivial and surrounded with controversy. The protection of American interests, the preservation of interstate commerce, and the use of inherent powers of Congress and the Office of the President reflect the difficulties associated with the provisions of the Commerce Clause.

Oxymoron: Commerce Clause Regulator of Local Issues

The Commerce Clause used as a regulator of local issues can be considered an oxymoron. A definitive statement would include both yes and no, given the government's inherent interest concerning interstate commerce. Any actions pursued are explainable and are necessary to prove the government's point of view in relation to the Commerce Clause. The mutual interest of Congress and the Office of the President include the protection of the greater good of America's interests in a constitutionally affirming manner to uphold the integrity of what the Commerce Clause deems to be the "American way".

The Commerce Clause can be found in section 8 of Article I of the Constitution, as it declares that "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and the several States, and with the Indian Tribes . . ." In order to be in violation of the Commerce Clause, there has to be a restriction of interstate commerce or the infringement upon local commerce by way of government. Hence, the issue of The Patient Protection and Affordable Care Act (a.k.a "ObamaCare") is said to regulate and affect local commerce and to be in violation of the Commerce Clause, which deems ObamaCare unconstitutional. The argument arises to its constitutionality and adherence of the Commerce Clause with the president's current health care reform to initiate fair practice and coverage for all Americans.

The primary issue remains whether or not the Commerce Clause can be prescribed as a regulator mechanism of local issues or be an example of inherent privileges to be enjoyed by only the members of Congress and the "Bully Pulpit" officially known as the Office of the President of the United States of America (Pfiffner, 2011). The Commerce Clause represents the interest of the American civil liberties by a Congress that regulates local commerce, and a platform builder for a so called "Bully in the Pulpit" that has passed an unconstitutional health care reform and violated the Commerce Clause (Pfiffner, 2011).

Commerce Clause

The "American way", "mom's apple pie", "piece of the pie, the "American dream", and the "American interest" are all clichés echoing the patriotic heroism outwardly suggesting protectionism from economic restrictions of in-state and interstate commerce. Congress has the privilege use of the Commerce Clause and, with its adaptable and flexibility of interpretation, employs the maturation of precedent history concerning constitutional rights, and issues involving in-state and interstate commerce. While simultaneously exclaiming its due diligence

to prohibit the interruption of interstate commerce directly and indirectly, protectionism can be considered a noble gesture that can be represented by any group, as long as it falls within the confines of their own understanding. Regardless of the cause commerce is protected and, as a rule of thumb, the flow of currency must not be interrupted.

In the case of *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964), a reminder of the preservation of traditional and nontraditional hatred of individuals or groups, most often referred to as racism or discrimination (Mason, 2012). The *Heart of Atlanta Motel* exemplified an unfavorable view of protectionism or "American values", which involved the interruption of interstate commerce, by not allowing black people to enjoy the same amenities as other Americans. The owners of the Heart Motel in Atlanta were deliberate violators of the Commerce Clause and the Civil Rights Act of 1964 (Mason, 2012). The local commerce had been affected not only in Atlanta, Georgia, but across the southeast where civil liberties had been restricted. The "American interest" and congressional interest were both served in a dual manner. The actions of the owners of the Heart Motel were considered unconstitutional and in violation of the Commerce Clause.

Obama Health Care Reform

Argumentatively President Obama's Health Care Reform is in direct violation of these two issues. In lieu of a recessive era mitigated efforts by the Obama administration to stabilize a failing health care system, it has been met with an uncanny resistance. In light of inheriting, the current economic downturn, a pure political travesty, President Obama's approval rating among Americans is still favorable despite this handicap. His assessment of America's needs during turmoil filled times and his ability to effectively function as a president has been greatly undermined.

This great nation has suffered tremendously since the turn of the century from the threat of radical terrorism of terrorist groups such as Al Qaeda to the displacement and maltreatment of thousands of people after the natural disaster of Hurricane Katrina. It continued to the bailout of American banks and the American car industry to the soaring high oil and gas prices that have elevated higher than the spirit of our national symbol the bald eagle. It was further stifled from the foundation of the shaken housing market marked with foreclosures to the crash of the stock market stamped with scandal and insider trading. Suffering has further riddled this nation from the uncertainty of the safety of our homeland and our ability to defend it. We proclaim "liberty and justice for all" because the scales have been tipped from the insurmountable numbers of unemployed and disenfranchised people to the influx of illegal immigrants.

