

11-1-1995

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Recommended Citation

Sande B. Pond, *No Dogs Allowed: Hawaii's Quarantine Law Violates the Rights of People with Disabilities*, 29 Loy. L.A. L. Rev. 145 (1995).

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NO DOGS ALLOWED: HAWAII'S QUARANTINE LAW VIOLATES THE RIGHTS OF PEOPLE WITH DISABILITIES

*Sande Buhai Pond**

I. INTRODUCTION

Stephanie is a visually-impaired Hawaii resident who has used a guide dog (seeing-eye dog) for several years. Her accounting firm temporarily transferred Stephanie, a CPA with expertise in mergers and acquisitions, to New York to assist a client in a multi-million dollar transaction, placing her in an impossible position: If she takes her guide dog to New York, she will have to put it in quarantine when she returns; if she goes to New York without her guide dog, she must rely on others for aid in maneuvering through the unfamiliar surroundings. Either way, Stephanie will be unable to function in her usual independent manner.

Vernon, a visually-impaired resident of California, also uses a guide dog. Vernon's friend has offered him a free apartment in Maui for two months. Unfortunately, Vernon cannot travel to Hawaii unless he either leaves his dog in California, where it will lose its training, or brings it with him where it will stay in mandatory quarantine on the island of Oahu for the entire duration of his stay. Both options eliminate his ability to travel safely and affect his independence.

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Federal law has recognized that persons with disabilities¹ are entitled to protection against discrimination. Both the Rehabilitation Act of 1973² and the Americans With Disabilities Act of 1990 (ADA)³ prohibit discrimination against persons with disabilities. The ADA aims to assist persons with disabilities in leading fuller, more productive lives, enabling society to fully benefit from the skills and talents of such persons.⁴

The recent passage of the ADA has outlawed many barriers for persons with disabilities, but many still remain. Several existing laws adversely impact persons with disabilities, although they are not openly discriminatory.⁵ This Article discusses one such barrier: Hawaii's eighty-year-old quarantine law—requiring a 120-day quarantine of dogs and cats upon entering Hawaii—to prevent the spread of rabies. Attempts to modify this absolute rule have thus far been unsuccessful.⁶

1. This Article will generally use the preferred term "person" or "people with disabilities." However, some older cases and statutes may use the term "handicapped person" and, when quoting, those terms may be used. The definition of these terms is substantially similar.

2. 29 U.S.C. §§ 701-796 (1988).

3. 42 U.S.C. §§ 12101-12213 (1988).

4. Dick Thornburgh, *Introduction to OFFICE ON THE AMERICANS WITH DISABILITIES ACT, U.S. DEP'T OF JUSTICE, THE AMERICANS WITH DISABILITIES ACT: QUESTIONS AND ANSWERS* (1991).

5. For example, some statutes limit the number of persons who may reside in a residence. *See, e.g., City of Edmonds v. Oxford House*, 115 S. Ct. 1776 (1995) (city zoning ordinance limiting the number of unrelated persons who could live in a single-family dwelling). Laws of this kind could discriminate against persons with disabilities who need an attendant living with them.

6. In *Crowder v. Kitagawa*, No. 94-15403 (9th Cir. filed June 13, 1995) [hereinafter *Crowder II*], a class action suit currently pending in the Ninth Circuit Court of Appeals, Appellant Crowder challenges Hawaii's insistence on quarantining guide dogs. Appellant's Opening Brief at 2, *Crowder II* (No. 94-15403). He represents the class of mainland United States visually-impaired users of guide dogs, and Appellant Good represents the class of Hawaii visually-impaired users of guide dogs. *Id.* Although the Hawaii District Court in *Crowder v. Kitagawa*, 842 F. Supp. 1257 (D. Haw. 1994) [hereinafter *Crowder I*] granted summary judgment for the State of Hawaii, it stated

[w]ell, one way or the other it should be because this . . . is an important issue and it should be visited not just by me, but I think it should be visited . . . by the Court of Appeals one way or the other. . . . I don't often invite people to appeal my decisions, but they appeal them anyway, and in this case, I think it's appropriate for there to be an appeal regardless of how I rule because I think there should be a review of this whole question by the Ninth Circuit.

Transcript of Proceedings at 5-6, *Crowder I* (No. 93-00213DAE) [hereinafter Transcript].

This Article will describe Hawaii's current quarantine law and its impact on persons with disabilities.⁷ Next, it will consider the law in relation to the Rehabilitation Act and the ADA.⁸ Finally, this Article will evaluate the constitutionality of Hawaii's quarantine law.⁹ Based on this analysis, the Article will urge an exemption to Hawaii's current quarantine law for individuals with disabilities.

II. HAWAII'S QUARANTINE LAW

Hawaii is the only state without any incidents of rabies.¹⁰ To protect this status, Hawaii implemented a program in 1920 that includes a 120-day quarantine for animals, including dogs, entering the state from the continental United States and other areas that lack a rabies-free classification.

At the time of enactment, quarantine was the only viable alternative to combat the spread of rabies occurring in the western United States.¹¹ Although evidence at that time demonstrated that rabies could still develop after a 120-day period, legislators based the law on available data showing that eighty percent of animals contracting rabies displayed signs of the disease within four months.¹² The quarantine law has remained unchanged¹³ despite the development of vaccines sufficiently capable of preventing both rabies and its spread.¹⁴

Hawaii's continued use of the quarantine system is based in part upon findings of the World Health Organization (WHO) which, since 1950, has recommended that "in order to maintain a rabies free environment, an imported animal should be *vaccinated* with an inactivated (killed) virus vaccine, entered into a *120-day quarantine*,

7. This Article concentrates on the visually impaired who use guide dogs as a means of assuring safe mobility. However, there are service dogs, which assist persons who use wheelchairs, and other individuals with disabilities by performing certain essential daily living activities. There are also signal dogs, which are trained to alert hearing-impaired persons to sounds such as the ringing of a doorbell or telephone. For individuals using these latter two types of dogs, the Hawaii quarantine law is equally discriminatory.

8. See *infra* part VII.

9. See *infra* part VIII.

10. INTERIM TASK FORCE TO STUDY THE STATE OF HAWAII'S ANIMAL QUARANTINE SYSTEM, REPORT TO THE 1990 STATE LEGISLATURE 9 (1990) [hereinafter TASK FORCE].

11. *Id.* at 8.

12. *Id.*

13. *Id.* at 1. The Task Force noted that "the existing quarantine system ha[s] remained intact for over 77 years." *Id.*

14. *Id.* at 21.

and placed on a 60-day home quarantine and leashing requirement."¹⁵ However, Hawaii does not require the vaccination of pets before importation, nor does the state require Animal Quarantine Station caretakers, who come into frequent contact with the quarantined animals, to receive routine vaccinations.¹⁶ Hawaii's adherence to selected—and outdated—portions of the WHO's recommendations is biased and irrational.

A. Statutory Authority for the Quarantine Law

Enforcement of the quarantine law rests with the Hawaii Department of Agriculture (Department),¹⁷ which regulates the inspection, quarantine, disinfection, and destruction of animals in Hawaii.¹⁸ This power enables the Department to work toward the eradication of "contagious, infectious, and communicable diseases among animals."¹⁹

Other provisions limit this apparent broad authorization. Section 142-4 of the Hawaii Revised Statutes requires an inspection of all animals upon entry into the state. In addition, there cannot be a delay "concerning the landing of any domestic animal for which a certificate of health has been issued as prescribed by the Federal Cattle Contagious Disease Act."²⁰ These statutory limitations indicate that the state legislature's original intent was to quarantine only those animals posing a health threat, rather than burden the importation of animals demonstrably free from disease.²¹ The

15. *Id.* at 8 (emphasis added).

16. *Id.* at 9.

17. Control over the quarantine law is granted to the Hawaii Department of Agriculture (DOA) by the Hawaii State Legislature. HAW. REV. STAT. § 142-2 (1985 & Supp. 1992). The DOA rules regarding quarantine, in pertinent part, state that "the objective . . . is to prevent the introduction of rabies into the State through a one hundred twenty-day quarantine." HAW. ADMIN. RULES § 4-18-1 (1981) [hereinafter DOA RULES].

18. "Subject to chapter 91 the department of agriculture may make and amend rules for the inspection, quarantine, disinfection, or destruction, either upon introduction into the State or at any time or place within the State, of animals and the premises and effects used in connection with the animals." HAW. REV. STAT. § 142-2 (Supp. 1992).

19. HAW. REV. STAT. § 142-3 (1985).

20. HAW. REV. STAT. § 142-4 (Supp. 1992).

21. Another attack on the legislation is that it exceeds the scope of the statute. "The [D]epartment [of Agriculture] may . . . prohibit the importation . . . of animals known to be or suspected of being infected with a contagious, infectious, or communicable disease or known to have been exposed to any such disease." *Id.* § 142-2. The DOA, however, is exercising this authority without any knowledge about the health of the dog quarantined. DOA RULES, *supra* note 17, § 4-18-7 (1987).

Department's administrative rules regarding the quarantine ignore both of these limitations.²²

B. *The General Quarantine Rule*

Despite the legislature's original intent, the general rule, as enforced by the administrative rules, requires a 120-day quarantine of all dogs, cats, and other carnivores upon arrival in the state.²³ This rule does not, on its face, discriminate against persons with disabilities, as there is no differentiation among animals based on breed, size, age, or traits, nor among particular owners. The rules expressly cover guide dogs, and the only accommodation made to persons with disabilities is the option to occupy housing at the quarantine station with their guide dog to maintain an exercise regimen for that dog.²⁴ This section of the regulation also requires that a sighted person accompany every visually-impaired person during these exercise regimens.²⁵

The rules provide that housing at the quarantine station shall be provided to visually-impaired guide dog owners during the quarantine period, providing a request for reservation has been made in advance.²⁶ Since 1991, only one visually-impaired person has utilized the quarantine housing,²⁷ demonstrating the inadequacy of the accommodation. More importantly, the quarantine station chairper-

22. Section 4-18-3 of the DOA's Administrative Rules governs the quarantine of dogs, cats, and other carnivores. DOA RULES, *supra* note 17, § 4-18-3 (1981). Section 4-18-14 establishes fees for food, housing, care, and "registration." DOA RULES, *supra* note 17, § 4-18-4 (1982). Sections 4-18-7 and 4-18-8 create the only exemption to the 120-day quarantine requirement. DOA RULES, *supra* note 17, §§ 4-18-7, 4-18-8 (1987). The presence of a United States Department of Agriculture Certificate of Health is not among the exemptions listed.

23. Section 4-18-7 states that

[d]ogs, cats, and other carnivores originating from the United States mainland and all other countries not included on the list of areas designated by the board as rabies-free and entitled to an exemption from the one-hundred-twenty-day quarantine requirement . . . upon arrival and before entry, shall be confined in the animal quarantine station . . . for a period of one hundred twenty days or longer . . . to prevent the introduction of rabies.

DOA RULES, *supra* note 17, § 4-18-7 (1987).

24. DOA RULES, *supra* note 17, § 4-18-12 (1981). The residency provisions for guide dog owners are provided in section 4-18-12(a). Section 4-18-12 requires advance notice by persons with disabilities, and gives the quarantine station chairperson discretion in approving requests for this housing.

25. *Id.* § 4-18-12(f).

26. *Id.*

27. Telephone Interview with Dr. Sturgess, Station Manager, Hawaii Quarantine (July 31, 1995).

son has discretion in approving requests for housing. Thus, the "housing provision" is not an absolute guarantee, and there is potential for visually-impaired persons to be forced to find and pay for accommodation without the assistance of their guide dogs.

This provision makes no allowance for guide dogs to leave the quarantine premises other than for veterinary treatment, even if the dogs are accompanied by a state agent.²⁸ In contrast, circus animals and police dogs are permitted to leave the quarantine area when accompanied by a Department agent or authorized handler.²⁹ The rules patently suggest that circus animals and police dogs are more worthy of an exception than a trained guide dog. Further, the rules assume that a state agent or military handler can more adeptly control a trained dog than a person with a disability, which perpetuates bias and depicts how administration of Hawaii's quarantine exemptions discriminate against persons with disabilities.

C. *Special Exemptions to the Rule*

The administrative rules include other exemptions to the quarantine, although no exemptions for guide dogs exist. First, animals with a health certificate indicating a current vaccination may enter only from rabies-free areas.³⁰ However, the continental United States is not designated as one of the few "rabies-free" regions. Moreover, certain animals enjoy a limited exemption in that they can leave the quarantine station during their quarantine period. Specifically, the rules allow circus animals to leave in the company of a Department agent if the animal returns after each performance and has no contact with unquarantined animals.³¹ Under government surveillance, circus animals can also travel to other Hawaiian islands. The rules allow this exception despite well-documented incidents of rabies in common circus menageries, which include trained dogs, lions, tigers, monkeys, and camels.³² Celebrities' animals also have received exemption from the quarantine requirements.³³ Further,

28. DOA RULES, *supra* note 17, § 4-18-10 (1981).

29. *Id.* § 4-18-10(b)(2).

30. DOA RULES, *supra* note 17, §§ 4-18-7, 4-18-8 (1987). These sections create limited exemptions to the 120-day quarantine for animals imported from areas designated as rabies free.

31. DOA RULES, *supra* note 17, § 4-18-10(b)(1) (1981).

32. GEORGE M. BAER, *THE NATURAL HISTORY OF RABIES* 20 (2d ed. 1991).

33. The Hawaii Board of Agriculture unanimously approved the importation of two Bactrian camels owned by Doris Duke, a renowned tobacco heiress, and waived the

police and military-trained dogs can leave the quarantine area in the company of authorized handlers—either state agents or military handlers—for predetermined periods of training.³⁴

Clearly the rules treat guide dogs differently than the above-exempted animals. The rules assume, both explicitly and implicitly, that persons with disabilities are less able to control their animals than handlers of other types of animals. Presumably, state agents are able to oversee numerous circus animals for an entire circus performance, and police handlers are able to control trained dogs—both while protecting the public against the chance of exposure to rabies. The assumption that a state circus agent or police handler is better able to control a trained dog than a person with a disability bespeaks an inherent bias in the law and illustrates the discriminatory nature of the law.

