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THE CULTURAL, POLITICAL, AND LEGAL CLIMATE BEHIND THE FIGHT TO STOP TRAFFICKING IN WOMEN: WILLIAM J. CLINTON'S LEGACY TO WOMEN'S RIGHTS

*SUSAN TIEFENBRUN**

*"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has."*¹

—Margaret Mead

INTRODUCTION

Trafficking in women for the purpose of enslaving them in sex work is one of the oldest and most heinous violations of women's rights. Trafficking had never effectively been addressed until the Clinton Administration focused world-wide attention on this international crime. The Clinton Administration left a legacy to the valorization of women and to the enhancement of women's rights by adopting a multi-pronged cultural, political, and judicial approach that has had a direct impact in the United States and an indirect effect abroad. The culmination of that effort was the enactment of the Victims of Trafficking and Violence Protection Act of 2000, which the Bush Administration fully supports and re-authorized in 2003 and 2005. This Article will examine the cultural context that enabled the passage of this important trafficking legislation and which has resulted in a profound effect on women in society.

Each year an estimated 600,000 to 800,000 people—mostly women and young girls—are trafficked across international borders, and millions more are trafficked within the borders of countries. Despite the overwhelming difficulty to eradicate the complex and lucrative crime of human trafficking, in the past four years, twice as many people in the United States have been prosecuted and convicted for trafficking than in the prior four years. Internationally, more than 3,000 traffickers were convicted in 2005—an increase from previous years. The increased investigations, prosecutions and convictions of traffickers in the United

* Special thanks to my Research Assistant, Nicole L. Schuman, for her extraordinary efforts at compiling much of the documentation reserved for this study.

¹ THE MARGARET MEAD CENTENNIAL 2001, available at <http://www.mead2001.org/Biography.htm> (last visited Mar. 4, 2006).

States and abroad indicate the impact that U.S. trafficking legislation has had both domestically and internationally.²

There is a good reason why William Jefferson Clinton's election in 1992 was referred to as "The Year of the Woman."³ More women came into Congress in 1992 than in any other year in the history of the United States. In that year, female representation in Congress increased from 5.8% to 9.9%,⁴ and forty-seven women were elected to the House of Representatives.⁵ In the Senate, six of its one hundred seats were held by women.⁶ But the question one must ask is whether the presence of more women in Congress after 1992 had an impact on the legal, political, and social rights of the average woman in America.⁷

Did the newly-elected President William Jefferson Clinton stay true to his campaign promise⁸ to further the rights and roles of women? Did the Clinton

² *Rep. Smith's Trafficking Victims Protection Act to be Signed By President Bush*, U.S. FED. NEWS, Jan. 9, 2006, available at www.lexis.com/research/retrieve.

³ Media pundits and others dubbed the election the "Year of the Woman" because of the large number of women who ran for elective office and the resulting number of successful female candidates. See *National Women's History and the Anniversary of the Women's Rights Movement*, Women's Rural Advocacy Programs, available at <http://www.letswrap.com/LetsWRAP/Spring98/natlhist.htm> (citing information obtained through the National Women's History Project, http://www.legacy98.org/move_hist.html) (last visited Mar. 4, 2006). See also Victoria Schiller, *The Year of The Woman*, THE LAUGHING MEDUSA, Geo. Wash. Univ., at <http://www.gwu.edu/~medusa/womenyear.html> (last visited Mar. 4, 2006). In the 1992 Congressional election, there were 11 women candidates for U.S. Senate and 106 women candidates for the House. See *The Year of the Woman* (Senate Oct. 29, 1992), Library of Congress, at <http://thomas.loc.gov/cgi-bin/query/z?r102:S29OC2-371>: (last visited Mar. 4, 2006). For another interesting but perhaps countering perspective on why the 1992 election was known as "The Year of the Woman," see Barbara Palmer, PhD and Dennis Simon, PhD, *The Political Glass Ceiling: Gender, Strategy and Incumbency in U.S. House Elections, 1978-1998*, Institute For Women's Policy Research, IWPR PUBLICATION #1907, Feb. 2001. Here, the authors indicate that "The 'Year of the Woman' has been attributed to a number of factors, but two are important for this analysis. First, a House banking scandal caused an unusually large number of incumbents to retire, and second, 1992 was the first election after reapportionment based on the 1990 Census. All of this created strategic opportunities for women (and men) candidates. Newly open seats were available, and in some instances incumbents had to run in districts with substantially redrawn lines. These incumbents were perceived as more vulnerable than usual, which may have induced more candidates to enter these races." *Id.* at 2.

⁴ Susan J. Carroll, *The Politics of Difference: Women Public Officials as Agents of Change*, 5 STAN. L. & POL'Y REV. 11, 1 (1994).

⁵ See *Women Candidates for Congress 1974-2004: Party and Seat Summary for Major Nominees*, Center for Women and Politics, available at http://www.cawp.rutgers.edu/Facts/CanHistory/canwincong_histsum.pdf (last visited Mar. 4, 2006). This number does not include delegates for the District of Columbia or other US territories. See *id.*

⁶ See Carroll, *supra* note 4, at 11. In June 2003, however, the number of female Senators increased to seven with the special election of Texan Republican Kay Bailey Hutchison, filling the seat vacated by Lloyd Bentsen who had resigned from the Senate after his Clinton Administration appointment as Secretary of the Treasury.

⁷ See Carroll, *supra* note 4, at 11, for a good general discussion about the role of, and impact on, women public officials in the Clinton Administration or any other specific administration.

⁸ Presidential Candidate William Jefferson Clinton, Acceptance Speech at the Democratic National Convention (July 1992), available at <http://www.4president.org/speeches/billclinton1992acceptance.htm> (last visited Mar. 4, 2006). Bill Clinton's campaign themes included women's rights issues as early as his nomination as the Democratic Party candidate in July 1992. For example, during his acceptance speech before the Democratic National Convention, Bill Clinton declared "I'll fight to make sure women in this country receive respect and dignity, whether they work in the home, out of the home, or both."

Administration accomplish its goal of eradicating the horrific crime of trafficking of women in the United States and all over the world; a crime tantamount to a contemporary form of slavery? This Article will demonstrate that during Clinton's eight years as President, he supported legislation that would fulfill his promises to advance women's rights and to enhance women's image and role in society. But to do so, he had to use a multi-pronged approach to change the culture of a society that has, for so many years, underestimated and devalued women.

This Article explores the role of the Clinton Administration's establishment of a focus on the furtherance of women's rights in the United States, especially in the areas of women's rights in the family, domestic violence, and sexual slavery of trafficked women. Clinton made significant contributions to aid women in the executive, judicial, and legislative branches of government. This Article will demonstrate that the Clinton Administration left an extensive and unprecedented legacy to the furtherance of women's rights.

Part I of this Article discusses the Clinton Administration's successful appointment of women to positions in high office of government and on the judicial bench, despite great resistance by the Senate during the process of nominee confirmation. Part II examines the domestic legislation promulgated under the Clinton Administration that impacts women's roles and legal rights as mothers, partners, employees, and most importantly, as human beings. Part III examines more specifically three major sources of women's rights legislation enacted under the Clinton Administration in the areas of family medical leave, violence toward women, and trafficking of women. These laws have been selected for in-depth examination because of their significant impact and precedential value in the furtherance of women's rights.

I. THE CLINTON ADMINISTRATION'S APPOINTMENT OF WOMEN TO POSITIONS IN HIGH OFFICE AND ON THE BENCH OF THE JUDICIARY

Placing women in positions of power and authority in the government and judiciary is a method Clinton used to focus attention on women and place a positive value on their role in society. The valorization of women set the stage for the enactment of laws that would protect women's rights to freedom from enslavement by severely punishing violators who engage in trafficking. Additionally, these new laws helped to recategorize victims of trafficking so they are no longer treated as criminals.

A. Cabinet and Cabinet-Level Appointments

After defeating incumbent President George H.W. Bush in the electoral college,⁹ Clinton proceeded to fulfill his campaign pledge to put in place an

⁹ Bill Clinton received 370 electoral votes and 44,909,889 popular votes, defeating the incumbent President George H.W. Bush, who received 168 electoral votes and 39,104,545 popular votes. *See*

administration that “looked like America.”¹⁰ Deemed by many to be a reference to the nation’s changing demographic attitudes toward diversity,¹¹ Clinton’s pledge would require the inclusion of more women and minorities in the cabinet and in other cabinet-level positions.

Typically, “[f]or much of the nation’s history, when a president spoke of ‘diversity’ in his cabinet, he meant including men from different states, religions or European heritage.”¹² However, President Clinton’s ideal would transcend this traditional notion of “diversity” by “extending the political definition of a ‘diverse cabinet’ to include race, gender, ethnicity and sexual orientation,”¹³ as evidenced by his appointment of a significant number of women to high office. To date, a total of thirty women have held cabinet or cabinet-level positions in the history of the United States.¹⁴ Of those thirty women, thirteen¹⁵ were appointed by Clinton.¹⁶

During the Clinton Administration, the cabinet was composed of fourteen executive departments, each headed by a Secretary.¹⁷ The five women appointed to the cabinet by Clinton include: Madeline K. Albright, Secretary of State, 1997-2001; Janet Reno,¹⁸ Attorney General, 1993-2001; Alexis M. Herman, Secretary of

<http://www.potus.com/wjclinton.html> (last viewed Mar. 4, 2006). See also Presidential Elections, 1789-2004, Infoplease, at <http://infoplease.com/ips/A0781450.html> (last viewed Mar. 4, 2006).

¹⁰ Victoria L. Radd et al., *Women of Justice: Reflections*, 18 HARV. WOMEN’S L.J. 1, 1 (1995) (a compendium of personal essays written by six of the women leaders at the United States Department of Justice).

¹¹ Ben Vient, *Leaving Diversity in his wake—Clinton changed the math for Cabinet appointments*, MSNBC NEWS (Dec. 2000), at <http://www.msnbc.msn.com/id/3071906> (last viewed Mar. 4, 2006).

