

An Attempt at Striking a Balance: The Obligations of Citizenship and the Bait of Student Aid

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Governments have a vested interest in citizenship and enact laws to promote it among its citizens. Congress passed three federal laws that eliminate federal funding from students who do not adhere to federally prescribed civic duty: the Department of Defense Act of 1983, the Violent Crime and Control Act of 1994 and the Higher Education Reconciliation Act of 2005. This paper discusses the development of these laws and the failed legal challenges meant to invalidate them. These cases generally contend that the reach of civic-minded legislation was limited to only certain socioeconomic segments of the general population, rendering its application inequitable. Low-income and middle-income students lack the monetary means of financing their postsecondary education independently. Therefore, their financial situation compels their compliance as opposed to their high-income counterparts who can afford their education without federal subsidization. This paper does not reject, nor disagrees, with the notion of federally enforced civic duty, but recommends adaptations to existing law to make its application more equitable to the general population.

When civic duty is discussed, it is casually referred to as an obligation that is associated with citizenship, manifesting itself in mundane responsibilities such as jury duty, remaining a law-abiding citizen, and participating in the political process. However, the concept is more complicated than perceived. Social science literature either approaches citizenship in terms of voting behavior studies in the field of political science or in abstract, philosophical treatises in education. In a pragmatic world, the federal government has a vested interest in promoting civic duty, passing legislation that promotes it; however, consequences of its enforcement of civic duty can be conducted in an inequitable manner that makes it counter-productive to other public policies.

This paper examines federal legislation that enforces civic duty and citizenship obligations on American college students and contemplates the consequences of such enforcement. Legislation such as the *Department of Defense (DOD) Act of 1983*, the *Violent Crime Control (VCC) Act of 1994* and, most recently, the *Higher Education Reconciliation (HER) Act of 2005* mandated conformity of civic duty from college students. While the *DOD Act* eliminated Title IV funding (Perkins and Stafford loans, Pell Grant, College Work-Study) from students who failed to register with Selective Service, the *VCC Act* withdrew Pell Grant eligibility from prison inmates in both state and federal institutions. Lastly, the *HER Act of 2005* denied federal financial aid to any student who has been convicted of any drug charges while receiving Title IV aid. While each piece of legislation promotes the virtues and obligations of citizenship, each act has been constitutionally challenged in federal court in several instances.

The Development of Civic Duty

Before discussing the legal requirement of the selected legislation, the concept of civic duty would be helpful in fully understanding the purpose of federal interests in promoting the responsibilities of citizenship. However, when attempting to discern the definition of citizenship and its connection with civic duty, one finds that there are varying understandings about what the term represents. For some, discussion involving civic duty constitutes those obligations that encompass responsible citizenship and promote the connection between the individual and common society. However, Kerber (2000) laments that the word “obligation” as it is sometimes used in civic duty is convoluted, a superficial label to mask duties that are less than heartwarming.

If the duty of loyalty were not so difficult, the punishment for treason would not be so severe; if the duty to defend the nation were not so distasteful, there would never be a need for a draft. (Kerber, 1999, p. 833)

Kerber (1999) contends that the concept of citizenship and the obligations of citizenship are not as abstract as they appear to be; they have real impact for those who fail to follow their guidelines. In essence, individuals of a society garner benefits due to their citizenship; however, they are bound by rules produced by society. In contemporary times, the civic duties of citizenship are more pronounced by state and federal law.

The duties of responsible citizenship include paying taxes, serving in the country's armed forces when called upon, obeying laws enacted by one's representatives in government, demonstrating commitment and loyalty to the democratic political community and state, constructively criticizing the conditions of political and civic life, and participating to improve the quality of political and civic life." (Patrick, 1999, p. 2)

In the United States, the federal and state governments codified some of these "duties of responsible citizenship" into laws, creating situations where non-complying citizens can be penalized for their non-compliance.