III. RABIES STATISTICS

Rabies does not pose a major health problem in the United States.³⁵ It is a viral infection of the central nervous system that primarily affects domesticated and wild, warm-blooded animals.³⁶ The bite of a rabid animal transmits the disease to humans by allowing the infected saliva to enter the person's nervous system.³⁷ The incubation period in humans is usually between three weeks and three months, but in some cases, it can exceed one year; in unusual cases, it can even exceed four years.³⁸ When properly administered post exposure, the Human Diploid Cell Rabies Vaccine (HDCRV)—the only post-exposure vaccine currently licensed in the United States—has proven 100% effective against the development of rabies.³⁹ HDCRV requires only a series of five vaccinations in the arm or leg, provided the vaccinations are administered close to the time of infection.⁴⁰

quarantine requirement. CHI. TRIB., Dec. 22, 1988, at 24.

34. DOA RULES, *supra* note 17, § 4-18-10(b)(2).

35. TASK FORCE, *supra* note 10, at 6.

36. *Id.* at 4.

37. *Id.* at 4-5.

38. *Human Rabies: Strain Identification Reveals Lengthy Incubation*, 337 LANCET 822, 823 (1991).

39. Declaration of Charla Jones, D.V.M. at 6, *Crowder I* (No. 93-00213DAE).

40. TASK FORCE, *supra* note 10, at 7.

With the exception of Australia and Antarctica, all continents have reported cases of rabies in humans.⁴¹ Sixty countries are currently considered rabies-free, including Great Britain, Ireland, Sweden, Norway, and Japan.⁴² In countries such as the United States, where rabies in domestic animals is well-controlled, incidents of rabies result most likely from wild animal bites or visits to underdeveloped countries.⁴³

In addition to the vaccine, the Rabid Fluorescent Focus Inhibition Test (RFFIT) indicates protection against rabies infection and provides a strong signal that a dog is not infected with, nor incubating, rabies.⁴⁴ Together, the vaccine and RFFIT effectively prevent and detect rabies.⁴⁵

The decline in the incidence of rabies in humans has been "dramatic" since 1912,⁴⁶ with an average of two cases per year reported in the United States since 1960.⁴⁷ Moreover, there have been no indigenous dog exposure cases of rabies in the United States since at least 1965.⁴⁸

Further, the quarantine system has failed to intercept even a single case of rabies in seventy-seven years.⁴⁹ Thus, the quarantine system has yet to be tested.⁵⁰ In addition, because rabies can have an incubation time in excess of 120 days, it is estimated that a 120-day quarantine is only eighty percent effective.⁵¹ The substantially improved methods of rabies control that have been developed in the past eighty years would better protect public health than Hawaii's

41. *Id.* at 6.

42. THE CAMBRIDGE WORLD HISTORY OF HUMAN DISEASE 962 (Kenneth F. Kiple ed., 1993).

43. TASK FORCE, *supra* note 10, at 6.

44. Declaration of Keith Clark, Director, Zoonosis Control Division, Bureau of Veterinary Public Health, Austin, Texas (Feb. 21, 1992).

45. TASK FORCE, *supra* note 10, at 6.

46. *Id.* If one disregards foreign exposures, the decline is even more impressive. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 8.

50. *Id.*

51. *Id.* Of the few countries that still rely on a quarantine system, most require that incoming animals be vaccinated, and be quarantined for a longer period than 120 days, the minimum recommended by the World Health Organization (WHO). *Id.* Hawaii, in contrast, does not require incoming animals to be vaccinated, even though the WHO has recommended this approach since 1950. WORLD HEALTH ORG., WHO EXPERT COMMITTEE ON RABIES 43 (8th Report).

current quarantine system.⁵² Clearly, the current quarantine law is outdated and ineffective.

IV. HAWAII'S SPECIAL TASK FORCE

In 1990 the Hawaii legislature appointed a special Task Force comprised of legislators, veterinarians, representatives of persons with disabilities, and health experts (hereinafter Task Force) to study and report on the Hawaii quarantine system.⁵³ Recognizing that the overriding state policy should be the prevention of rabies in Hawaii, the Task Force proposed only extremely limited exemptions.⁵⁴ In its report, the Task Force devotes considerable attention to the problems faced by persons in the disabled community who use guide dogs.⁵⁵ Its findings promote Hawaii's state interest without the present discriminatory impact on travelers with disabilities.⁵⁶

The Task Force found that since 1965 there have been *no* identified rabies cases in humans involving indigenous dog exposure in the United States;⁵⁷ the quarantine system has not discovered a single rabid dog in seventy-seven years of operation.⁵⁸ Their study further recommended a special tattoo or microchip implant to alleviate difficulties with guide dog identification and certification of health.⁵⁹ Finally, the risk of guide dogs carrying rabies was found to be low.⁶⁰ The Task Force recommended exempting guide dogs from quarantine, using the following guidelines: (1) a vaccine administered before arriving in Hawaii; (2) a valid USDA health certificate; (3) a RFFIT protective test result; (4) documentation of the individual's disability;

52. TASK FORCE, *supra* note 10, at 27.

53. *Id.* at 1. Co-chairpersons of the Task Force were the Chairpersons of the Senate and House Committees on Agriculture. *Id.* Also included on the Task Force were the Chairperson of the Senate and House Committees on Health, and representatives of the Department of Agriculture, Department of Health, disability policy groups, veterinarians, the U.S. military, the Hawaii Humane Society, dog and cat fanciers, and the Hawaiian community-at-large. *Id.* Expert advice was provided by Dr. Michael Burridge, an expert from the University of Florida on infectious diseases in the Caribbean Islands, who has research experience in rabies prevention; and Dr. George Beran of Iowa State University, a member of the WHO's Expert Committee on Rabies. *Id.*

54. *Id.* at 15-18. See also *supra* part II.C for further discussion on exemptions.

55. TASK FORCE, *supra* note 10, at 2.

56. *Id.* at 16-17.

57. *Id.* at 6.

58. *Id.* at 8.

59. *Id.* at 16-17.

60. *Id.* at 15.

(5) a microchip implant to aid in identifying the dog,⁶¹ and (6) the guide dog's successful completion of training.⁶²

The recommended exemption would not apply if the dog had been absent from Hawaii for more than 120 days after vaccination.⁶³ However, the Task Force also suggested that absent an exemption approval, a guide dog would be granted work-permit status and allowed to leave the quarantine premises between the hours of 8:00 A.M. and 5:00 P.M. and return to quarantine daily.⁶⁴

The Task Force supported its recommendations with information regarding the dramatic improvement in rabies vaccines over the past two decades, the use of vaccines as the primary mechanism for rabies prevention in animals and humans, and the WHO's recommendation of rabies vaccinations for animals transported between countries.⁶⁵ In addition, comparisons between countries with a six-month quarantine program⁶⁶ and ones with a vaccination program "indicate[d] no significant differences between the number of rabid dogs imported into the countries without quarantine requirements and the number of cases which occurred following a quarantine period."⁶⁷

The Task Force implicitly recognized the limited value of the 120-day quarantine when it recommended that an animal coming from a country other than the United States, or other specific rabies-free countries, be subject to a six-month quarantine.⁶⁸ Additionally, animals from certain east African countries, known to have rabies strains resistant to vaccines, are to be completely prohibited from importation.⁶⁹

Hawaii's major concern is the protection of its citizens from rabies. The Task Force reinforced this goal while recommending an exemption that would not increase the risk of rabies. The Task Force found that the proposed quarantine exemption would accommodate both goals by severely limiting the type of animals that can enter

61. The Task Force found that the inability to identify a specific dog or verify its vaccination history created an obstacle for quarantine officials. *Id.* However, these hindrances can easily be eliminated by requiring that the dog have a special tattoo or implanted microchip. *Id.* at 16-17.

62. *Id.* at 16.

63. *Id.* at 17.

64. *Id.* at 18.

65. *Id.* at 21.

66. For example, Great Britain has such a program. *Id.* at 22.

67. *Id.*

68. *Id.* at 25.

69. *Id.* at 25-26.

without a quarantine, and requiring stringent reporting and testing for exempted animals.

Subsequent to the Task Force report, Hawaiian legislators introduced several bills attempting to implement the recommendations.⁷⁰ The legislature did not enact any of the bills, leaving the current quarantine restrictions in place to apply to all guide dogs entering Hawaii.

V. GUIDE DOG STATISTICS

The Task Force discovered that guide dogs face a particularly low risk of rabies,⁷¹ primarily because they undergo long periods of training and confinement, they are strictly controlled, either by leash or confinement indoors, they have received proper vaccinations for extended periods of time, they have no history of rabies exposure, and they are of such a value that they require greater control and medical care than other pets.⁷² Graduates of Guide Dogs of America (GDA) must have a veterinary examination at least every six months, with a health report forwarded to GDA after each visit so that GDA may monitor any potential problems.⁷³ Because guide dog users comprise an extremely limited population and, consequently, pose virtually no potential for injury, the effect of a guide dog exemption would be *de minimis*.⁷⁴

70. For example, Senate Bill 1171 created an exemption for Hawaii residents returning to the state as long as certain requirements were met. 1991 Haw. Sess. Laws 1171. These included vaccination within 30 days of departure, microchip implantation for identification of the dog, rabies test before departure and upon return, proof of the handler's disability and training of both the handler and dog, and absence from the state for no more than 30 days. *Id.* at 2-3. No provision was made for exemption of nonresident dogs entering Hawaii. *Id.* The bill specifically recognized the minimal threat of rabies by assistance dogs, and that the exemptions would not undermine the quarantine law for other animals. *Id.* at 3. Senate Bill 2479, like Senate Bill 1171, recognized that assistance dogs provide a limited threat of rabies. 1990 Haw. Sess. Laws 2479. However, it also provided an exemption for Hawaii residents and, also provided that dogs trained in the United States, if they traveled to Hawaii immediately at the completion of training would be exempted. *Id.* at 3-4.

House Bill 2642 also attempted to implement the Task Force recommendations. 1990 Haw. Sess. Laws 2642. It established several categories of animals to be quarantined, based on the point of origin, and the presence of a current health certificate issued by a United States DOA accredited veterinarian. *Id.* at 2-4.

71. TASK FORCE, *supra* note 10, at 15.

72. *Id.*

73. Declaration of Jane Brackman at 2, *Crowder I* (No. 93-00213DAE).

74. The Task Force found that there were approximately 12 guide dogs belonging to residents of Hawaii. TASK FORCE, *supra* note 10, at 16.

Placing trained guide dogs in quarantine causes a potentially permanent loss of effectiveness,⁷⁵ which jeopardizes the safety of their owners until the dogs can be retrained.⁷⁶ The Task Force recognized the importance of the relationship between persons with disabilities and their dogs: "Handicapped persons and their guide/signal/service dogs are an inseparable working team. . . . [T]hese dogs are essential in allowing handicapped persons to function independently."⁷⁷ The impacts of the quarantine are significant: It separates persons with disabilities from their needed companions, destroys the future effectiveness of the guide dog, severely limits the owner's mobility, and imposes a heavy financial burden on persons with disabilities.⁷⁸

Guide dogs are indispensable because they literally operate as their owner's eyes. The owner and the guide dog constitute an inseparable working team, enabling the disabled person to function independently.⁷⁹ Guide dogs perform functions which no other mobility aid can. For example, guide dogs immediately orient themselves to new surroundings and can respond to such things as traffic signals and oncoming traffic.⁸⁰ Relying on guide dogs often results in diminished cane skills, increasing the danger and difficulty

75. Guide dogs lose their training during the quarantine because the limited exercise allowed does not occur in the environment in which they need to operate, such as, public areas. A distracted guide dog could eventually injure the handler or the public. Declaration of Nicholas J. Terrones at 7, *Crowder I* (No. 93-00213DAE).

76. TASK FORCE, *supra* note 10, at 15.

77. *Id.*

78. The cost of training a guide dog is estimated to exceed \$16,000. Declaration of Don Frisk at 2, *Crowder I* (No. 93-00213DAE). The cost alone makes it critical that the dogs are properly maintained both while in training and active service. *Id.* But more than the cost, the quarantine in some instances may prevent a Hawaii resident from obtaining an American guide dog. Guide Dogs of America does not accept applicants who must quarantine their dog for four months upon return to their home because the quarantine is detrimental to the training of the dogs. Declaration of Nicholas J. Terrones at 523, *Crowder I* (No. 93-00213DAE).

79. TASK FORCE, *supra* note 10, at 15.

80. Cherrie Pomerantz, a former President of the Guide Dog Users of California and President of Guide Dog Users, Inc., states,

Canes don't care about traffic, guide dogs do. Recently, I was making a street crossing (with the light), at a major four-way intersection. In the middle of the street, my guide dog suddenly went into reverse. . . . A reckless driver making a right turn would have connected with me and my guide dog if not for his quick decision. Canes do not do this, EVER!

Declaration of Cherrie Pomerantz at 3, *Crowder I* (No. 93-00213DAE).

visually-impaired individuals face in negotiating unfamiliar surroundings without the aid of a guide dog.⁸¹

Enforcement of Hawaii's outdated and unjustified quarantine regulations forces guide dog owners to compromise personal safety and independence. Essentially, guide dog owners have no other option except avoiding travel to Hawaii.

The Task Force carefully evaluated the risk presented by guide dogs.⁸² Veterinary technology has virtually eliminated rabies in domestic dogs from the areas in the United States from which guide dogs likely come.⁸³ Guide dogs represent a small, highly monitored segment of the domestic dog population.⁸⁴ Hawaii's continued reliance on animal quarantine represents the type of stereotypical, generalized approach to safety that the ADA aims to eliminate.⁸⁵

VI. IMPACTS ON PERSONS WITH DISABILITIES

The visually impaired meet the federal statutory definition of a person with a disability: a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.⁸⁶ Federal statutes forbidding discrimination protect these individuals.⁸⁷ The Rehabilitation Act and the ADA also recognize that persons with disabilities often need special assistance,

81. Declaration of Judene Weymouth, *Crowder I* (No. 93-00213DAE). Judene Weymouth, describing being deprived of the services of a guide dog during the three years she lived in Hawaii, states,

I worked in Aiea, which is a difficult environment in which to get around without a guide dog and if one does not know exactly where one is going. I got off the bus the first day and had difficulty in finding the path I needed to travel. My guide dog had always found that path for me. As a result, as I walked into the Halawa industrial park, my cane missed a tree which, unfortunately, I found with my head.

