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In an effort to support the provision of federal subsidies for purchasing health insurance by low-income individuals in all states, the Harvard Law School Center for Health Law and Policy Innovation spearheaded the filing of an amicus brief in the U.S. Supreme Court. The brief requests that the Court affirm a court of appeals decision upholding the nationwide provision of federal subsidies under the Affordable Care Act. The 46 non-profit organizations signing onto the brief, including AIDS United, HIV Medicine Association, and National Alliance of State and Territorial AIDS Directors, serve populations that are deeply affected by the ACA’s expansion of health insurance access, including over two dozen organizations dedicated to addressing the needs of people living with HIV and AIDS. The brief highlights the voices of individuals with the most at risk in this Supreme Court case — those who rely on the federal subsidies to access meaningful health care coverage.

“For many low and middle-income individuals and families the subsidies have made it possible for them to access private health insurance for the first time in their lives,” said Robert Greenwald, clinical professor of law and director of the CHLPI. “This is particularly important as we work to create a health system that focuses on prevention and early intervention health care that both improves health outcomes and reduces costs.”

The Harvard-led brief presents substantial studies and data that demonstrate that federal subsidies are critical to accomplishing Congress’s goal of achieving near-universal health insurance access under the ACA. Included in the brief are personal accounts of individuals who, because of the subsidies, were finally able to access affordable insurance on the federal exchanges and obtain needed health care services with the help of subsidies. The brief also demonstrates that eliminating subsidies in states where federal exchanges operate would harm vulnerable populations, middle- and low-income households, and higher-earning households alike.

Using evidence from Massachusetts, the brief shows that expanded health insurance access has a demonstrable effect in controlling the HIV epidemic and improving individual health outcomes. Congress’s adoption of subsidies and private health insurance reform has created a national capacity to both replicate Massachusetts’ successes with ongoing epidemics such as HIV, and to strengthen public health.

The brief also highlights that the challengers’ proposed interpretation of the ACA would harm the Nation’s ability to resist and fight epidemics and other emerging public health threats. The brief argues that, by depriving millions of people access to health insurance, a victory for the challengers would negate these public health gains in a majority of states, thwarting national efforts to promote public health security to the detriment of the entire population.

The brief warns that “a recent study predicts that eliminating the ACA subsidies would cause in the insurance market a near ‘death spiral,’ a cycle of sharp premium increases and subsequent disenrollment until only the sickest individuals remain in the market risk pools.”

The amicus brief was prepared by the Harvard Law School Center for Health Law and Policy Innovation and the law firm WilmerHale.

The Center for Health Law and Policy Innovation of Harvard Law School advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses and disabilities. CHLPI works with consumers, advocates, community-based organizations, health and social services professionals, food providers and producers, government officials, and others to expand access to high-quality healthcare and nutritious, affordable food; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective healthcare and food systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health, public health, and food law and policy.
Just ahead of the New England blizzard, the Emmett Environmental Law & Policy Clinic has released two new documents, building on its pioneering legal analysis of offshore drilling regulation in the Arctic and other U.S. waters.

Clinic comments on the Bureau of Ocean Energy Management’s draft Environmental Impact Statement for an oil and gas lease sale in the Chukchi Sea. The comments focused on BOEM’s analysis of the impacts of a Very Large Oil Spill, particularly (1) the assumption that operators could stop an end-of-season spill during an Arctic winter and (2) shortcomings in the analysis of impacts of oil spill dispersants on wildlife and indigenous communities.

Other Emmett Clinic papers on offshore drilling include Suggested Indicators of Environmentally Responsible Performance of Offshore Oil and Gas Companies Proposing to Drill in the U.S. and Arctic and Recommendations for Improved Oversight of Offshore Drilling Based on a Review of 40 Regulatory Regimes.

The Clinic also submitted comments on a federal Draft Safety Culture Policy Statement for Offshore Drilling. Some Clinic students have traveled to Washington, DC, to present their work to officials at the Department of Interior and to legislative staff on Capitol Hill.

The latest in a series of Clinic offshore drilling white papers is Offshore Drilling: Coordinating and Improving Access to Information. This paper recommends improvements to the Department of the Interior’s mechanisms for facilitating public access to, and inter-agency sharing of, information from companies engaged in offshore drilling.

The Emmett Environmental Law & Policy Clinic gives students the opportunity to do real legal work on today’s most pressing energy and environmental issues. The Clinic is part of the Harvard Environmental Law Program, working alongside Harvard’s world-class environmental law faculty and the Harvard Environmental Policy Initiative.
This winter term, approximately 132 Harvard Law School students traveled to over 47 cities and countries across the world to pursue clinical projects that range from working with the Girls Court in Hawaii, analyzing documents with the Judicial Reform Foundation in Taiwan, to developing case studies for the Arts Law Center in Australia.