In 2006, the U.S. Department of Education provided \$85 billion in federal student aid to students who qualified for Title IV funds (College Board, 2007). In addition, approximately 10.5 million students received federal financial aid (American Council on Education, 2005). This paper will provide an overview of the three legislative acts that enforce the responsibility of citizenship and discuss the legal challenge to their constitutionality.

The Department of Defense Act of 1983

Conscription, the governmental action of recruiting and compelling citizens to serve in the armed forces as one's civic duty requirement, has been a contentious issue at times in American society. Congress passed numerous conscription acts during the two World Wars and the Korean Conflict. However, the societal unrest of the Vietnam Conflict (1964-1973) caused the policy of conscription to be revisited and revised. Ultimately, the federal government opted to suspended conscription in favor of an all-volunteer army in 1974.

Ironically, President Carter, who in 1977 pardoned all draft absentees, reinstated the registration in 1980, requiring all men from ages 18 to 26 to register for military service (*Selective Service v. MPIRG*, 1984). Congress followed suit and passed the *DOD Act of 1983*, a reauthorization of the *Military Selective Service Act*. According to §12(f)(1) of the *DOD Act*, registration with the Selective Service was a prerequisite for Title IV program eligibility. The Pell Grant, the Stafford Student Loan, the Perkins Student Loan, and Work-Study programs are all encompassed in Title IV. Students who chose not to register with Selective Service would no longer be eligible for federal financial aid. In the following provision, §12(f) required students to sign a statement at their postsecondary institution attesting to their registration with Selective Service. Because of the adverse effect on students, § 12(f) of the *DOD Act* was the epicenter of contention since it eliminated Pell Grant eligibility for non-complying individuals.

Selective Service Systems v. MPIRG (1984)

Six students challenged a legislative act that stripped Title IV funding, including the Pell Grant from those who failed to register with Selective Service, alleging that the

DOD Act of 1983 posed an unconstitutional bill of attainder and violated the Fifth Amendment self-incrimination protections. They sought to enjoin § 12(f) of the Act that denied federal financial aid under Title IV of the HEA of 1965. At the district court level, the court agreed with the students and permanently enjoined § 12(f), contending that the statute presented an unconstitutional bill of attainder and compelled self-incrimination (*Doe v. Selective Service System*, 1983). However, the Selective Service System and the U.S. Department of Education appealed the Supreme Court in 1983, and the Court issued a decision on July 5, 1984.

By definition, the Court denotes a bill of attainder as “a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial” (*Nixon*, 433 U.S. at 468). Bill of attainders could impose a wide range of punishments, from death sentences to small fines. However, according to common law, its applicability is not necessarily based on the severity of the punishment, but on the definition of legislative punishment. The Court in *Selective Service v. MPIRG* (1984) followed a three-prong test established in *Nixon v. Administrator of General Services* (1977) to determine whether a bill of attainder existed.

The court examined the first element of its analysis: whether the denial of financial aid eligibility would be considered legislative punishment within the historical meaning of a bill of attainder. In applying this first element of the *Nixon* test, the Court rationalized that the *DOD Act* imposed “no burdens historically associated with punishment” (*Selective Service*, 468 U.S. at 842), and therefore was not a bill of attainder. Students were simply deprived of Title IV funds until they registered. The deprivation was temporary, dependant on student’s compliance with the federal law. ”A

statute that leaves open perpetually the possibility of qualifying for aid does not fall within the historical meaning of forbidden legislative punishment” (*Selective Service*, 468 U.S. at 853). Since §12(f) of the *DOD Act* temporarily suspended eligibility, the Court concluded that it placed no burden normally associated with punishment.

Second, the Court turned their attention to whether the act imposed further non-punitive damages to individuals who did not register with the Selective Service. In its analysis, it concluded that Congressional intent attempted to encourage students to register for the armed services, but not punish those who opted not to register. At the enactment of the *DOD Act*, approximately 500,000 eligible males did not register for Selective Service, and Congress developed legislation to encourage registration (*Selective Service v. MPRIG*, 1984). Since there was no intention of punishment to register for Selective Service, no bill of attainder existed.