President Obama's health care reform is a needed attempt to improve horrible economic and health conditions in America. Whether in agreement or not with President Obama's health care reform, the issue remains whether it violates the Commerce Clause and its constitutionality? The answer is "no" to both highly publicized questions surrounding the future of this nation's health care system.

"Bully in the Pulpit"

The issue is whether the Commerce Clause represents inherent powers that can be only entrusted to the ideological representation of American civil liberties. Allegedly it would then be for Congress to regulate local commerce, and for a so-called "Bully in the Pulpit", to pass an unconstitutional health care reform and violate the Commerce Clause. However, the Office of the President and Congress' use of the Commerce Clause has been surrounded with controversy. When Congress intervened concerning interstate commerce in cases such as the *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964), the actions of the *Heart of Atlanta Motel* were

found to be unconstitutional and in violation of the Commerce Clause. In the case of *Philadelphia v. New Jersey*, 437 U.S. 617 (1978), the actions of the State of New Jersey were in violation of the Commerce Clause (Mason, 2012). The U.S. Supreme Court upheld Congress' use of the Commerce Clause to promote healthy uninterrupted flow of interstate commerce.

Conclusion

Obama health care reform is not in violation of the Commerce Clause, and though ObamaCare may affect local jurisdictions directly or indirectly, the requirement for all Americans in every state to purchase healthcare is essentially a federal requirement. The inclusion of all persons in every state to participate particularly the entire United States, in this unprecedented health care reform clearly denotes a responsibility equal to and greater than local incidents. This inclusion of all states, healthcare providers, and people of the United States creates a federal mandate for a federal issue that affects every American and not a particular state or district. The current status of health care in America is detrimental to our national security. There are many people with untreated and growing medical conditions and this problem will continue to rise with the elevated numbers of unemployment. During times of war and national security, it is evident, that presidential powers are left to be discretional.

References

Mason, A. T. (2012). *American Constitutional Law.* Glenview: Longman.

Pfiffner, J. P. (2011). *Understanding the Presidency.* Boston: Pearson.

Right to Bear Arms: Exercising Your Constitutional Right

George Thomas, Junior

Abstract

The right to bear arms is granted to citizens' of this nation in the Second Amendment of the United States Constitution. There should there be a difference between military weapons and ones for civilian use. It should be governed to an extent of what an individual can and cannot do to protect one's household. Personally the more logical explanation would be a mix between last resort and any means necessary in home defense. The right to bear arms is a must for self-defense. When the odds are against you, having a firearm is the great equalizer, and a lot of times, the difference between life and death. When this nation was started, it was done by musket and rifle, not by discussion and being passive, so question is why change this now.

Bearing Arms: Exercising Your Constitutional Right

The *District of Columbia v. Heller*, 554 U.S. 570 (2008) was a monumental case in that it changed the fact that an individual can have a loaded weapon in times of self-defense. This case also struck down the ruling of the Firearm Control Regulations Act of 1975 as unconstitutional. It labeling hand guns as "arms" justified by the Second Amendment of the U.S. Constitution. This case also stopped the regulations of all firearms including rifles and shotguns had to be kept with the safety on, unloaded, and disassembled.

The book by Geraldine Woods, *Right to Bear Arms*, delves in to this constitutional issue regarding what exactly the Second Amendment means and which guns are appropriate in various situations. It describes the official wording in the Second Amendment of the U.S. Constitution as, "A well regulated Militia, being necessary to the security of a Free State, and the right of the people to keep and bear Arms shall not be infringed [violated]." Although this short statement is very bold it is self-explanatory on how the law should be which is more of a conservative

ideology. This right was based on the very old American tradition that the owner of the home is in charge of what goes on in his or her home; therefore, the government does not have the right to place military in his or her home. The right to bear arms should be the rights of the individuals and not the states. In the case *United States v. Miller*, 307 U.S. 174 (1939), it focused on interstate commerce and that certain guns could be used by civilians, in the order of self-defense. Jack Miller and Frank Layton were indicted for taking unregistered firearms across state lines, which were in violation of the national Firearm Act of 1939. It just so happened that the guns they were taking across state lines were a sawed-off or shortened-barrel shotgun. These were illegal, as they were considered a military weapon used in the Civil War. It was further argued that a sawed off or shortened barrel shotgun was not even a military weapon in the 1700s.