Id. at 5-6.

82. See TASK FORCE, *supra* note 10.

83. *Id.* at 15.

84. See *supra* note 72 and accompanying text.

85. See 42 U.S.C. § 12101(a)(5) (Supp. V 1988) (“[I]ndividuals with disabilities continually encounter various forms of discrimination, including . . . transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices.”).

86. 29 U.S.C. § 706(8)(B) (1988); ADA 42 U.S.C. § 12102(2) (Supp. V 1988).

87. See, e.g., 42 U.S.C. § 12188(a)(1)-(2) (Supp. V 1988) (setting forth the availability of remedies, including injunctive relief).

such as guide dogs, to allow them to live productive, independent lives.⁸⁸

Recognition of the adverse impact of the quarantine law on persons with disabilities is a consistent theme throughout the Task Force report.⁸⁹ Implementing a guide dog exemption would achieve positive results, including increased tourism to the state, an increased ability for visually impaired residents to travel outside Hawaii, and a possible reduction in the cost of guide dogs for Hawaii residents. According to a Task Force survey, exempting guide, service, and signal dogs from the 120-day quarantine requirement would encourage a sizable percentage of persons with disabilities to visit the state for business and pleasure.⁹⁰

The Hawaii District Court documented the experiences of many visually-impaired users of guide dogs.⁹¹ Appellant Vernon Crowder contrasted his independence using a guide dog with the indignity of having to rely on strangers to find a hotel lobby for a cup of coffee, or to find the bathroom.⁹² He described being quarantined with his dog as "disgusting and humiliating."⁹³ Further, Cherrie Pomerantz, a visually-impaired person, stated:

When I am allowed to travel to Hawaii only to be hustled off to quarantine as though I and my guide dog were contagious, I feel offended, humiliated and completely devalued. When I am not permitted to travel to Hawaii and freely move about the state with my guide dog, I am effectively denied the ability to travel to Hawaii at all.⁹⁴

Further, the trial court in *Crowder* observed:

There's no question and it's undisputed that people who are visually impaired and who regularly use a guide dog . . . are going to be significantly inconvenienced from conducting themselves in the manner and mode in which they would

88. See, e.g., 29 U.S.C. § 701(a)(6)(B) (Supp. V 1988) (stating that one goal of the nation is to provide individuals with disabilities the tools to achieve, among other things, economic self-sufficiency and independence).

89. See TASK FORCE, *supra* note 10.

90. *Id.* at 15; see also Declaration of Cherrie Pomerantz at 4, *Crowder I* (No. 93-00213DAE) ("to permit [a visually-impaired person] to come to Hawaii, only to remove [the] only reasonable and chosen form of mobility, is tantamount to refusing [a visually-impaired person] access to the state.").

91. *Crowder I*, 842 F. Supp. 1257 (D. Haw. 1994).

92. Declaration of Vernon Crowder at 4-5, *Crowder I* (No. 93-00213DAE).

93. *Id.* at 6.

94. Declaration of Cherrie Pomerantz at 3-4, *Crowder I* (No. 93-00213DAE).

prefer to conduct themselves. . . . [T]here's no question that there is a significant inhibiting affect [sic] of these regulations in spite of the fact that the State says that you can stay out there in the quarantine station.⁹⁵

The record in *Crowder* clearly indicates that the quarantine law has a substantial negative impact on visually-impaired persons.

VII. FEDERAL STATUTES MANDATING AN EXEMPTION OF THE QUARANTINE LAW

Analysis of the legality of the Hawaiian quarantine law requires application of two federal statutes.⁹⁶ To date, no federal or Hawaiian state case has successfully challenged the quarantine law.⁹⁷ However, the two federal statutes and several constitutional theories provide a basis for requiring an exemption from the quarantine for visually-impaired persons' guide dogs.

A. *Protection of Persons with Disabilities*

The federal government has sought to remedy years of discrimination against persons with disabilities in many areas, including employment, education, health services, transportation, and housing.⁹⁸ Legislators have long recognized the need to codify these protections to ensure that persons with disabilities have the opportunity to fully participate in society. Hawaii's animal quarantine law conflicts with the two major federal statutes designed to provide these protections: the Rehabilitation Act and the Americans with Disabilities Act.

1. Rehabilitation Act of 1973

Congress added section 504, "the central linchpin of public policy efforts to advance the rights of persons with mental and

95. Transcript, *supra* note 6, at 577-78.

96. Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796 (1988); Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (1988).

97. See *supra* note 6 and accompanying text; see also Plaintiff's Motion for Appeal at 1-2, *McKeith v. Kitagawa*, No. 92-00108DAE (9th Cir. filed Mar. 3, 1992) (discussing district court's denial of preliminary injunction against quarantine).

The one case identified that involves the quarantine station, *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981), is routinely cited regarding recovery of damages for serious mental distress. In this case, a family dog was being transported to a veterinarian from the quarantine station and died en route. *Id.* at 1067.

98. 42 U.S.C. §§ 12101(a)(3), 12101(a)(5) (Supp. V 1988).

physical disabilities,"⁹⁹ to the Rehabilitation Act, with the purpose of overcoming biases within the business community towards individuals who had completed vocational rehabilitation training, by providing that

[n]o otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency¹⁰⁰

Subsequent case law and amendments have defined the scope of section 504 since its adoption. In *School Board of Nassau County v. Arline*,¹⁰¹ the Supreme Court found that section 504 reflected Congress's goal to "ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others."¹⁰² *Consolidated Rail Corp. v. Darrone*¹⁰³ applied section 504 to any public service provided by a recipient of federal financial assistance. Finally, in *Alexander v. Choate*,¹⁰⁴ the Court stated, "[s]ection 504 seeks to assure evenhanded treatment and the opportunity for handicapped individuals to participate in and benefit from programs receiving federal assistance."¹⁰⁵

Hawaii's quarantine law conflicts with section 504's goal of protecting persons with disabilities,¹⁰⁶ who are impacted by a federally funded program. Whether or not section 504 applies to the

99. STEPHEN L. PERCY, *DISABILITY, CIVIL RIGHTS AND PUBLIC POLICY* 52 (1990).

100. 29 U.S.C. § 794(a) (Supp. V 1988).

101. 480 U.S. 273 (1987).

102. *Id.* at 284 (emphasis added).

103. 465 U.S. 624 (1984). The Supreme Court found that Consolidated Rail received federal funds to provide termination allowances to workers who lost their jobs as a result of its reorganization. *Id.* at 627. The Court reviewed the purpose of the Rehabilitation Act, and found that the language of § 504 prohibited discrimination against the handicapped under "any program or activity receiving Federal financial assistance." *Id.* at 632 (quoting § 504 of the Rehabilitation Act). The Court also found that although the original intention of the Act was to protect against employment discrimination, all programs receiving federal funding were included within the reach of the Act. *Id.* at 632-33. In addition, the program itself did not have to be the primary recipient of the federal funds. *See id.* at 633.

104. 469 U.S. 287 (1985).

105. *Id.* at 304 (citing *Southeastern Community College v. Davis*, 442 U.S. 397 (1979)).

106. The Rehabilitation Act and case law use the term "handicapped" rather than "disabled." This usage is followed in this section for the purpose of consistency.

Hawaiian quarantine depends on the presence of four issues: (1) the presence of federally assisted programs or activities; (2) an individual with a disability; (3) the need for access to services; and (4) the absence of a reasonable accommodation.¹⁰⁷

a. Hawaii's quarantine program is a federally assisted program

Since section 504 prohibits discrimination against persons with disabilities in programs or activities receiving federal financial assistance, the Hawaii quarantine program must fit the definition of a "federally assisted program" for section 504 to be applicable. A "program or activity" consists of "all of the operations of . . . a department . . . of a State."¹⁰⁸ The Department of Justice regulations, however, define federal financial assistance more broadly as grants, loans, or contracts that make funds, personnel, or property available.¹⁰⁹

According to the Department of Health and Human Services, a "recipient" can be "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient"¹¹⁰

107. This approach somewhat parallels the standard for a plaintiff to make out a prima facie case under § 504. This standard requires that a plaintiff

prove (1) that [the individual] is a "handicapped individual" under the Act, (2) that [the individual] is "otherwise qualified" for the position sought, (3) that [the individual] was excluded from the position sought solely by reason of [the individual's] handicap, and (4) that the program or activity in question receives federal financial assistance.

This standard was articulated in an employment context in *Strathie v. Department of Transp.*, 716 F.2d 227, 230 (3d Cir. 1983) (citing *Doe v. New York Univ.*, 666 F.2d 761, 774 (2d Cir. 1981)).

108. 29 U.S.C.A. § 794(b)(1)(A) (West Supp. 1995).

109. 28 C.F.R. § 41.3(e) (1989) states:

[A]ny grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel; or
- (3) Real and personal property or any interest in or use of such property,

including:

- (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
- (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal government.

110. 45 C.F.R. § 84.3(f) (1994).

Section 504 also prohibits discrimination throughout entire agencies or institutions if *any part* of an agency or institution receives federal financial assistance and distributes it to another.¹¹¹ Courts have found that this type of assistance triggering application of section 504 embraces a diversity of programs, including funds received by Pennsylvania's Department of Public Welfare "for a variety of programs and purposes,"¹¹² Maine's Department of Education and Cultural Services "for bus driver training,"¹¹³ and Tennessee's Medicaid program.¹¹⁴

A person with a disability may allege a violation of section 504 without being a beneficiary of any program under a governmental department.¹¹⁵ In *United States v. Baylor University Medical Center*,¹¹⁶ although a particular complainant did not directly receive Medicare or Medicaid benefits, the court found that this plaintiff asserted valid section 504 violations.¹¹⁷ The court explained that "the Rehabilitation Act is intended to prohibit discrimination in 'programs which receive federal financial assistance' without limiting that protection to the direct beneficiaries of the federal assistance."¹¹⁸

111. BONNIE P. TUCKER & BRUCE A. GOLDSTEIN, LEGAL RIGHTS OF PERSONS WITH DISABILITIES: AN ANALYSIS OF FEDERAL LAW 3:35-3:36 (1992); see also 45 C.F.R. § 84.4(a)-(b) (1994) (regulations adopted by the Department of Health, Education and Welfare).

112. *Doe v. Colautti*, 454 F. Supp. 621, 626 (E.D. Pa. 1978). In *Colautti*, the plaintiff challenged Pennsylvania's 60-day limitation on benefits for in-patient psychiatric care under § 504. *Id.* The parties stipulated that the Department of Public Welfare received federal funding "for a variety of programs and purposes including but not limited to mental health programs." *Id.* Because of this general federal assistance, without any specific program requirements, the court found Pennsylvania's medical assistance program and its regulations subject to the anti-discrimination mandate of § 504. *Id.*

113. *Jackson v. State*, 544 A.2d 291, 298 (Me. 1988). Plaintiff challenged Maine's regulation prohibiting diabetics from employment as bus drivers. *Id.* The court found the Department of Education and Cultural Services subject to § 504 since the specific program, the Transportation Division, received approximately \$9,000 per year from the federal government for bus driver training. *Id.* The court stated that "those federal funds were not insulated by virtue of the fact that they were originally received by the Maine Highway Safety Committee." *Id.*

114. *Alexander v. Choate*, 469 U.S. 287 (1985). "Medicaid is a joint state-federal funding program for medical assistance in which the Federal Government approves a state plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the State has agreed to assume." *Id.* at 289 n.1.

115. *United States v. Baylor Univ. Medical Ctr.*, 736 F.2d 1039 (5th Cir. 1984).

116. *Id.*

117. *Id.* at 1042.

118. *Id.*

Hawaii participates in a variety of federally-funded programs. The Department of Agriculture, which oversees implementation of the quarantine laws and operation of the quarantine station, receives federal grants for pesticide and meat inspection programs. Although the Animal Quarantine Station does not receive any direct federal funding,¹¹⁹ the quarantine meets the requirement of being a federally-assisted program, since the program itself does not have to be the primary recipient of the federal funds.¹²⁰

b. Rehabilitation Act protects the visually impaired

A challenger to Hawaii's program under section 504 must fall within the scope of the Rehabilitation Act. Section 504 defines a person with a disability as one "who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."¹²¹ While it seems obvious that a person whose visual impairment requires the assistance of a guide dog would meet the definition of "disabled" under the statute, it is helpful to reinforce this assumption by reviewing the various regulations. The term "physical impairment" includes any physiological disorder or anatomical loss affecting one or more of the body conditions including the "special sense organs."¹²² Major life activities involve "functions such as caring for one's self" which includes sight.¹²³ Since visual impairment clearly falls within the Rehabilitation Act, and courts have determined that blindness constitutes a disability,¹²⁴ a visually-impaired person could successfully challenge the quarantine statute under section 504.

119. The fees collected from the users of the quarantine station are used to offset the cost of its operation. David M. Sasaki & John M. Gooch, *Cost Effectiveness of Hawaii's Anti-Rabies Quarantine Program*, HAW. MED. J., July 1983, at 159.

120. See Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (amending § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988)).

121. 29 U.S.C. § 706(8)(B) (1988).

122. 45 C.F.R. § 84.3(j)(2)(i)(A) (1994).

123. 45 C.F.R. § 84.3(j)(2)(ii) defines a major life activity as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

124. See *Norcross v. Sneed*, 573 F. Supp. 533, 536 (W.D. Ark. 1983) ("[t]he Court specifically finds that plaintiff is 'legally blind' and is a 'handicapped individual'"); see also *Gurmankin v. Costanzo*, 411 F. Supp. 982, 989 (E.D. Pa. 1976), *aff'd*, 556 F.2d 184 (3d Cir. 1977) ("A blind person certainly is a 'handicapped individual' as defined in [section 504 of the Rehabilitation Act].").

c. the visually impaired need access to Hawaii's services

Another issue related to challenging the quarantine law under section 504 is whether the individual with the disability is able to obtain the full benefit of a program or service. Broadly defined, the program or service that the visually-impaired person entering Hawaii seeks to benefit from includes any and all programs or services provided by the state legislature that a person who is not disabled can enjoy. The quarantine regulations preclude visually-impaired guide dog users attempting to enter Hawaii from enjoying any of the state's programs or services.

