

Summer 2019

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Stephanie E. Stupakis

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Recommended Citation

Stephanie E. Stupakis, *What the Future May Hold for Victims of Domestic and Sexual Violence Without the Violence Against Women Act*, 30 *Hastings Women's L.J.* 261 (2019).
Available at: <https://repository.uchastings.edu/hwlj/vol30/iss2/7>

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What The Future May Hold For Victims of Domestic And Sexual Violence Without the Violence Against Women Act

*Stephanie E. Stupakis**

INTRODUCTION

The Violence Against Women Act (“VAWA”) is known as the cornerstone of our nation’s response to domestic and sexual violence. It fills an important gap by providing lifesaving services to victims of domestic violence, sexual assault, dating violence, and stalking.¹ Yet, with the recent expiration of VAWA and President Trump’s “blueprint” of the proposed budget cuts for fiscal year 2018 and 2019, the future of VAWA is at stake.²

Decreases or the elimination of funding for VAWA programming, facilitated through the Office on Violence Against Women, will affect support services offered through the Department of Health and Human Services (“HHS”), the Centers for Disease Control and Prevention (“CDC”), Housing and Urban Development (“HUD”), and a long list of organizations utilizing VAWA grant funding.³ For example, prior to the enactment of VAWA and its reauthorization in 2013, tenants in HUD run public housing programs were subject to eviction for criminal activity occurring at the residence under housing provider’s “zero tolerance” or

* J.D. Candidate Class of 2019.

1. Violence Against Women Health Act of 1994, 42 U.S.C. § 13981 (1994) (reclassified as 34 U.S.C. §12361 (2000)); *see* H. Res. 281, 116th Cong. (2019-2020) (for recent resolution to reauthorize VAWA of 1994 agreed to in the House of Representatives on April 3, 2019).

2. BLUEPRINT FOR BALANCE A FEDERAL BUDGET FOR FISCAL YEAR 2018, THE HERITAGE FOUNDATION 32 (2017), https://www.heritage.org/sites/default/files/2017-04/BlueprintforBalance_AFederalBudgetforFY2018.pdf [<https://perma.cc/UR8Q-97UE>] [hereinafter *Heritage Foundation 2018 Blueprint*].

3. *See generally* GARRINE P. LANEY, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING, CONGRESSIONAL RESEARCH SERVICE, 1 (Feb. 26, 2010) http://digit.alcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1716&context=key_workplace [<http://perma.cc/LC7Y-8C46>].

“one strike” policies.⁴ These policies failed to account for domestic violence and whether a tenant was the victim of violence or the perpetrator.⁵ Thus, the drafters of VAWA’s 2013 reauthorization included powerful language to help stabilize housing opportunities for victims by requiring HUD to implement regulations to protect public housing tenants from wrongful evictions based on domestic violence.⁶ This is but one example of how VAWA has changed lives, and how a failure to reauthorize VAWA will drastically impact the lives of all domestic and sexual violence victims across the United States.

In an effort to promote the continued reauthorization of VAWA, this note begins by reviewing the rates of domestic violence today. The second section chronicles the political history of VAWA, including the constitutional controversy surrounding VAWA at the time of its enactment. The third section details the scope of the bill’s grant funding and the influential provisions that have developed over the decades. The fourth section begins with a breakdown of the budget proposals for fiscal years 2018 and 2019. This final section then ends with a discussion of VAWA’s positive impact on victims of sexual violence with an emphasis on low-income individuals participating in federal public housing programs. This deeper dive into VAWA’s effect on victims in the public housing arena will illustrate how monumental VAWA is and has been in expanding protections and services for victims. In sum, this note will demonstrate that a failure to reauthorize VAWA would be detrimental to the livelihood and quality of life of domestic and sexual assault victims, and in doing so would turn a blind eye to an ever important social and legal issue.

I. A SNAPSHOT OF DOMESTIC VIOLENCE STATISTICS AND SERVICE COSTS IN THE UNITED STATES TODAY

Although the rate of domestic violence has dropped significantly since the enactment of VAWA, the issue remains extremely relevant and far-reaching.⁷ According to the CDC’s latest Intimate Partner and Sexual Violence Survey, one in two women are victims of sexual violence,

4. Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724 (Nov. 16, 2016) (codified at 24 C.F.R pt. 5, 91-93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983).

5. Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724 (Nov. 16, 2016) (codified at 24 C.F.R pt. 5, 91-93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983).

6. *The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs Notice*, 78 Fed. Reg. 47, 718 (Aug. 6, 2013) <https://www.hudexchange.info/resources/documents/Federal-Register-Reauthorization-Violence-Against-Women-Act-2013-Notice.pdf> [<https://perma.cc/223T-8RXH>] [hereinafter, *VAWA 2013 HUD Notice*].

7. Casey Leins, *Sobering Stats for Domestic Violence Awareness Month*, U.S. NEWS (Oct. 9, 2015), <https://www.usnews.com/news/blogs/data-mine/2015/10/09/sobering-stats-for-domestic-violence-awareness-month>. [<https://perma.cc/LJ4C-427D>].

physical violence, and/or stalking by an intimate partner.⁸ On average, roughly twenty people are physically abused by their intimate partner every minute in the United States.⁹ This equates to more than ten million women and men during one year.¹⁰ And on a typical day, more than 20,000 phone calls are placed to domestic violence hotlines nationwide.¹¹ These statistics reflect the prevalence of domestic and sexual violence in our society.

In a 2016 study conducted by the McKinsey Global Institute, the annual cost of violence against women is approximately \$4.9 billion dollars.¹² This figure includes medical costs, lost productivity, and lost earnings over women's lifetime.¹³ Incorporating the costs related to pain and suffering experienced by women increases the cost of violence against women more than tenfold, bringing this total estimate close to \$500 billion dollars.¹⁴

A separate study found that adjusted total healthcare costs were 19% higher in women with a history of intimate partner violence, which translates into an extra expenditure of \$19 million healthcare dollars per 100,000 women in the United States.¹⁵ Further demonstrating the high monetary cost, the CDC estimates that victims in the United States lose a total of nearly 8 million days of paid work annually, which is the equivalent of more than 32,000 full-time jobs.¹⁶

Research also underscores the overwhelming need for services for

8. *Facts Everyone Should Know about Intimate Partner Violence, Sexual Violence, & Stalking*, NISVS: THE NAT'L INTIMATE PARTNER & SEXUAL VIOLENCE SURVEY (2016), <https://www.cdc.gov/violenceprevention/pdf/nisvs-infographic.pdf> [<https://perma.cc/AS9J-5AEZ>] [hereinafter, *Facts about IPV*].

9. *Statistics*, NCADV: THE NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more/statistics> (last visited Nov. 28, 2017) [<https://perma.cc/8UJ2-CV6K>] [hereinafter, *Statistics*].

10. *Id.*

11. *Id.*

12. KWEILIN ELLINGRUD ET AL., THE POWER OF PARITY: ADVANCING WOMEN'S EQUALITY IN THE UNITED STATES, MCKINSEY GLOBAL INSTITUTE 39 (Apr. 2016), <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Employment%20and%20Growth/The%20power%20of%20parity%20Advancing%20womens%20equality%20in%20the%20United%20States/MGI-Power-of-Parity-in-US-Full-report-April-2016.ashx> [<https://perma.cc/FWV5-WVBM>].

13. *Id.*

14. *Id.*

15. Frederick P. Rivara et al., *Healthcare Utilization and Costs for Women With a History of Intimate Partner Violence*, AM. J. PREV. MED., Feb. 2007, at 89, 94; Monica N. Modi et al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*, J. OF WOMEN'S HEALTH 253, 254, (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3952594/> [<https://perma.cc/5W6B-XPAN>].

16. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES, CTRS. FOR DISEASE CONTROL AND PREVENTION 1 (Mar. 2003), <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf> [<https://perma.cc/82Z4-JV6Y>].

victims.¹⁷ According to the 2015 National Census of Domestic Violence Services, in just one day in 2015, over 40,302 adults and children fleeing domestic violence found refuge in domestic violence emergency shelters or transitional housing programs.¹⁸ An additional 31,526 victims received non-residential assistance and services, such as counseling and legal advocacy.¹⁹ This same study reported that another 12,197 requests for services were made on this same day but were unmet, 63% of these requests were for housing.²⁰

In President Trump's budget message for 2018 fiscal year he wrote ". . . we must ensure the Federal Government spends precious taxpayer dollars only on our highest national priorities, and always in the most efficient, effective manner."²¹ The following year, alleging great progress, Trump stated in his budget message for the 2019 fiscal year that "America is back to winning again. A great spirit of optimism continues to sweep across our Nation. Americans can once again be truly confident that our brightest days are ahead of us."²² However, in looking at the statistics for the economic and healthcare costs associated to domestic violence, it is clear that victims of domestic violence are not "winning" and this social issue should remain a national priority. For the sake of the longevity of VAWA, as well as the victims and survivors of domestic violence, Congress and the President's attention is still in high demand when it comes to crucial budget decisions. Thus, as illustrated in the next section, it becomes important to understand VAWA's lengthy history and appreciate its evolution into the invaluable bill it is today.

II. UNDERSTANDING VAWA OVER THE DECADES

In the late 1980s and early 1990s, Congress began addressing the "grim statistics of regarding the national impact of domestic violence" observed across the nation.²³ Congress pushed for nationwide solution to address the

17. NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2015: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 1(2016), https://nnedv.org/mdocs-posts/census_2015_handout_report/ [<https://perma.cc/F6U4-KSMY>] [hereinafter *24-Hour Census of DV Shelters & Services*].

18. *24-Hour Census of DV Shelters & Services*, *supra* note 17.

19. *Id.*

20. *Id.*

21. BUDGET OF THE U. S. GOVERNMENT: A NEW FOUNDATION FOR AMERICAN GREATNESS: FISCAL YEAR 2018, OFF. OF MGMT. & BUDGET, 1 (2017), <https://www.whitehouse.gov/wp-content/uploads/2017/11/budget.pdf> [<https://perma.cc/7HXV-YANA>] [hereinafter, U.S. BUDGET 2018].

22. FISCAL YEAR 2019: EFFICIENT, EFFECTIVE, ACCOUNTABLE AN AMERICAN BUDGET, OFF. OF MGMT. & BUDGET 1 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf> [<https://perma.cc/GG9F-8S66>] [hereinafter Fiscal Year 2019].

23. David M. Fine, Note, *The Violence Against Women Act of 1994: The Proper Federal Role in Policing Domestic Violence*, 84 CORN. L. REV. 252, 255 (1998).

lack of a cohesive legal response to domestic violence and related crimes of sexual assault.²⁴ VAWA was intended to shift the nation's attitudes toward domestic violence by: bringing awareness to important issues surrounding domestic violence; improving services and provisions for victims; and reforming the manner in which the criminal justice system responded to domestic violence and sex crimes.²⁵

Prior to VAWA, the criminal justice system was not set up to handle these type of crimes, sexual assault and domestic violence were even not included in the Federal Criminal Code.²⁶ Local criminal and family courts were forced to rely on state assault laws to enforce protection orders and other related enforcement measures for domestic violence.²⁷ A 1990 study found that between 40% and 60% of all calls received by police departments were related to domestic violence, demonstrating the high-need for comprehensive laws and protections for victims in this category of crime.²⁸ Between 1987 and 1991, 92% of incidents reported to the National Crime Victimization Survey involved acts of violence that men had committed against their female partners.²⁹ These statistics highlight that women as a group bore the brunt of this violence. Further, in 1992, the American Medical Association reported that as many as 1 in 3 women would be assaulted by a domestic partner in her lifetime—4 million in any given year.³⁰ Thus, members of Congress formed a task force and took on investigative projects to draft a meaningful piece of legislation to tackle this glaring legal and social issue.³¹

Former Vice President Joseph Biden, then a Delaware Senator, initiated this legislative endeavor, by submitting to Congress a preliminary

24. Fine, *supra* note 23, at 258.

25. LISA N. SACCO, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING, CONG. RES. SERV. 1 (2015), <https://fas.org/sgp/crs/misc/R42499.pdf> [<https://perma.cc/QX3N-F8LV>].

26. Tara Culp-Ressler, *How The Country Has Changed Under The Violence Against Women Act*, THINKPROGRESS, (Sept. 12, 2014, 12:09 PM), <https://thinkprogress.org/how-the-country-has-changed-under-the-violence-against-women-act-2348c358dbda/> [<https://perma.cc/TD8Y-XUYR>].

27. Fine, *supra* note 23, at 253.

28. CLARK COUNTY PROSECUTING ATT'Y, *Fast Facts on Domestic Violence*, CLARKPROSECUTOR.ORG, (last visited Nov. 28, 2017), <http://www.clarkprosecutor.org/html/domviol/facts.htm> [<https://perma.cc/DDY7-WMCS>] (citing ROXANNA CARILLO, VIOLENCE AGAINST WOMEN: AN OBSTACLE TO DEVELOPMENT (Social Scientists' Association Colombo, 2005) [hereinafter, *Fast Facts on DV*].

29. *Id.*

30. Jill Smolowe, *When Violence Hits Home*, TIME, (July 04, 1994), <http://content.time.com/time/subscriber/article/0,33009,981054-1,00.html>.

31. *History of the Violence Against Women Act*, LEGALMOMENTUM: THE WOMEN'S LEGAL DEFENSE AND EDUCATION FUND, (last visited Nov. 28, 2017), <https://www.legalmomentum.org/history-vawa> [<https://perma.cc/5XFH-5YRE>] [hereinafter, *History of VAWA*].

proposal to address the issue of violence against women.³² Biden's task force first focused on the structural problem: the few institutions dedicated to preventing and redressing violence against women were severely constrained by the inadequate legal remedies, taking issues with the limited scope of Title VII and Title IX.³³ VAWA sought to right this wrong by implementing a number of powerful changes to the way crimes of domestic violence were addressed and the federal funding that would be available for use.³⁴ As a result of these legislative efforts, the original Violence Against Women Act ("VAWA 1994") was passed as part of the Violent Crime Control and Law Enforcement Act in 1994.³⁵

VAWA 1994 facilitated change by: enabling investigations and prosecutions of sex offenses, instituting grant programs to support local law enforcement efforts, public and private entities and service providers supporting victims, and victims of crimes themselves.³⁶ Provisions within VAWA 1994 also established new offenses and penalties for the violation of a protection order by requiring states and territories to enforce protection orders issued by other states, tribes, and territories.³⁷ VAWA also penalized stalking in which an abuser crossed a state line to injure or harass another, or the forcing of a victim to cross a state line under duress and then physically harmed the victim in the course of a violent crime.³⁸

In addition to creating valuable legal remedies and enforcement measures, VAWA 1994 also designed grant programs for a wide variety of activities, including programs aimed at preventing domestic violence and related crimes and addressing the needs of individuals in a special population group, such as the elderly, disabled, and nonimmigrant women.³⁹ The grant programs were administered by the HHS and CDC.⁴⁰ Overall, VAWA 1994 was able to generate 1.62 billion federal dollars for federal and state agencies to combat violence against women.⁴¹ In 1995, the Office on Violence Against Women ("OVW")⁴² was created

32. *History of VAWA*, *supra* note 31.

33. Caroline S. Schmidt, *What Killed the Violence Against Women Act's Civil Rights Remedy Before the Supreme Court Did?* 84 U. VIRG. L. REV. 501, 520 (2014) www.virginialawreview.org/sites/virginialawreview.org/files/Schmidt_101-501.pdf [https://perma.cc/Y4G4-YJUT].

34. SACCO, *supra* note 25, at 2.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 3.

40. *Id.*

41. Schmidt, *supra* note 33, at 503.

42. See U.S. DEP'T OF JUST., ABOUT THE OFFICE, OFF. ON VIOLENCE AGAINST WOMEN, (last visited Nov. 28, 2017), <https://www.justice.gov/file/29836/download> [https://perma.cc/G29B-378X] [hereinafter *About the OVAW*] (Created in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs,

administratively within Department of Justice (“DOJ”) to oversee federal grants authorized under VAWA.⁴³ Congress reauthorized VAWA three additional times due to VAWA 1994’s success in gaining traction and generating grant funding.⁴⁴

Congress first reauthorized VAWA in 2000, almost all of the provisions in VAWA 1994 were reauthorized with the exception of some amendments.⁴⁵ The additional provisions were aimed at enhancing the federal domestic violence and stalking penalties, protections for abused foreign nationals, and programs for elderly and disabled women.⁴⁶ The second reauthorization of VAWA occurred in 2005.⁴⁷ Again Congress added enhancing provisions to the Act.⁴⁸ The 2005 legislation included: 1) stricter penalties for repeat stalking offenders; 2) protections for battered and trafficked foreign nationals; 3) programs for American Indian victims of domestic violence and related crimes; and 4) programs designed to improve the public health response to domestic violence.⁴⁹

The most recent complete reauthorization of VAWA occurred in 2013, in this version the provisional language became even more inclusive of populations affected by domestic violence and sexual assault.⁵⁰ In an effort to recognize the complexities of domestic violence as a crime, the VAWA 2013 reauthorization’s drafters redefined domestic violence to include intimate partner violence.⁵¹ It defines domestic violence as:

[F]elony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has

policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking. OVW administers both formula-based and discretionary grant programs, established under VAWA and subsequent legislation.).