¹² *Id.*

¹³ *Id.*

¹⁴ See CENTER FOR AMERICAN WOMEN AND POLITICS, FACT SHEET, WOMEN APPOINTED TO PRESIDENTIAL CABINET (2005), available at <http://www.gendergap.com/government/fedcab97.html> (last visited Mar. 4, 2006) (indicating the sources for this statistical information as the Center for the American Woman and Politics (CAWP), National Information Bank on Women in Public Office, Eagleton Institute of Politics, and Rutgers University). Reference to the thirty women who have held cabinet and cabinet-level positions includes the four females appointed by President Clinton’s predecessor, George W. Bush. The four women appointed by President George W. Bush during his tenure include: Elaine Chao, Secretary of Labor, 2001-present; Gale Norton, Secretary of the Interior, 2001-present; Ann Veneman, Secretary of Agriculture, 2001-present; and Christine Todd Whitman, Administrator, Environmental Protection Agency (a Cabinet-level post under the G. W. Bush Administration), 2001-2003; Condoleezza Rice, Secretary of State, 2005-present. *Id.*

¹⁵ *Id.* Madeline K. Albright was appointed twice under the Clinton Administration. She was appointed Secretary of State and U.N. Ambassador. Therefore, her appointments count as two of President Clinton’s thirteen female appointments.

¹⁶ *Id.* This number only refers to appointed Secretaries of the fourteen executive departments and other officers with cabinet-level status. It does not include other high-ranking officers such as the Director of the Central Intelligence Agency, nor White House officers such as the White House Chief of Staff.

¹⁷ *William Jefferson Clinton*, The Internet Public Library, at <http://www.potus.com/wjclinton.html> (last visited Oct. 2, 2004). All departments, with the exception of the Office of the Attorney General, are headed by a Secretary. The thirteen departments include: State; Treasury; Defense; Interior; Agriculture; Commerce; Labor; Health and Human Services; Housing and Urban Development; Transportation; Energy; Education; and Veteran Affairs. *Id.* See also THE WHITE HOUSE, BIOGRAPHY OF SECRETARY TOM RIDGE, available at <http://www.whitehouse.gov/homeland/ridgebio.html> (last visited Oct. 2, 2004), for more information on the fifteenth Cabinet department, the Department of Homeland Security, that was added under the Bush Administration in 2001.

¹⁸ See generally *William Jefferson Clinton supra* note 17. See also Bill Clinton, Encarta Encyclopedia, available at http://encarta.msn.com/encyclopedia_761564341_2/Bill_Clinton.html (last

Labor, 1997-2001; Donna E. Shalala, Secretary of Health and Human Services, 1993-2001; and Hazel R. O'Leary, Secretary of Energy, 1993-1997. In addition to the five women appointed to cabinet positions, Clinton also named eight women to departments in high-ranking cabinet-level¹⁹ positions. They include:²⁰ Madeleine K. Albright, U.N. Ambassador, 1993-1997;²¹ Aida Alvarez, Administrator, Small Business Administration, 1997-2001; Charlene Barshefsky, U.S. Trade Representative, 1997-2001; Carol M. Browner, Administrator, Environmental Protection Agency, 1993-2001; Janice R. Lachance, Director, Office of Personnel Management, 1997-2001; Alice M. Rivlin, Director, Office of Management and Budget, 1994-1996; Laura D'Andrea Tyson, Chair, National Economic Council, 1995-1997; and Janet L. Yellen, Chair, Council of Economic Advisors, 1997-1999.

It is generally agreed that the women appointed by Clinton experienced significant difficulty in obtaining the confirmation of their high-ranking cabinet-level and cabinet positions. In the past, cabinet nominations have "been handled by the Senate with kid gloves" and "the handling . . . [was] . . . so gentle as to make nomination to a cabinet post virtually tantamount to [actual] appointment."²² In contrast, partisan politics made Clinton's cabinet appointment process one of the most difficult in history.²³

During Clinton's first term, the assembling and confirmation of the cabinet was slowed down²⁴ by a historically unforeseen level of scrutiny toward his early nominees.²⁵ For example, Clinton was forced to withdraw his initial two nominations for the position of Attorney General, both of whom were women.²⁶

visited Mar. 4, 2006) (Janet Reno was the first woman in U.S. history to hold the office of Attorney General); Ruth Marcus, *Clinton Nominates Reno at Justice*, WASH. POST, Feb. 12, 1993, at A1 (Janet Reno received the appointment after two failed attempts to appoint female candidates Zoe E. Baird and Kimba M. Woods to the position early in Clinton's administration due to controversy over Baird's and Woods' previous employment of illegal immigrants.).

¹⁹ The eight departments were considered to be cabinet-level positions during the Clinton Administration. See <http://www.gendergap.com/government/fedcab97.html> (last visited Oct. 9, 2004).

²⁰ *Id.* For biographies of these women, see *Fact Sheet on Women Government Appointees*, WOMEN'S ENEWS, available at <http://www.womensenews.org/article.cfm?aid=331&mode=today> (last visited Oct. 9, 2004).

²¹ *Id.* Madeline K. Albright held this post prior to her appointment as Secretary of State in 1997.

²² Stephen L. Carter, *The Confirmation Mess, Continued*, 62 U. CINN. L. REV. 75, 79 (1993).

²³ See Stephen L. Carter, *A Devilish Look at the Confirmation Process (With Apologies to C.S. Lewis)*, 50 DRAKE L. REV. 369, 371 (2002) (indicating that pitched battles over nominations for the President's cabinet are rare. Since WWII, the number of cabinet nominees who have been defeated or withdrawn is approximately half a dozen. Only one of nine has failed to achieve a plurality of 90% in the Senate.).

²⁴ See generally Stephen Hess, *First Impressions: A Look Back at Five Presidential Transitions*, 19 THE BROOKINGS REV. 28-31 (Spring 2001), available at <http://www.brookings.edu/press/REVIEW/spring2001/hess.htm> (last visited Oct. 10, 2004) (indicating that it was not until March 11, 1993, the day Janet Reno was confirmed, that President Clinton finally had his Cabinet assembled and confirmed).

²⁵ See generally *The Confirmation Mess*, *supra* note 22.

²⁶ See generally *A Devilish Look*, *supra* note 23 (referring to nominees Zoe Baird and Kimba Wood, whose nominations were forcibly withdrawn upon the finding that both women had hired illegal aliens to care for their children). For further explanation as to Baird's failed nomination, see generally Michael J. Gerhardt, *The Confirmation Mystery*, 83 GEO. L.J. 395 (1994) (book review of STEPHEN L. CARTER, *THE CONFIRMATION MESS: CLEANING UP THE FEDERAL APPOINTMENT PROCESS* (1994),

By the time Clinton's third nominee for Attorney General, Janet Reno, was finally confirmed on March 11, 1993, President Clinton's cabinet consisted of eleven men, four women, nine whites, four blacks, and two Hispanic Americans.²⁷ "Yet the fallout from the [two failed appointments of an] Attorney General [which was a] fiasco helped create the impression that the new presidency would, as the New York Times put it, 'hit the ground stumbling.'"²⁸

Clinton's second term cabinet and cabinet-level appointments proved equally challenging. "[T]he last wave of Clinton appointees entered office during a period of high scandal, which led to increased delays at the FBI and in the Republican-controlled Senate."²⁹ The reasons for the difficulty in securing confirmation of Clinton's appointments have long since been a source of scholarly debate.³⁰ Despite these daunting challenges, Clinton was successful in appointing an unprecedented number of women to positions of high office. These appointments helped to focus attention on women's rights and set the stage for the enactment of important women's rights legislation that would greatly benefit women, the family, and American society in the future.

B. Judicial Appointments

President Clinton's appointment of a significant number of women to various levels of the federal bench is quite noteworthy. However, these judicial appointments were fraught with even more confirmation scrutiny than his government appointments on the cabinet level. When Clinton was campaigning for the White House, he "pledged to name lawyers who would enhance balance on the federal bench, would have proper 'judicial temperament' as well as be intelligent, industrious, independent, and committed to the enforcement of essential constitutional rights."³¹ In his pledge, Clinton's notion of "balance" would ultimately result in the appointment of a substantial number of female federal judges.

During his tenure as President, Clinton successfully appointed a total of three hundred and seventy-eight persons to various levels of the federal bench,³² one

where Mr. Carter contends there were indeed three overall factors related to Baird's conduct that helps explain her failed nomination).

²⁷ Hess, *supra* note 24.

²⁸ *Id.*

²⁹ Paul C. Light, *Our Tottering Confirmation Process*, THE BROOKINGS INSTITUTION (2002), available at <http://www.brookings.edu/views/articles/light/200205.htm> (last visited Oct. 10, 2004).

³⁰ For a comprehensive analysis of the federal appointment process outside the scope of this Article, see Michael J. Gerhardt, *Toward a Comprehensive Understanding of the Federal Appointments Process*, 21 HARV. J.L. & PUB. POL'Y 467 (1998); Michael J. Gerhardt, *Putting Presidential Performance in the Federal Appointment Process in Perspective*, 47 CASE W. RES. L. REV. 1359 (1997); and William G. Ross, *The Senate's Constitutional Role in Confirming Cabinet Nominees and Other Executive Officers*, 48 SYRACUSE L. REV. 1123 (1998).

³¹ Carl Tobias, *Choosing Judges at the Close of the Clinton Administration*, 52 RUTGERS L. REV. 827, 827 (2000).

³² *Judgeship Appointments by President*,

hundred and thirteen of whom were women.³³ The number of Clinton's female judicial appointees is greater than the preceding three administrations combined.³⁴

Included in this impressive number of female judges appointed to the federal bench is Ruth Bader Ginsburg, whom Clinton appointed to the United States Supreme Court. Justice Ginsburg is the second woman ever to be appointed to the nation's highest court, and her appointment had special significance in the advancement of women's rights. Justice Ginsburg had successfully pursued a number of trail-blazing women's rights cases even before she was appointed to the United States Court of Appeals for the District of Columbia Circuit, a position she held for thirteen years before being appointed to the U.S. Supreme Court.³⁵ Thus, Clinton's appointment of Justice Ruth Bader Ginsburg constitutes an important element in the development of a favorable cultural climate for the protection of women's rights in the United States.