In *Alexander v. Choate*,¹²⁵ the Supreme Court held that a fourteen-day limitation on the number of annual inpatient hospital days that state Medicaid would pay hospitals on behalf of a Medicaid recipient would not deny persons with a disability "meaningful access" or exclude them from health services,¹²⁶ because persons with and without disabilities would have identical, effective hospital services.¹²⁷ Under the quarantine law, however, persons with disabilities and those without disabilities do not receive equal treatment. Persons with disabilities can neither travel to Hawaii nor accept employment in Hawaii without experiencing an impact substantially different from that encountered by a dog owner who is not visually impaired. Hawaii's quarantine law prevents persons with disabilities who would travel to and from Hawaii from fully participating in the state's programs and services, in contrast to the arguably unreasonable but equal treatment of both persons with disabilities and those without in *Alexander*.

d. Hawaii's quarantine laws have not made reasonable accommodation

The final question in analyzing the quarantine law is whether a reasonable accommodation can provide a remedy. Defining "reasonable accommodation" is one of the most troublesome issues in the application of section 504.¹²⁸ One definition requires the elimination of existing barriers to participation in a program,¹²⁹ whereas another

125. 469 U.S. 287 (1985).

126. *Id.* at 302.

127. *Id.*

128. TUCKER & GOLDSTEIN, *supra* note 111, at 5:1.

129. *Id.* at 5:4-5:5.

interpretation does not demand that a federal assistance recipient substantially modify its programs.¹³⁰ To determine whether an accommodation is reasonable, courts balance competing equities and will not require accommodation if it will place “undue hardship” on an entity¹³¹ or if it constitutes a “substantial modification” of the program or service.¹³²

Federal regulations list factors to be considered in a section 504 challenge, such as the size and type of the organization, the budget of the program, and the nature and cost of the accommodation required to assist the visually-impaired person.¹³³ The major factor involves the cost of the accommodation and the entity’s ability to bear that cost. The cost of the exemption would be negligible,¹³⁴ given the small portion of the population that would take advantage of the quarantine exemption,¹³⁵ the limited administrative procedures needed to implement the exemption, and the methods which could be used to offset any increased cost.¹³⁶

Notwithstanding that the cost would not pose an undue hardship in implementing an exemption to the quarantine law, Hawaii may nevertheless claim that such a change represents a “fundamental alteration” of its rabies control program. Federal regulations,

130. *Id.* at 5:5 (citing *Alexander*, 469 U.S. at 300 n.20).

131. *Id.* at 5:5-5:6.

132. See *Southeastern Community College*, 442 U.S. at 405.

133. 45 C.F.R. § 84.12(c) (1994) provides:

In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient’s program, factors to be considered include: (1) [t]he overall size of the recipient’s program with respect to number of employees, number and type of facilities, and size of budget; (2) [t]he type of the recipient’s operation, including the composition and structure of the recipient’s workforce; and (3) [t]he nature and cost of the accommodation needed.

134. In fact, both the Task Force and subsequent proposed legislative bills addressed the cost of accommodating the exemption. TASK FORCE, *supra* note 10, at 16-18. The Task Force proposed that the incoming individual with a disability bear all costs of medical treatment and verify that the guide dog had the required tests and vaccinations. *Id.* at 17. In the legislative bills presented, proponents suggested that fees be adopted to defray the cost of implementing the exemption, and that the guide dog owner be responsible for all costs. *Id.* The Task Force also recognized that there would be a general public cost benefit from the exemption resulting from the decreased cost for guide dogs for Hawaiian residents. *Id.* at 16-18.

135. Only users of guide dogs would qualify for this exemption.

136. Compare the examination of paperwork as compared with the expense of housing the person with the disability, as well as caring for the guide dog for the 120-day quarantine period. The fee for a 120-day quarantine is \$456, or \$3.80 per day. TASK FORCE, *supra* note 10, at 10.

however, have failed to define "fundamental alteration."¹³⁷ The Third and Fifth Circuits, however, have assessed whether the required or necessary accommodation violates the basic integrity of the job or program.¹³⁸ The Court in *Alexander* stated that

Davis . . . struck a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs: while a grantee need not be required to make "fundamental" or "substantial" modifications to accommodate the handicapped, it may be required to make "reasonable" ones.¹³⁹

The Court cited examples, including modifications to secondary education programs, changes in the length of time for completion of degree requirements, and adaptations to conducting courses.¹⁴⁰

This approach provides a particularly helpful scheme to address the reasonable accommodation issue as applied to Hawaii's quarantine law. Hawaii's statutory law, the findings of the Task Force, and statements by government officials all reinforce Hawaii's goal of "preserv[ing the State's] rabies-free status, a public health issue which is of critical importance."¹⁴¹ A challenge to this program must address accommodations that the state has already implemented, the substance of the proposed exemption in light of those accommodations, and the level of safety required for any accommodation.

Hawaii already has made several exemptions that are nonetheless consistent with its rabies prevention goal. For example, the quarantine regulations provide exemptions for circus animals and police and military dogs,¹⁴² and the state specifically exempted two camels from quarantine in 1988.¹⁴³

The Task Force's recommended exemption for guide dogs similarly supports the integrity of the program. It proposes very stringent technological and veterinary controls to prevent rabies from

137. TUCKER & GOLDSTEIN, *supra* note 111, at 5:10.

138. *Id.* at 5:11.

139. *Alexander*, 469 U.S. at 300.

140. *Id.* at 300-01 n.20.

141. Letter from Yukio Kitagawa, Director, Department of Agriculture, State of Hawaii, to Melissa McKeith (Feb. 14, 1992) (on file with *Loyola of Los Angeles Law Review*).

142. *See supra* part II.C.

143. *See supra* part II.C.

entering the state.¹⁴⁴ It further restricts the exception to a very small population of animals that are highly unlikely to carry rabies.¹⁴⁵

Supreme Court decisions have set forth two arguments to challenge the quarantine: (1) the methodology proposed by the Task Force is safe and meets the level of certainty required; and (2) the current exceptions to the quarantine law already show Hawaii's willingness to make exemptions which do not compromise the essential nature of its rabies protection efforts.¹⁴⁶ By withholding the exemption provision from those who use guide dogs, Hawaii is imposing a level of certainty on persons with disabilities that it does not require of others. The Task Force report provides the state with a nondiscriminatory proposal which would allow the safe accomplishment of its goal of rabies prevention. Thus, if the state faces a challenge to the quarantine from persons with a disability, and refuses to exempt guide dogs, a court should find Hawaii in violation of section 504.

2. Americans with Disabilities Act (ADA)

Not only does the quarantine law violate the Rehabilitation Act, it also presents similar problems under the ADA. The ADA represents the most inclusive antidiscrimination legislation since the Civil Rights Act of 1964.¹⁴⁷ It codifies case law decided under the Rehabilitation Act, and further extends its commitment to removing barriers for persons with disabilities in all areas of life.¹⁴⁸

The ADA provides that state and local governments must give persons with disabilities full access to programs which the entity offers.¹⁴⁹ The ADA accords civil rights protections to persons with disabilities similar to protections provided on the basis of gender, race, national origin, and religion under the Civil Rights Act. The ADA guarantees equal opportunity in public accommodations, employment, services, and telecommunications.¹⁵⁰

144. TASK FORCE, *supra* note 10, at 16-17.

145. *Id.*

146. *See, e.g., Arline*, 480 U.S. at 287 n.16 (holding exclusion of employee permitted only when *significant* risk of communicating infectious disease to others existed).

147. 42 U.S.C. § 2000e (1988). The Civil Rights Act, as amended, prohibits discrimination on the basis of race, color, religion, national origin, and sex. *Id.*

148. *See* 42 U.S.C. § 12101 (Supp. V 1988).

149. 56 Fed. Reg. 35,719-35,720 (1991) (to be codified at 28 C.F.R. § 31).

150. *See Thornburgh, supra* note 4.

The ADA's preliminary language emphasizes the legislative intent "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."¹⁵¹ Congress specifically noted that

discrimination against individuals with disabilities persists in such critical areas as; . . . transportation . . . recreation . . . and access to public services . . . individuals with disabilities continually encounter various forms of discrimination, including . . . overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria . . . and relegation to lesser services . . . [and] benefits, . . . individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations . . . based on characteristics that are beyond the control of such individuals and resulting from stereotypical assumptions not truly indicative of the individual ability . . . to participate in, and contribute to, society; the Nation's proper goals . . . are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.¹⁵²

Addressing discrimination in a full range of major life activities, the ADA contains specific titles to cover areas such as employment, public services, public transportation, and public accommodations and services operated by private entities. Title II of the ADA, entitled "Public Services," is the section used to analyze Hawaii's quarantine law.

In contrast to the Rehabilitation Act, the ADA specifies in detail the governmental entities covered and does *not* include a federal financial assistance requirement. The ADA defines a public entity as any state or local government, department, agency, special-purpose district, or other instrumentality of a state or states or local government.¹⁵³ The Department of Justice promulgates even more specific regulations: "Title II is intended to apply to *all* programs, activities and services provided or operated by State and local

151. 42 U.S.C. § 12101(b)(1).

152. *Id.* § 12101(a)(3)-(a)(8).

153. U.S. DEP'T OF JUSTICE, AMERICANS WITH DISABILITIES ACT: TITLE II TECHNICAL ASSISTANCE MANUAL § II-1.2000 (1993) [hereinafter ADA MANUAL].

governments.”¹⁵⁴ The state of Hawaii, its departments and their programs, including the animal quarantine program, run by the Department of Agriculture, fall within these guidelines.

As under the Rehabilitation Act, persons protected from discrimination under the ADA must demonstrate their status as a “qualified individual with a disability.”¹⁵⁵ Both the Rehabilitation Act and the ADA similarly define a person with a disability. Thus, a person who faces restrictions in the conditions, manner, or duration of performing a major life activity has a disability. Since sight constitutes a major life activity, a visually-impaired person is disabled under the ADA.¹⁵⁶

In addition, the ADA requires that the person covered be “qualified.”¹⁵⁷ A qualified individual with a disability is “an individual with a disability who, with or without reasonable modifications to rules . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”¹⁵⁸

The term “essential eligibility requirements” is the key element of the definition. The comments to the regulations and the Title II technical manual indicate that this is a minimal threshold for most programs.¹⁵⁹ Most public entities provide information about their programs, activities, and services upon request. In such situations the only eligibility requirement involves asking for the information.¹⁶⁰ If safety is an issue, the threshold requirement will be substantially

154. *Id.*

155. *See* 42 U.S.C. § 12111(8) (Supp. V 1988). The Code of Federal Regulations summarizes the definition of a “qualified individual with a disability” as “an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m) (1995). In addition, an individual who has either a physical or mental impairment is viewed as disabled under the ADA. The regulations, pursuant to Title I, define physical impairment as “[a]ny physiological disorder, or condition . . . or anatomical loss affecting one or more of the following body systems: neurological . . . special sense organs, [and] respiratory (including speech organs).” *Id.* § 1630.2(h)(1).

156. The ADA regulations define “major life activities” as: “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Id.* § 1630.2(i) (1992).

157. 42 U.S.C. § 12111(8).

158. *Id.* § 12131(2).

159. *See* ADA MANUAL, *supra* note 153, § II-2.8000.

160. *Id.*

higher. In this area, Title II incorporates requirements from Title III, which deals with entities providing public accommodation.¹⁶¹

3. Public safety

An entity has no obligation to provide services to an individual who poses a "direct threat" to the health and safety of others or himself. The ADA defines a direct threat as "a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation."¹⁶² The ADA has essentially adopted the standard defined by the Supreme Court in *School Board of Nassau County v. Arline*.¹⁶³

The Court in *Arline* recognized the need to balance the interests of persons with disabilities against the legitimate concern of protecting public safety.¹⁶⁴ The plaintiff worked as a school teacher for thirteen years before she suffered several relapses of tuberculosis within a two-year period.¹⁶⁵ The school fired Arline after her third relapse, and she alleged discrimination.¹⁶⁶ According to the Court, although "[e]mployers have an affirmative obligation to make a reasonable accommodation for a handicapped employee,"¹⁶⁷ an employer may consider safety, and thus, could assess the duration of the disease or the severity of the condition.¹⁶⁸ If a public entity cannot eliminate the risk to others, even by making reasonable modifications to its policies or procedures, a person with a disability will be disqualified.¹⁶⁹

Authorities must determine if a person is qualified based on an individualized assessment, not stereotypes or generalizations.¹⁷⁰ The individualized analysis must demonstrate reasonable judgment that relies on current medical evidence or the best available objective evidence to determine the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures

161. *Id.* § II-5.2000.

162. 42 U.S.C. § 12111(3).

163. 480 U.S. 273 (1987).

164. *Id.* at 277.

165. *Id.*

166. *Id.* at 276-77.

167. *Id.* at 289 n.19.

168. *Id.* at 287-88.

169. *Id.* at 287 n.16.

170. ADA MANUAL, *supra* note 153, § II-2.8000.

would mitigate the risk.¹⁷¹ Medical and public health authorities may be sources of assistance when making this assessment.¹⁷²

Persons with disabilities are clearly the focus of the ADA. The ADA's goal of preventing discrimination, however, must not overshadow the importance of public safety, as both of these concerns are important. Hawaii may emphasize public safety to buttress opposition to a guide dog quarantine exemption. Since a guide dog accompanies a visually-impaired person constantly and acts as an extension of that person, Hawaii will argue strongly for public safety considerations. However, the government's standards, as well as the *Arline* three-part test, provide a rebuttal to any such argument.¹⁷³

Hawaii's quarantine law has not changed in over eighty years, notwithstanding the current level of veterinary technology, including effective and reliable vaccines and rabies testing.¹⁷⁴ An individualized assessment of guide dogs would reveal a group with substantially different characteristics—a minimal risk of rabies. Instead, Hawaii continues to rely on generalizations about all dogs. The Task Force recognized the extremely small risk of rabies in guide dogs given their medical history and constant supervision.¹⁷⁵ The extremely limited size of the proposed exempted population¹⁷⁶ minimizes the probability that any potential injury, such as rabies infection, will occur.

