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New Domestic Violence Litigation and Legislation Advance the Rights of Welfare Recipients, Immigrant Women, and Lesbians

Amanda Steiner†

Battered women will benefit from several legal developments that occurred in the past year. New legislation will specifically impact low-income, lesbian, and immigrant women who are victims of domestic violence, and courts have begun to define the actual impact of this new legislation. Several courts held unconstitutional residency requirements for welfare recipients which inhibit the freedom of low-income battered women to move to a new state. The national Crime Bill allocates significant funds to address domestic violence. In addition, the recently amended California domestic violence laws extend protection to battered lesbians and gay men.

I. WELFARE RESIDENCY REQUIREMENTS

In the past year, battered women challenged discriminatory welfare benefits requirements in California. After victory at the district court was affirmed by the Ninth Circuit, the U.S. Supreme Court granted certiorari, but then declined to address the merits of the case.

DeShawn Green and her two children had nearly become homeless1 when a district court issued a temporary restraining order enabling her to receive an Aid to Families with Dependent Children ("AFDC") benefit adequate to afford the rent for a California apartment.2 Having fled an abusive husband in Louisiana, Green returned to Sacramento to live with her mother, who she discovered was homeless and could provide no shelter or protection. Upon applying for AFDC benefits, Green learned that Califor-
nia state law imposed a durational residency requirement that prevented her from receiving the full California payment of $624 for a family of three until she had resided in the state for at least a year. Instead, she was entitled to only the $190 per month that she would have received in Louisiana. Returning to Louisiana, if she had been able to afford the transportation, would have meant returning to the threat of a husband who was arrested several times for beating her.\footnote{Brief for Respondents at 25, Anderson (No. 94-197).}

Debbie Venturella and Diana Bertollt also left behind abusive relationships when they came to California. Venturella had one child and was seven months pregnant when her temporary residence with relatives fell through. Her family helped her to find an apartment, but the Oklahoma benefit of $264 per month for a family of two was simply inadequate to pay the rent. Bertollt and her son were from Colorado, which entitled her to receive $280 per month. She stayed with an uncle and his family temporarily but soon had no choice but to apply for AFDC payments and seek her own housing. She could not return to Colorado because she feared her son’s father, whose abusive behavior had, among other things, prevented her from developing any useful job skills.\footnote{Id. at 25-26.}

Green, Venturella, and Bertollt filed a class-action lawsuit against Eloise Anderson, the director of the California Department of Social Services, seeking a preliminary injunction to prevent use of section 11450.03(a) of the California Welfare and Institutions Code.\footnote{811 F. Supp. at 516.} Under this law, AFDC recipients who have resided in California for less than twelve months may not receive more than the maximum benefits available in their state of origin.\footnote{CAL. WELF. & INST. CODE § 11450.03 (West Supp. 1995).} The district court granted the injunction, concluding that the residency requirement violated the Equal Protection Clause of the Fourteenth Amendment by favoring established residents over new residents. The court held that the only possible basis for the two-tier welfare system was to prevent the poor from migrating, a constitutionally protected right, and that the statute did not further any compelling state purpose.

Stripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design. This group of residents is no better able to bear the loss of benefits than a group randomly drawn. The State may seek to conserve resources by reducing welfare benefits to all recipients or to some recipients on some rational, non-discriminatory basis. But unless the purpose here is to deter migration, there is no other rational basis for the distinction drawn among applicants all of whom are California residents.\footnote{811 F. Supp. at 522-23.}

The court of appeals affirmed the district court’s decision, and writ of certiorari was granted by the U.S. Supreme Court. The case was argued in January of 1995.
On February 22, 1995, the U.S. Supreme Court vacated the judgment of the court of appeals and remanded the case with directions to vacate the district court order and dismiss the case. Since the granting of certiorari, the court of appeals had vacated California's Health and Human Services waiver in a separate proceeding. Without this waiver, California cannot implement the residency requirement. Therefore, the Supreme Court found that the case was not ripe because no actual dispute remained between the parties.

Similar welfare requirements have been challenged in New York, Minnesota, and Wisconsin. The Supreme Court of Minnesota held unconstitutional a statute with a durational residency requirement of six months for general assistance-work readiness benefits, concluding "that the '60 percent benefits for 6 months' plan 'penalizes' the fundamental constitutional right to migrate." Similarly, a New York trial court held that a state statute that limited benefits for the first six months after establishing residency to eighty percent of the New York rate or to the standard payment of the prior state "contravenes the right to travel and equal protection, as guaranteed by the United States Constitution." Wisconsin has instituted a durational residency requirement as an experiment in four counties, requiring families to reside in the county for six months prior to receiving full Wisconsin benefits. Legal Action of Wisconsin has initiated an action in federal court to stop the experiment as an unconstitutional violation of the rights to travel and migrate.

The residency requirement for payment of AFDC benefits prohibits all poor people from freely migrating between states, but most severely impacts women who leave abusive spouses to reside in a new state. Many women who leave these situations have no independent finances or marketable job skills. Often they leave without any possessions and literally must start over in making a new life for themselves and their children. Public assistance, such as AFDC benefits, can be critical to their ability to find housing, employment, and the other necessities of life. If these benefits are limited, victims of domestic violence may find life with an abusive partner who can guarantee them shelter and food preferable to the prospect of homelessness.