The qualifications of the women appointed to the federal bench warrant some attention. The Clinton Administration followed the longstanding practice of vetting judicial candidates with the American Bar Association ("ABA") prior to their nomination.³⁶ The ABA assigned President Clinton's appointees the highest ratings ever since the ABA initially began ranking nominees over a half-century ago.³⁷ In referring to President Clinton's unprecedented record of appointing highly competent female judges, Professor Carl Tobias, a reputed scholar in presidential judicial selection, noted that "[t]he record compiled is important, because diverse judges can improve their colleagues' understanding of complex questions that the federal courts must decide, might reduce bias in the judicial process, and may increase the confidence of the American people in the federal judiciary."³⁸

http://www.uscourts.gov/history/appointments_by_president.pdf (last visited Oct. 19, 2004). See also Carl Tobias, *Choosing Judges at the Close of the Clinton Administration*, 52 RUTGERS L. REV. 827 (2000); Carl Tobias, *Leaving a Legacy on the Federal Courts*, 53 U. MIAMI L. REV. 315 (1999); Carl Tobias, *Fostering Balance on the Federal Courts*, 47 AM. U. L. REV. 935 (1998) [hereinafter *Fostering Balance*]; Carl Tobias, *Choosing Federal Judges in the Second Clinton Administration*, 24 HASTINGS CONST. L.Q. 741 (1997); Carl Tobias, *Keeping the Covenant on the Federal Courts*, 47 SMU L. REV. 1861 (1994). See generally Carl Tobias, *Judicial Selection at the Clinton Administration's End*, 19 LAW & INEQ. 159 (2001) [hereinafter *Judicial Selection*].

³³ *Judicial Selection*, *supra* note 32, at 171, 181.

³⁴ *Id.* at 161 (discussing relatively recent federal judicial selections including those specifically in the first year of the Clinton Administration). Collectively the three preceding administrations appointed a total of 108 female judges to the federal bench. *Id.* Under the Carter Administration, there were forty-one women named to the federal bench (15.9% of the total individuals appointed). President Reagan named a total of only thirty-one female federal judges out of his 372 appointees (a total of 8.3%). During the George H.W. Bush Administration, a total of thirty-six women judges were appointed to the federal bench (18.7% of the total appointees). *Id.*

³⁵ *Fostering Balance*, *supra* note 32, at 942.

³⁶ Sarah Wilson, *Appellate Judicial Appointments During the Clinton Presidency: An Inside Perspective*, 5 J. APP. PRAC. & PROCESS 29, 33 (2003).

³⁷ *Judicial Selection*, *supra* note 32, at 167-68 (citing Robert A. Stein, *For the Benefit of the Nation*, A.B.A. J., Mar. 1996, at 104 (describing the American Bar Association's procedure of evaluating the professional qualifications of candidates for appointment to the federal courts).

³⁸ *Judicial Selection*, *supra* note 32, at 159.

During his first two years in office, Clinton was successful in naming unprecedented numbers of highly competent female judges to the federal bench.³⁹ But afterwards, the President encountered greater difficulty in appointing women “partly because the Republican Party had captured a Senate majority in 1994.”⁴⁰ Indeed, Clinton’s judicial nominations “slowed to a crawl in the final years of his presidency, leading the President to declare a ‘vacancy crisis’ on the federal bench.”⁴¹ Clinton’s successful appointment of unprecedented numbers of women to the federal bench, despite such obstacles, is one of the key victories of his presidential legacy and the enhancement of women’s rights.⁴²

II. DOMESTIC WOMEN’S RIGHTS LEGISLATION IN THE CLINTON ADMINISTRATION

During the Clinton Administration, the 103rd through 106th Congresses were responsible for promulgating dozens of public laws relating to women’s rights.⁴³ This section briefly summarizes the major sources of domestic public laws pertaining to women’s rights as originally enacted,⁴⁴ and it culminates in legislation to protect trafficked women both in the United States and abroad.

The domestic legislation pertaining to women’s rights enacted during the Clinton Administration includes the following Public Laws:

*A. The Family and Medical Leave Act of 1993 (FMLA)*⁴⁵

The Family and Medical Leave Act of 1993 promotes the goal of equal employment opportunity for women and men. The purpose of FMLA is to balance the demands of the workplace with the needs of the family and to preserve family integrity. In pursuit of these objectives, FMLA entitles employees to receive up to twelve weeks of leave during a twelve-month period for any of the following reasons: personal medical reasons, the birth or adoption of a child, and the care of a child, spouse, or parent who has a serious health condition. Employees receiving leave may not be thereafter subjected to reprisals such as discrimination or loss of

³⁹ See *id.* at 159.

⁴⁰ *Id.*

⁴¹ Keith E. Whittington, *Yet Another Constitutional Crisis?*, 43 WM. & MARY L. REV. 2093, 2105 (2002) (citing Peter Baker, *Clinton Says Republicans are “Threat” to Judiciary; Hill GOP Blamed for “Intimidation,” Delays*, WASH. POST, Sept. 28, 1997, at A6).

⁴² The Honorable Stephanie K. Seymore, *The Judicial Appointment Process: How Broken Is It?*, 39 TULSA L. REV. 691, 698 (2004) (citing John Anthony Maltese, *Confirmation Gridlock: The Federal Judicial Appointments Process under Bill Clinton and George W. Bush*, 5 J. APP. PRAC. & PROCESS 1, 27 (2003); Michael J. Gerhardt, *Norm Theory and the Future of the Federal Appointments Process*, 50 DUKE L.J. 1687, 1705 (2002-2003)) (When President Clinton left office, forty-two nominees remained unconfirmed, and there were nearly 100 vacancies on the federal bench.).

⁴³ For a complete list of public laws enacted under the 103rd through 106th Congresses, visit <http://thomas.loc.gov>. The site allows users to navigate through Congressional records by year or by Congressional number.

⁴⁴ The Public Law number ascribed to each piece of legislation is identified because the Public Laws indicated here were either not codified or were scattered throughout numerous titles and sections of the U.S. Code. Subsequent amendments, as well as any repeals or findings of little significance, have not been addressed here unless otherwise indicated.

⁴⁵ See 29 U.S.C. § 2601-2654 (2003).

benefits. FMLA helps to valorize the family as a cultural institution and highlights the significant role that parenting plays in our society. By providing for the legal right to take care of one's child, this law focuses attention on women and sets the stage for further women's rights legislation that will protect women against domestic violence and trafficking.

B. Women's History Month—Proclamation (WHMP)⁴⁶

Clinton was determined to enhance the image of women in society. To further this aim, a Joint Resolution of Congress designated March 1993 and March 1994 as "Women's History Month." The President was authorized and requested to issue a proclamation calling upon the people of the United States to observe Women's History Month by establishing appropriate programs, ceremonies, and activities dedicated to women.

WHMP was promulgated in order to recognize officially that women of every race, class, and ethnic background have made historical contributions to the growth and strength of the United States in countless ways, and despite these contributions, the role of American women in history has been consistently overlooked.

C. National Institutes of Health Revitalization Act of 1993 (NIHRA)⁴⁷

NIHRA amends the Public Health Service Act⁴⁸ in order to revise and extend the programs of the National Institutes of Health, which indirectly benefit women. For example, NIHRA establishes the Office of Research on Women's Health within the Office of the Director of the National Institutes of Health in order to identify projects of research on women's health that should be conducted or supported by national research institutes. In furtherance of this research, NIHRA enables women to assume various leadership roles and acquire research positions within the Office.

NIHRA conducts research into the causes, prevention, detection, and treatment of breast cancer and cancer of the female reproductive system. NIHRA also enables the National Institutes of Health to conduct research into the aging process of women, with particular emphasis given to the effects of menopause and the physiological and behavioral changes occurring during the transition from pre- to post-menopause, and into the diagnosis, disorders, and complications related to aging and loss of ovarian hormones in women.

⁴⁶ Pub. L. No. 103-22, 107 Stat. 58 (1993).

⁴⁷ 42 U.S.C § 285g-5 (indicates "Section effective June 10, 1993, see section 2101 of Pub. L. 103-43, set out as a note under Section 201 of this title").

⁴⁸ Public Health Services Act, 42 U.S.C § 300 *et. seq.* (1993).

*D. National Women's Health Resources Center, Washington, D.C. (NWHRC)*⁴⁹

NWHRC conveys to the Columbia Hospital for Women certain lands and improvements in Washington, D.C. for the purpose of constructing a facility to house the National Women's Health Resource Center ("The Center"). The Center is designated to provide comprehensive health and counseling services to women including prenatal and postnatal services, treatment and counseling of substance abusers and those at risk for substance abuse, health promotion and disease prevention services, and physician and hospital referral services.

Clinton's focus on, and protection of, women's health and well-being is another example of the sea change that his administration produced in the cultural climate of American society with respect to the value of women.

*E. Small Business Guaranteed Credit Enhancement Act of 1993 (SBGCEA)*⁵⁰

SBGCEA offers assistance to women-owned businesses in order to provide a fair opportunity for women to fully participate in the free enterprise system. SBGCEA recognizes that women, as a group, are subjected to gender discrimination in their entrepreneurial endeavors. SBGCEA also recognizes that it is in the national interest to remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women. Pursuant to SBGCEA, the government shall engage in a systematic and sustained effort to identify, define, and analyze discriminatory barriers facing women in business. The cataclysmic rise in the number of women CEOs in the workplace today is proof that Clinton's focus on guaranteed credit enhancement programs for women has had an impact in American society.

*F. National Breast Cancer Awareness Month—Proclamation (NBCAMP)*⁵¹

A Joint Resolution of Congress designated October 1993 as "National Breast Cancer Awareness Month." The President was authorized to issue a proclamation calling upon the people of the United States to observe National Breast Cancer Awareness Month by establishing appropriate programs and activities.