Hawaii's Task Force recommended reasonable modifications in the form of stringent medical, identification, and monitoring conditions.¹⁷⁷ These methods would at least decrease, and possibly eliminate, the risk of rabies entering Hawaii. Applying these factors to the ADA's analysis shows that Hawaii's continued reliance on animal quarantine represents the type of stereotypical, generalized approach to safety that Congress intended the ADA to eliminate.¹⁷⁸

Whether under the lowest standard, requiring a person with a disability to request information to meet eligibility requirements, or the highest standard, requiring a determination that no direct threat

171. *Id.*

172. *Id.*

173. *See Arline*, 480 U.S. at 287 n.17.

174. *See supra* part III.

175. *See supra* part IV.

176. To demonstrate the limited number of proposed exemptions, the Task Force advances the following statistics: (1) approximately 12 guide dogs belong to residents of Hawaii; and (2) one guide dog was confined in the quarantine station in 1988 and two in 1989. TASK FORCE, *supra* note 10, at 16.

177. *Id.*

178. *See ADA MANUAL*, *supra* note 153, § II-2.8000.

exists to public safety, the visually-impaired person with a guide dog meets any threshold of ADA requirements and qualifies for the ADA's protection. The ADA challenges state and local governments to look at their requirements and ensure that "safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities."¹⁷⁹ The current quarantine law fails both in its approach to persons with disabilities and in recognizing that medical technology has changed since the law was adopted over eighty years ago.

4. Undue burden

The ADA requires that all services, programs, and activities of state and local governments be readily accessible and usable by qualified persons with disabilities, unless doing so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens.¹⁸⁰ While discussion of the Rehabilitation Act addressed this topic,¹⁸¹ the ADA regulations emphasize that accessibility should occur in "all but the most unusual cases."¹⁸² Congress clearly indicated that most accommodations would not create an undue financial or administrative hardship.¹⁸³ The head of the public entity bears the responsibility of defending the lack of accommodation by substantiating in writing that an alteration would be fundamental, or that a burden would be undue.¹⁸⁴

The ADA strives to mainstream persons with disabilities by integrating them into society to the fullest extent possible.¹⁸⁵ The drafters of the ADA recognized that special programs might be necessary to ensure equal opportunity.¹⁸⁶

179. *Id.* § II-3.5200.

180. *Id.* § II-5.1000.

181. *See supra* part VII.A.1.d.

182. ADA MANUAL, *supra* note 153, § II-5.1000.

183. The Task Force report suggested that the person with a disability bear the cost of the vaccines, medical records, and identification required for a quarantine exemption. TASK FORCE, *supra* note 10, at 18. However, to this extent the Task Force is wrong. Under the regulations for Title II, a public entity "may not place a surcharge only on particular individuals with disabilities . . . to cover these expenses." ADA MANUAL, *supra* note 153, § II-3.5400. The regulations use examples of providing interpreter services to the deaf, eliminating architectural barriers, and relocating classes, as types of compliance efforts that disabled persons would not be expected to pay for individually. *Id.* The state may need to increase the fees for all program participants to cover its costs. *Id.*

184. ADA MANUAL, *supra* note 153, § II-5.1000.

185. *Id.* § II-3.4000.

186. *Id.* § II-3.4100.

Even if an accommodation would represent a fundamental alteration, the public entity may not escape its responsibilities to persons with disabilities; the ADA requires the entity to take other actions to ensure that persons with disabilities have access to the benefits or services provided.¹⁸⁷ The quarantine exemption recommended by the Task Force constitutes a special program ensuring visually-impaired persons entering Hawaii an equal opportunity to participate in the programs and services offered by the state. The current quarantine law purports giving equal treatment to persons entering Hawaii with a dog; however, as demonstrated above, it undermines the concept of mainstreaming by eliminating a visually-impaired person's normal participation in the state's programs and activities.

The two statutes discussed in this Article provide a basis for a challenge to Hawaii's historical discrimination against persons with disabilities who are unable to travel with their guide dogs. Given the current state of medical technology, Hawaii's reliance on the traditional quarantine for the prevention of rabies lacks reasonable justification. Consequently, the current quarantine law implicates various constitutional provisions which will be discussed in the next section.

VIII. A CONSTITUTIONAL ANALYSIS

The quarantine statute prevents persons who use guide dogs from entering or leaving Hawaii, which clearly contradicts the protections provided by the United States Constitution.¹⁸⁸ This Article will first explore the protections provided by the Commerce Clause¹⁸⁹ to residents of the United States who wish to move among the states, then analyze the similar protections afforded by the Privileges and Immunities Clause of the Fourteenth Amendment.¹⁹⁰ Historically, these two provisions protected the right to travel.¹⁹¹ This Article will then discuss the equal protection and due process

187. *Id.* § II-5.1000.

188. *See infra* part VIII.A-D.

189. U.S. CONST. art. I, § 8.

190. *Id.* amend. XIV.

191. *Edwards v. California*, 314 U.S. 160 (1941). Whereas the majority found the protection of the right to travel in the Commerce Clause, *id.* at 172, four Justices found the protection in the Privileges and Immunities Clause of the Fourteenth Amendment. *Id.* at 178.

provisions in the context of Hawaii's quarantine law to protect the rights of persons with disabilities to travel to and from Hawaii.

A. *The Commerce Clause*

1. Overview of the Commerce Clause

The Commerce Clause of the United States Constitution authorizes Congress to "regulate Commerce . . . among the several States"¹⁹² Congressional exercise of its power pursuant to the Commerce Clause preempts inconsistent state legislation affecting commerce.¹⁹³ "The Commerce Clause long has been held to be self-executing . . . [t]hus, even in the absence of preemptive legislation it bars state regulations that unduly burden interstate commerce."¹⁹⁴ Similarly, "Congress may authorize the States to engage in regulation that the Commerce Clause would otherwise forbid."¹⁹⁵

Congress designed the Commerce Clause to prevent states from enacting legislation that needlessly obstructs interstate trade, or from attempting to place themselves in a position of economic isolation.¹⁹⁶ The Commerce Clause specifically recognizes the potential conflicts that arise if each state acts simply to advance its own local interests.¹⁹⁷ State laws intended to protect the profitability of a state's own business or economy are invalid pursuant to the Commerce Clause.¹⁹⁸ The courts act as final arbiters of competing demands of state and national interests.¹⁹⁹

The Commerce Clause applies to the interstate movement of people as well as goods. In *Crandall v. Nevada*,²⁰⁰ the Court reviewed a Nevada statute that required payment of a tax for each person leaving the state or passing through it.²⁰¹ The Court found

192. U.S. CONST. art. I, § 8, cl. 3.

193. See, e.g., *Burlington N. R.R. v. Nebraska*, 802 F.2d 994, 999 (8th Cir. 1986) (holding federal statute affecting commerce preempts conflicting state law).

194. *Id.* This self-executing feature of the Commerce Clause is often referred to as the dormant commerce clause.

195. *Maine v. Taylor*, 477 U.S. 131, 138 (1986). However, the Court noted that "[a]n unambiguous indication of congressional intent is required before a federal statute will be read to authorize otherwise invalid state legislation." *Id.* at 139.

196. *Id.* at 151 (quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935)).

197. *Burlington*, 802 F.2d at 1004.

198. See *Safeway Stores, Inc. v. Board of Agric.*, 590 F. Supp. 778, 784 (D. Haw. 1984).

199. *Burlington*, 802 F.2d at 999 (quoting *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 769 (1945)).

200. 73 U.S. (6 Wall.) 35 (1867).

201. *Id.* at 36.

that the federal government has the authority to send people freely throughout the states and that

the citizen also had correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.²⁰²

The majority opinion did not place this right firmly within the Commerce Clause, but the concurring opinion stated that the law “is inconsistent with the power conferred upon Congress to regulate commerce among the several States”²⁰³

In *Edwards v. California*,²⁰⁴ the Court firmly held that the transportation of people fell under the Commerce Clause.²⁰⁵ In that case, the plaintiff went to Texas to pick up his brother-in-law and bring him back home to California.²⁰⁶ He was convicted of violating a California statute that forbade bringing indigent persons into the state.²⁰⁷ Justice Byrnes, writing for the majority, held that the statute violated the Commerce Clause: “We think this statute must fail under any known test of the validity of State interference with interstate commerce.”²⁰⁸ The concurring opinion from Justice Douglas, joined by Justices Black and Murphy, agreed that the right to interstate travel should be recognized, but found its protection under the Privileges and Immunities Clause of the Fourteenth Amendment, not under the Commerce Clause²⁰⁹—an approach which will be explored in the next section.

Similarly, the Hawaii statute forbids a certain group of people from travelling in or out of a state. In fact, the practical effect of

202. *Id.* at 44.

203. *Id.* at 49 (Clifford, J., concurring).

204. 314 U.S. 160 (1941).

205. *Id.* at 172.

206. *Id.* at 170.

207. *Id.* at 171.

208. *Id.* at 174.

209. *Id.* at 178 (Douglas, J., concurring).

Hawaii's statute is to either prevent people with guide dogs from entering the state or, if they do enter, locking the dogs up for 120 days and thus requiring the visually-impaired person to be dependent or unable to move about freely.

State laws that only incidentally burden commerce may not violate the Commerce Clause. *Pike v. Bruce Church, Inc.*²¹⁰ sets forth the general criteria used to evaluate such state laws.

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.²¹¹

The "[s]tates' power to regulate commerce is greatest when they act on matters of local concern . . . and state regulations enacted to promote public health and safety are accorded particular deference."²¹² Courts will override this deference only when the effect of the safety measure is slight and the burden on interstate commerce is massive.²¹³

The burden on interstate commerce is at its greatest when, as here, interstate commerce and travel are prohibited entirely.²¹⁴ Hawaii's quarantine law prohibits people from travelling to the state and residents from leaving the state. As explained above, this law prevents people with visual impairments who use guide dogs from enjoying the benefits of interstate travel. That is, non-Hawaii residents who use guide dogs will choose to travel elsewhere so as to avoid Hawaii's 120-day quarantine. Similarly, the law deters residents

210. 397 U.S. 137 (1970).

211. *Id.* at 142 (citation omitted).

212. *Burlington*, 802 F.2d at 999 (citations omitted); *see also* *Winkler v. Colorado Dep't of Health*, 564 P.2d 107, 110-11 (Colo. 1977) (holding that law prohibiting importation of pets for resale showed a legitimate public interest which outweighed any collateral impact on interstate commerce, and implying that "administrative convenience" alone is not a valid justification for burdening interstate commerce).

213. *Burlington*, 802 F.2d at 1000 (referring to the Illinois statute at issue in *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959)).

214. *Safeway*, 590 F. Supp. at 786 n.2.

with guide dogs from leaving Hawaii because those residents would lose the use of their dogs for the 120 days upon their return to Hawaii.

Further, there must be a real and demonstrated health or safety objective. In *Raymond Motor Transportation, Inc. v. Rice*,²¹⁵ the statute failed because the state did not rebut the challengers' considerable evidence that the regulation did not further the state's safety objective.²¹⁶ The Court expressly rejected the assertion that it must defer to state safety legislation without weighing the burden on interstate commerce.²¹⁷ However, Justice Blackmun wrote a separate opinion, joined by four other Justices, stating that "if safety justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce."²¹⁸

Clearly, the courts can "look to the practical operation and enforcement of a law in order to divine its real purpose."²¹⁹ In *Kassel v. Consolidated Freightways*,²²⁰ the Court stated that "the incantation of a purpose to promote the public health or safety does not insulate a state law from Commerce Clause attack. Regulations designed for that salutary purpose nevertheless may further the purpose so marginally, and interfere with commerce so substantially, as to be invalid under the Commerce Clause."²²¹ The Court refused to grant a regulation the deference normally accorded the legislature's judgment in matters of highway safety.²²² The Court reasoned that the state law was costly and inefficient, imposing a burden on interstate commerce "without any significant countervailing safety interest."²²³

Courts limit their evaluation of state safety legislation to an analysis of whether the state legitimately acted in furtherance of

215. 434 U.S. 429 (1978).

216. *Id.* at 444-45.

217. *Id.* at 443.

218. *Id.* at 449 (Blackmun, J., concurring). *But see Burlington*, 802 F.2d at 1004 (holding that district court erred in not examining burden on interstate commerce when the statute at issue was enacted for purely public safety reasons).

219. *Safeway*, 590 F. Supp. at 784 (stating that the court is free to disregard the legislature's statement of purpose if it considers the statement to be pretext); *see also Taylor*, 477 U.S. at 149 (disapproving of "post hoc rationalization" when justifying laws).

220. 450 U.S. 662 (1981).

221. *Id.* at 670.

222. *Id.* at 675-76.

223. *Id.* at 678.

safety objectives.²²⁴ Importantly, the evaluation does not involve a comparative analysis of legislative alternatives.²²⁵ Courts at times will examine whether less discriminatory means exist to achieve the state's stated purpose in enacting a law.²²⁶ Typically, however, courts do not expect a state to employ less discriminatory means if the development would involve a considerable period of time,²²⁷ or when there is no assurance as to their effectiveness.²²⁸

2. Hawaii's quarantine law and the Commerce Clause

Hawaii's quarantine law requires a 120-day quarantine of dogs and cats upon entry into the state to prevent the introduction of rabies.²²⁹ This law must fail scrutiny because it places a massive burden on interstate commerce and the movement of persons to and from the state with an illusory health and safety benefit.