43. SACCO, *supra* note 25, at 4; *see* U.S. DEP’T OF JUST., OVW FREEDOM OF INFORMATION ACT, OFF. ON VIOLENCE AGAINST WOMEN, (last visited Nov. 28, 2017), <https://www.justice.gov/ovw/ovw-freedom-information-act> [<https://perma.cc/XN7T-C35L>] (OVW implements provisions of VAWA, administers grants authorized by VAWA, provides national leadership on the issues of domestic violence, sexual assault, and stalking. OVW functions by forging important relationship with and among police, prosecutors, the judiciary, victim advocates, health care providers, faith leaders, and others.).

44. SACCO, *supra* note 25, at 2.

45. *Id.* at 9.

46. *Id.* at 10.

47. *Id.* at 9.

48. *Id.* at 10.

49. *Id.*

50. *Id.* at 12-13.

51. SACCO, *supra* note 25, at 12; *see also* 42 U.S.C. §13925(a)(8) (West 2017) (stating that the Violence Against Women Reauthorization Act of 2013 revised the definition of “domestic violence” to specifically include “intimate partners” in addition to “current and former spouses”).

cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.⁵²

A change to this definition brought first-time protections for lesbian, gay, bisexual, transgender, and queer ("LGBTQ") individuals.⁵³ This is but one of the many influential provisions that the 2013 reauthorization brought, helping VAWA to become a dynamic force behind aid for victims of domestic violence across the nation.

Despite decades of success, proponents of VAWA 1994 faced fierce opposition before and after the legislation's enactment. In recent years, the historical arguments against VAWA 1994 have resurfaced, which in part, led to a two-year delay in reauthorizing VAWA 2005.⁵⁴ And as VAWA 2013 expired in 2018, the fate of VAWA funding and its valuable protective provisional language for all victims of domestic violence is at stake once again.

A. THE CONSTITUTIONAL CONTROVERSY AND ARGUMENTS AGAINST VAWA 1994

With the Congressional floor continuing their political debate around the reauthorization of VAWA, it becomes important to take a look back at the political controversy around VAWA 1994 and the arguments against its original enactment.

Despite VAWA's success over the decades, it took multiple years to draft and pass VAWA 1994 due to its most controversial provision, the civil rights remedy.⁵⁵ The legislators and advocates behind VAWA 1994 had two primary purposes with this piece of the legislation: 1) provide victims of gender-based violence with a forum and method to seek justice; and 2) send a powerful message that violence against women violates a civil right.⁵⁶ The civil rights remedy provision, modeled after late nineteenth century laws intended to protect African Americans, gave plaintiffs the opportunity to take their civil domestic violence claims to

52. 34 U.S.C.A. § 12291(a) (8) (West 2017).

53. Modi et al., *supra* note 15, at 255.

54. Rosalind S. Helderman, *House To Vote On Violence Against Women Act Measures*, WASH. POST, (Feb. 27, 2013), https://www.washingtonpost.com/politics/house-to-vote-on-violence-against-women-act-measures/2013/02/27/53837910-8121-11e2-a350-49866afab584_story.html?utm_term=.e894c1d1a88b [<https://perma.cc/AV5B-WKU3>].

55. Fine, *supra* note 23, at 261.

56. Schmidt, *supra* note 33, at 508.

federal court.⁵⁷ Yet, the provision did not go unchallenged. Chief Justice William Rehnquist was the key figure in opposition of the provision.⁵⁸ He and several judicial organizations argued that this particular provision would bring an unmanageable wave of family disputes into the federal courts.⁵⁹ Yet, through dedicated redrafting and advocacy efforts, the bill passed with the civil rights remedy intact and was upheld for several years.⁶⁰

In 1995, the Supreme Court handed down an unexpected ruling on an unrelated gun regulation, which changed the course of VAWA. In *United States v. Lopez*, the defendant on appeal successfully challenged a provision of the Gun-Free School Zone Act of 1990 as exceeding Congress' Commerce Clause Authority.⁶¹ Specifically, the Court held that a criminal statute which by its terms had nothing to do with "commerce" or any sort of "economic enterprise" could not meet the requirement of the substantial effect on interstate commerce test.⁶² This holding opened the door to challenging Congress' previous interpretation of the Commerce Clause, and specifically federal courts' authority to oversee criminal prosecutions under VAWA.⁶³

Congress had extensively relied on the Commerce Clause and the Fourteenth Amendment of the Constitution for the authority to enact VAWA 1994 because they lack general federal police power.⁶⁴ At that time, "the controlling precedent under the Commerce Clause implied that Congress had the power to regulate activities which, under a rational basis test, had a substantial effect on commerce."⁶⁵ "Congress found domestic and sexual violence qualified under this test, given the vast costs borne by taxpayers as a result of such violence."⁶⁶ For example, during the legislature's investigations, the estimated cost of domestic violence was between "\$5 and \$10 billion a year in health care, criminal justice, and other special costs."⁶⁷ However, after the *Lopez* decision, critics of VAWA found new ammunition to challenge the constitutionality of the bill.

The next blow to VAWA occurred in May of 2000, when a conservative five-justice majority of the Supreme Court found VAWA's civil rights remedy provision unconstitutional in *United States v.*

57. *History of VAWA*, *supra* note 31.

58. *Id.*

59. *Id.*

60. *Id.*

61. *U.S. v. Lopez*, 514 U.S. 549, 567 (1995).

62. *Id.* at 561.

63. Fine, *supra* note 23, at 269-70.

64. *Id.* at 262.

65. *History of VAWA* *supra* note 31.

66. *Id.*

67. *Id.*

Morrison.⁶⁸ There, a student sued her attackers under the civil rights remedy of VAWA 1994 after she was allegedly assaulted and raped by two of her classmates.⁶⁹ The defendants moved to dismiss the complaint on the grounds that it failed to state a claim and that the civil rights remedy was unconstitutional.⁷⁰ The Court relied on the analysis of *United States v. Lopez* to determine that gender-based violence is a noneconomic activity.⁷¹ Further, the Court held that congressional findings of gender-based violence on a national level were insufficient, “by itself, to sustain the constitutionality of the Commerce Clause assertion of the legislation.”⁷² The Court cited *Lopez* stating that “simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.”⁷³ Thus, with one stroke, the civil rights remedy was struck from the legislation and the road to fighting domestic violence on a national level became increasingly harder.

Despite losing the civil rights remedy provision, VAWA persevered and continues to expand the ways in which it aids victims of sexual assault and domestic violence. However, as was seen in the reauthorization of VAWA in 2013, presently a right-centered administration has resurrected this Commerce Clause argument leaving VAWA vulnerable once again to becoming a pawn in a political game.⁷⁴

B. VAWA'S USE AS A POLITICAL GAME PIECE THEN AND NOW

VAWA is subject to reauthorization every 5 years,⁷⁵ and in 2013, VAWA was brought back to the table and subjected to a long-winded political battle.⁷⁶ In previous years, the legislation's reauthorization was passed without much contention.⁷⁷ In fact, Congress unanimously voted in favor of reauthorization in 2000 and 2005.⁷⁸ Yet, upon VAWA's impending expiration in 2012 and the Democratic Party proposing the inclusion of new provisions rooted in immigrant, LGBTQ, and Native American rights, a heated political debate ensued delaying its

68. Schmidt, *supra* note 33, at 502.

69. U.S. v. Morrison, 529 U.S. 598, 602 (2000).

70. *Id.* at 604.