NBCAMP recognizes that as of 1993 breast cancer is the second leading cause of cancer-related death in women. Deaths from breast cancer are significantly reduced in women who have been screened by mammography. Therefore, NBCAMP seeks increased public awareness of the importance of screening mammography and increased access to and affordability of mammography screening for all women. In the United States, a new culture was created as a result of this Proclamation. Now more and more women are

⁴⁹ Pub. L. No. 103-67, 107 Stat. 686 (1993).

⁵⁰ See 15 U.S.C. § 631, *et. seq.*

⁵¹ Pub. L. No. 103-84, 107 Stat. 926 (1993).

submitting voluntarily to a yearly mammogram, just as normally as they would submit to a yearly dental examination.

*G. National Breast Cancer Awareness Month—Proclamation (NBCAMP)*⁵²

Recognizing once again that breast cancer is prevalent in American society, NBCAMP designated October 1994 as “National Breast Cancer Awareness Month.” The goal of NBCAMP is to educate both the public and health care providers about the importance of early detection of breast cancer. Early detection by mammography testing can reduce breast cancer mortality.

*H. Stamp Out Breast Cancer Act (SOBCA)*⁵³

SOBCA allows postal patrons to contribute to breast cancer research funds through the voluntary purchase of specially issued United States first-class postage stamps. Seventy percent of the money paid for these stamps is designated to be paid back to the National Institutes of Health for breast cancer research.

*I. National Mammography Day—Proclamation*⁵⁴

Experts agree that mammography is the best method for early detection of breast cancer. Early detection is the key to saving lives. Thus, the National Mammography Day Proclamation designated October 19th, 1993 as “National Mammography Day.”

*J. National Mammography Day—Proclamation (NMDP)*⁵⁵

Mammograms can reveal the presence of small cancers up to two years before regular clinical breast examinations or breast self-examinations. Mammograms can save as many as a third more lives. NMDP designated October 19, 1994 as “National Mammography Day.”

*K. Mammography Quality Standards Reauthorization Act of 1998 (MQSRA)*⁵⁶

MQSRA amends the Public Health Services Act⁵⁷ to revise and extend the program for mammography quality standards.

*L. National Women Veterans Recognition Week—Proclamation (NWVRWP)*⁵⁸

As of 1993, there are more than 1,200,000 women veterans in the United States representing 4.6 percent of the total veteran population. However, the

⁵² Pub. L. No. 103-367, 108 Stat. 3473 (1994).

⁵³ Pub. L. No. 105-41, 111 Stat. 1119 (1997).

⁵⁴ Pub. L. No. 103-109, 107 Stat. 1036 (1993).

⁵⁵ Pub. L. No. 103-370, 108 Stat. 3483 (1994).

⁵⁶ 42 U.S.C. § 263(b) (1995).

⁵⁷ 42 U.S.C. § 263 (1995).

⁵⁸ Pub. L. No. 103-148, 107 Stat. 1502 (1993).

special needs of women veterans, especially in the area of health care, have often been overlooked or inadequately addressed by the federal government. For this reason, NWVWP designated the week beginning November 7th, 1993 and the week beginning November 6th, 1994 as “National Women Veterans Recognition Week.” Designating a week to recognize women veterans helps to promote the important gains made by women veterans and to focus attention on their special needs.

*M. Preventive Health Amendments of 1993 (PHA)*⁵⁹

PHA amends the Public Health Services Act⁶⁰ in order to revise and extend the program of State and tribal grants relating to preventive health measures for breast and cervical cancer and other illnesses related to women.

*N. Freedom of Access to Clinic Entrances Act of 1994 (FACE)*⁶¹

FACE establishes criminal and civil penalties against anti-abortion protestors who block access to abortion clinics. Specifically, FACE creates federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services.

Congress enacted the legislation in response to a rising tide of violence after determining that existing laws were inadequate to stop the violence and that federal legislation was necessary and appropriate.⁶²

*O. Violence Against Women Act (VAWA)*⁶³

VAWA gives victims of sexual assault or gender-based violence the private right to sue in federal court. Victims can sue their attackers for compensatory and punitive damages. Furthermore, VAWA provides a victim of gender-based violence with the right to obtain injunctive, declaratory, and other appropriate relief.⁶⁴

*P. Women's Educational Equity Act (WEEA)*⁶⁵

Women's excellence in and high educational achievements and standards, as well as the full participation of women in American society, cannot be achieved

⁵⁹ Pub. L. No. 103-183, 107 Stat. 2226 (1993).

⁶⁰ 42 U.S.C. § 300 *et. seq.* (2005).

⁶¹ 18 U.S.C. § 248 (2005).

⁶² FACE was held unconstitutional in *U.S. v. Bird*, 279 F. Supp. 2d 827 (2003) (stating that Congress lacked authority under the Commerce Clause to regulate non-economic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce).

⁶³ 42 U.S.C. § 13981 (1993).

⁶⁴ VAWA was found unconstitutional by *US v. Morrison*, 529 U.S. 598 (2000) (indicating Congress lacked the power to enact the civil remedy provision), but was reauthorized by the Victims of Trafficking Protection Act, signed into law on October 5, 2000.

⁶⁵ Pub. L. No. 103-382, 108 Stat. 3518 (1994).

without educational equity for women. WEEA seeks to promote gender equity in education in the United States by providing financial assistance that enables educational agencies and institutions to meet the requirements of Title IX of the Educational Amendments of 1972. Thus, WEEA seeks to promote equity in education for women who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age. WEEA recognizes that federal assistance for gender equity must be tied to systemic cultural reform. This must involve collaborative efforts to encourage parental participation to help facilitate effective gender practices at the local level.

*Q. Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development Act (CAWMSETDA)*⁶⁶

Women have historically been underrepresented in scientific and engineering occupations. CAWMSETDA seeks to establish a Commission specifically designed to promote the Advancement of Women and Minorities in Science, Engineering, and Technology Development (“the Commission”).

The duty of the Commission is to review available research and to conduct additional research in order to identify opportunities for, and artificial barriers to, the recruitment, retention, and advancement of women, minorities, and disabled individuals in the fields of science, engineering, and technology development in academia, industry, and government.

*R. Women’s Health and Cancer Rights Act (WHCRA)*⁶⁷

WHCRA was enacted in order to assist a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction. WHCRA states that health insurance providers who offer medical and surgical benefits for a mastectomy shall also provide coverage for all stages of breast reconstruction, surgery, and reconstruction of the other breast in order to produce a symmetrical appearance and prostheses in a manner to be determined in consultation between the physician and patient.

WHCRA also provides that a group health plan and/or insurance provider may not deny a patient eligibility, or continued eligibility to enroll or renew coverage, under the terms of the plan solely for the purpose of avoiding the requirements of the WHCRA.

*S. Women’s Health Research and Prevention Amendments of 1988 (WHRPA)*⁶⁸

WHRPA amends the Public Health Services Act⁶⁹ by revising and extending certain programs with respect to women’s health research and prevention activities

⁶⁶ 42 U.S.C. 1885(a) (1995).

⁶⁷ 29 U.S.C. § 1185(b) (1995).

⁶⁸ 42 U.S.C. § 283(a); 42 U.S.C. § 201 (1995).

⁶⁹ 42 U.S.C. § 300 (1993).

at the National Institutes of Health and the Centers for Disease Control and Prevention.

Examples of women's health research affected by WHRPA include: education regarding DES (Diethylstilbestrol); research on osteoporosis, Padgett's Disease, and other bone disorders; breast and ovarian cancer; heart attack, stroke, and cardiovascular disease in women; and aging processes in women.

*T. Women's Progress Commemoration Act (WPCA)*⁷⁰

In honor of the 150th Anniversary of the Seneca Falls Convention, WPCA establishes a commission to further protect sites of importance in an effort to secure equal rights for women.

*U. Women's Business Centers Amendments Act of 1999 (WBCAA)*⁷¹

WBCAA amends the Small Business Guaranteed Credit Enhancement Act of 1993 in order to change the conditions of women's participation in business and to provide significant authorization of appropriations for women's business center programs.

*V. Women's Business Centers Sustainability Act of 1999 (WBCSA)*⁷²

WBCSA amends the Small Business Guaranteed Credit Enhancement Act of 1993 (WBCAA) with respect to the women's business center program, making technical changes to the requirements for women's business centers established pursuant to WBCAA as well as the sustainability program.

*W. Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA)*⁷³

BCCPTA amends Title XIX of the Social Security Act⁷⁴ to provide medical assistance for certain women screened and found to have breast or cervical cancer under a federally-funded screening program. BCCPTA amends the Public Health Services Act⁷⁵ and the Federal Food, Drug, and Cosmetic Act⁷⁶ with respect to surveillance and information concerning the relationship between cervical cancer and the human papillomavirus (HPV).

⁷⁰ 16 U.S.C. § 470(a) (1995).

⁷¹ 15 U.S.C. § 656 (1996).

⁷² 15 U.S.C. § 656 (1999).

⁷³ 42 U.S.C. § 1396(a) (1996).

⁷⁴ Codified at 42 U.S.C. § 1396 *et. seq.*

⁷⁵ 42 U.S.C. § 300 *et. seq.*

⁷⁶ 21 USC §301 *et. seq.*

*X. Trafficking Victims Protection Act (TVPA)*⁷⁷

As of 2000, approximately 50,000 women and children are trafficked into the United States each year. TVPA, which was signed into law by President Clinton in October 2000, was promulgated to combat trafficking in persons (predominantly women and children), especially into sex trade, slavery, and involuntary servitude. The purpose of the TVPA is to ensure just and effective punishment of traffickers, to prevent trafficking in the future, and to reauthorize certain federal programs to prevent violence against women. Understanding that trafficking of women is an international phenomenon involving source, transit, and destination countries, TVPA includes international programs designed to educate women abroad about the dangers of trafficking. It also includes financial, immigration, and educational benefits to the victims of trafficking who are encouraged to assist in the prosecution of the perpetrators of trafficking.