Rabies, although a serious disease, is not a major health problem in the continental United States or Hawaii.²³⁰ Further, like New Jersey in *City of Philadelphia v. New Jersey*,²³¹ Hawaii is not evenhandedly imposing upon its own animals the same restrictions it places on animals entering the state.²³²

The 120-day quarantine law should be invalidated under the Commerce Clause because the law places a massive burden on interstate commerce. It prevents people who use guide dogs from traveling to and from Hawaii—the law precludes the interstate travel of both residents and nonresidents of Hawaii who use guide dogs.²³³

The quarantine system has not intercepted a case of rabies since its inception.²³⁴ A critical court should find Hawaii's stated safety purpose illusory, especially when circus, police, and celebrities'

224. *Burlington*, 802 F.2d at 999-1000.

225. *Id.* at 1003.

226. *See Taylor*, 477 U.S. at 138; *see also Cresenzi Bird Importers, Inc. v. New York*, 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987) (upholding New York's law because it was the least restrictive alternative).

227. *Taylor*, 477 U.S. at 143.

228. *Id.* at 147 (stating that states are "not required to develop new and unproven means of protection at an uncertain cost").

229. *See DOA RULES*, *supra* note 17, §§ 4-18-1, 4-18-2 (1981).

230. TASK FORCE, *supra* note 10, at 6 ("There have been no identified indigenous dog exposure cases in the United States since at least 1965.").

231. 437 U.S. 617 (1978).

232. *Id.* at 626-27.

233. *See supra* part VI.

234. TASK FORCE, *supra* note 10, at 8.

animals receive exemptions from the law.²³⁵ An illusory safety purpose violates the Commerce Clause.²³⁶

Other alternatives, such as vaccination requirements, that have less effect on the right to travel would achieve Hawaii's stated purpose.²³⁷ The legislature adopted the law over eighty years ago, and medical technology has changed drastically since then. Thus, there are no uncertain time or cost factors, or lack of scientifically accepted techniques which would prevent the adoption of less burdensome means.

Furthermore, the law restricts access of Hawaii residents to the guide dog market. A Hawaii resident who wants to obtain a guide dog from outside the state must wait the standard 120 days to obtain it. To avoid such a delay, these individuals will obtain Hawaiian-bred and -trained guide dogs when they otherwise would advance interstate commerce by obtaining a dog from outside the state. Using the *Pike* factors,²³⁸ while the quarantine law may arguably advance preventing the spread of rabies, the burden on interstate commerce clearly outweighs that interest.

Subject to the regular Commerce Clause analysis, the burden that Hawaii's law imposes on interstate commerce clearly outweighs the claimed local safety benefits of the law. Additionally, alternative means that do not significantly burden the fundamental right to travel enjoyed by all citizens of the United States exist to further the goals of the law.²³⁹

B. Privileges and Immunities Clause of the Fourteenth Amendment

The right to move freely also stems from the Privileges and Immunities Clause of the Fourteenth Amendment.²⁴⁰ As Justice Douglas stated in *Edwards v. California*,²⁴¹ "when the Fourteenth Amendment was adopted in 1868, it had been squarely and authoritatively settled that the right to move freely from State to State was a right of *national* citizenship. As such it was protected by the

235. See *supra* notes 31-34 and accompanying text.

236. *Kassel v. Consolidated Freightways*, 450 U.S. 662, 671 (1981).

237. See *infra* part VIII.C.1.d.

238. See *supra* note 211 and accompanying text.

239. *Edwards v. California*, 314 U.S. 160, 160-61 (1941).

240. The Fourteenth Amendment states "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. CONST. amend XIV.

241. 314 U.S. 160 (1941).

privileges and immunities clause of the Fourteenth Amendment against state interference."²⁴²

In *Twining v. New Jersey*,²⁴³ the Court provided a list of judicially recognized privileges and immunities. The right to pass freely from state to state appears first on the list.²⁴⁴ In a more recent case, the Court again observed that "[t]he constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."²⁴⁵

Although in past years courts have analyzed the right to travel from an equal protection standpoint, it is likely that the Privileges and Immunities Clause helped to support those decisions. In the first case enunciating the equal protection safeguards for the right to travel, Justice Brennan cited the concurring opinion in *Edwards*, which discussed the right to travel as a privilege of national citizenship.²⁴⁶ Constitutional scholars have argued that the Privileges and Immunities Clause provides the appropriate vehicle to protect the rights of national citizenship.²⁴⁷

The Privileges and Immunities Clause protects a citizen's right to travel among the states.²⁴⁸ In applying the clause to Hawaii's quarantine law, it is clear that the law impermissibly restricts this national right. Whether a court chooses to use the Privileges and Immunities Clause, the Commerce Clause or, as to be discussed at length next, the Equal Protection Clause or the Due Process Clause, Hawaii's quarantine law is unconstitutional.

242. *Id.* at 179 (Douglas, J., concurring).

243. 211 U.S. 78 (1908).

244. *Id.* at 97.

245. *United States v. Guest*, 383 U.S. 745, 757 (1966).

246. *Edwards*, 314 U.S. at 164.

247. See, e.g., David S. Bogen, *The Privileges and Immunities Clause of Article IV*, 37 CASE. W. RES. L. REV. 794 (1987) (the Privileges and Immunities Clause secures, among other things, the right to interstate travel); John Harrison, *Reconstructing the Privileges or Immunities Clause*, 101 YALE L.J. 1385 (1992) (the Privileges or Immunities Clause requires every state to give the same rights to all its citizens).

248. See *Guest*, 383 U.S. at 757; *Edwards*, 314 U.S. at 178 (Douglas, J., concurring); *Twining*, 211 U.S. at 97.

C. *The Equal Protection Clause*

The Equal Protection Clause of the Fourteenth Amendment states that “[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”²⁴⁹ The Supreme Court, however, has never required that a particular statute treat every person identically in all circumstances.²⁵⁰ As a result, when evaluating the legitimacy of a statute or law, the Court will employ one of three main forms of scrutiny under the traditional equal protection analysis. The level of deference applied varies according to the nature of the classification, the class discriminated against, and the asserted state interests.²⁵¹

This Article will explain how Hawaii’s quarantine law fails all three levels of scrutiny and, thus, should be deemed unconstitutional as applied to persons with disabilities.²⁵² Furthermore, this Article will describe the discriminatory impact on persons with disabilities of both Hawaii’s quarantine law and its exemptions.

1. The strict scrutiny test

The Supreme Court will apply the strict scrutiny test, or a “heightened” review to a legislative classification, when the classification impermissibly interferes with the exercise of a fundamental right, or operates to disadvantage a “suspect class.”²⁵³ Furthermore, a court will only subject a classification to strict scrutiny if it finds the legislature “intended” to discriminate against a particular group.²⁵⁴ Hawaii’s current quarantine law both burdens a suspect class, persons with disabilities, and interferes with the exercise of a fundamental right—the right to travel. Moreover, the Department of Agriculture’s “administration” of the quarantine law demonstrates a legislative intent to discriminate.²⁵⁵

249. U.S. CONST. amend. XIV, § 1.

250. *Tigner v. Texas*, 310 U.S. 141, 147 (1940).

251. *Dandridge v. Williams*, 397 U.S. 471, 520-21 (1970) (Marshall, J., dissenting).

252. Please note, however, that this Article assumes “travelers with disabilities” or “guide dog users” involve both Hawaii residents traveling from Hawaii to the mainland and those individuals traveling from the mainland to Hawaii.

253. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973) (finding that generally courts construe race and national origin as suspect classes).

254. *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982).

255. See *supra* part II.B-C.

When applying the strict scrutiny test, courts will uphold a statute only if it is necessary to attain a compelling governmental interest, and the state employs the least discriminatory means of administering the law.²⁵⁶ A state purpose may be legitimate and substantial; however, it cannot employ means that overwhelmingly stifle fundamental personal liberties.²⁵⁷

Hawaii's quarantine law cannot survive heightened review. The statute distinguishes between the visually impaired, who cannot function without a nonexempt guide dog, and those individuals whose animals are exempt. Furthermore, since the exemptions are administered in a discriminatory manner, the classification will be deemed "suspect."

Nevertheless, Hawaii asserts that its state interest to eradicate "contagious, infectious, and communicable diseases among animals" is compelling.²⁵⁸ Its refusal to consider a less drastic alternative, such as the use of vaccinations, coupled with stringent reporting and testing requirements, suggests that Hawaii has not chosen the best "means" to achieve its state interest. The following discussion will more thoroughly exemplify how Hawaii's quarantine law fails the strict scrutiny test.

a. persons with disabilities constitute a suspect class

In *United States v. Carolene Products Co.*,²⁵⁹ the Supreme Court discussed various factors that would trigger application of strict scrutiny to a legislative classification. The Court stated that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."²⁶⁰

*Massachusetts Board of Retirement v. Murgia*²⁶¹ provided a more recent description of a suspect class. The Court characterized

256. See *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 633 (1969) (holding that statute restricting voters in school board election is not narrowly tailored to compelling state interest of having concerned voters); *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969) (finding that denial of welfare benefits to those not residing in the state for at least one year did not further a compelling state interest).

257. *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

258. HAW. REV. STAT. § 142-3 (1985).

259. 304 U.S. 144 (1938).

260. *Id.* at 152-53 n.4.

261. 427 U.S. 307 (1976).

a suspect class as one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."²⁶²

As previously noted, the ADA aims to remove barriers for persons with disabilities in all aspects of life.²⁶³ In granting civil rights protections to persons with disabilities similar to those given to individuals on the basis of race, sex, and national origin, the ADA states that "individuals with disabilities are a *discrete and insular minority* who have been faced with restrictions and limitations . . . based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society."²⁶⁴ A congressional finding within the ADA making persons with disabilities a suspect class warrants the imposition of strict scrutiny and furnishes a legitimate basis to apply strict scrutiny to Hawaii's current quarantine law.

b. *purposeful discrimination*

Even though persons with disabilities constitute a suspect class, a court will not deem a classification suspect absent legislative intent to discriminate against the disfavored group.²⁶⁵ Legislative intent to discriminate can be inferred from state administration of a law in a discriminatory manner. Thus, a law may be facially neutral, but still violate the Equal Protection Clause due to its manner of administration.²⁶⁶

262. *Id.* at 313 (quoting *Rodriguez*, 411 U.S. at 28).

263. *See supra* note 4 and accompanying text.

264. 42 U.S.C. § 12101(2)(a)(7) (Supp. V 1988) (emphasis added).

265. *See* GERALD GUNTHER, CONSTITUTIONAL LAW 704-27 (12th ed. 1991).

266. For example, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), demonstrates how a facially neutral law results in purposeful discrimination due to its manner of administration. In that case, a San Francisco ordinance prohibited a laundry to be operated in a wooden building without the consent of the Board of Supervisors. *Id.* at 358. The Board granted permits to all but one of the non-Chinese applicants. *Id.* at 359. In contrast, the Board did not grant permits to any of the 200 Chinese applicants. *Id.* In finding discrimination in administration of the law, the Court found that

the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that . . . they are applied by the public authorities charged with their administration . . . with a mind so unequal and oppressive as to amount to a practical denial by the State of [equal protection] Though the law itself be fair on its face and impartial in appearance . . . it is applied and administered . . . with an evil eye and an

While Hawaii's current quarantine law appears facially neutral, its administration is discriminatory. The law does not differentiate among animals based on breed, size, age, or traits of the owner,²⁶⁷ and it expressly includes guide dogs despite the devastating effect this inclusion has on otherwise capable and independent persons with disabilities.²⁶⁸

Although Hawaii has made special exemptions to the quarantine, it administers the exemptions in a discriminatory manner. Hawaii has exempted some questionable categories of animals,²⁶⁹ while refusing to exempt guide dogs which have no history of rabies exposure, pose virtually no risk of rabies due to their prolonged periods of confinement and training, and can obtain a health certification from a veterinarian.

Hawaii might argue that the quarantine law accommodates the needs of the visually impaired who own guide dogs by providing an opportunity to exercise the animals.²⁷⁰ As previously discussed,²⁷¹ the quarantine facility does not allow the mobility sought by persons with disabilities and it compromises the training of the guide dogs.²⁷²

Finally, Hawaii's quarantine law distinguishes the risk of rabies associated with guide dogs from the risks associated with circus animals, police, and military dogs. Legislative history makes no mention of any attempt by Hawaii to investigate the risk of contagion posed by exotic animals as opposed to guide dogs. Nonetheless, the standards to which military dog handlers and circus animal trainers must adhere do not guarantee the prevention of rabies. During a performance, circus animals might possibly cross the barrier between the arena and the audience. Similarly, the exemption permitting offsite police dog training increases the likelihood that the animal might escape. Although the exempted animals face seemingly high restrictions, no guarantee exists to ensure that they will not introduce rabies into the state. Apparently, Hawaii is willing to assume the risk

unequal hand.

Id. at 373-74.

267. DOA RULES, *supra* note 17, § 4-18-2 (1981).

268. *Id.* § 4-18-12.

269. *See supra* part II.C.

270. DOA RULES, *supra* note 17, § 4-18-12.

271. *See supra* part II.B.

272. TASK FORCE, *supra* note 10, at 15 (recognizing that guide dogs are essential in allowing persons with disabilities to function independently and that there is a danger of guide dogs losing their effectiveness after they undergo quarantine).

associated with the current exemptions, while it resists the negligible risk associated with the exemption of guide dogs.

c. police power as a compelling state interest

Hawaii Civil Code section 142-2 empowers the Department of Agriculture (Department) to regulate inspection and quarantine of animals in Hawaii.²⁷³ More importantly, the Code imposes a duty on the Department to work toward the “eradication of contagious, infectious and communicable diseases among animals.”²⁷⁴ Hawaii will certainly assert that the preservation of a rabies-free state constitutes a critically important public health concern.

Generally, a state will exercise its police power to protect against any incident or use which is “injurious to the health, morals, or safety of the community.”²⁷⁵ In *Goldblatt v. Town of Hempstead*,²⁷⁶ the Court stated that “[t]o justify the State in . . . interposing its authority in [sic] behalf of the public, it must appear, first, that the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.”²⁷⁷

While stopping short of delineating specific criteria, the Court has often imposed a three-part “reasonableness” standard.²⁷⁸ The *Goldblatt* Court stated that to evaluate a statute’s reasonableness, one must consider “the nature of the menace against which it will protect, the availability and effectiveness of other less drastic protective steps, and the loss which appellants will suffer from the imposition of the ordinance.”²⁷⁹ Applying this standard, Hawaii’s quarantine law does not appear reasonable.