71. *Id.* at 613.

72. Morrison, 529 U.S. at 614.

73. *Id.*; *see also Lopez*, 514 U.S. at 557.

74. Helderman, *supra* note 54.

75. Modi et al., *supra* note 15, at 253.

76. P.R. Lockhart, *Jeff Sessions Is in Charge of Enforcing the Violence Against Women Act, and Victims' Advocates Are Worried*, MOTHER JONES, (Feb. 22, 2017), <http://www.motherjones.com/politics/2017/02/sessions-justice-department-violence-against-women-act-enforcement/> [<https://perma.cc/UC53-PMM9>].

77. Lockhart, *supra* note 76.

78. *Id.*

reauthorization.⁷⁹ Many Republican's opposed reauthorization and their opposition breathed new life into the past arguments against VAWA 1994, namely that VAWA authorizes the federal government to fund and administer local programs that should be controlled by the states.⁸⁰ Additionally, Republicans were skeptical of the new provisions regarding tribal courts claiming that they are unconstitutional and will cause the bill to be rejected in court, which in turn impacts the position of women.⁸¹ Republicans also complained that Democrats were not interested in working on a compromise, but instead wielded the Senate bill as a political club to be used against House Republicans.⁸² Nevertheless, with the unified Democratic Party and the Republicans divided, VAWA was reauthorized in 2013.⁸³

VAWA 2013 expired in 2018 and Congress is currently embroiled in a new political battle over VAWA. Former United States Attorney General Jeff Sessions was a key figure in the current debate against reauthorization of VAWA.⁸⁴ He has a history of opposing the reauthorization of VAWA dating back to his time as an Alabamian Senator.⁸⁵ In 2012, when VAWA came up for reauthorization, Sessions opposed the additional provisions that were added to "increase the number of visas available to battered immigrant women fleeing their abusers, new nondiscrimination [protections] for LGBT survivors of violence, and a provision granting tribal courts the authority to prosecute non-Native Americans who abused Native women on tribal land."⁸⁶ Regarding the debate over controversial provisional additions, Session's "accused Democrats of including them to turn the reauthorization into a political battle"⁸⁷ in an interview with the New York Times.⁸⁸ Sessions stated that, "[t]here are matters put on that bill that almost seems to invite opposition."⁸⁹

Just before the expiration of VAWA in 2018, Sessions was in charge of enforcing and carrying out the same version of VAWA that he adamantly opposed.⁹⁰ As a result, Sessions' position on VAWA generated concern amongst domestic violence advocates and the marginalized communities

79. Helderman, *supra* note 54.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. Lockhart, *supra* note 76.

85. *Id.*

86. *Id.*

87. *Id.*

88. Jonathan Weisman, *Women Figure Anew in Senate's Latest Battle*, N.Y. TIMES, (Mar. 14, 2012), <https://www.nytimes.com/2012/03/15/us/politics/violence-against-women-act-divides-senate.html> [<https://perma.cc/FS7W-XMLZ>].

89. *Id.*

90. Lockhart, *supra* note 76.

that were finally afforded protections under VAWA 2013.⁹¹ Fatima Goss Graves, a senior vice president at the National Women's Law Center, spoke on Sessions role stating, "[w]hen you think about what a [Department of Justice] should be, the role that a DOJ can play, and juxtapose that with the record that [Senator] Sessions has had historically with regards to civil rights, with regards to women's rights, it is clear to us that he should not [have been] confirmed to a position. . . as crucial as this position . . ."⁹² Sessions remained quiet on any plans for the OVW and VAWA funding, but with the fiscal year 2018 budget proposal circulating, leaders such as Sessions could not remain quiet much longer on their positions to reauthorize VAWA.⁹³

Notwithstanding silence from Sessions, what was known was President Trump's blueprint for the 2018 fiscal year was largely shaped by information published by a conservative think tank, the Heritage Foundation.⁹⁴ The Heritage Foundation recommended the elimination of VAWA grants.⁹⁵ Further, their recommended blueprint stated that using federal agencies to fund the operations of domestic violence programs "is a misuse of federal resources and a distraction from concerns that are truly the province of the federal government."⁹⁶ This recommended cut to VAWA and other programming protecting the poor and vulnerable is to support President Trump's call for a \$54 billion spike in spending for defense and immigration enforcement.⁹⁷ A national security strategy the President has maintained in his 2019 fiscal year budget.⁹⁸

Unsurprisingly, the President's shift in federal spending and policy runs counter to VAWA 2013's protective provisions. For example, under President Trump's immigration policies, federal immigration agents are free to detain and deport anyone who is in the country without papers.⁹⁹

91. Lockhart, *supra* note 76.

92. *Id.*

93. *Id.*

94. *Heritage Foundation 2018 Blueprint*, *supra* note 2; *see also* BLUEPRINT FOR BALANCE A FEDERAL BUDGET FOR FISCAL YEAR 2018, THE HERITAGE FOUNDATION 24 (2016), <https://thf-reports.s3.amazonaws.com/2016/BlueprintforBalance.pdf> [<https://perma.cc/8LZE-6G8B>] (The Heritage Foundation advocates for the elimination of VAWA grants and according to their calculations, would save the government \$480 million dollars in 2017, an argument that is recycled in their 2018 recommendations.).

95. Lynsi Burton, *What's at stake for domestic violence survivors under Trump*, SEATTLE PI (May 11, 2017), <http://www.seattlepi.com/local/article/What-s-at-stake-for-domestic-violence-survivors-11136734.php>; *see also Heritage Foundation 2018 Blueprint*, *supra* note 2.

96. Burton, *supra* note 95.

97. Melissa Jeltsen, *Trump's Budget Would Be Devastating To Poor Victims Of Domestic Abuse*, HUFFPOST, (Mar. 17 2017), https://www.huffingtonpost.com/entry/trump-budget-domestic-abuse-victims_us_58cc2184e4b0ec9d29dbd9f7 [<https://perma.cc/8EA5-8EDJ>].

98. *Fiscal Year 2019*, *supra* note 22.

99. Kate Segal, *Immigration Order Undermine Violence Against Women Act Protections*, THE HILL, (Mar. 13, 2017 4:30 PM) <http://thehill.com/blogs/pundits-blog/immigration/32375-6-new-immigration-orders-a-double-threat-for-immigrant-women> [<https://perma.cc/UK6G-NPL6>].

Thus, undocumented victims of domestic violence may face a difficult choice between “outing” themselves to immigration authorities or submitting to a life of abuse.¹⁰⁰ This is in direct conflict with VAWA 2013 language that encourages immigrant families to report serious crime and gives them the option to assist authorities in investigating and prosecuting the crime in exchange for eligibility to stay in the country through the U visa program.¹⁰¹ With this kind of conflict on the table, it is easy to see how VAWA can become a leveraging tool in policy reform.

More recently, VAWA was set to expire September 30, 2018, but “Congress took the unusual steps of extending its authorization three times in a series of short-term spending bills they passed to fund the government until the end of the previous fiscal year.”¹⁰² Unfortunately, VAWA’s series of authorization extensions came to an end in February 2019.¹⁰³ However, VAWA’s lapse does not impact its funding for the 2019 fiscal year since money has already been appropriated.¹⁰⁴ It is speculated that Congress will continue to analyze whether or not to pass a bipartisan VAWA reauthorization, as seen when VAWA’s authorization expired between 2010 and 2013.¹⁰⁵

Despite outcry from VAWA advocates, the Senate voted to approve William Barr as the next attorney general and successor to Jeff Sessions the same month that VAWA lapsed—leaving Barr as the top law enforcement officer of the DOJ and the Office of Violence Against Women.¹⁰⁶ Barr previously served in the position from 1991 to 1993,¹⁰⁷ and “has a troubling record on a number of civil rights issues, including LGBTQ rights and other intersecting issues such as justice system reform, reproductive justice, immigrant rights,” and criminal justice policies on domestic and sexual

100. Segal, *supra* note 99.

101. *Id.*

102. *NTF Applauds Congress for Supporting Victims and Survivors*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE BLOG, (Feb. 15, 2019), <https://ncadv.org/blog/posts/ntf-applauds-congress-for-supporting-victims-and-survivors> [<https://perma.cc/TP4H-YKAR>] [hereinafter *NCADV BLOG*].

103. *NCADV BLOG*, *supra* note 102.