III. EXAMINATION OF SELECTED SOURCES OF THE DOMESTIC WOMEN'S
LEGISLATION ENACTED UNDER THE CLINTON ADMINISTRATION

Of the numerous sources of domestic legislation enacted under the Clinton Administration pertaining to women's rights, three laws warrant further examination since they pertain to rights and protections never before dealt with through federal legislation. These rights are family medical leave and protection from sexual trafficking of women. The third law passed under the Clinton Administration that gave women much hope, the Violence Against Women Act (VAWA), was ultimately declared unconstitutional primarily on Commerce Clause grounds. Nevertheless, VAWA and the services it provided to victims of domestic violence were reauthorized by the TVPA, which the Bush Administration fully supports and actually has re-authorized in 2003 and again in 2005 as the Trafficking Victims Protection Reauthorization Act (TVPRA). The TVPRA reauthorizes and expands appropriations for anti-trafficking programs in the United States and abroad and offers solutions to specific scenarios where additional initiatives are needed, such as in peacekeeping missions.⁷⁸ The TVPRA authorizes \$361 million for fiscal years 2006 and 2007 to better implement the TVPA.⁷⁹

The United States' emphasis on the protection of women from domestic violence and from trafficking is also shared by influential institutions abroad like NATO and the Organization for Security and Cooperation ("OSCE") which works primarily in Europe. OSCE adopted a decision on Dec. 6, 2005 to prevent sexual

⁷⁷ See 22 U.S.C. § 7101 (1996). This Act will be examined in more detail in Part III.C of this Article.

⁷⁸ *Rep. Smith's Trafficking Victims Protection Act to Become Law; Soon-to-be Law Strengthens and Expands Human Trafficking Laws*, U.S. NEWswire, Dec. 22, 2005, available at <http://releases.usnewswire.com/GetRelease.asp?id=58567>.

⁷⁹ *Smith's Trafficking Victims Protection Act Becomes Law; Combats Domestic Trafficking by Targeting Sex Trade Industry*, U.S. NEWswire, Jan. 10, 2006 [hereinafter *Trafficking Victims Protection Act Becomes Law*], available at www.lexis.com/research/retrieve?_m=c57c862d655073c1297920d4df05bec1&searchType=&docnu.

exploitation and abuse by its civilian and military personnel or incidents of forced labor. NATO adopted a similar policy in 2004.⁸⁰ The adoption of these policies by reputable institutions in Europe and abroad is evidence of the international impact of the TVPA.

*A. Family and Medical Leave Act of 1993*⁸¹

President Clinton signed the Family and Medical Leave Act of 1993 (FMLA) into law on February 5, 1993.⁸² Indeed, FMLA was the first piece of legislation signed by the President after taking office.⁸³ Upon signing FMLA, Clinton declared that “American workers will no longer have to choose between the job they need and the family they love.”⁸⁴ Until the passage of FMLA, “the United States was the only industrialized nation in the world that did not have a national policy guaranteeing some type of maternity, family, or medical leave.”⁸⁵ After the passage of FMLA, “American workers in all 50 states . . . enjoy the same rights as workers in other nations.”⁸⁶

As originally enacted, and as it still stands today following its amendment, FMLA provides a broad framework for family and medical leave. Title I of the Act entitles eligible employees to take a total of twelve work-weeks of leave during any twelve-month period for one or more of the following reasons: (1) the birth or care of a son or daughter; (2) the adoption or foster care of a son or daughter; (3) the care of the employee’s spouse, son, daughter, or parent who has a serious health condition; and (4) a serious health condition that makes the employee unable to perform the functions of the position.⁸⁷ Entitlement to leave for the birth, adoption, or foster care of a child is limited to a twelve-month period beginning with the birth or placement of the child.⁸⁸

⁸⁰ Trans-Atlantic Group’s Action Against Human Trafficking Welcomed; Helsinki Commission praises OSCE Ministerial Council Decision, Dec. 12, 2005, http://www.lexis.com/research/retrieve?_m=295f24031aa26a9d90330712a3a19ae7&neStartCite--1 & cm.

⁸¹ 29 U.S.C.A. § 2601 *et. seq.* (1993).

⁸² 29 U.S.C.A. § 2601.

⁸³ Jane Rigler, *Analysis and Understanding of the Family and Medical Leave Act of 1993*, 45 CASE W. RES. L. REV. 457, 458 (1995) (citing *Doing the Leave Policy Shuffle*, U.S. NEWS & WORLD REP., Feb. 8, 1993, at 21).

⁸⁴ Emily A. Hayes, *Bridging the Gap Between Work and Family: Accomplishing the Goals of the Family and Medical Leave Act of 1993*, 42 WM. & MARY L. REV. 1507, 1507 (2001) (citing Remarks on Signing The Family and Medical Leave Act of 1993, 1 PUB. PAPERS 49 (Feb. 5, 1993)).

⁸⁵ Sabra Craig, *The Family and Medical Leave Act of 1993: A Survey of the Act’s History, Purposes, Provisions, and Social Ramifications*, 44 DRAKE L. REV. 51, 52 (1993) (citing Shannon L. Antle, *Parental Leave: An Investment in Our Children*, 26 J. FAM. L. 579, 579 (1987-88)).

⁸⁶ *Id.* at 1 (citing Statement by President William J. Clinton upon signing H.R. I, 29 WEEKLY COMP. PRES. DOC. 144 (Feb. 8, 1993)).

⁸⁷ 29 U.S.C.A. § 2612 (a)(1)(A)-(D) (1993).

⁸⁸ *Id.* at (a)(2).

Under Title I of FMLA,⁸⁹ an “employer” includes any person engaged in commerce or in any industry or activity affecting commerce who employs fifty or more employees for each working day during each of twenty or more calendar work weeks in the current or preceding calendar year.⁹⁰ The term “employer” also includes any “public agency” as defined in section 203(x) of the Fair Labor Standards Act of 1938 (FLSA).⁹¹ Under FLSA, and, therefore, under FMLA, “[a] public agency . . . [includes] the government of a State or political subdivision thereof, a State, or a political subdivision of a State.”⁹²

An “eligible employee” under FMLA includes an employee who has been employed for at least twelve months, and who has performed at least 1,250 hours of service during the previous twelve-month period.⁹³ “The term eligible employee does not include any federal officer or employee covered under subchapter V of Chapter 63 of title 5, United States Code (as added by title II of this Act),” or any employee who is employed at a worksite with less than fifty employees.⁹⁴ This number includes the total number of employees at the employer’s facilities within seventy-five miles of the facility in which the employee works.⁹⁵

There are limitations on the compensability for leave granted under FMLA. An employer need not pay the employee who takes leave pursuant to FMLA.⁹⁶ Leave is unpaid unless an employer or employee elects to substitute any accrued paid leave for the leave provided under FMLA.⁹⁷ Furthermore, in some circumstances, spouses employed by the same employer must aggregate their twelve weeks of leave.⁹⁸

There are circumstances under which an employer may require an employee to use accrued paid leave as a substitute to mandatory unpaid leave. For example, an employer may require an employee to use any accrued paid leave such as a vacation, personal, medical, or sick leave as a substitute for all or any portion of the twelve-week leave when mandated by the employer or elected by the employee.⁹⁹

However, there are strict limitations imposed upon the substitution of accumulated paid sick or medical leave. “The employer is not required to make paid medical leave available in any situation in which the employer would not normally provide such leave.”¹⁰⁰ For example, “if any employer’s policy restricts

⁸⁹ Title I of the FMLA outlines the general requirements for leave for employees of private employers and of state and local governments. Title I excludes most federal employees. Instead, federal employees, or civil service employees are covered in Title II of FMLA.

⁹⁰ 29 USC § 2612 (4)(A)(i).

⁹¹ Fair Standards Labor Act, 29 U.S.C. § 203(x); § 101(4)(A)(iii)(1938).

⁹² *Id.* § 203(x).

⁹³ 29 USC § 2612 (2)(A)(i), (ii).

⁹⁴ 29 USC § 2612 (2)(B)(ii).

⁹⁵ *See id.* § 2612 (2)(B)(ii).

⁹⁶ *See* 29 U.S.C. § 2612(c).

⁹⁷ 29 U.S.C. § 2612 (d)(2)(A).

⁹⁸ *See* 29 U.S.C. § 2612(f).

⁹⁹ *Id.*

¹⁰⁰ *See* Craig, *supra* note 85, at 74 (citing § 2612(d)(2)(B)).

the use of paid sick leave to absences necessitated by the employee's own illness, the employer may refuse the use of such paid sick leave when the employee takes leave to care for a sick family member."¹⁰¹

Furthermore, FMLA limits spouses who are employed by the same employer, and who are eligible for leave under FMLA, to a total combined leave of twelve-work weeks of leave during any twelve-month period.¹⁰² However, this limitation only applies to leave granted under subsection (a) of FMLA for the birth, adoption, or foster care of a child or the care of a sick parent.¹⁰³ FMLA, however, does not limit spouses who work for the same employer to an aggregate twelve-week leave within a twelve-month period if the leave is taken to care for a spouse or child who has a serious health condition or if the employee himself has a serious health condition.¹⁰⁴

FMLA also makes it "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title."¹⁰⁵ Additionally, FMLA makes it unlawful for any employer to "discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title."¹⁰⁶ There is no doubt that FMLA "represents a fundamental change in the way American employers are required to acknowledge and accommodate employees and their families."¹⁰⁷

Given the sweeping benefits accorded to employees who are also family members, it is fair to characterize FMLA as a law that inaugurated a major change in the way people view the family, and a woman's right to work and raise a family. Nevertheless, studies need to be conducted in the next few years in order to determine the quantity and quality of social and cultural change that FMLA has brought about in American society. There is no doubt that FMLA's valorization of the woman in society has paved the way for the enactment of the TVPA which further protects women from the horrors of enslavement.