First, the scope of the “rabies menace” opens considerable debate. In 1912, when Hawaii implemented the regulations, rabies posed a serious threat to public health.²⁸⁰ Today, however, rabies does not constitute a major health problem.²⁸¹ The Task Force’s

273. HAW. REV. STAT. § 142-2 (1985 & Supp. 1992).

274. HAW. REV. STAT. § 142-3 (1985).

275. *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 593 (1962) (quoting *Mugler v. Kansas*, 123 U.S. 623, 668 (1887)).

276. 369 U.S. 590 (1962).

277. *Id.* at 594-95 (quoting *Lawton v. Steele*, 152 U.S. 133, 137 (1894)).

278. *Id.* at 595.

279. *Id.*

280. *See supra* note 11 and accompanying text.

281. *See supra* notes 46-48 and accompanying text.

findings and statistical data corroborate this assertion.²⁸² Second, the visually impaired suffer a deprivation of independence and safety provided by their guide dogs. Finally, the 120-day quarantine is not necessary to preserve a rabies-free society, and is unduly oppressive upon disabled individuals.²⁸³ This Article will propose a less drastic alternative that will enable Hawaii to achieve its state interest.

d. necessary means versus a less drastic alternative

Even assuming that Hawaii's interest is compelling, the state must pass another test to survive strict scrutiny—the suspect classification must be shown as necessary to promote the compelling state interest.²⁸⁴ However, developing a “less drastic alternative” requires a prior evaluation of the quarantine law's legislative history.

Although section 142 of the Hawaii Revised Statutes grants the Department broad authority to regulate the importation and exportation of animals, it limits that power in various respects. Section 142-4 requires an inspection of all “domestic animal[s]” upon entry into the state, but it stipulates that no “delays [shall be] caused, concerning the landing of any domestic animal for which a certificate of health has been issued.”²⁸⁵ The Civil Code empowers the Department to quarantine only those animals “known to be or suspected of being infected with a contagious, infectious, or communicable disease.”²⁸⁶ If Hawaii simply adhered to the limitations, no discriminatory conduct would arise.

However, the Department exercises these limitations without any regard for or knowledge about the health of the quarantined animals,²⁸⁷ and thwarts the original legislative intent. The legislature did not intend the quarantine to burden the importation of animals demonstrably free from disease.²⁸⁸ Therefore, the Department's patent disregard of the limitations imposed by the legislature creates an undue burden on visually-impaired users of guide dogs.

Hawaii's contention that the 120-day quarantine is the means “necessary” to preserve a rabies-free state has outgrown its use. At

282. See *supra* notes 57-60 and accompanying text.

283. See *supra* part IV.

284. *Shapiro*, 394 U.S. at 634.

285. HAW. REV. STAT. § 142-4 (Supp. 1992).

286. *Id.* § 142-2.

287. DOA RULES, *supra* note 17, § 4-18-7 (1987).

288. HAW. REV. STAT. § 142-2 (1985 & Supp. 1992).

the time of its creation, the 120-day quarantine provided the only available means to combat the spread of rabies in Hawaii.²⁸⁹ Compelling statistics, however, demonstrate that the quarantine is an outdated and ineffective method to combat rabies.²⁹⁰

All of the World Health Organization policies require vaccinations in order to transfer animals between countries of differing rabies statuses.²⁹¹ Comparisons of countries with a six-month quarantine and those with a vaccination requirement revealed no significant differences between the number of rabid dogs imported.²⁹² The additional quarantine requirement in Hawaii is therefore not a "necessary means."

Hawaii will claim that vaccinations are not one-hundred percent effective due to varying storage procedures, animal species, and vaccine types.²⁹³ However, due to varying incubation periods of the rabies virus, the 120-day quarantine also falls short of a one-hundred percent guaranteed prevention against rabies.

Hawaii should acknowledge the viability of the proposed exemption and its stringent requirements. Mandatory proof of a rabies vaccination plus a valid United States health certificate would fulfill the original intent of Hawaii's legislature that the quarantine apply to "any domestic animal known to be affected with . . . any contagious, infectious, or communicable disease."²⁹⁴ The Task Force's findings indicate that the current quarantine law does not constitute a "necessary" means to achieve its compelling state interest. Therefore, Hawaii's quarantine law and its exceptions would fail the strict scrutiny test.

2. The fundamental right to travel

As noted earlier, when the state employs a classification that burdens the exercise of fundamental rights, a court must apply strict judicial scrutiny.²⁹⁵ Although the Constitution does not explicitly enumerate the "freedom of interstate migration," the Supreme Court

289. TASK FORCE, *supra* note 10, at 8.

290. *See supra* parts II-IV.

291. TASK FORCE, *supra* note 10, at 21.

292. *Id.* at 22.

293. Letter from Robert M. Nakamura, D.V.M., M.S., Ph.D., to Senator Donna Ikeda, Chairperson of Agriculture (Feb. 13, 1990) (on file with *Loyola of Los Angeles Law Review*).

294. HAW. REV. STAT. § 142-6 (1985).

295. *Rodriguez*, 411 U.S. at 16.

has repeatedly treated it as a fundamental right.²⁹⁶ In the *Passenger Cases*,²⁹⁷ the Court supported the guarantee of the right to interstate migration, stating that “[w]e are all citizens of the United States; and, as members of the same community, [we] must have the right to pass and repass through every part of it without interruption, as freely as in our own States.”²⁹⁸ Similarly, in *Zobel v. Williams*,²⁹⁹ the Court held that the right to travel “protect[s] persons against the erection of actual barriers to interstate movement.”³⁰⁰

A state implicates the right to travel when it actually deters such travel or when it uses any classification that penalizes the exercise of that right. In *Shapiro v. Thompson*,³⁰¹ Connecticut, Pennsylvania, and the District of Columbia enacted a one-year residency requirement for the receipt of welfare benefits.³⁰² The states asserted an interest to deter the migration of indigents in order to preserve their fiscal integrity.³⁰³ According to the Court, the requirement impaired the “fundamental right of interstate movement.”³⁰⁴ Because the statute impaired the freedom of travel, the Court applied strict scrutiny.³⁰⁵

In *Shapiro* the state failed the strict scrutiny test on two grounds: (1) it could not assert a compelling state interest for its classification;³⁰⁶ and (2) the means employed were not necessary to achieve the interest.³⁰⁷ The Court found that “the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits.”³⁰⁸ The durational residency requirement *penalized* indigents for exercising their right to migrate.³⁰⁹ The *Shapiro* Court emphasized that many families depend on welfare aid

296. *Shapiro*, 394 U.S. at 629-31; *United States v. Guest*, 383 U.S. 745, 757 (1966); *Kent v. Dulles*, 357 U.S. 116, 126 (1958).

297. 48 U.S. (7 How.) 283 (1849).

298. *Id.* at 492.

299. 457 U.S. 55 (1982).

300. *Id.* at 60 n.6.

301. 394 U.S. 618 (1969).

302. *Id.* at 622-23.

303. *Id.* at 627.

304. *Id.* at 638.

305. *Id.*

306. *Id.* at 633.

307. *Id.* at 638.

308. *Id.* at 631.

309. *Id.* (emphasis added).

to obtain the “very means to subsist—food, shelter, and other necessities of life.”³¹⁰

Likewise, in *Memorial Hospital v. Maricopa County*,³¹¹ the Court invalidated an Arizona statute that required indigents to reside in-state for one year prior to receiving free nonemergency care. The Court held that the denial of medical care infringed on the right to travel,³¹² and accordingly applied strict scrutiny.³¹³ The Court determined that “[the state did] not [meet its] heavy burden . . . [of] demonstrat[ing] that . . . in pursuing legitimate objectives, [it] ha[d] chosen means which [did] not unnecessarily impinge on constitutionally protected interests.”³¹⁴

Perhaps the most critical issue involved in *Memorial Hospital* was the articulation of the type of penalty which would trigger strict scrutiny and most likely result in a statute’s invalidation.³¹⁵ That Court maintained that a penalty exists when it affects a “necessity of life.”³¹⁶ Both *Shapiro* and *Memorial Hospital* involve temporary deprivations of vital benefits and rights which in turn penalize migration.³¹⁷ The temporary nature of the penalization did not deter the Court from imposing strict scrutiny.³¹⁸

Hawaii’s current quarantine law penalizes guide dog users’ right to interstate migration. *Shapiro* and *Memorial Hospital* both involved “residents,” whereas guide dog users traveling to Hawaii are usually “visitors.” Nevertheless, assuming a guide dog user planned to move to Hawaii, the quarantine would impose a severe, perhaps insurmountable, impediment. The quarantine law also penalizes a visually-impaired Hawaii resident who owns a guide dog because the 120-day requirement impedes the ability to travel outside the state.³¹⁹

The quarantine law penalizes a disabled person’s right to travel in several ways. The manner in which Hawaii administers its quarantine law parallels *Shapiro*, lumping together individuals who travel to Hawaii with rabies-free animals along with those who travel

310. *Id.* at 627.

311. 415 U.S. 250 (1974).

312. *Id.* at 261-62.

313. *Id.* at 262 n.21.

314. *Id.* at 269.

315. *Id.* at 258-62.

316. *Id.* at 259-62.

317. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

318. *Memorial Hospital*, 415 U.S. at 259-62; *Shapiro*, 394 U.S. at 638.

319. *See supra* part II.A-C.

to Hawaii with animals that pose a rabies threat. As stated previously, Hawaii exercises the quarantine without regard to the animal's health.³²⁰ Consequently, the person with a disability has no opportunity to prove a guide dog is rabies-free. As in *Shapiro*, the state has not tailored its means to further its asserted interest.

By requiring a 120-day quarantine, Hawaii effectively takes away the eyes and the independence of a person with a disability. Although visual and mobile ability may not qualify as fundamental rights, they are certainly basic necessities of life. Without the guide dog, the individual with a disability cannot enjoy Hawaii's benefits and privileges since the guide dog provides safety and guides the individual around unfamiliar territory.

The housing accommodation at the quarantine station site is an inadequate substitute for traveling outside its premises. Citizens depend on the ability to move freely and function independently. Providing housing for guide dog owners at the quarantine station, as a sole alternative, severely limits the ability of a person with a disability to travel through other parts of the state.³²¹

Hawaii's quarantine law triggers a strict scrutiny analysis since it violates a guide dog user's right to travel. The following case shows that a court will invalidate a statute if the state fails to prove that it used necessary means to achieve the state's interest.

In *New York v. Soto-Lopez*,³²² the New York Constitution and civil service law granted a civil service employment preference to New York residents who were honorably discharged veterans.³²³ The preference, however, only applied to those veterans who were New York residents at the time they entered the military.³²⁴ The plaintiffs included army veterans and long-time New York residents who were not New York residents when they joined the army.³²⁵

Applying strict scrutiny, the Court invalidated the preference.³²⁶ The Court held that "[b]ecause New York could accomplish its purposes without penalizing the right to migrate by awarding special credits to *all* qualified veterans, the State is not free to promote its interests through a preference system that incorporates a

320. See *supra* part II.A.

321. See *supra* part II.A.-C.

322. 476 U.S. 898 (1986).

323. *Id.* at 900.

324. *Id.*

325. *Id.*

326. *Id.* at 911.

prior residence requirement.”³²⁷ The means employed by New York were not “necessary” to promote its interests.³²⁸

The foregoing analysis relied on the presumption that strict scrutiny provides the appropriate standard of review for this statute. However, if strict scrutiny is not the appropriate level of analysis, the intermediate scrutiny test must be considered.

3. The intermediate scrutiny test

Unlike strict scrutiny, the intermediate scrutiny test requires that the statute seek to achieve an “important,” rather than compelling, objective and that the means are “substantially related,” rather than necessary, to that objective.³²⁹ The state also must marshal credible supporting evidence to demonstrate a substantial relationship between the classification and the state interest.³³⁰ Under intermediate scrutiny, a statute placing exceptional burdens on a recognized group “in furtherance of proper state objectives must be more ‘carefully tuned to alternative considerations.’”³³¹

In the past the Court has applied this middle level of scrutiny to certain classifications that give rise to recurring constitutional difficulties such as those based on alienage, gender, and illegitimacy.³³² The sensitive status of these groups may not alone justify an intermediate scrutiny analysis.³³³ When coupled with the denial of an important interest that shares a close nexus with the exercise of constitutional rights, however, heightened scrutiny is appropriate.³³⁴

Although these groups may not qualify as a “discrete and insular minority,”³³⁵ they resemble minorities that warrant more than a

327. *Id.* at 910 (emphasis added).

328. *Id.* at 911.

329. See *Lalli v. Lalli*, 439 U.S. 259, 265 (1978) (“Although classifications based on illegitimacy are not subject to ‘strict scrutiny,’ they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests.”); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (“Classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”).

330. *Craig*, 429 U.S. at 197-99.

331. *Lalli*, 439 U.S. at 266 (quoting *Trimble v. Gordon*, 430 U.S. 762, 772 (1977)).

332. See, e.g., *Plyler v. Doe*, 457 U.S. 202, 217-18 (1982) (noting that certain forms of legislative classifications must further a “substantial interest of the state”).

333. Comment, *Intermediate Equal Protection Scrutiny of Welfare Laws that Deny Subsistence*, 132 U. PA. L. REV. 1547, 1550 (1984).

334. *Id.*

335. *United States v. Carolene Products Co.*, 304 U.S. 144, 153 n.4 (1938).

mere rational basis review.³³⁶ Courts will apply a "somewhat heightened review"³³⁷ if a group shares some suspect class characteristics.³³⁸

In *Craig v. Boren*,³³⁹ the Court applied intermediate scrutiny to an Oklahoma statute forbidding the sale of nonintoxicating 3.2% beer to males under the age of twenty-one and females under the age of eighteen.³⁴⁰ The state asserted an interest in promoting traffic safety based on statistics showing the higher incidence of arrest of males than females between the ages of twelve and twenty for driving under the influence.³⁴¹ Nevertheless, the Court invalidated the statute, stating "appellees' statistics in our view cannot support the conclusion that the gender-based distinction closely serves to achieve that objective and therefore the distinction cannot . . . withstand [an] equal protection challenge."³⁴² The overall fit between the means of regulation was not substantially related to the end.