104. *Id.*

105. *Id.*

106. NCAVP: NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, *NCAVP Opposes the Nomination of William Barr for Attorney General*, ANTI-VIOLENCE PROJECT, (Jan. 14, 2019), <https://avp.org/ncavp-opposes-the-nomination-of-william-barr-for-attorney-general/> [<https://perma.cc/W6VF-PYJ8>] [hereinafter *NCAVP Opposes Nomination of William Barr for AG*]; see also Jon Schuppe, *William Barr was Confirmed as U.S. Attorney General: Here’s What to Expect on Crime, Immigration and Marijuana*, NBC NEWS, (Feb. 14, 2019), <https://www.nbcnews.com/news/us-news/william-barr-was-confirmed-u-s-attorney-general-here-s-n971066> [<https://perma.cc/9YKQ-YNN4>].

107. Katie Benner and Nicholas Fandos, *Senate Confirms William Barr as Attorney General*, N.Y. TIMES, (Feb. 14, 2019), <https://www.nytimes.com/2019/02/14/us/politics/william-barr-confirmed.html> [<https://perma.cc/8B2A-RVJE>].

violence.¹⁰⁸ For example, in 1999, while speaking at an American Bar Association panel of former attorneys general, Barr “called VAWA a ‘bad idea,’ implying that it was a ‘crime du jour’ and said it is not in the ‘legitimate interest’ of the federal government.”¹⁰⁹ During the panel, Barr continued on to state he believed “the government does have a ‘legitimate interest’ in intervening in drug trafficking, organized crime and firearm regulations, but not in preventing violence against women.”¹¹⁰ In his renewed role as Attorney General, despite praising Sessions approach to leading the DOJ, Barr has stated he may support reauthorization of the act after learning more about what the DOJ did in years past to support the bill.¹¹¹ Thus, with another conservative political figurehead at the helm of the DOJ, advocates and supporters hold their breath as they await VAWA’s fate.

Overall, the unfortunate reality is that when parties are forced to examine historically contentious issues, such as immigration, LGBTQ rights, and government funding in addition to discussing violence against women; political agendas become more important than protecting those in need.¹¹²

Presently, VAWA must overcome a change in DOJ leadership, in addition to the historically rooted criticism that the federal government is intervening on the State’s powers and President Trump’s other policies aimed at immigration reform and military funding rather than continuing to fund support services. The future of VAWA hangs on this balance and victims across the nation wait to see whether the bill’s proponents will prevail.

III. THE GRANTS AND FUNDING THAT WILL BE AT STAKE IF VAWA IS NOT REAUTHORIZED

In addition to losing the important provisional protections VAWA 2013 as a bill has to offer, a failure to reauthorize VAWA also puts the Office of Violence Against Women and its available funding at stake. Since its enactment in 1994, VAWA through OVW has awarded roughly \$6 billion in funds to state, tribal, and local governments, and non-profit

108. *NCAVP Opposes Nomination of William Barr for AG*, *supra* note 106.

109. Nicole Goodkind, *William Barr, Trump’s Pick for Attorney General, Once Called Violence Against Women Act a ‘Bad Idea’*, NEWSWEEK, (Jan. 24, 2019), <https://www.newsweek.com/william-barr-trump-violence-against-women-act-bad-idea-1303939> [https://perma.cc/FL67-UMPQ].

110. *Id.*

111. *Id.*

112. Jen Doll, *When Violence Against Women Becomes a Political Game*, THE ATLANTIC, (Mar. 15, 2012), <https://www.theatlantic.com/national/archive/2012/03/when-violence-against-women-becomes-political-game/330518/> [https://perma.cc/FJG8-42UZ].

organizations focused on ending violence against women.¹¹³ In the initial legislation, VAWA 1994 created a number of grant programs aimed at: domestic violence and related crimes prevention, law enforcement, judicial personnel, and public/private sector provider collaboration, investigative and prosecution reform, and “addressing the specific needs of individuals in a special population groups (e.g., elderly, disabled, children and youth, individuals of ethnic and racial communities, and nonimmigrant women).”¹¹⁴ Today, OVW administers formula-based and discretionary grant programs, which are established under VAWA and any subsequent legislation.¹¹⁵ The four main formula-based programs are STOP (Services, Training, Officers, Prosecutors), SASP (Sexual Assault Services Program), State Coalitions, and Tribal Coalitions.¹¹⁶ These programs created under VAWA are funded through annual appropriations for both the DOJ and Health and Human Services (“HHS”).¹¹⁷ Thus, the amount of funding allocated to the DOJ and HHS plays a direct role in the how the OVW is able to operate and utilize VAWA.

Upon the expiration of VAWA 2005, on February 2, 2011, then President Barack Obama released his fiscal year 2011 budget, which requested \$649 million for violence against women program funding.¹¹⁸ For the programs directly administered by DOJ, the former President “requested \$457 million, of which \$187 million was for STOP formula grants and \$25 million was for Transitional Housing Assistance grants.”¹¹⁹ He also requested \$192 million for programs administered by HHS, of which \$140 million was for Family Violence Prevention/Grants for Battered Women’s Shelters and \$5 million was for the National Domestic Violence Hotline.¹²⁰ As a result, in 2011 OVW was able to generate approximately 830 awards totaling more than \$450 million.¹²¹ While a seemingly large amount of funding, Former President Obama’s budget plan actually presented a decrease in VAWA funding and in practice VAWA is funded far below what Congress has authorized.¹²² Influential organizations

113. *About the OVAW*, *supra* note 42.

114. SACCO, *supra* note 25, at 3.

115. *About the OVAW*, *supra* note 42.

116. *Id.*

117. LANEY, *supra* note 3.

118. *Id.*

119. *Id.*

120. *Id.*

121. U.S. DEP’T OF JUSTICE, 2012 BIENNIAL EFFECT REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT, OFF. ON VIOLENCE AGAINST WOMEN 10 (Mar. 13, 2012), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/03/13/2012-biennial-report-to-congress.pdf> [<https://perma.cc/USX8-EHX9>] [hereinafter *2012 Report on the Effectiveness of VAWA Grant Programs*].

122. *Progress Marked on One Year Anniversary of 2013 Violence Against Women Act*, NNEDV: NAT’L NETWORK TO END DOMESTIC VIOLENCE, (Mar. 7, 2014) (Press Release), https://nnedv.org/latest_update/progress-marked-on-one-year-anniversary-of-2013-violence-

such as the National Network to End Domestic Violence, report that budget cuts have led to insufficient funding for protective services creating a crisis for victim service providers attempting to meet the demand.¹²³ Thus, with a conservative administration in place, the fate of already insufficient funding appropriated to victims of sexual violence is at stake and proponents need to prove that VAWA is worth another reauthorization.

A. IMPACTS AND TRENDS OF VAWA PROGRAMING SINCE THE BILL'S ENACTMENT IN 1994

At such a vulnerable time for VAWA and those reliant on its funding, VAWA's impact becomes an important factor in arguing for the reauthorization of the bill. However, it is challenging to determine just how effective VAWA grants and programing have been overtime, especially in light of the provisional changes that have taken place with each reauthorization.¹²⁴

In an effort to quantify the success of VAWA, agencies such as the National Institute of Justice ("NIJ"), the Centers for Disease Control and Prevention ("CDC"), and the Bureau of Justice Statistics ("BJS"), compile data measuring the national rates of victimization.¹²⁵ For example, the BJS's National Crime Victimization Survey ("NCVS") measured victimization from 1993 to 2013 and stated that the rate of domestic violence declined 63% for females, with 5.7 victimizations per 1,000 females aged 12 and older in 1993 to 2.1 per 1,000 in 2013.¹²⁶ This decline in victimization rates is a clear demonstration of the impact that VAWA has on the lives of female victims.

Further, following the reauthorization of VAWA in 2000, the OVW and the University of Southern Maine, entered into a cooperative agreement to undertake an initiative to develop procedures for determining the effectiveness of the projects and activities supported by VAWA grant funding.¹²⁷ The university created databases to help grantees collect data as well as provided extensive ongoing training and technical assistance to grantees on how to complete the reporting forms.¹²⁸ In anticipation of VAWA 2005's expiration in 2011, the OVW prepared a report for

against-women-act/ [https://perma.cc/U9UG-PEDU] [hereinafter *One Year Progress on VAWA 2013*].