Legality of Firearms

Firearms can be used for multiple situations. In the journal article, *An Armed Community*: *The Origins and Meaning of the Right to Bear Arms*, Lawrence Delbert Cress argued how one interpretation of the law is that the right to bear arms is only for the military, to protect the republic internally and externally. The second interpretation was argued that the Second Amendment guarantees the people to possess a firearm for their own personal defense. Cress further claimed that the term militia, which was made up of civilians, and the need for them in today's society is not needed anymore.

The *District of Columbia v. Heller*, 554 U.S. 570 (2008), was the first case to determine whether the Second Amendment actually protects your individual right to bear arms. Dick Heller was a special police officer in the District of Columbia. The *District* refused Heller's application to register a handgun he wished to keep in his home. Heller filed this lawsuit in the Federal District Court for the District of Columbia on Second Amendment grounds. Heller sought an

injunction against enforcement of the bar on handgun registration, the licensing requirement prohibiting the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of functional firearms within the home. The District Court dismissed Heller's complaint.

The Court of Appeals for the District of Columbia Circuit reversed and directed the District Court to enter summary judgment in favor of the District of Columbia. The Court of Appeals construed Heller's complaint as seeking the right to render a firearm operable and carry it in his home only when necessary for self defense, and held that the total ban on handguns violated the individual right to possess firearms under the Second Amendment. The Court recognized that the right to bear arms is not absolute, that some restrictions may be placed and that "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." This process further meant there can be some regulations on bearing arms, such as banning felons from owning weapons, the mentally ill, and having registration requirements. However, since this law totally bans handguns in the home, it is not in keeping with the Second Amendment since it leaves no option open to bear arms. The Court explains by stating that, "the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chose by an American society for that lawful purpose." The conclusion of the case was that it was unconstitutional to tell someone that they cannot possess a firearm for the protection of their home and for self-defense.

Acceptable Weapons

There should be certain weapons that would be acceptable. This author does not believe that there is any room for a civilian to have a fully automatic gun, or a machine gun and so forth.

A good example of firearm regulations and/or to follow Georgia's law would lead to the fact that more justice is served with a more conservative gun law. The police are not always able to come at the snap of a finger, and when that does not happen, a person needs to be able to take things in their own hands. The case of *McDonald v. Chicago*, 561 U.S. 3025 (2010) is similar to the case of *District of Columbia v. Heller*, 554 U.S. 570 (2008), which works through the issue of the possession of firearms in your home. The Court declined to say whether this Second Amendment right applies to the states and local governments and not just the District of Columbia, which is under federal jurisdiction.

The Court answered this question in *McDonald* with a five-four split decision holding that an individual's right to keep and bear arms is incorporated and applicable to the states through the 14th Amendment's Due Process Clause. Writing for the majority, Justice Alito observed, "It is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." "The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States." In a separate concurring opinion, Justice Thomas wrote that the Second Amendment is fully applicable to states because the right to keep and bear arms is guaranteed by the 14th Amendment as a privilege of American citizenship. In the journal *What the Framers Intended: A Linguistic Analysis of the Right to 'Bear Arms'*, Professor Lawrence Cress, spoke for himself when he claimed that "we know little about the Second Amendment's reception in the States," has recently argued that the Founding Fathers would have been shocked by the idea that citizens could bear firearms for self-defense. Professor Kates based his similar argument that there is no right to bear arms outside of militia service on an unpublished thesis of

a law student. Yet Cress and Kates are well aware that the first state Declaration of Rights to use the term "bear arms" was that of Pennsylvania in 1776.

Conclusion

Research has determined that the solution to the gun problem in the United States is the strict regulations. A gun free society is a dangerous society. Statistics support the fact that a society where people have guns has a lot lower crime rate than those without, which should be a deciding point by allowing guns for individuals that are not felons or incapable of using one. When you know that someone has a gun, you are way less tempted to rob someone when you know they can equalize the situation with a firearm. Guns help to make a better environment.

References

Barnes, Robert (2008-06-27). "Justices Reject D.C. Ban On Handgun Ownership". *The Washington Post*. http://www.washingtonpost.com/wp-dyn/content/article/2008/06/26/AR2008062600615.html. Retrieved 2010-02-19. "The Supreme Court ... decided for the first time in the nation's history that the Second Amendment guarantees an individual's right to own a gun for self-defense."