And finally, the Court examined whether the legislative intent of §12(f) was “strictly a motivational one: inquiring whether the legislative record evinces a congressional intent to punish” (*Nixon*, 433 U.S. at 478). The Court admittedly asserted that “[c]ertain aspects of the legislation belie the view that §12(f) is a punitive measure” (*Selective Service*, 468 U.S. at 855). However, the scope of the legislation reaches only students who willfully choose not to register and those who merely forgot. Had the denial of Title IV funds been strictly punitive, it would have solely targeted willful non-registrants, which would have qualified the act as a bill of attainder. As the Court in the *Nixon* case (1977) illustrates, “A statutory enactment that imposes any of those sanctions on named or identifiable individuals would be immediately constitutionally suspect” (*Nixon*, 433 U.S. at 473).

Instead, §12(f) affects males who failed to register for Selective Service, regardless of their intent or social conscience. In addition, the provision allows all eligible males to register late without penalty and reinstate their Title IV eligibility instantly. As a result, the Court concluded “§12(f) does not single out an identifiable group that would be ineligible for Title IV aid or inflict punishment within the meaning of *Bill of Attainder Clause*” (*Selective Service*, 468 U.S. at 856).

After resolving that no bill of attainder was present, it addressed the allegation of self-incrimination, determining whether the students were under a compulsion to reveal their non-registration status with Selective Service. Because the *DOD Act* made non-registration a federal crime, the appellees argued that §12(f) violated the Fifth Amendment whereas students must certify their registration with their postsecondary institution. According to the majority opinion, students who did not register with Selective Service did so with the knowledge that they would be denied Title IV for their non-compliance. Even when students late-registered, no penalization or incrimination took place for initial non-compliance with the law. In essence, their own non-compliance denied them the privilege of federal financial aid, not the federal government.

Lastly, the majority opinion dispatched the appellees’ Equal Protection Clause argument. Established under the 14th Amendment, the Equal Protection Clause prohibits the government from denying any individual equal protection of the law.

Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and

require only that the classification challenged be rationally related to a legitimate state interests” (*City of New Orleans*, 427 U.S. at 303).

The appellees argued that § 12(f) discriminated against low-SES students and singled them out from the rest of the population since they lacked the financial resources to attend college without federal financial aid programs. The majority opinion found this contention meritless since §12(f) treated all individuals the same. Even if the DOD Act did discriminate against low-income students, the governmental interests in § 12(f) were rationally related to encourage registration among non-registrants and properly allocate governmental fiscal resources.

Justice Powell agreed with the majority opinion, but opted for a concurring opinion to articulate his rationale in the case: even if § 12(f) proved to be a bill of attainder, it could be permissible due to the non-punitive nature of the *DOD Act of 1983*, driving the core of his main contention. Powell maintained that Title IV programs were benefits bestowed by the taxpayers, and “there is no compulsion to request the benefit[s]” (*Selective Service*, 468 U.S. at 860).

In dicta, Powell also expounded on the level of duty that was requested by §12(f). He compared the registration requirements of the *DOD Act* to other countries that required more than mere registration with their own conscription service, most notably countries in the North American Treaty Organization (NATO). These countries required mandatory military service from many of their young men, not just registering for possible military service. As a parting note, Powell added that Congress could compel male students to serve the country. Dwelling upon the Federalist Papers, Powell argued that Congress carried out its duties under Article I of the U.S. Constitution: to “provide

for the common Defense and general Welfare of the United States.” Therefore, Congress carried out its constitutional responsibility through the *DOD Act* and with its right to withhold Title IV funding for non-registering students. Although the majority opinion determined that the *DOD Act* was constitutional, Justices Brennan and Marshall in their dissenting opinion contended that the *DOD Act* violated the constitutional protection against self-incrimination and breached the Equal Protection Clause.