123. *One Year Progress on VAWA 2013*, *supra* note 122.

124. Robert Lake, *The Violence Against Women Reauthorization Act of 2013 Summary of Substantive Changes*, 50 MPLP NEWSLETTER, Summer 2013 (Aug. 12, 2013), http://www.mplp.org/Newsletters/summer_2013_mplp_newsletter/the_violence_against_women_reauthorization_act_of_2013_summary_of_substantive_changes [https://perma.cc/MP93-7YCX].

125. Tara Aday, *The Effectiveness of the Violence against Women Act (VAWA) in Creating System-Level Change*, 11 SPNHA REV. 5, 11 (2015).

126. SACCO, *supra* note 25, at 6.

127. *2012 Report on the Effectiveness of VAWA Grant Programs*, *supra* note 121, at 13.

128. *Id.*

Congress covering the effectiveness of services from 2009 to 2011.¹²⁹ The data revealed that VAWA grantees reported serving an average of 125,726 victims/survivors during each 6-month reporting period between July 1, 2009, and June 30, 2011.¹³⁰ These statistics represent more than 97% of all the victims and survivors who requested services.¹³¹ Apart from aiding victims/survivors, grantees were also able to use VAWA funding to train 661,263 professionals, including police officers, victim advocates, health care professionals, and attorneys.¹³² Additionally, OVW's 2016 report to Congress on the effectiveness of grant programs under VAWA, reflecting the two-year period between July 1, 2013, and June 30, 2015, found that VAWA's 2,000 funded grantees provided more than 1 million services to victims.¹³³ On average, they provided services to 124,916 individuals during each 6-month reporting period, including an average of 111,817 primary victims of sexual assault, domestic violence, dating violence, stalking, and/or child or elder abuse; as well as victims' children.¹³⁴ These reports illustrate how VAWA programming continues to positively impact victims, service providers, and law enforcement despite budgetary cuts to its funding.

In addition to the numbers reflecting a significant decrease in victimization, VAWA proponents have pointed to the economic gains under the bill.¹³⁵ In a 2002 study, it was asserted that in the bill's first six years, VAWA saved the country \$14.8 billion in net averted social costs.¹³⁶ The net averted social costs are described as:

[T]he averted costs of crime, including direct property losses, medical care, ambulance services, mental health care, initial police response and follow-up investigation, victim services and other social services, lost productivity (workdays or school days, housework), and quality of life (pain and suffering, loss of affection/enjoyment, and death).¹³⁷

Further, the net benefit of VAWA was estimated to be \$16.4 billion,

129. 2012 *Report on the Effectiveness of VAWA Grant Programs*, *supra* note 121, at 13.

130. *Id.* at 15-16.

131. *Id.* at 16.

132. *Id.* at 17.

133. U.S. DEP'T OF JUSTICE, 2016 BIENNIAL REPORT: THE 2016 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT, OFF. ON VIOLENCE AGAINST WOMEN 61 (2016), https://www.vawamei.org/wp-content/uploads/2018/01/2016RTC_MASTER_12.19.16.pdf [<https://perma.cc/A8U5-QZR7>] [hereinafter 2016 *Report on the Effectiveness of VAWA Grant Programs*].

134. 2016 *Report on the Effectiveness of VAWA Grant Programs*, *supra* note 133, at xii.

135. Lake, *supra* note 124.

136. Kathryn Andersen Clark et al., *A Cost-Benefit Analysis of the Violence Against Women Act of 1994*, 8 VIOLENCE AGAINST WOMEN 417, 423 (Apr. 2002).

137. *Id.* at 419-20.

because the cost to implement VAWA programming was estimated at only \$1.6 billion, resulting in \$14.8 billion in averted victimization costs.¹³⁸ “On the individual level, VAWA was estimated at \$15.50 per U.S. woman and would be expected to save \$159 per woman in averted costs of criminal victimization.”¹³⁹ These cost savings were calculated from reductions in health care service needs and law enforcement costs for continued charges against repeat offenders.¹⁴⁰ Taken together, this analysis proves VAWA to be a fiscally efficient social program.¹⁴¹ Thus, failing to reauthorize the VAWA would not only uproot carefully designed victim services and protections, but also produce a substantial financial burden on States and American taxpayers.

B. INFLUENTIAL PROVISIONS IMPLEMENTED IN THE REAUTHORIZATION OF VAWA IN 2013

Despite budget cuts to the DOJ and OVW, VAWA's last reauthorization in February 2013 continued to expand the provisional language of the bill in unprecedented ways. For example, VAWA 2013 presented new and consolidated grant programs for women on Tribal lands, for immigrant and lesbian, gay, bisexual and transgender victims, victims impacted by sex trafficking, and victims living in federal public housing programs.¹⁴² As an illustration of VAWA 2013's influence and the bill's overall impact on victims, the next section showcases how VAWA 2013's provisional language and funding aids HUD and the victims that participate in HUD's federal public housing programs.

1. Protections for Victims Participating in HUD's Federal Public Housing Programs

The reauthorization of VAWA in 2013 expanded protections for victims of domestic and sexual violence by adding a number of housing rights participating in HUD programs. For example, Section 601 of VAWA 2013¹⁴³ added a new chapter titled “Housing Rights,” with the purpose of increasing protections for the following groups utilizing supportive housing programs: elderly, people with disabilities, people diagnosed with HIV/AIDS, homeless, and Section-8 participants.¹⁴⁴ Specifically, VAWA 2013 added language that prohibits the denial of housing assistance to an

138. Clark et al., *supra* note 136, at 423-24.

139. *Id.* at 424.

140. Aday, *supra* note 125, at 15.

141. Clark et al., *supra* note 136, at 423.

142. *One Year Progress on VAWA 2013*, *supra* note 122.

143. Violence Against Women Reauthorization Act of 2013 § 42 U.S.C. § 13701-14040 (2013).

144. *VAWA 2013 HUD Notice*, *supra* note 6.

applicant “on the basis that the person has been a victim of domestic violence, dating violence, sexual assault, or stalking.”¹⁴⁵ This inclusive language is vital as it removes barriers to victims of domestic and sexual violence attempting to access affordable and maintain stable housing.

Further, under the Transitional Housing Assistance Grant program administered by the OVW, victims receiving assistance are no longer subject to background checks or clinical evaluations to determine their eligibility for federal housing programs.¹⁴⁶ Prior to VAWA 2013, this presented an obstacle to many individuals and families attempting to solidify affordable housing because “landlords believ[ed] that they could ensure safety on their properties by keeping domestic violence survivors out.”¹⁴⁷ Now HUD language states that any criminal activity directly related to domestic violence, dating violence, or stalking committed by “a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate family member of the tenant is the victim.”¹⁴⁸ VAWA 2013 also required that each covered federal housing program implement “a model of emergency transfer plan to use for tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit of assisted housing.”¹⁴⁹ As a whole, VAWA 2013’s additional provisions have been monumental in aiding HUD’s redesign of their protective measures for victims.

For example, *Johnson v. Palumbo*, decided by the Supreme Court of New York’s Appellate Division on September 20, 2017, offers a powerful illustration of how VAWA 2013’s provisional language protects low-income tenants in HUD programs.¹⁵⁰ There, Amanda Chambers Johnson lived in a New York apartment with her five children under HUD’s Section-8 Housing Choice Voucher Program.¹⁵¹ On February 11, 2014, her housing provider notified her that her “benefits under the program were being terminated due to alleged violations of the program rules.”¹⁵² At

145. SACCO, *supra* note 25, at 15.

146. *Id.* at 15-16.

147. ACLU, THE RIGHTS OF DOMESTIC VIOLENCE SURVIVORS IN PUBLIC AND SUBSIDIZED HOUSING, ACLU: WOMEN’S RIGHTS PROJECT 1 (Feb. 6, 2008) <https://www.aclu.org/sites/default/files/pdfs/subsidizedhousingdv.pdf> [<https://perma.cc/AT8E-757L>] [hereinafter, *Housing Rights of DV Survivors*].

148. VAWA 2013 HUD Notice, *supra* note 5, at 47, 719.

149. SACCO, *supra* note 25, at 16.

150. *Johnson v. Palumbo*, 154 A.D.3d 231, 233 (N.Y. App. Div. 2017).