B. Violence Against Women Act

The Violence Against Women Act (VAWA) was signed into law by President Clinton on September 13, 1994.¹⁰⁸ The purpose behind VAWA is to "protect the civil rights of victims of gender-motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a federal civil rights cause of action for victims of crimes of violence motivated by

¹⁰¹ Dorothy J. Stephens, *How the New Family and Medical Leave Act Affects Employee Health Leave and Benefits*, 10 HEALTH SPAN 16, 18 (1993); see also 29 U.S.C. § 2611 (Supp. V 1993).

¹⁰² See 29 U.S.C. § 2612(f).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ 29 U.S.C. § 2615 (a)(1).

¹⁰⁶ *Id.* at § 2615 (a)(2).

¹⁰⁷ See Rigler, *supra* note 83, at 458.

¹⁰⁸ See Violence Against Women Act (VAWA), Pub. L. 103-322, Title IV, § 40302, 108 Stat. 1941 (codified as amended at 42 U.S.C.A. § 13981 (1993)).

gender.”¹⁰⁹ For the first time in the history of our nation, VAWA established the enactment of a civil rights remedy aimed at violent gender-based discrimination against women.

VAWA states that any person, including those acting under the color of a State, who commits a crime of violence motivated by gender, shall be liable to the injured party.¹¹⁰ Specifically, VAWA allows for a private right of action in federal court for the recovery of compensatory and punitive damages, injunctive and declaratory relief, as well as any other such relief a court may deem appropriate.¹¹¹ Under VAWA, female victims of gender-based violent crimes “would not have to rely on local criminal prosecutions for relief; instead, they could sue and seek significant damages in federal court on their own behalf.”¹¹² Thus, the aim of VAWA is to “replace a patchwork of inconsistent, inadequate, and under-enforced state, civil, and criminal law with a consistent and uniform national standard under which to evaluate and prosecute such civil rights violations.”¹¹³ Equally important is “the symbolic value of recognizing the political aspects of gender-based crimes of violence. More than random violence, this type of bias crime serves to reinforce discriminatory social hierarchies, thereby harming targeted civil rights.”¹¹⁴

Congress enacted VAWA under the authority of the Commerce Clause and the Fourteenth Amendment, in an effort to enforce the Equal Protection Clause.¹¹⁵ Before passing VAWA, “Congress conducted four years of research regarding the pervasiveness and deleterious effects of violence on women, and made substantial findings about its effect on interstate commerce.”¹¹⁶ After much investigation, Congress discovered that violence “is a leading cause of injury to women, more common than car accidents, muggings, and cancer combined.”¹¹⁷ Relying on the documentation of its research, Congress found that the gender-motivated violence imposed an “artificial restriction on the market.”¹¹⁸

Such an artificial restriction on the market in turn had a “substantial effect on interstate commerce, thereby bringing it within the congressional realm to regulate

¹⁰⁹ 42 U.S.C. § 13981(a) (1993).

¹¹⁰ *See id.* at § 13981(c).

¹¹¹ *Id.*

¹¹² J. Rebekka S. Bonner, *Reconceptualizing VAWA's "Animus" for Rape in States' Emerging Post-VAWA Civil Rights Legislation*, 111 *YALE L. J.* 1417, 1418 (2002) (citing an email from Senator Joseph R. Biden, Jr., United States Senator, written to the author saying “[t]he civil rights remedy empowered a victim with the ability to seek remedies that were not dependent on the state, a particularly important right for many women who lived in places that had no or inadequate state resources”).

¹¹³ *See id.* at 1418 (citing S. Rep. No. 102-197, at 48, 53).

¹¹⁴ *See id.*

¹¹⁵ Ambre Howard, *Current Events: United States v. Morrison* 529 U.S. 598 (2000), 9 *AM. U. J. GENDER SOC. POL'Y & L.* 461, 462 (2001).

¹¹⁶ Karen Tichenor, *The Violence Against Women Act: Continued Confusion Over the Scope of the Commerce Clause*, 18 *WOMEN'S RTS. L. REP.* 329, 331 (1997) (citing *Doe v. Doe*, 929 F. Supp. 608, 611 (D. Conn. 1996)).

¹¹⁷ *See id.* at 332 (citing S. Rep. No. 103-138, at 38 (1993); *Doe*, 929 F. Supp. at 611).

¹¹⁸ *See id.* at 329 (citing Amicus Curiae brief for Petitioner at 9, *Morrison*, 529 U.S. 598 (Nos. 99-5, 99-29)).

violence against women under the Commerce Clause.”¹¹⁹ Additionally, Congress determined “that the state legal systems were failing to provide protection to victims of gender-based violence, and generally failing to grant women the right to receive equal protection of the laws in the Nation’s court systems.”¹²⁰ Thus, it would seem that Congress was well founded in its rationale for establishing VAWA. However, in 2000, the Supreme Court held that Congress had overstepped its bounds.

The deterioration of VAWA¹²¹ began shortly after its enactment when a female student at Virginia Polytechnic & State University accused two university football players of sexually assaulting her.¹²² *Brzonkala v. Virginia Polytechnic & State Univ.*, was filed in the Western District of Virginia pursuant to the claimant’s right to be free from gender-motivated violence under VAWA.¹²³ Although the court held that *Brzonkala* stated a claim under VAWA, the court also held that Congress did not have the authority to enact section 13981 under the Commerce Clause.¹²⁴

In interpreting Congress’ power to regulate interstate commerce, the West Virginia court relied primarily upon *United States v. Lopez*,¹²⁵ a 1995 Supreme Court case that struck down the Gun-Free School Zone Act of 1990 on the grounds that Congress lacked power under the Commerce Clause to enact such legislation.¹²⁶ The court noted the similarities between the acts in *Lopez* and the acts in the *Brzonkala* case based on both their criminal and non-commerce natures.¹²⁷ The court also noted that both cases involve remoteness of effect on commerce as well as the excessive Congressional power that would follow if the statutes were to be held constitutionally valid.¹²⁸

¹¹⁹ See Tichenor, *supra* note 116, at 329 (citing U.S. Const. Art. I, § 8, cl. 3 (giving Congress the power “[t]o regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes”)).

¹²⁰ *Id.* (citing S. Rep. No. 103-138, at 48 (“The Violence Against Women Act is intended to respond both to the underlying attitude that this violence is somehow less serious than other crimes and to the resulting failure of our criminal justice system to address such violence.”)).

¹²¹ Interestingly, the first case to rule on the constitutionality of VAWA was *Doe*, 929 F. Supp. 608. In *Doe*, a woman sued her husband under VAWA for physical and mental abuse inflicted upon her by her husband. In ruling on the defendant’s motion to dismiss, the court held that VAWA was a valid exercise of Congress’ Commerce Clause powers. *Id.* at 611. Here, the court concluded that there was a rational basis that existed for Congress to determine that gender-based violence is a national problem that affects interstate commerce. *Id.*

¹²² See *Brzonkala v. Virginia Polytechnic & State Univ.*, 935 F. Supp. 779 (W.D. Va. 1996).

¹²³ *Id.* at 779.

¹²⁴ *Id.* at 801.

¹²⁵ *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, the Supreme Court reasoned that gun possession in school zones has nothing to do with commerce or any economic enterprise and was, therefore, not arising out of, or connected with, a commercial transaction that substantially affects interstate commerce. *Id.* at 559-61. Thus, the Court held that Congress lacked the power to enact the legislation. *Id.*

¹²⁶ See *Brzonkala*, 935 F. Supp. at 786-93.

¹²⁷ See *Brzonkala*, 935 F. Supp. at 791-92.

¹²⁸ See *id.*

The West Virginia court also held that VAWA was not valid under the Enforcement Clause of the Fourteenth Amendment.¹²⁹ The primary rationale behind this particular ruling was the court's opinion that VAWA was not closely tailored enough to remedy equal protection violations.¹³⁰ Furthermore, the *Brzonkala* court found that assaulting women was not considered to be state action, and thus, the Fourteenth Amendment could not apply.¹³¹

On appeal to the Fourth Circuit, the court affirmed the district court's opinion that Congress had indeed exceeded its authority under the Commerce Clause and section 5 of the Fourteenth Amendment.¹³² Because the Fourth Circuit found a federal statute invalid on constitutional grounds, the Supreme Court granted certiorari and validated the findings of the Fourth Circuit.¹³³

In affirming the lower court's decision, the Supreme Court held VAWA to be unconstitutional because it did not substantially affect interstate commerce.¹³⁴ Specifically, the Court stated "[w]e accordingly reject the argument that Congress may regulate noneconomic, violent conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local."¹³⁵

In *United States v. Morrison*, the U.S. Supreme Court also rejected the argument that VAWA was valid under section 5 of the Fourteenth Amendment.¹³⁶ Specifically, the Court held that VAWA lacked proportionality to the discrimination that it purported to remedy and, therefore, could not be upheld under section 5 of the Fourteenth Amendment.¹³⁷ The Court reasoned that "prophylactic legislation under section 5 must have a 'congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'"¹³⁸

Furthermore, the Supreme Court held that VAWA was not within the state action parameters of section 5 of the Fourteenth Amendment, referring to two well-established precedents—*United States v. Harris*¹³⁹ and the *Civil Rights Cases*¹⁴⁰—to reaffirm that section 5 proscribes State discriminatory action.¹⁴¹ In *Harris*, the Supreme Court held that a law that punishes private persons for conspiring to

¹²⁹ See *id.* at 801.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² See *United States v. Morrison*, 169 F. 3d 820, 889 (4th Cir. 1999).

¹³³ See *United States v. Morrison*, 529 U.S. 598 (2000).

¹³⁴ See *id.* at 617.

¹³⁵ *Id.* at 617.

¹³⁶ *Id.* at 627.

¹³⁷ See *Morrison*, 529 U.S. at 625-626.

¹³⁸ *Id.* (citing *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U.S. 627, 639 (1999)).

¹³⁹ *United States v. Harris*, 106 U.S. 629 (1883) (concluding that the law in question was unconstitutional because Congress' right to enforce a decedent's rights to equal protection was only applicable to a state's violation of those rights, and not a violation by an individual).

¹⁴⁰ *Civil Rights Cases*, 109 U.S. 3 (1883) (holding that public accommodation could not be enforced under § 5).