Dissenting Opinion

The dissenting opinion concurred that no bill of attainder existed within the meaning of §12(f). However, it concluded that the *DOD Act* violated Fifth Amendment protections. Although §12(f) permitted late registration for students, it did not protect them from criminal prosecution. Late registration was a felony, punishable by five years in prison and/or \$10,000 in fines. During the oral argument of the case, there were at least 300,000 late registrants, but the government did not persecute a single case (*Oyez Project*, 2008). As a result of §12(f), students who failed to register on time were required to report their transgression to the federal government, providing it with information, which could possibly be used to prosecute them for it. In the end, §12(f) created a situation where the federal government compelled students to provide information that would later assist in convicting them in violations of federal law.

In *Selective Service v. MPIRG* (1983), the Supreme Court by a 7-2 decision determined that the *DOD Act* was a constitutionally valid legislative act. Congress was well within its right to compel students on federal financial aid to fulfill their civic duty and register with Selective Service. Like the *DOD Act*, the *VCC Act* disproportionately

affects low-income students and was validated by the federal judiciary despite the act's detrimental effect on prison recidivism, an important public policy concern.

The Violent Crime Control Act of 1994

When Congress passed Title IV of *Higher Education Act* (HEA) in 1965, it allowed prison inmates to apply and qualify for student aid funds. However, the rationale of allowing Pell funding for incarcerated recipients was questioned throughout early 1990s. During the 1992 reauthorization of the HEA, some House members sought to add an amendment that eliminated Title IV funding for prisoners for the sake of fiscal savings, but it failed.

However, the Senate would revisit the issue a year later. In the fall of 1993, the Senate produced a bill that eliminated Pell Grant eligibility for federal prisoners. In 1994, Congress passed the *VCC Act of 1994* that eliminated Pell Grant eligibility to all state and federal prisoners, despite the nature of their crime. The act modified the HEA of 1965, inserting the restriction for prisoners in Section 401, the same section that dictated the Pell Grant program.

No basic grant shall be awarded under this subpart to any individual who is incarcerated in any federal or state penal institutions. [20 U.S.C. 1070a(b)(8)].

Upset at the elimination of their Pell Grant eligibility, prisoners in a New York prison sued a year later, arguing that the *VCC Act* was an *ex post facto* law, punishing them retroactively for their failure to follow their civic duty to abide by the law (*Tremblay v. Riley*, 1984). An inmate at Collins Correctional Facility in Collins, New York, Stephan Tremblay, filed for a class action classification in this suit against the

then-Secretary of Education of the Clinton Administration, Richard Riley. Incarcerated since 1990, Tremblay took various college courses from 1991 to 1994. Having fewer financial resources to afford college coursework, Tremblay used several grants, including the Pell Grant, to pay for his educational endeavors. Before the enactment of the *VCC Act*, prisoners, with the exception of those who were on death row or serving life sentences, were eligible to receive the Pell Grant; however, the *VCC Act* altered the Pell Grant eligibility requirements by excluding all incarcerated individuals in state or federal prisons.

In his argument, Tremblay advocated three points of contention, challenging the unconstitutional nature of the legislation. First, he claimed that the *VCC Act* violated the prohibition of *ex post facto* laws under the U.S. Constitution. Second, he asserted that the legislative act violated two elements of the Fifth Amendment, the Equal Protection and Due Process Clauses. And lastly, Tremblay contended that the act violated Eighth Amendment protections against cruel and unusual punishment. However, despite these passionate arguments, the court rejected each of his contentions, upholding the constitutionality of the *VCC Act*.

By definition, an *ex post facto* law is one that retroactively punishes individuals for deeds or actions committed before the enactment of the law. In the U.S. Constitution, *ex post facto* laws are prohibited under Article I, section 9, clause 3. In his case before the Supreme Court, Tremblay argued that the *VCC Act* punished individuals by denying the Pell Grant for criminal acts committed and convictions handed down before the passage of this act. Therefore, Tremblay reasoned that prison inmates were being retroactively punished for the crimes that they committed by the denial of Pell Grant funding.