Congress is now considering imposing welfare residency requirements. The Republican Personal Responsibility Act of 1995 includes a provision for a one-year residency requirement at each state's discretion. The

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9 Beno v. Shalala, 30 F.3d 1057, 1073-76 (9th Cir. 1994).
future of welfare residency requirements like this one remains in question because the Supreme Court did not address the constitutional issue at stake in Green. Some commentators were curious why the U.S. Supreme Court granted certiorari in this case because so many courts had agreed that no precedent exists for the constitutionality of welfare residency requirements.\(^{14}\) As welfare reform gains importance in American politics, such proposals will undoubtedly continue to appear at the state and federal levels, and advocates for battered women will continue to fight them. The Supreme Court will have new opportunities to address this issue in the future.

## II. The Crime Bill: Safe Homes for Women

The Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act\(^{15}\) that President Clinton signed into law on September 13, 1994, is devoted to the understanding and prevention of violence against women. The Act consists largely of provisions for the general safety of women such as increased sentencing guidelines and a variety of grants. The Safe Homes for Women Act\(^{16}\) addresses domestic violence exclusively and includes grants for diverse services which can assist battered women of low-income and immigrant groups. The Act provides:

- A grant of $1 million to be awarded to a nonprofit agency to establish and maintain a national, toll-free domestic violence hotline to provide information and assistance to victims of domestic violence, including non-English speaking callers.\(^{17}\)
- The allocation $4 million for fiscal year 1996 to provide three-year grants to nonprofit community programs by nonprofit organizations that bridge various community sectors, including health care, education, religion, justice system, domestic violence groups, human services, and business and civic leaders. The funds can be used to “develop a coordinated community consensus opposing domestic violence.”\(^{18}\)
- Funds to local governments to develop training and arrest programs for police departments,\(^ {19}\) including specific funds for rural law enforcement agencies.\(^ {20}\)

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\(^{19}\) § 40231, 108 Stat. at 1932-34.

Persons convicted of domestic violence must make restitution to the victim for medical care, transportation, child care costs, attorney's fees, and any other losses suffered. Provisions for battered women's shelter grants, youth education on domestic violence, and confidentiality of addresses of abused persons.

Full faith and credit between states to protection orders issued in other states.

This act provides the first step in a nationwide program for understanding and preventing domestic violence. The newly established grants will enable many organizations to expand their services for victims of domestic violence. However, it remains to be seen whether the Safe Homes for Women Act contains adequate allocation of these funds to established organizations that will be able to make immediate use of them. In addition, the broad terminology may result in inequities between states; one state may establish a strong and effective police program with the funds provided, while another may elect not to make use of them at all.

Another concern is the Act's definition of domestic violence, which may not cover same-sex abuse. According to the Act, domestic violence is perpetrated by:

(A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides.

Thus, while the language is gender-neutral throughout much of the Safe Homes for Women Act (excepting the title), this definition of domestic violence enables the individual states to decide whether or not to address same-sex battering.

III. The Crime Bill: Protections for Battered Immigrant Women and Children

The new Crime Bill also contains a critical amendment to the Immigration and Nationality Act. The Act now allows non-citizen victims of domestic violence, both spouses and children, who have been present continuously in the United States for at least three years to petition to suspend deportation and be admitted for permanent residence. Elena Acosta, who

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27 Immigration and Nationality Act, 8 U.S.C. 1101-1525.
came to the United States from Ecuador with her abusive husband in 1992, may be the first person to test this new grant of refugee status. She was granted an order of protection against her husband, but she would not receive any comparable protection in Ecuador should she be deported. Her husband’s lawyer contends that she is inventing the allegations of abuse, which include death threats and knife threats to her young daughter, simply to gain refugee status. The amendment does not specify the standards to be used to determine whether allegations of abuse are true, except that “the Attorney General shall consider any credible evidence relevant to the application,” but Acosta at least has an opportunity to present her situation in a petition for legal resident status.

A second amendment to the Immigration and Nationality Act allows immigrant victims of domestic violence to petition for nationality on their own, rather than through a citizen or permanent resident spouse or parent. Prior to these amendments, women like Acosta would have been required to show “persecution based on race, religion, nationality, political opinion or membership in a social group,” or have their abusive spouse petition for immigrant status. Now these women are able to file a petition with the Attorney General on their own behalf and gain legal residency by establishing that they have been battered by a spouse and that deportation will result in extreme hardship. This amendment protects women who might fear that leaving an abusive spouse will jeopardize their chances of becoming legal or lead to deportation.

IV. THE CALIFORNIA DOMESTIC VIOLENCE LAWS

In 1994, the California legislature amended the criminal domestic violence laws, to remove the requirement that the abuser and abused be of the opposite sex. Section 273.5 now reads as follows:

(a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person with whom he or she is cohabitating, or any person who willfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both.

32 Germain, supra note 29.
33 CAL. PENAL CODE § 273.5 (West 1995).
34 Experts estimate that battering occurs with equal frequency in homosexual and heterosexual relationships at a rate of approximately one in four relationships. Telephone Interview with Sasha Marini, The San Francisco Network for Battered Lesbians and Bisexual Women (Feb. 1, 1995).
Because the definition of domestic violence in the Safe Homes for Women Act allows the states to include or exclude same-sex violence, this federal act should now apply to same-sex domestic violence in California. While lesbian victims of domestic violence are now protected by the language of the domestic violence statute, this amendment does not solve many critical problems in the prosecution of same-sex domestic violence. It remains to be seen if these cases will be prosecuted, and if so, whether the prosecution will be successful. Factors such as the prejudices and misinformation of juries and the judiciary must be addressed, and lesbians and gay men must feel safe about bringing an action that may publicly reveal their sexual orientation.