151. *Palumbo*, 154 A.D.3d at 233; see 42 USC § 1437f(b)(1) (West 2017); see also *Housing Choice Voucher Program (Section 8), Program Requirements*, BENEFITS.GOV, <https://www.benefits.gov/benefits/benefit-details/710> (last visited Nov. 28, 2017) [<https://perma.cc/3GVY-3YBP>] (for a description on the Housing Choice Program and requirements).

152. *Palumbo*, 154 A.D.3d at 233.

Johnson's administrative hearing, it was held that her Section-8 Housing Voucher would be terminated for failing to notify and receive permission from her housing provider to add another occupant to her lease agreement.¹⁵³ The unauthorized occupant was anonymously reported as frequently staying at Johnson's apartment in violation of the program rules.¹⁵⁴ However, there was uncontested evidence that this individual, a former intimate partner of Johnson, was actually subjecting her to unwanted stalking, abusive behavior, and domestic violence.¹⁵⁵ For example, Johnson's cell phone was smashed by her abusive partner, Antwone Jordan McGill, on four separate occasions between October 2012 and June 2013, all for not answering his calls.¹⁵⁶ McGill's behavior toward Johnson turned physical and resulted in Johnson being punched in her face and her tooth chipped outside of a police station.¹⁵⁷ The court considered whether, under these circumstances, Johnson was entitled to the housing protections under VAWA.¹⁵⁸

VAWA 2013 specifically provides that any incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking, shall not be construed as a serious or repeated lease violation, or good cause for terminating assistance to the victim.¹⁵⁹ Due to VAWA 2013, HUD regulations also state that housing providers are encouraged to undertake "whatever actions permissible and feasible to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking, to remain in their units or other units under the covered housing program."¹⁶⁰ Despite these regulations, Johnson's housing provider failed to recognize that Johnson was a victim domestic violence and that she and her family were entitled to certain protections.

The case initially turned on the fact of whether McGill resided with Johnson. McGill, who was in and out of jail, used Johnson's contracted unit as his address, making it appear that he was an unauthorized occupant.¹⁶¹ However, Johnson testified and provided a number of supporting documents that the individual was not a resident and his presence at the unit was the result of domestic violence and stalking.¹⁶² Thus, with clear federal rules and regulations established and evidence to support Johnson's

153. *Palumbo*, 154 A.D. 3d at 233-34.

154. *Id.* at 235.

155. *Id.* at 234.

156. *Id.* at 236-37.

157. *Id.* at 238.

158. *Palumbo*, 154 A.D.3d at 234; *see also* 34 U.S.C.A. § 12291 (West 2017).

159. *Palumbo*, 154 A.D.3d at 234; 34 U.S.C.A. § 12491(b) (West 2017); 24 C.F.R. § 5.2005(b) (West 2016).

160. *Palumbo*, 154 A.D.3d at 232; *see also* 24 C.F.R. § 5.2009(c) (West 2016).

161. *Palumbo*, 154 A.D.3d at 236.

162. *Id.*

claims, the court determined that she was entitled to protection under VAWA 2013 and a reinstatement of her Section-8 Housing Voucher.¹⁶³ Without these provisional protections, Johnson and her family would have faced homelessness and the significant obstacles that come with searching for affordable housing. Johnson's story is a powerful example of how influential VAWA's provisions are in shaping protections for victims and how they offer a supportive network for victims in need.

The additional provisions established in the 2013 reauthorization continue to leave a meaningful impression on marginalized populations through the United States. By uprooting decades of legislation, the failure to reauthorize VAWA 2013 will have a detrimental impact on other federal departments, such as HUD, that are working hard on instituting protections and resources for victims of domestic and sexual violence.

IV. WHAT IS AT STAKE IF CONGRESS FAILS TO REAUTHORIZE VAWA?

A. PRESIDENT TRUMP'S FISCAL BUDGET FOR 2018

As previously mentioned, Trump's budget proposal for fiscal year 2018 ("FY2018") was titled *A New Foundation For American Greatness*—yet greatness does not result from defunding and a failure to reauthorize an important piece of legislation for domestic violence victims across the United States.¹⁶⁴ President Trump spoke on the reductions of federal spending stating,

I spoke to a joint session of the Congress about what we need to do to begin a new chapter of American Greatness. I asked the Nation to look forward nine years and imagine the wonders we could achieve by America's 250th anniversary of our Independence if we set free the dreams of our people by removing the barriers holding back our economic growth.¹⁶⁵

The blueprint that President Trump announced was designed to reduce federal spending by \$10.5 trillion over the next 10 years, and closely follows the conservative Heritage Foundation's own budget blueprint.¹⁶⁶

163. *Palumbo*, 154 A.D.3d at 245; see also 34 U.S.C.A. § 12491 (West 2017) ("[a]n applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy").

164. U.S. BUDGET 2018, *supra* note 21, at 1.

165. *Id.*

166. Alexander Bolton, *Trump Team Prepares Dramatic Cuts*, THE HILL, (Jan. 19, 2017), <http://thehill.com/policy/finance/314991-trump-team-prepares-dramatic-cuts> [https://perm

The changes it proposed were dramatic and called for monumental increases in military and border-security spending, while cutting important programming in other government departments, such as the DOJ and HHS.¹⁶⁷ It begged the questions of what barriers actually laid in the wake of President Trump implementing this budget blueprint.

Alarmingly, the FY2018 budget reports presented misleading information on the administration's dedication to current funding for domestic violence prevention and programming. For FY2018, a total of \$1.979 billion was requested for the five Department of Justice grant accounts.¹⁶⁸ This amount includes a total of \$610 million in transfers from the Crime Victims Fund to three accounts; most importantly the request calls for \$445 million of that amount to be allocated to Violence Against Women Programs.¹⁶⁹ From an isolated numbers perspective this is an increase from FY2016, which allocated only \$379 million.¹⁷⁰ However, at the time of VAWA's last expiration in 2011, former President Obama had requested \$649 million for violence against women program funding and \$457.00 million for the programs directly administered by DOJ.¹⁷¹ This fluctuation and decrease in a budget is a natural part of analyzing a nation's spending, but this is but one piece of the equation for what the current president had in store for the American people.

A chart buried within the president's 2018 budget analysis included a 10-year spread for federal programing related to aid for survivors of assault and domestic violence that illustrated a disturbing future.¹⁷² The chart showcased a budget timeline amounting to a 93% cut for counseling services, shelter, legal aid and other VAWA programs.¹⁷³ These numbers paint a dark picture for the survival of VAWA and the overall existence of the OVW. Sadly, despite the clear impact that VAWA and the OVW have had on victims, service providers, and law enforcement, the federal government seems to be turning a blind eye to the overwhelming benefits VAWA has produced.

a.cc/PUL8-RULM]; see also *Heritage Foundation 2018 Blueprint supra* note 2.

167. Bolton, *supra* note 166.

168. NATHAN JAMES, FY2018 APPROPRIATIONS FOR DEPARTMENT OF JUSTICE GRANT PROGRAMS, CONGRESSIONAL RESEARCH SERVICE (2017), <http://www.cq.com/pdf/crsreports-5148985> [<https://perma.cc/W5BR-B2CB>].

169. *Id.*

170. U.S. DEP'T OF JUSTICE, FY 2018 PERFORMANCE BUDGET, OFF. OF JUSTICE PROGRAMS, 14 (May 2017), <https://www.justice.gov/file/969001/download> [<https://perma.cc/ZNW4-Q94X>].

171. LANEY, *supra* note 3 at 1.

172. Lindsay Wise, *Massive Cuts to Violence Against Women Programs just 'Technical,' White House Says*, MCCLATCHY: DC BUREAU (May 25, 2017), <http://www.mcclatchydc.com/news/politics-government/white-house/article152705234.html> [<https://perma.cc/9CMA-KALV>].

173. *Id.*

B. PRESIDENT TRUMP'S FISCAL BUDGET FOR 2019

The 2019 fiscal year budget brought some hope to VAWA advocates. While the budget proposal called for significant reductions in spending—such as \$1.5 trillion of cuts to nondefense discretionary spending and over \$300 billion from reductions in and reforms to welfare or safety net related programs—there seemed to be an increase for VAWA programs.¹⁷⁴ The Budget provides \$486 million to reinforce efforts to combat and respond to violent crimes against women, including \$215 million for Services, Training, Officers, and Prosecutors Grants.¹⁷⁵ However, to date, the GOP has refused to bring the reauthorization bill to the Floor for a vote. The short-term VAWA reauthorization extensions have only bought VAWA grant recipients time and money for the remainder of the 2019 fiscal year, which ends in September. Thus, the fate of VAWA and its programming still hangs in the balance, and the President's 2018 budget 10-year timeline for federal programing could still be VAWA's grim future if he is reelected.