Tremblay also raised an Equal Protection claim, arguing a distinction not only existed between prisoners and non-prisoners, but between prisoners in state/federal institutions and those who were in local institutions. However, the court concluded that the distinction between non-prisoners and prisoners was not a suspect class and only deserved of a rational basis scrutiny.

Second, the distinction between prisoners in state/federal institutions and prisoners in local institutions also warranted and survived rational basis scrutiny. The court reasoned that prisoners in local institutions were either short-term residents or were awaiting transfer to a state/federal institution. Since local institution inmates were short-term residents, Congress may have wanted to provide these individuals with education since they would be re-entering society soon. Since the congressional action had a rational relationship to its governmental purposes, the court dismissed the equal protection claims.

Tremblay also made a third claim, contending that the *VCC Act* violated his substantive and procedural due process rights. However, the court concluded that Tremblay had no claim of entitlement to the Pell Grant, providing two reasons. First, Congress never considered the Pell Grant as a true entitlement, and even if it were, Tremblay's argument would fail since the *VCC Act* had eliminated Pell eligibility for incarcerated felons. With procedural due process terminated through the legislative act, there were no procedural due process violations to claim.

In his final contention, Tremblay argued that the denial of Pell Grants constituted cruel and unusual punishment through the Eighth Amendment. He contended that he was economically and educationally disadvantaged and relied on his educational endeavors to

persuade the parole board for an early release. The court used the same rationale to dismiss this argument as it did with Tremblay's *ex post facto* contention. In short, the denial of funds for education fell far short of the egregious type of conduct needed to establish an Eighth Amendment claim.

Bolstering its argument, the court cited two other cases as precedent, *Rhodes v. Chapman* (1981) and *Termunde v. Cook* (1988) where inmates challenged the denial or elimination of education programs. In both cases, the inmates argued that the denial of education constituted a violation of cruel and unusual punishment. However, the courts in both cases struck down these arguments.

Despite the challenges of cruel and unusual punishment, *ex post facto* law and Equal Protection claims, the judiciary confirmed congressional discretion to eliminate federal funding for inmates who did not adhere to their civic duty to abide by the law.

The Higher Education Reconciliation Act of 2005

Embedded in the Deficit Reduction Act of 2005 (P.L. 109-171), Congress passed the *HER Act of 2005* as a means of reconciling the budget for fiscal year 2007 according to a congressional budget resolution. An ambitious piece of legislation, the *HER Act* addressed several financial issues involving higher education. The legislation also amended Title IV eligibility guidelines for those students convicted of any drug possession crimes.

In general—A student who is convicted of any offense under any Federal or State law involving the possession of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this subchapter and

Part C of subchapter I of chapter 34 of Title 42 shall not be eligible to receive any grant, loan, or work assistance, (*P.L. 109-171*)

Prior to the passage of the *HER Act*, federal regulations eliminated the eligibility of any student who had been convicted of drug possession or solicitation. However, the *HER Act* liberalized the eligibility restriction to affect those students who were convicted of drug offenses *during* college, and not before.

Students For Sensible Drug Policy v. Spellings (2006)

In 2006, an organization, Students For Sensible Drug Policy Foundation (Foundation), and three of its members filed suit in federal court against U.S. Secretary of Education, Margaret Spellings, challenging the constitutionality of the *Higher Education Reconciliation Act of 2005*. They alleged that the legislation violated the Equal Protection clause of the Fifth Amendment and the Double Jeopardy prohibition of the Eighth Amendment. Both the organization and students sought to enjoin the law in federal district court.