Within the United States, students traveled to 31 cities to practice with government offices such as Office of the Attorney General in California, Kentucky, Maine and Maryland; and organizations such as the Equal Justice Center, Capital Post Conviction Project of Louisiana, and American Civil Liberties Union (ACLU) Capital Punishment Project. Through the Independent Clinical Program students are representing clients and dedicating their skills to meet the legal needs of the community.
The Clinic and our partners filed an opening brief yesterday in the Second Circuit in an appeal in In re South African Apartheid Litigation. The case, which is being litigated under the Alien Tort Statute, seeks relief against IBM and Ford for assisting and supporting human rights violations committed in apartheid South Africa.

Back in August, the district court dismissed the case when the court denied Plaintiffs’ motion for leave to file an amended complaint against these two U.S. Defendants. The lower court reasoned that the claims did not sufficiently “touch and concern” the territory of the United States, as required by the Supreme Court’s 2013 decision in Kiobel v. Royal Dutch Petroleum, which established a presumption against extraterritoriality in ATS cases.

On appeal, Plaintiffs contend that the lower court failed to undertake the necessary inquiry into the U.S. Defendants’ own conduct in the United States, and instead focused only on actions that took place in South Africa. The proposed amended complaint contains detailed new allegations about how, from the United States, both Defendant corporations aided and abetted the South African security forces and government to commit human rights violations over several decades. Defendants will file their opposition brief in the coming months.

Clinical students Ariel Nelson, J.D. ’15, Brian Klosterboer, J.D. ’16, and Peter Stavros, J.D. ’16, contributed research and drafting for the brief.

FOOD LAW AND POLICY CLINIC

Three Questions with Emily Broad Leib of Harvard Law School

Food Tank recently had the opportunity to speak with Emily Broad Leib, of Harvard Law School, who will be speaking at the summit.

Food Tank (FT): What will your message be at the Food Tank Summit?
Emily Broad Leib (EBL): I’m going to talk about the role that legal and policy research must play in improving the food system, the importance of collaborating across disciplines to identify innovative new approaches, and one way that we are using a university-wide student challenge to help foster that collaboration and innovation.

Food Tank (FT): How are you contributing to building a better food system?
Emily Broad Leib (EBL): The Harvard Food Law and Policy Clinic (FLPC) was established in 2010 to link Harvard Law School students with opportunities to work with clients and communities on various food law and policy issues. The FLPC provides legal advice to nonprofits and government agencies seeking to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and reduce barriers to market entry for small-scale and sustainable food producers, while educating law students about ways to use law and policy to impact the food system. The FLPC engages a strong policy orientation as well as substantive expertise in the food system to assist a range of federal, state, and local clients around the United States—from Massachusetts to Mississippi—in understanding the legal and policy regimes that apply to food production and sales.

Food Tank (FT): What are the biggest obstacles or challenges you face in achieving your organization's goals?
Emily Broad Leib (EBL): One ongoing struggle has been helping people to understand the role that law and lawyers play in this movement, and see us as a resource. We are working to create a cohort of food lawyers and food advocates across the country in order to take our part of the food movement to the next level. We hope to see food systems being changed county by county and state by state through the work of local citizens taking an active interest in their food system, and connecting with the legal and policy expertise needed to move the needle. We also struggle to educate funders about the important work we are doing, and to get support for policy change. We hope to find passionate leaders and funders who share our vision of using legal and policy expertise as tools for transforming the food system, and want to support our work in future successful enterprises.
Overview
The Cyberlaw Clinic began in 1999, with the Berkman Center for Internet & Society’s announcement of a new “Clinical Research Program.” As the program heads into its sixteenth year, we at the Clinic have the opportunity to reflect on the events of 2014. From student work and public events, to changes among the Clinic staff, to new modes of teaching and updates to structure of the program itself, we wanted to share some highlights of the past calendar year as we look ahead to the rest of 2015.

Student Participation and Enrollment
In 2014, the Clinic continued its pattern of growth from previous years, with our largest-ever semester of Clinic enrollment this fall. Across the winter, spring, and fall terms of 2014, the Clinic enrolled more than sixty students. In addition, five full-time interns supported the Clinic’s work during the summer months and participated in the Berkman Center’s vibrant summer internship program.

Teaching
Along with a surge in student participation came the addition of a dedicated Cyberlaw Clinic Seminar to augment the student experience. Starting last fall semester, students were required to enroll in the Seminar contemporaneous with enrollment in the Clinic.