¹⁴¹ *Morrison*, 529 U.S. at 621.

deprive anyone of equal protection of the laws enacted by a State is a law that exceeds Congress' section 5 powers because the law is "directed exclusively against the action of private persons, without reference to the laws of the State, or their administration by her officers."¹⁴² The Supreme Court also held that, "the provisions of the Fourteenth Amendment have reference to State action exclusively, and not to any action of private individuals."¹⁴³

Similarly, in the *Civil Rights Cases*, the Supreme Court held that "[i]ndividual invasion of individual rights is not the subject-matter of the [Fourteenth] [A]mendment."¹⁴⁴ The Supreme Court continued by referring to these cases and admonished that "[c]areful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power."¹⁴⁵

Since the repeal of VAWA by the Supreme Court, it became patently obvious that alternatives to combat the pervasive affliction of violence against women must be established and must continue. Indeed, as Associate Professor Sally F. Goldfarb of Rutgers University School of Law at Camden indicated recently, "[o]ne of the most important goals of VAWA's civil rights provision was to demonstrate that forms of violence heretofore considered private are actually an expression of a group-based discrimination that deserves public recognition and public address."¹⁴⁶ Without VAWA-like legislation, or viable alternatives, justice due women victims of violence will continue to be an elusive ideal. Fortunately, protections accorded women under VAWA were reinstated by the enactment of the Victims of Trafficking and Violence Protection Act of 2000.

C. Victims of Trafficking and Violence Protection Act of 2000

Trafficking is a \$9 billion industry, the third largest source of income for organized crime and the second fastest growing criminal activity in the world, equal with illegal arms sales.¹⁴⁷ In order to fight this international crime, the Victims of Trafficking and Protection Act of 2000 (TVPA) was signed into law on October 28, 2000.¹⁴⁸ TVPA is the "first comprehensive anti-trafficking legislation"¹⁴⁹ to be promulgated by Congress, and it "grants a number of protections never before afforded to trafficking victims."¹⁵⁰ TVPA "follows a

¹⁴² *Id.*

¹⁴³ *Id.* at 639.

¹⁴⁴ See *Civil Rights Cases*, 109 U.S. at 11.

¹⁴⁵ See *Morrison*, 529 U.S. at 689 (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982)).

¹⁴⁶ Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER SOC. POL'Y & L. 251, 268 (2003).

¹⁴⁷ *Trafficking Victims Protection Act Becomes Law*, *supra* note 79.

¹⁴⁸ See P.L. 106-386, 114 Stat. 1464 (1996) (codified as amended in various titles of the U.S.C.).

¹⁴⁹ Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L. J. 29, 60 (2001) (citing The President's Radio Address, 36 WEEKLY COMP. PRES. DOC. 2661, Oct. 28, 2000).

¹⁵⁰ See *id.* at 60.

three-part model”¹⁵¹ with sections on prevention,¹⁵² protection and victim assistance,¹⁵³ and prosecution and punishment,¹⁵⁴ as set forth by President Clinton.¹⁵⁵ In accordance with the purpose of the TVPA,

[t]his new law is tough on sex traffickers and generous to victims of trafficking. Its aim is to prevent trafficking, protect the victims, and effectively prosecute the perpetrators by establishing an entirely different economic and social approach to the problem of trafficking. It punishes the traffickers, not the victim; it prevents the crime from spreading by establishing international programs to educate women about trafficking; and it rewards the victims who are willing to cooperate with the prosecution of the perpetrators by offering them a permanent residency status in the United States and the right to work during their stay in the United States.¹⁵⁶

Specifically, TVPA requires that the U.S. Department of State prepare a report for each country of origin, transit, or destination for victims of trafficking and that receives economic and/or security assistance.¹⁵⁷ TVPA also requires the President to establish, and the Secretary of State to chair, an Interagency Task Force in order to monitor and combat trafficking.¹⁵⁸

Additionally, TVPA imposes sanctions against foreign governments that fail to comply with the minimum standards to combat trafficking.¹⁵⁹ The President is authorized to deny non-humanitarian, non-trade related foreign assistance to any government that does not comply with the minimum standard set forth in the TVPA for elimination of trafficking.¹⁶⁰

TVPA should be recognized for its multi-pronged approach to combat trafficking and for its multilateral efforts to work with other nations where poverty, poor education, and cultural barriers to women’s equality foster trafficking in women. However, “there is no guarantee that it will be enforced.”¹⁶¹ Additionally, “there is also no guarantee that the victims who agree to assist in the

¹⁵¹ See *id.* at 62.

¹⁵² See *id.* (citing TVPA, Pub. L. No. 106-386, § 106, 114 Stat. 1464, 1474 (2000)).

¹⁵³ See *id.* at 62 (citing Pub. L. No. 106-386, § 107, 114 Stat. at 1474-80).

¹⁵⁴ See Hyland, *supra* note 149 (citing Pub. L. No. 106-386, § 107, 114 Stat. at 1486-90).

¹⁵⁵ See Margaret Murphy, *International Watch: Modern Day Slavery: The Trafficking of Women to the United States*, 9 BUFF. WOMEN’S L.J. 11, 15 (2000/01).

¹⁵⁶ Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 165 (2002) [hereinafter *Saga of Susannah*]. See also Susan Tiefenbrun, *Sex Sells But Drugs Don’t Talk: Trafficking of Women by Workers and An Economic Solution*, 2 T. JEFFERSON L. REV. 161 (2002).

¹⁵⁷ Murphy, *supra* note 155, at 15 (citing Roger Cohen, *The Oldest Profession Seeks New Market in West Europe*, N.Y. TIMES, Sept. 19, 2000, at A1).

¹⁵⁸ *Id.* at 15.

¹⁵⁹ Hyland, *supra* note 149 (citing Pub. L. No. 106-386, § 110, 114 Stat. 1482-84).

¹⁶⁰ Murphy, *supra* note 155, at 15.

¹⁶¹ *Saga of Susannah*, *supra* note 156, at 165.

prosecution of the perpetrators will be adequately protected, or that their families abroad will be protected.”¹⁶² The problems with TVPA are as follows:

While high-minded and laudable, the far-reaching international programs for cooperation and reeducation are numerous and complex to administer. Huge amounts of money have been allocated for the implementation of these international programs, but the funding may still be inadequate for the accomplishment of the goals of these programs. One cannot be certain that money sent to foreign nations will be properly administered for its intended purpose. The administration of these many programs is not described in any detail, and it is uncertain how the programs’ goals will ever be accomplished given the differences in cultures and societies involved in this internationally coordinated effort.¹⁶³

Nevertheless, recent studies indicate that the TVPA has had some impact both domestically and internationally to reduce this heinous crime, deter the perpetrators, and protect the victims.¹⁶⁴ More efforts at prevention of trafficking are sorely needed.

D. Trafficking Victims Reauthorization Act of 2003

To address the notable deficiencies in the TVPA of 2000, Congress enacted the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA).¹⁶⁵ In promulgating this legislation, Congress found that “since the enactment of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386), the United States Government has made significant progress in investigating and prosecuting acts of trafficking and in responding to the needs of victims of trafficking in the United States and abroad.”¹⁶⁶ However, it was noted that “victims of trafficking have faced unintended obstacles in the process of securing needed assistance, including admission to the United States . . .”¹⁶⁷

Furthermore, Congress found that “additional research is needed to fully understand the phenomenon of trafficking in persons and to determine the most effective strategies for combating trafficking in persons.”¹⁶⁸ “Corruption among foreign law enforcement authorities continues to undermine the efforts by governments to investigate, prosecute, and convict traffickers.”¹⁶⁹ Moreover, “international law enforcement academies should be more fully utilized in the

¹⁶² *Id.* at 165.

¹⁶³ *Id.*

¹⁶⁴ See Susan Tiefenbrun, *Sex Slavery In the United States and The Law Enacted to Stop It Here and Abroad*, 11 WILLIAM & MARY J. WOMEN & L. 317 (Spring 2005) [hereinafter *Sex Slavery In the United States*].

¹⁶⁵ Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. No. 108-193, 117 Stat. 2875.

¹⁶⁶ *Id.* at § 2(2).

¹⁶⁷ *Id.* at § 2(3).

¹⁶⁸ *Id.* at § 2(4).

¹⁶⁹ *Id.* at § 2(5).

effort to train law enforcement authorities, prosecutors, and members of the judiciary to address trafficking in persons-related crimes.”¹⁷⁰ More efforts at prevention of trafficking are needed in addition to more prosecutions of perpetrators.

The major components enacted by the TVPRA of 2003 include border interdiction and training of border guards, educational programs disseminated by international media to increase awareness of the traps of sex trafficking, and different approaches to reduce sex tourism. These protections are provided more specifically in the following sections of the TVPRA:

1. Border Interdiction¹⁷¹

The Act authorizes the President of the United States to establish and carry out programs of border interdiction outside the United States. Such programs are to include the providing of grants to foreign nongovernmental organizations that provide for transit shelters operating at key border crossings. The programs also help train survivors of human trafficking by educating and training border guards and officials, and other local law enforcement officials, in order to identify traffickers and victims of severe forms of trafficking, and the appropriate manner in which to treat such victims. The programs also include monitoring by survivors themselves of trafficking in persons in order to successfully implement border interdiction programs. The President also ensures freedom for any trafficking victim who chooses to return to his or her previous residence.

2. International Media¹⁷²

The President shall establish and carry out programs that support the production of television and radio programs, including documentaries, to inform vulnerable populations overseas of the dangers of trafficking. The objective of this section is to increase awareness of the public in countries of destination regarding the slave-like practices and other human rights abuses involved in trafficking.

3. Combating International Sex Tourism¹⁷³

Pursuant to TVPRA, the President shall ensure that materials are developed and disseminated to alert travelers that sex tourism is illegal, will be prosecuted, and presents dangers to those involved. Such materials shall be disseminated to individuals traveling to foreign destinations where the President determines that sex tourism is significant. This section also requires the President to monitor compliance with this section. Further, a feasibility report is required to be transmitted within 180 days of the enactment of the TVPRA, to the Committee on

¹⁷⁰ TVPRA, Pub. L. No. 108-193, 117 Stat. 2875, at § 2(6).