The district court underwent similar analysis of the Equal Protection clause in the Selective Service case (1984) determining whether this select group of affected students (in this case, students with drug convictions while in college) constituted a suspect class. However, even if a suspect classification had existed, the court would have validated the legislation if a rational basis existed to justify such a classification. “The district court is entitled to consider the language of the statute, together with any proffered assumption of legislative purpose, in its rational basis analysis” (*Student for Sensible Drug Policy v. Spellings*, 2006; *Knapp v. Hanson*, 183 F.3d at 789). In the court’s review, Congress instituted the *HER Act* to curb drug-related crimes in college and prevent taxpayers of

financially subsidizing such behavior. The court contended that the second justification for the legislation stood on its own against any Equal Protection claims (*Students for Sensible Drug Policy*, 2006).

To illustrate the utility of the legislation, the Foundation requested for the opportunity to conduct discovery to determine whether the *HER Act* actually deters drug use among college students. By conducting discovery, the plaintiffs sought to show that the *HER Act* is irrational legislation that does not have utility in deterring drug use. However, the court concluded that such discovery was not necessary.

All that is required to be shown here is that the relationship of the classification (different treatment for students committing drug offenses) to its goal (detering drug related conduct on campus or the use of tax dollars to subsidize such conduct) is not so attenuated as to render the classification arbitrary or irrational.” (*Students for Sensible Drug Policy*, 2006).

The Foundation also argued that the *HER Act* presented a violation of the Double Jeopardy clause of the Fifth Amendment. The court utilized the two prong test established in *Hudson v. United States* (1997) to determine whether a law constituted a Double Jeopardy violation: (1) whether the law established a civil penalty and (2) whether the penalty was “punitive either in purpose or effect” (*Students for Sensible Drug Policy*, 2006).

In its determination whether the *HER Act* conferred a criminal penalty or not, the court inferred that all of the eligibility decisions originated from the Department of Education, concluding that there was “no indication in the statute that a criminal penalty

was contemplated.” In the second prong, the *HER Act* was examined to determine whether it was “punitive either in purpose or effect.” The Foundation argued that the legislative histories of previous legislation showed that the HER Act was intended to be punitive in nature. However, the court clearly disregarded the notion, stating that the previous legislation had no relevance to the legal issues in the case, and upon reviewing the legislative history of the HER Act, it flatly stated that “[in]eligibility for the receipt of federal funds has never historically been regarded as punishment” (*Students for Sensible Drug Policy*, 2006).

Analysis

While *Selective System v. MPIRG* (1984), *Tremblay v. Riley* (1996) and *Student for Sensible Drug Policy v. Spellings* (2006) may appear to be substantially different from each other, they confirmed congressional discretion in legally limiting the recipient pool for the federal financial aid for reasons outside of budgetary restrictions. The *DOD Act of 1983* compelled male students between the ages of 18 and 26 to register with Selective Service or risk having their Title IV eligibility revoked, while the *VCC Act of 1994* eliminated Pell Grant eligibility for prison inmates. The *HER Act* eliminated the Title IV eligibility of students who were convicted of drug possession or solicitation. The federal judiciary upheld the constitutionality of the three acts despite the onslaught of *ex post facto*, bill of attainder, Equal Protection, Cruel and Unusual punishment, Double Jeopardy and self-incrimination challenges. While these three acts affirmed the right of congressional discretion despite these violations, they also illustrated the unwillingness of the federal judiciary to invalidate acts of Congress. While these acts do promote the

obligations of civic duty, one has to wonder: who do these laws most effect and at what costs?