The new class offered opportunities for teaching about practice and professional responsibility issues that arise when counseling clients on matters relating to technology, intellectual property, privacy, and speech. It also permitted students to participate in skill-building exercises and – perhaps most importantly – regular case rounds sessions in which they shared information about their projects and learned from one another. We look forward to continuing to refine the Seminar during the upcoming spring term.

The Clinic’s supervisors taught other courses and engaged in other teaching initiatives this year as well, including the following:

Chris Bavitz taught Music & Digital Media during the spring semester and a new First-Year Reading Group, Fostering Innovation, during the fall semester.

Susan Crawford taught Communications Law during the spring semester and Law of Surveillance during the fall semester 2014.

Chris Bavitz and Dalia Topelson Ritvo updated the long-running seminar, Practical Lawyering in Cyberspace, and re-launched it as Counseling & Legal Strategy in the Digital Age during the fall semester 2014.

Andy Sellars taught Internet & Society: Technology & Politics of Control at the Harvard Extension School during the spring semester 2014.

Chris also participated as a mentor in the inaugural edition of the Harvard University-wide Digital Problem Solving Initiative during the 2013-14 academic year. Working with Colin Maclay of Harvard Business School’s Digital Initiative, Chris advised a team that examined the phenomenon of “creation spaces.” That team wrapped up its work in spring 2014. Chris worked with a second DPSI team during the fall of 2014, considering issues relating to accessibility of educational materials in the context of online education.

Clinic Projects
The Clinic has long strived to offer students a broad-based experience, touching on the full range of substantive issue areas and types of practice that characterize the tech law space. This year was no exception, as we saw our students accomplish as wide a variety of work as ever before in the Clinic.

Advocacy – including via participation in administrative proceedings and assistance with amicus filings – remained a core component of the Cyberlaw Clinic’s practice, and 2014 saw its fair share of filings on behalf of clients:
On behalf of a coalition of medical device researchers, the Clinic filed a petition for an exemption to the United States Copyright Act’s anti-circumvention provision to the Copyright Office and Library of Congress. The petition seeks an exemption to the Digital Millennium Copyright Act for researchers seeking to reverse engineer medical devices, such as pacemakers and continuous glucose monitors, in order to study their security and effectiveness.

The Clinic filed an amicus letter with the California Supreme Court on behalf of Global Voices Advocacy and the Media Legal Defence Initiative, urging the Court to hear a case involving defamation allegations against an anonymous defendant. Plaintiff sued defendant over critical comments on a website targeting plaintiff, and amici argued that lower courts had not done enough to safeguard defendant’s right to speak anonymously on issues of public concern.

Consistent with past years, the Clinic helped produce work aimed toward educating and informing a wider public audience about important issues:

- With the help of the Cyberlaw Clinic, the Consortium for School Networking created and released the “Protecting Privacy in Connected Learning Toolkit,” an in-depth privacy guide designed to help school system leaders navigate complex federal laws and related issues.
- The Clinic collaborated with WGBH to create the “Digitizing News Archives” flowchart, designed to help news media archivists consider and manage legal risks while striving to maximize the availability of historic footage and other media content online.
- Fall 2014 Clinic student Joe Milner, along with Clinical Instructor Vivek Krishnamurthy, delivered a presentation to the MIT Bitcoin Club about legal issues surrounding bitcoin — from taxes to privacy to currency regulation.

Representative projects this year included advising on the use of copyrighted music and images in documentary films, drafting terms of service and privacy policies for mission-oriented startups, and researching intellectual property regimes in countries around the world.

**Looking Ahead**

Coming off such a tremendous year, we could not be more excited or energized about the future of the Cyberlaw Clinic. Priorities for 2015 include:

- expanding our international practice, with a particular focus on issues relating to technology and human rights; engaging more deeply and regularly with our phenomenal Clinic alumni community through dedicated outreach and events;
- continuing efforts to expand public outreach, through our blog and in other fora;
- refining our pedagogy to better support our students throughout the semester and prepare them for law practice.

**Conclusion**

We appreciate all the support we received over this year – first and foremost from our stellar students, without whom none of this work would be possible. The Berkman Center, our clinical colleagues at HLS, and the greater Harvard Law School community also deserve our thanks. Finally, we want to express our appreciation for our clients and collaborators, large and small, who trust us to assist them in achieving their goals and allow our students to learn and grow through working with them. We look forward to undertaking many more fruitful and exciting projects in 2015.
The Legal Services Center of Harvard Law School has released a Know Your Rights video series consisting of 97 videos informing Massachusetts residents of their legal rights when faced with foreclosure or eviction. The videos are a product of the Mattapan Initiative—a free legal services anti-foreclosure and eviction defense program created in 2013 in response to the foreclosure crisis that ravaged the Mattapan section of Boston, as well as other low-income neighborhoods throughout Massachusetts. The Mattapan Initiative and the Know Your Rights video series were funded by a grant from the Massachusetts Attorney General’s Office.