C. HOW A FAILURE TO REAUTHORIZE VAWA WILL DIRECTLY IMPACT VICTIMS, WITH AN EMPHASIS ON THOSE IN FEDERAL PUBLIC HOUSING PROGRAMS

VAWA was enacted as a direct response to a great deal of women across the United States suffering from the effects of domestic and sexual violence. Intimate partner and sexual violence have serious short and long term physical, mental, sexual and reproductive health problems for survivors and for their children leading to high social and economic costs for the nation.¹⁷⁶ Further, these social and economic costs create ripple effects throughout society.¹⁷⁷ Individuals may suffer isolation, inability to work, loss of wages, lack of participation in regular activities and limited ability to care for themselves and their children.¹⁷⁸ These effects need to be taken into consideration before Congress decides against the reauthorization of VAWA and President Trump, if reelected, attempts to phase out its grants and programing over the next 10 years.

As discussed, the political strife between 2011 and 2013 lead to a decrease in VAWA funding and the ability for OVW to administer grants

174. BUDGETS & PROJECTIONS, *An Overview of the President's FY 2019 Budget*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET, (Feb. 12, 2018), <http://www.crfb.org/blogs/overview-presidents-fy-2019-budget> [<https://perma.cc/XV8N-VBRD>].

175. *Fiscal Year 2019*, *supra* note 22.

176. *Violence Against Women: Fact Sheet*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs239/en/> (Nov. 29, 2017) [<https://perma.cc/44ED-G5XW>] [hereinafter, *WHO Fact Sheet*].

177. *One Year Progress on VAWA 2013*, *supra* note 122.

178. *WHO Fact Sheet*, *supra* note 177.

and programming, which caused prolonged crisis for victim service providers.¹⁷⁹ These providers continue to lack the resources needed to meet the demand for services, despite more recent subtle increases to VAWA programming.¹⁸⁰ For example, the National Network to End Domestic Violence's "Domestic Violence Counts" report found that in one 24-hour period in 2013, more than 66,500 victims received lifesaving services at domestic violence programs nationwide.¹⁸¹ Unfortunately, during that same 24-hour period, nearly 10,000 requests for services went unmet, largely due to lack of funding.¹⁸² If VAWA funding were to cease all together, the number of victims failing to access lifesaving services would skyrocket.

Further, VAWA proponents on the local level are bracing themselves for what is potentially in store for victims and service providers. For example, Merrill Cousin, executive director of the King County Coalition Ending Gender-Based Violence, says a financial hit would be "devastating" for her organization and other service providers.¹⁸³ Speaking with regard to emergency shelters, Cousin stated that, "[l]ocal domestic violence shelters are forced to turn away 10 to 20 victims for every one they accept, and waiting lists are growing for people who need counseling or legal advocacy."¹⁸⁴ Cousin further stated that if VAWA programming for victims and families were eliminated, "[w]e would see many more people having to decide to stay with violent abusers rather than risk being homeless or not being able to feed their kids."¹⁸⁵ Adding to the need to maintain some portion of VAWA funding is the \$6 billion cut to HUD.¹⁸⁶ As emphasized by Cousin, the availability of emergency shelters, transitional housing, and affordable housing is incredibly significant to aiding domestic violence victims escape the cycle of abuse.¹⁸⁷ Thus, it becomes clear that domestic violence is intertwined with other problems and while it affects people from all economic backgrounds, people who don't have financial resources face much fewer options.¹⁸⁸

Regardless of inadequate funding, VAWA 2013's provisional language has proven to be significant in its ability to aid victims. As depicted in *Johnson v. Palumbo*, VAWA 2013 has specific provisions that prohibit public housing authorities run under HUD from denying or terminating tenancy of any person because they are a victim of domestic violence,

179. *One Year Progress on VAWA 2013*, *supra* note 122

180. *Id.*

181. *Id.*

182. Burton, *supra* note 95.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

dating violence, or stalking.¹⁸⁹ A failure to reauthorize VAWA, mixed with a slash of federal resources aiding low-income communities, will turn the tables on victims such as Johnson and her family. Failing to reauthorize VAWA will not only eliminate HUD protections for victims but will also strip vital monetary resources available to program participants.

Groups such as the Heritage Foundation and other conservatives who find VAWA as an obstacle to efficient federal spending are indifferent to the elimination of this legislation and the effects it will have on victims and service providers. They believe that domestic and sexual violence should fall within the States' responsibilities. However, in the year 2017 alone, OVW distributed 75 grants for victims of sexual assault, domestic violence, dating violence and stalking participating in transitional housing program, which totaled over \$25.3 million.¹⁹⁰ If the OVW and its funding through VAWA were to be phased out, state and local counties will acquire this financial burden or risk an increase in the economic and health costs related to this category of crime. Further, state and local counties will see an increase in homelessness without sufficient funding for affordable housing and domestic violence shelters, an influx of domestic violence related crimes in their court systems, and an increase in costs proven to be associated with this social issue.¹⁹¹ Therefore, the only socially and financially viable solution to these anticipated problems is to reauthorize VAWA.

CONCLUSION

Over the course of a couple decades and three reauthorizations, VAWA has been a critical piece of legislation as it successfully combines criminal justice, social services and community-based initiatives to prevent and respond to domestic violence, dating violence, sexual violence and stalking. Unfortunately, the safety of victims and services available to them are in jeopardy as VAWA's reauthorization falls prey to partisan politics.

Proponents of VAWA are anticipating that the right-centered congressional members will drudge up the historic legal argument that VAWA involves Congress in local programs that should be controlled by the states. However, if VAWA funding were to cease all together, the carefully designed victim services and protections will be uprooted, leaving behind a substantial financial burden on American taxpayers. States and counties will be burdened by the costs of increased crime, medical care, mental health care, police investigations, victim and other social services,

189. *Housing Rights of DV Survivors*, *supra* note 147.

190. U. S. DEP'T OF JUSTICE, *FY 2017 OVW Grant Awards by Program*, OFF. ON VIOLENCE AGAINST WOMEN, (last updated Oct. 16, 2018), <https://www.justice.gov/ovw/awards/fy-2017-ovw-grant-awards-program> [<https://perma.cc/ET9R-9VTS>].

191. Burton, *supra* note 97.

lost victim productivity and contribution to the workforce, and overall victim quality of life. Thus, the economic and healthcare costs associated with domestic and sexual violence make clear that this remains a national priority.

Beyond this hurdle lies another obstacle as the “national priorities” outlined in President Trump’s FY2018 and FY2019 blueprints are a dramatic call for monumental increases in defense and immigration spending, as well as potential long-term cuts to funding for departments that help promote VAWA. President Trump’s FY2018 blueprint proposed a 10-year budget trajectory aimed to phase out VAWA and its facilitation through the OVW. While VAWA funding has increased and remained intact at least for the 2019 fiscal year, without a reauthorization on the Congressional floor the fate of VAWA is unknown. However, what is known is VAWA’s purpose and profound impact.

Prior to VAWA’s enactment in 1994, a woman was beaten by her husband or male partner every 15 seconds in the United States.¹⁹² Ten years after VAWA 1994, the bill was able to reduce female victimization rates across the United States by 63%.¹⁹³ Further, the VAWA 2013 reauthorization brought first time protections for Native American and Alaskan Native women, immigrant women, and LGBTQ individuals, and other marginalized populations. Federal agencies such HUD, have implemented protective regulations incentivized by the VAWA and OVW’s grants thereby providing holistic services to tenants with victim status in subsidized housing programs. Thus, every day that goes by without reauthorization of an inclusive VAWA is one more day that a victim’s safety hangs in the balance.

Therefore, by eliminating decades of legislation, Congress will cause a detrimental impact to those reliant on VAWA and the American people as a whole. The only viable solution is to reauthorize VAWA, but as the President’s reign continues proponents of VAWA must wait for Congress and President Trump to make their next move.

192. *Fast Facts on DV*, *supra* note 28.

193. SACCO, *supra* note 25, at 6.