Enforcement of Societal Values

The federal financial aid programs have assisted millions of low-income students to follow their dreams of attaining a college degree, and the popularity of the programs was not lost on Congress. In fact, through the trio of legislative acts, Congress sought to instill and enforce the obligations of civic duties among students and those aspiring to attend college, but who are unable to afford it on their own. In order receive a non-contractual government benefit, students must abide by the law and fulfill their civic duty. In the official report of the Truman Commission on Postsecondary Access in 1947, the commission reasoned that postsecondary access should be expanded to the general public to instill the obligations of civic duty and participation to promote the ideals of democracy. Ironically, the three acts do exactly that. The DOD Act withdrew their eligibility for financial aid if students failed to register for military service and ignored their civic duty. The *VCC Act* symbolized the same message: members of Congress stated that the Pell Grant rewarded prisoners for their unlawful conduct, thus not abiding by their civic duty of adhering to societal laws (Blumenson & Nilsen, 2002). And lastly, the *HER Act* eliminates Title IV eligibility for students who are convicted of drug conviction while receiving federal aid. In order to receive a benefit from the government, students should observe its rules and laws. Failure to do so would eliminate one's eligibility for governmental benefits that they might desperately need.

The Consequence of Enforcement

Although both legislative acts promote civic duty on college student populations, one must question: (1) at what price and (2) at whose expense? The cases establish bad public policy in terms of equitable postsecondary access. In the *Tremblay* case, the federal judiciary should have given more credence to Equal Protection argument. Since the Pell Grant was need-based, the students who were affected by the *DOD Act* were from low- to middle-class income families. The *DOD Act* had little effect on students from affluent backgrounds since they were in a better position to absorb tuition costs and fees without federal financial assistance. Although late registrants could be fined \$10,000 and imprisoned for five years, these penalties were not applied in any case (Oyez Project, 2008; Sciarrino & Deutsch, 2003). The dissenting Justices in *Tremblay* (Justices Brennan and Marshall), invoking the Equal Protection Clause, contended that the *DOD Act* adversely affected students along socioeconomic lines. Due to the unequal wealth in society, §12(f) treated non-registrants unequally. Because of their need of Title IV funding, low-income and middle-class students were compelled to register for Selective Service while their wealthy counterparts had no such enforcement mechanism to compel them to register. Eligibility for federal financial aid programs within Title IV was based on financial need.

The wealthy do not require, are not applying for, and do not receive federal education assistance, and therefore are not subject to the requirement that they file statements that they have complied with the Selective Service registration requirement, nor to the economic compulsion to provide incriminating facts to the Government in the act of late registration. (*Selective Service*, 468 U.S. at 877)

Section §12(f) also affected other people based on other classifications such as race, gender and age. First, §12(f) disproportionately affected a large number of minority students. Minorities comprised a substantial portion of Title IV recipients: 56.7% of Pell Grant recipients, 46.4% of Work-Study students, and 52.1% of SEOG students. Therefore, the *DOD Act* carried the risk of having greater consequences for students of color than it had for their white counterparts. Second, the *DOD Act* had an adverse effect on the basis of gender as §12(f) only targeted males from the ages of 18 to 26. Females of the same age group remained immune. As a result, although both sexes received Title IV funding, only male college students risked benefit deprivation if they violated the *DOD Act*. While the *Selective Service* case found that Title IV eligibility could be eliminated for failing to register, the court in *Tremblay v. Riley* (1996) determined whether Pell Grant funding could be withheld from prison inmates.

Whereas the *DOD Act* comes short of its desired effect on the entire student body, the *VCC Act* is counterproductive when weighed against other public policy concerns. Much like the *DOD Act* and the *HER Act*, the *VCC Act* disproportionately affects those who are from low-income backgrounds. Numerous studies have noted that there is a high percentage of low-income prisoners in state and federal penal facilities, and before the passage of the *VCC Act*, many inmates took advantage of the availability of federal Pell Grants to finance their education for their post-incarcerated lives. During deliberations in the U.S. Senate, Sen. Clairborne Pell, the namesake of the grant, argued that inmates who received two years of postsecondary education had a recidivism rate of 10 percent, compared to the national averages of 60 to 70 percent (Pell, 1994). However, proponents countered that budgetary restraints and a desire to reserve federal benefits for only law-

abiding citizens drove the needs to eliminate Pell Grant funding for prisoners. Sen. Kay Bailey Hutchinson stated that the purpose of the *VCC Act* was to “free up the \$200 million [in Pell Grants] that was going to prisoners to have their educations funded, and it will now go to the children of these low-income families for whom the Pell Grants were originally intended” (*Congressional Record*, 1993).