The aim of the video series is to educate Massachusetts residents regarding their legal rights when faced with foreclosure of their homes, or the threat of displacement due to foreclosure or eviction. The series includes videos on legal issues pertaining to: Basic Tenant Rights, Loan Modifications, Bankruptcy as it Relates to Foreclosure, Eviction Summary Process for Former Homeowners, Eviction Summary Process for Tenants as well as FAQ videos for homeowners and tenants facing foreclosure or eviction.

Attorney Roger Bertling, Director of the Mattapan Initiative and Director of the Consumer Protection/Predatory Lending Clinic at the Legal Services Center, says “we created these videos in hope that they’ll be used as a resource for distressed homeowners. The mission of the Legal Services Center is to protect the legal rights of the communities we serve, and as an extension of that mission, these videos are available to help people make informed decisions regarding their foreclosure or eviction.”

The Know Your Rights videos can be viewed on the Legal Services Center’s website and will be distributed using social media.

HARVARD NEGOTIATION AND MEDIATION CLINICAL PROGRAM

Creating A Storyboard To Support Learning Goals

In December, the Harvard Law School Case Studies site added a new HNMCP negotiation case to its repertoire—the Hesperia Seed Initiative. This latest simulation, has been years in the making, undergoing many classroom tests and iterations before publication. In this multiparty role play stakeholders negotiate the terms of an agricultural initiative regarding genetically modified seeds.

Faculty author Professor Robert Bordone sat down to talk with the HLS Case Studies blog about the process and the possibilities of writing a simulation.

You can read more about this story the Harvard Negotiation and Mediation Clinical Program website.

Robert Bordone, Clinical Professor of Law and Director, Harvard Negotiation and Mediation Clinical Program
On Tuesday, January 20th, Akin Gump’s leader of worldwide pro bono practice, Steven Schulman, spoke to a room full of HLS students interested in making pro bono work part of their careers.

Mr. Schulman leads Akin Gump’s Pro Bono Scholars Program, started seven years ago. This two-summer commitment program is currently offered in five offices: Dallas, Houston, Los Angeles, New York, and Washington D.C. During their 1L summer, Pro Bono Scholars spend seven weeks at a public interest organization of their choosing. Mr. Schulman said the organization could be located anywhere in the world, and in discussing this with the students, encouraged them to choose a placement that matches their interests and will provide them with a meaningful experience.

In addition, students also spend four weeks at the Akin Gump law firm, where they engage with substantive assignments in a variety of subject areas and interact with other attorneys in a mentoring environment. During their second summer at the firm, students have the opportunity to work on substantial pro bono matters. It is expected that they will go on to make pro bono work an integral part of their practice careers.

Why Do Pro Bono?
Helping people is what lawyers are all about, said Mr. Schulman. “It is in the essence and DNA of lawyers.” Former Pro Bono Scholars have helped develop a charter school, represented abused women, assisted asylum seekers, and prepared custody cases. At Akin Gump students find a large pro bono practice which includes the areas of death penalty trial defense, education reform, environmental protection, human rights and refugees, impact litigation, international development, and policy work in the public interest.
On Thursday, January 15th, the Office of Clinical and Pro Bono Programs (OCP) held an orientation session to provide students with an overview of the various clinical placements, student practice organizations, and pro bono opportunities at Harvard Law School. Christopher Bavitz, Clinical Professor of Law at the Cyberlaw Clinic, Esme Caramello, Clinical Professor of Law at the Harvard Legal Aid Bureau, and Lisa Dealy, Assistant Dean of the Clinical and Pro Bono Programs spoke about the benefits of doing a clinic. Over 250 students participated and asked questions.

In the upcoming Spring semester, OCP will relaunch ClinicTalks, a series of information sessions designed to help students learn more about each clinic and discover their legal interests.

OCP welcomes all students to stop by our office in WCC 3085 to ask questions and seek advice from our team of lawyers and educators.

L-R: Christopher Bavitz, Clinical Professor of Law, Cyberlaw Clinic; Lisa Dealy, Assistant Dean of the Clinical and Pro Bono Programs; Esme Caramello, Clinical Professor of Law, Harvard Legal Aid Bureau
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## MARCH SERIES

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