

PREFACE

I am pleased to present the Law and Social Change issue of Volume 36 of the Golden Gate University Law Review Journal. The Law and Social Change issue focuses on a broad range of current socio-legal topics, such as changes to bankruptcy law, grandparent visitation rights, and the rights of trade secret holders. Collectively, the articles in this issue encourage readers to reflect on the law and its relationship to the current social landscape.

Assistant United States Bankruptcy Administrator Robert J. Landry, III, and Professor Nancy Hisey Mardis address the changes in bankruptcy law since the recent enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Landry and Hisey Mardis provide an overview of the history of bankruptcy law in assisting social stability. Their article discusses the introduction of several controversial areas of the new law that affect consumer reform, with particular focus on the use of a "means test" as an eligibility requirement for Chapter 7 debtors. The authors highlight important additions with the new legislation and predict that the "means test" will not apply to the majority of consumer debtors. In conclusion, the article suggests that only time will tell whether the new act will be overly harsh on the debtor or effectively discourage deadbeat debtors.

Professor Joan Catherine Bohl reviews California's grandparent visitation law in light of the landmark case *Troxel v. Granville*. Professor Bohl navigates through the origins of grandparent visitation law and the legal and social landscape that set the stage for the *Troxel* decision. Next, Professor Bohl critiques the California court's application of a key concept from *Troxel*: that the court ordering visitation must give a parent's wishes "special weight." Professor Bohl suggests that the pattern of decisions in California courts is not radically different from pre-*Troxel* decisions. Professor Bohl closes her article by predicting that the future of grandparent visitation law will provide more judicial deference to parental decision-making.

Erin Frazor explores the federal statutory scheme for funding and thereby regulating public education and state accountability through student assessment, the recent federal policy changes regarding "alternate assessments" and students with disabilities, and the many constitutional issues raised by these new federal assessment policies. Frazor proposes that states be relieved from penalties for noncompliance regarding "alternate assessment" systems to avoid any constitutional violations and

to promote states as laboratories of ideas. Such an approach strikes the appropriate balance between preserving the goal of school accountability and permitting local innovation to meet students' educational needs.

Owen Tipps examines the role of the California initiative process in the state's constitutional scheme. In particular, he discusses the effect that the separation of powers provision in the state constitution should have on the citizens' exercise of direct lawmaking power. After detailing the theory and history of the initiative process as well as existing law relating to it, Tipps concludes that the state legislature must possess a check on the initiative process in order to preserve the integrity of the separation of powers in California. Such a check would effectuate the intent of the creators of the state's initiative process, which was to give ordinary citizens greater control over the state legislature rather than to supplant it entirely as the state's primary lawmaking body.

Sahana Murthy examines the California Supreme Court's decision in *DVD Copy Control Association v. Bunner*, in which the court concluded that preliminary injunctions against third party publishers of trade secrets are not prior restraints. Murthy analyzes the court's rationale in favoring the rights of trade secret holders by abridging the First Amendment rights of third party publishers of trade secrets, and argues that the decision may nevertheless provide room for a narrow exception. Murthy proposes that the courts should be more cautious in granting preliminary injunctions against third party publishers of trade secrets, with no duty of confidentiality to trade secret holders, when the information affects matters of public concern and is newsworthy. Murthy concludes that this approach provides an equitable balance between the third party publishers' right to publish, the public's need to know, and trade secret holders' right to protect their investments.

Susana Garcia examines the Development Relief and Education for Alien Minors ("DREAM") Act, proposed legislation in Congress that provides undocumented youth access to higher education and an opportunity to legalize their immigration status. Garcia looks at the future of these youth under existing immigration laws and emphasizes the need for a solution to the problems faced by undocumented children. By demonstrating the insufficiency and inconsistency of some state legislation, Garcia highlights the need for a federal solution to these issues. She argues that Congress should consider the best interests of the child standard established in the Convention on the Rights of the Child.

Lastly while dispelling some of the opposing arguments to passage of the DREAM Act, Garcia shows how the Act will benefit society overall.

Kirsten Kwasneski reviews the historical background leading to the enactment of California Probate Code Section 21350, which creates a presumption of invalidity where a dependent adult makes a testamentary transfer to his or her care custodian. She asserts that the legislature intended the presumption to encompass only professional care custodians, not personal friends. Kwasneski further argues that the traditional law of undue influence is better suited to a consideration of personal relationships because it simultaneously preserves the testamentary right to disposition while protecting vulnerable dependent adults. Finally, Kwasneski concludes that a statutory amendment is the best way to clarify the scope of the statute and achieve consistency in application by California courts.

Gwynneth Smith examines the California case of *Ewing v. Goldstein* and assesses its impact on the treatment of potentially dangerous patients, with an examination of both the therapist's duty to warn and the civil commitment process. Smith suggests that civil commitment under the LPS Act is a suitable framework for dealing with potentially dangerous patients that, if used correctly, eliminates the need to expand the triggering criteria for the duty to warn as occurred in *Ewing*. Smith concludes that this framework provides a better compromise and serves to protect both patient confidentiality and potential victims.

The Law and Social Change issue of the Golden Gate University Law Review is the outcome of countless hours of researching, writing, editing, and rewriting on the part of the authors and editorial staff. Their commitment and hard work provide evidence of their promise in the legal profession. It is an honor to have worked with such fine future lawyers and developing legal minds. I would like to point out that the hard work and dedication of Journal Editor Dominic Porrino and Editor Pro Tem Katie York proved to be indispensable in developing this issue.

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Editor-in-Chief