The majority opinion in *Tremblay* examined the legislative history of the *VCC Act*, including congressional records, statements, and floor speeches, to explore the intent of the legislation. In reviewing the congressional records, the court concluded that the act was developed partly as a cost-cutting measure. Senators such as Kay Bailey Hutchinson of Texas were particularly interested in re-allocating the \$200 million in Pell Grants originally slated to state and federal prisoners at a time when the program itself constantly endured funding shortages.¹ However, as a response, Sen. Pell in a *USA Today* opinion column argued that the \$200 million price tag for grant funding was very insignificant when compared with the total costs of federal aid programs, comprising of .5 percent of the DOE budget.

Overall, the legislative acts have an acute, disproportionate effect on low-income individuals. With tuition increases nearly occurring annually nationwide, it is becoming more difficult to afford the costs of a postsecondary education. These annual increases in postsecondary tuition have had a greater effect on low-income and middle-class students than upon their wealthier counterparts (St. John & Noell, 1989). Since lower-income students are more dependent on federal financial aid programs, they are more likely

¹ Hutchinson stated that the purpose of the Violent Crime Control Act was to “free up the \$200 million [in Pell Grants] that was going to prisoners to have their educations funded, and it will now go to the children of these low-income families for whom the Pell Grants were originally intended” 139 Cong. Rec. S15746 (1993).

affected by this legislation than those in higher income situations. With the *DOD Act* having little effect on upper-income students and the *VCC Act* eliminating Pell Grant funding for most low-income prisoners, the legislative restrictions have a disparate impact on those from low-SES backgrounds.

When discussing the *VCC Act*, it could be argued that society reaped two obvious benefits in educating prison inmates. First, amendment opponents argued that education during imprisonment provided rehabilitative benefits such as preparing inmates to join the workforce after incarceration. Many inmates are not trained academically or vocationally, leaving them with limited employment options in society (Blumenson & Nilsen, 2002). They have to overcome a lack of training in addition to the stigma of being a former convict. Second, and relating to the first benefit, postsecondary education decreases recidivism. With some academic or vocational training, former inmates have a means to attain gainful employment, reducing the chance of a relapse into their former lifestyle. By some observations, recidivism was reduced if prisoners received some postsecondary education (Jones, 1995).

Recommendation for Equitable Treatment

If the governmental interest in promoting civic duties was implemented even-handedly, Congress should consider eliminating tax credit benefits as well as federal financial aid programs across the board to those students who fail to register with Selective Service or are incarcerated. Unlike their low-income counterparts, high-income students and their families qualify for federal tax credits such as the Lifetime Learning Credit and the Hope Scholarship Credit that provide up to \$1,200 and \$1,500 in tax savings respectively. Although this suggestion best fits the punitive needs of the *HER Act*

and *DOD Act*, its equitable treatment of rich and poor alike aligns more closely with the intent of the laws, the enforcement of civic duties on the general population.

Conclusion

Of all of the civic duties enforced by Congress, penalties for failure to report to jury duty and pay taxes are applied even-handedly despite distinctions based on race or SES. The *VCC and DOD Acts* depart from this approach, instead enforcing civic duty obligations with penalties that disproportionately affect low-SES college students. With the *VCC Act* eliminating Pell Grant eligibility for prison inmates and the *DOD Act* compelling conscription with the threat of funding disqualification, the coerced enforcement of civic duty only affects those dependent on governmental benefits and not the affluent who can sidestep such requirements. In order to provide equitable enforcement, all government benefits, including tax breaks, should be withheld from those who fail to abide by civic duty obligations. Only then would all citizens equally be compelled to comply with their civic obligations.

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