¹⁷¹ *Id.* at § 3(a)(2)(c).

¹⁷² *See* TVPRA, Pub. L. No. 108-193, 117 Stat. 2875, at § 3(a)(2)(d).

¹⁷³ *See* TVPRA, Pub. L. No. 108-193, 117 Stat. 2875, at § 3(a)(2)(e).

International Relations of the House of Representatives and the Committee on Foreign Affairs of the Senate. The report shall describe the feasibility of such U.S. Government materials being disseminated through public-private partnerships to individuals traveling to foreign destinations.

An expanded civil remedy in the form of a private right of action has been promulgated under the TVPRA. Thus, an individual who is a victim of sex trafficking may bring a civil right of action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.¹⁷⁴

Whether the TVPRA of 2003, together with the TVPA of 2000, will ultimately achieve the prevention, punishment, and protection objectives or have any impact, either domestically or internationally, on reducing the crime of trafficking of women shall be determined.¹⁷⁵ Without these two laws, as well as additional efforts to obstruct and abolish the trafficking of persons, the persistence of trafficking “will have a devastating affect on the vary nature of relations between men and women.”¹⁷⁶ The “increase of sex trafficking worldwide implies the loss of women’s human rights and the continued marginalization of women in society.”¹⁷⁷

E. Trafficking Victims Reauthorization Act of 2005 (TVPRA of 2005)

The TVPRA of 2005 is the third human trafficking law to be authored by U.S. Representative Chris Smith (R-N.J.). The purpose of the TVPRA of 2005 is to provide law enforcement with the necessary tools to continue the liberation of trafficked women and children who are forced into abusive, slave-like conditions. Generally, the TVPRA of 2005 strengthens current U.S. anti-trafficking laws (TVPA and TVPRA of 2003) and authorizes new funds to the Federal Bureau of Investigation (“FBI”) to combat both domestic and international trafficking. Internationally, it requires U.S. assistance programs for post-conflict and humanitarian emergencies to include anti-trafficking measures. It also includes provisions for monitoring and combating forced labor and child labor in foreign countries. The TVPRA strengthens the use of money laundering, racketeering and civil and criminal forfeiture statutes against traffickers, and it establishes the crime of sex trafficking under the Uniform Code of Military Justice. For the first time,

¹⁷⁴ *Id.* at § 4(a)(4)(A) (amending Chapter 77 of part I of title 18, U.S.C.).

¹⁷⁵ See Susan Tiefenbrun, *The Domestic and International Impact of the Victims of Trafficking Protection Act: Does Law Deter Crime*, 2 LOY. CHI. INT’L L. REV. 193 (Spring/Summer 2005); see also *Sex Slavery in the United States*, *supra* note 164.

¹⁷⁶ See *Saga of Susannah*, *supra* note 156, at 75.

¹⁷⁷ *Id.*

the TVPRA of 2005 actually confronts the root problem of demand for commercial sex in order to investigate and prosecute the customers, who, as President Bush calls them, are the “unscrupulous adults who prey on the young and the innocent.”¹⁷⁸

More specifically, the TVPRA of 2005 allocates \$361 million over the next two years in order to combat trafficking. The law addresses trafficking that takes place in peacekeeping missions abroad. Initiatives and programs will be put in place in order to combat the demand for prostitution, which arguably fuels sex trafficking in the U.S. and abroad. The TVPRA, in its entirety, enables prosecution in the United States of trafficking offenses committed by federal employees and contractors, and it amends the United States Code in order to strengthen the use of money laundering, racketeering and civil and criminal forfeiture statutes against traffickers. In addition, the Department of Justice is directed to conduct a biennial analysis of trafficking and commercial sex acts statistics inside the United States. This law also authorizes a grants program for non-governmental organization victim service providers. It establishes programs for residential rehabilitation facilities and promotes access to information about federally-funded services for victims of trafficking. The TVPRA of 2005 requires that the State Department include in the annual *Trafficking in Persons Report* information on the steps taken by international organizations like the UN, OSCE and NATO to prevent involvement of their personnel with trafficking. On the effort to prevent trafficking domestically, the TVPRA of 2005 requires the Attorney General to study and report to Congress on the prevalence of severe forms of trafficking and sex trafficking in the United States and the approach to combating these crimes by law enforcement. TVPRA of 2005 terminates all government grants, contracts and cooperative agreements with contractors that engage in trafficking in persons or that procure commercial sex acts during the period during which the grant is in effect. It establishes a grants program through the Department of Health and Human Services (“HHS”) to assist American citizens and nationals who are victims of human trafficking and directs HHS to establish a program to create residential treatment facilities for juveniles subjected to trafficking.

This law also establishes a grants program for states and local law enforcement totaling \$50 million in 2006 and 2007 to investigate and prosecute acts of trafficking in persons and criminals that purchase commercial sex acts within the United States.¹⁷⁹ The TVPA, the TVPRA of 2003, and the TVPRA of 2005 are federal acts that need to be implemented at the state level by legislation in order to see real progress in the elimination of trafficking in the United States. Many states have adopted similar legislation. For example, California Governor Arnold Schwarzenegger signed the California Trafficking Victims Protection Act

¹⁷⁸ Jeffrey Thomas, *U.S. Determined to Fight Trafficking, Bush Says, Signing New Law; New law strengthens current anti-trafficking effort, attacks domestic demand*, USInfo.State.Gov, Jan. 10, 2006, available at <http://usinfo.state.gov/gi/Archive/2006/Jan/11-191763.html>.

¹⁷⁹ *Trafficking Victims Protection Act Becomes Law*, *supra* note 79.

this year, the purpose of which is to protect children from sex offenders and criminalize the practice of human trafficking in the state of California. This law establishes human trafficking as a crime in California and provides for the punishment of individuals that knowingly participate or benefit from this crime. It also creates a new civil cause of action for victims of human trafficking and requires local law enforcement to track incidents of trafficking. The California Alliance to Combat Trafficking and Slavery Task Force was established to evaluate the programs available to the victims of trafficking as well as the statutes addressing human trafficking. The Task Force is required to report its findings to the Governor, Legislature and Attorney General by July 1, 2007.¹⁸⁰

CONCLUSION

Addressing the human rights of women requires a sweeping cultural change in the way society values women and the kind of work they do in the home, family, and society. A cultural transformation began during the Clinton Administration, which systematically and intentionally focused attention on the values, rights, and roles of women in American society. Historians recognize Clinton's achievements in the areas of domestic economy, social progress, foreign policy, peacemaking in the Middle East, and Social Security reform. Clinton's achievements in expanding women's rights, however, have been underestimated, as evidenced by the assessment of Michael H. Armacost, President of the Brookings Institution. Armacost stated just days before Clinton's successor, George W. Bush, would be inaugurated:

It's clear that the President's supporters and his detractors are hard at work seeking to shape the way historians will remember him, as is the president himself. In some ways, one of the defining characteristics of Mr. Clinton's legacy may be the self-consciousness of its pursuit. Historians and scholars with the benefit of time and a measure of detachment will provide the authoritative judgments concerning what Mr. Clinton has accomplished, what was left undone [I]t's clear that during President Clinton's watch, the economy had flourished as almost never before. It's true also that not least because of this prosperity, we've seen rather dramatic progress on a number of social indices, and I expect there historians will mainly argue over how to divvy up credit for these very benign and welcome developments. In the field of foreign policy, too, there have been undoubted accomplishments, most notably in the field of trade with the ratification of NAFTA . . . and in the field of peacemaking and peacekeeping. And yet, even in an area like the Middle East, where the president has undoubtedly made extraordinary personal efforts, there is more turmoil perhaps now than there was in January of 1993 when he

¹⁸⁰ *Governor Schwarzenegger Highlights Important Legislation Taking Effect January 1*, NEWS SERVICE, Dec. 29, 2005, available at [www.lexis.com/research/retrieve?m=699306e3a0a6f52d7f0c8060e5d8d17 &newStartCite-l&cmCh](http://www.lexis.com/research/retrieve?m=699306e3a0a6f52d7f0c8060e5d8d17&newStartCite-l&cmCh).

assumed office. And finally in the areas of major reform, it's currently welcome that an issue like Social Security Reform is no longer taboo, it's out on the table, politicians actively debate it. And yet the opportunities for reform, heretofore at least, have seemingly slipped through the cracks, and perhaps the personal scandals in the White House did something to affect the practical possibilities for reform as they impinged on the national political climate. So I expect the balance sheet to be a mixed bag now and perhaps later¹⁸¹

Whether on its face the Clinton Administration is remembered for its economic prosperity, foreign policy contributions, attempts at social reform, or personal indiscretions, the furtherance of women's rights through judicial and congressional appointments and groundbreaking legislation particularly in the areas of family medical leave, the protection of women's health, the prevention of violence toward women and trafficking of women, are major contributions that should be recognized. These contributions by the Clinton Administration are a sign of an important cultural change in American society. This transformation is reflected in and was caused by the many women appointed to top-level positions in the government, on the federal bench, and even to the U.S. Supreme Court. This cultural change is also reflected in women's rights legislation that has had an impact both domestically and internationally on drawing attention to the severity of violence against women and trafficking in human beings. The Bush Administration, which has absorbed this cultural change, has continued to support the Victims of Trafficking and Violence Protection Act of 2000 by re-authorizing it in 2003 and again in 2005. This is just the beginning of a much-needed fight to combat human trafficking that is nothing less than a contemporary form of slavery that afflicts mostly women and girl children. It is a good beginning because nothing less than a total change in values will ever eradicate this international crime that makes the purchase and sale of women a profitable industry.

¹⁸¹ *Assessing Bill Clinton's Legacy: How Will History Remember Him?*, THE BROOKINGS INSTITUTION, Jan. 9, 2001, available at <http://www.brook.edu/comm/transcripts/20010109a.htm> (last visited Mar. 10, 2006).