Case brief of D.C. v. Heller. (n.d.). Retrieved from http://www.lawnix.com/cases/dc-heller.html.

Cress, L. C. (1984). An armed community: The origins and meaning of the right to bear arms. 22-42.

Halbrook, S. P. (1985). *That every man be armed - the evolution of a constitutional right*. (p. 279). Albuquerque, NM.

McDonald v. Chicago Summary. (2009, September 30). Retrieved from http://www.law.cornell.edu/supct/cert/08-1521.

Mears, Bill (2008-03-18). "Court decision on gun control is personal for 2 women". Cable News Network. http://www.cnn.com/2008/US/03/17/scotus.guns/index.html. Retrieved 2010-02-19.

Merkel, William G. and Uviller, H. Richard (2002). *The militia and the right to arms, or, How the second amendment fell silent*. Durham, N.C: Duke University Press. ISBN 0822330172.

United States v. Miller brief. (n.d.). Retrieved from http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-kamisar/the-charging-instrument/united-states-v-miller/.

The Fire Next Time – A Book Review

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James Baldwin was certainly good at his craft. At the peak of the civil rights movement, *The Fire Next Time* brought an excellent perspective to a point in history of which intellectual thought was essential. The 1963 novel combines two Baldwin essays: *My Dungeon Shook*, a letter to his nephew concerning his familial roots and the plight of racialist views, and *Down at the Cross*, a riveting tale of how Baldwin searched the corridors of his soul as a youth and the development of his mind through experience. These tails of religion, race relations, and relationship certainly provide a view of reality from the eyes of a unique individual, an individual of several differentiating qualities. Especially in the mid-20th century, these qualities were considered to be deficient compared to a "normal" American citizen. Even as American society has improved in its acceptance of difference, qualities similar to that of Baldwin still are not completely recognized as the norm today.

As a gay, black, former Pentecostal pastor who denounced his religious affiliation, James Baldwin was different. In the essay *Down at the Cross,* Baldwin speaks of his early "religious crisis" very extemporaneously, as if he was trying to determine how he felt on the matter the instant he put each letter on paper. At the same time, however, the language used by Baldwin seems as if he had always known how he felt on the matter, and had for years, but he had yet to speak on it. Throughout the essay, Baldwin extensively speaks of religions and religious groups, comparing a particular Christian congregation to pimps, stating,

> "My friend was about to introduce me when she looked at me and smiled and said, 'Whose little boy are you?' Now this, unbelievably, was precisely the phrase used by

pimps and racketeers on the Avenue when they suggested, both humorously and intensely, that I 'hang out' with them."

Inclinations of this nature dominate the novel, and as Baldwin continues page after page, coming off as if he has everything together, his arguments extensively choreographed, you come to more of an understanding of how much he thought he knew of himself, but how little he actually knew, all the while criticizing the rest of the world. The fact remains, however, that the criticisms made by Baldwin on the array of topics were much needed in the paradoxical nation of that time. Through the rise of the Nation of Islam in the 1950's and 1960's, a rise that was highly debated and contemplated by mainstream white, and Black, America, the fact remains that no argument against this group was comparable to that of Baldwin's. The arguments of the former consisted of personal attacks, which were attacks on statements made by members, and attempts to discredit the organization's mission. Baldwin, however, led an ideological argument based off perceptions formed first hand, making statements that included:

"Elijah's power came from his single-mindedness."

And—

"God is black. All black men belong to Islam; they have been chosen. And Islam shall rule the world. The dream, the sentiment shall rule the world. The dream, the sentiment is old; only the color is new. And it is this dream, this sweet possibility, that thousands of oppressed black men and women in the country now carry away with them after the Muslim minister has spoken, through the dark, noisome ghetto streets, into the hovels where so many have perished. The white God has not delivered them; perhaps the Black God will."

Statements of this nature, as the novel continues, create a very confusing perception of Baldwin. The nature of the word choice evokes a near sarcasm or sarcasm comparable to that of

a bully in elementary school. Through several psychological and sociological studies, it has been found that many of these bullies are either being bullied at home, not content with themselves as people, or are ashamed of their situation and would like to lash out on the world. It seems as if Baldwin, in a genius and important manner for the betterment of black Americans, used writing at a means to lash out on the world, using race relations, religion, and relationship as a medium.