The Court relied on several indicia to justify an intermediate level of scrutiny. It stated that "outdated misconceptions concerning the role of females in the home . . . were . . . incapable of supporting state statutory schemes that were premised upon their accuracy."³⁴³ The Court further implied that it would apply intermediate scrutiny to classifications reflecting inaccurate stereotypes that are not truly indicative of a group's abilities.³⁴⁴ Although *Craig* held that intermediate scrutiny applies to gender classifications, other instances also warrant an intermediate review. The Court may also apply intermediate scrutiny to classifications that implicate a fundamental right.³⁴⁵

336. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* §§ 16-31, 1594-98 (2d ed. 1988).

337. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439-42 (1984).

338. *Id.*

339. 429 U.S. 190 (1976).

340. *Id.* at 197-99.

341. *Id.* at 200-01.

342. *Id.* at 200.

343. *Id.* at 198-99.

344. *See id.*

345. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Court invalidated a statute that denied illegal alien children access to free education. *Id.* at 230. To justify applying intermediate scrutiny, the Court reasoned that illegal alien children approached a quasi-suspect status, that education was an important right, and that the law created a new underclass or subclass of illiterates. *Id.* at 217-23.

The Court concluded that illegal alien children shared at least some suspect characteristics because they had no political power, and could not change the classifying characteristic of illegality. *Id.* at 219-20. Furthermore, the Court argued that the law "is

Persons with disabilities qualify as a quasi-suspect class because they share a characteristic of a suspect class—immutability. Further, they possess traits over which they have no control and confront inaccurate and archaic stereotypes that are “not truly indicative of their abilities.”³⁴⁶ Additionally, Hawaii’s current quarantine law and its refusal to exempt guide dogs impairs the travel rights of guide dog users, and directly prevents them from functioning independently in society. Comparable to *Plyler*, Hawaii’s quarantine law impairs important interests of persons with disabilities.

The guide dog is indispensable to its owner’s physical, social, and economic well-being. Further, guide dogs and their owners constitute an inseparable working team. Suppose that the guide dog user traveled to Hawaii for an important business meeting. Since Hawaii has no current exemptions for guide dogs, the animal would face the 120-day quarantine. Because the guide dog cannot leave the quarantine site, the owner is unable to attend the business meeting. Not only does this directly impair the disabled person’s right to travel, it indirectly impairs the right of the individual “to engage in any of the common occupations of life.”³⁴⁷

directed against children, and imposes its discriminatory burden on the basis of a legal characteristic over which children can have little control.” *Id.* at 220. The Court did not solely rely on the fact illegal alien children constituted a quasi-suspect class. Instead, *Plyler* recognized that the statute also burdened the important right of education. *Id.* at 221-24.

Although the Constitution does not explicitly enumerate education as a fundamental right, the Court stressed the importance of education when it stated that “education has a fundamental role in maintaining the fabric of our society.” *Id.* at 221. In addition, the Court acknowledged “the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child.” *Id.* The Court conceded that education was indispensable to the individual’s social, economic, intellectual, and psychological well-being. *Id.* at 221-22. Most importantly, the Court justified the application of intermediate scrutiny because of education’s close nexus with the exercise of fundamental rights. *Id.* at 217-24.

The Court cautioned that denial of education to a discrete class of children creates an obstacle to individual achievement, and makes it difficult to reconcile, within the framework of Equal Protection Clause equality, the cost or principle of a status-based denial of basic education. *Id.* at 221-22. Moreover, the Court stated “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* at 223 (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)).

346. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976).

347. *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)) (stating that the Court has repeatedly recognized that the right of individual to engage in work falls within concept of liberty guaranteed in Fourteenth Amendment); see also *Smith v. Texas*, 233 U.S. 630, 641 (1914) (recognizing that “all men are entitled to the equal protection of the law in their right to work for the support of themselves and families”).

Thus, Hawaii's current quarantine law and its exemptions burden an important right of a group at least approaching quasi-suspect status. Accordingly, intermediate scrutiny applies, and Hawaii must show that the refusal to exempt guide dogs, but not other groups such as circus animals and police and military dogs, substantially furthers important state interests.

Hawaii's interest in preserving a rabies-free state constitutes an important state interest. Yet, given the current state of veterinary technology and the effectiveness of vaccinations, the application of the quarantine may not substantially further that interest. Since the quarantine unduly burdens a group approaching a quasi-suspect class, other alternatives, such as a vaccination coupled with stringent reporting and testing requirements, must be adopted.

Assuming, however, that the quarantine represents a viable method for Hawaii to achieve its interests, Hawaii's refusal to exempt guide dogs is based on archaic and inaccurate stereotypes that are not indicative of the group's abilities. As stated previously, the quarantine regulations presume that persons with disabilities cannot handle their guide dogs without the help of a responsible sighted person.³⁴⁸ In contrast, circus animals and military dogs may leave the premises if accompanied by an authorized handler.³⁴⁹ Thus, the current quarantine law exemptions imply that persons with a disability are incompetent.

Given that the quarantine and its exemptions burden a quasi-suspect class, impair various important interests, and stem from inaccurate stereotypes, Hawaii will have considerable difficulty proving that the quarantine substantially furthers an important state interest.

4. The rational basis test

If persons with disabilities do not qualify as a quasi-suspect class warranting intermediate scrutiny, the quarantine law will be reviewed according to the rational basis test. Traditionally, courts apply the rational basis test with classifications used in economic and social welfare legislation. Courts will uphold challenged legislation unless the classification at issue does not bear a rational relationship to a

348. DOA RULES, *supra* note 17, § 4-18-12(f) (1981).

349. *Id.* § 4-18-10(b)(1)-(2).

legitimate state interest.³⁵⁰ Under this test the Court usually defers to legislative judgment.³⁵¹

a. the rational basis test "with teeth"

In the past few years, the Supreme Court has expanded equal protection by applying a heightened review under the guise of "mere rationality."³⁵² The Supreme Court has regarded illegitimate children and the mentally retarded as potential candidates for judicial strict scrutiny.³⁵³ In these contexts the Court applied heightened scrutiny, yet it did not treat the classifications as suspect.³⁵⁴ In both situations the Court applied the mere rationality test more rigorously. One commentator described this expansion of the equal protection clause as "an effort to 'reach perceived injustices that otherwise lie beyond constitutional reach.'"³⁵⁵

Assuming that Hawaii's quarantine law does not warrant strict judicial scrutiny because persons with disabilities do not constitute a suspect class, the quarantine law does not impair a guide dog user's right to travel, or because persons with disabilities do not approach a quasi-suspect status, the quarantine law may encounter another level of scrutiny—the rational basis test with teeth.

In *City of Cleburne v. Cleburne Living Center*,³⁵⁶ the Court considered an equal protection challenge to a zoning ordinance that denied a special use permit for the establishment of group homes for the mentally retarded in an area zoned for multiple dwellings. The Court of Appeals applied the intermediate scrutiny test because it determined that the mentally retarded constituted a quasi-suspect

350. *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *Murgia*, 427 U.S. at 315 (mandatory retirement for state police at age 50 held rationally related to the state's legitimate interest of protecting public by having physically fit police).

351. Gayle L. Pettinga, Note, *Rational Basis With Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779, 779 (1986).

352. See generally GUNTHER, *supra* note 264, at 620-22.

353. See *Lalli v. Lalli*, 439 U.S. 259 (1978) (upholding New York statute which prevented illegitimate children from inheriting by intestate succession from their fathers unless court made finding of paternity during father's lifetime); *Levy v. Louisiana*, 391 U.S. 68 (1968) (striking down a legitimacy-based classification that refused to allow unacknowledged illegitimate children to bring wrongful death action for mother's death).

354. See *Lalli*, 439 U.S. at 265; *Levy*, 391 U.S. at 71.

355. Pettinga, *supra* note 351, at 779 (quoting David O. Stewart, *A Growing Equal Protection Clause?*, A.B.A. J., Oct. 1985, at 108, 112-14).

356. 473 U.S. 432, 435-37 (1985).

class,³⁵⁷ and found that the ordinance did not promote any important governmental interest, thus, failing to satisfy intermediate scrutiny.³⁵⁸

The Supreme Court, however, concluded that the mentally retarded were not a quasi-suspect class and thus deemed rational basis as the appropriate standard.³⁵⁹ Based on a rational basis analysis, the Supreme Court invalidated the ordinance because it found that the city's refusal to grant a special use permit was not even "rationally related" to any legitimate state purpose.³⁶⁰ The Court held that the city's decision unfairly singled out the retarded and, therefore, must have been based on an irrational prejudice against the mentally retarded. Thus, the ordinance was unconstitutional as applied.³⁶¹ Nevertheless, it seems apparent that the Court applied a more exacting form of the rational basis test. It seems that prejudice against the mentally retarded motivated the Court to apply a higher standard. The Court stated that "there have been and there will continue to be instances of discrimination against the retarded that are in fact invidious"³⁶²

The dissent in *Cleburne* further bolstered the notion that the Court applied a more rigorous rational basis test. Justice Marshall stated that the "ordinance surely would be valid under the traditional rational-basis test."³⁶³ Under this test, courts generally presume that the legislation is constitutional.³⁶⁴ Thus, if the Court had applied the traditional test, the City would not have faced the burden of showing that the home would be overcrowded and the Court would not have reviewed the legislature's explanations so vigorously.³⁶⁵

Finally, the *Cleburne* majority did not regard the mentally retarded as a quasi-suspect class, as they contended that the legislature's response to their problem had addressed any existing prejudice.³⁶⁶ The dissent rebutted this notion in its statement that "race-based classifications [did not become] any less suspect once

357. *Cleburne Living Center, Inc. v. City of Cleburne*, 726 F.2d 191, 196-200 (5th Cir.), *aff'd*, 473 U.S. 432 (1984).

358. *Id.* at 200-02.

359. *Cleburne*, 473 U.S. at 446.

360. *Id.* at 450.

361. *Id.*

362. *Id.*

363. *Id.* at 456 (Marshall, J., dissenting).

364. *Id.* at 459 (Marshall, J., dissenting).

365. *Id.* at 458 (Marshall, J., dissenting).

366. *Id.* at 443.

extensive legislation had been enacted on the subject."³⁶⁷ Ongoing discrimination against the mentally retarded, and arguably any other group with such immutable characteristics, will persist throughout society despite any legislative response. Nonetheless, the mentally retarded prevailed despite the Court's failure to categorize that group as a quasi-suspect class. Rather than strike down the entire ordinance, the Court held that the ordinance, as applied to the particular group home, violated equal protection.³⁶⁸

Similarly, a court applying the rational basis with teeth test to Hawaii's quarantine law would find that the law and its exemptions, as applied to persons with disabilities traveling with guide dogs, violate equal protection. Hawaii's blatant refusal to acknowledge that guide dogs are not ordinary pets and pose a very low risk of spreading rabies suggests a manifest prejudice. Furthermore, the Task Force's proposed exemption and stringent requirements³⁶⁹ would certainly accomplish Hawaii's stated purpose. Hawaii's exemption of circus animals, celebrities' animals, and military dogs, and their refusal to grant a guide dog exemption, bespeaks the irrationality of the statute. If the Court applied a more exacting standard under the guise of rational basis, as in *Cleburne*, it would find that an irrational prejudice against persons with disabilities inspired the classification and, thus, is not rationally related to a governmental interest. As applied to persons with disabilities using guide dogs, the quarantine law would be unconstitutional.

b. ordinary rational basis

When mere rationality is the test, a "classification having some reasonable basis does not offend against [the equal protection] clause merely because it is not made with mathematical nicety or because in practice it results in some inequality."³⁷⁰ However, in spite of high deference and presumptive constitutionality accorded in a mere rationality review, both Hawaii's quarantine and its current exemptions will not survive this test because it is both overinclusive and irrational. Since Hawaii's state interest involves the exercise of police power and public health concerns, it will most likely receive wide lati-

367. *Id.* at 467 (Marshall, J., dissenting).

368. *Id.* at 450.

369. *See supra* part IV.

370. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

tude.³⁷¹ Nevertheless, even though rational basis may be highly deferential, it is not toothless.³⁷² Although the current quarantine law may further the preservation of a rabies-free state in a rational manner, the state has not chosen the best means to accomplish this purpose. Given the overwhelming progress of medical technology, the effectiveness of vaccinations, and the minuscule risk that guide dogs pose to the spread of rabies, Hawaii's reliance on a law adopted over eighty years ago is arbitrary and irrational.

Furthermore, Hawaii's quarantine law and its exemptions are overinclusive because they "impose[] a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims."³⁷³ Although the quarantine aims to prevent the spread of rabies among animals known to be a threat,³⁷⁴ quarantine officials indiscriminately apply the law to all types of animals, regardless of the health and medical history of the particular animal.³⁷⁵ Thus, Hawaii's quarantine law includes those animals that pose no threat.

Hawaii may argue that its law does not indiscriminately apply to all animals because it has exempted various groups. However, Hawaii's current exemptions to its quarantine law merely confirm the statute's irrationality and arbitrariness. "Rational" requires "that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the

371. See *City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976) ("States are accorded latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude.")

372. See *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 184 (1980) (Brennan, J., dissenting); see also *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 440 (1982) (Blackmun, J., concurring) (finding state employment discrimination statute that allowed for the dismissal of a claim when employment commission inadvertently scheduled a fact-finding conference after statutory period expired was not rational way of achieving objective of expediting disputes); *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973) (holding federal food stamp limitation that distinguished between "households" without any unrelated persons and those with unrelated persons was not rationally related to the expressed purposes of the statute).

373. Tussman & TenBroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341, 351 (1949).

374. HAW. REV. STAT. § 142-2 (1985 & Supp. 1992).

375. See *supra* note 19 and accompanying text.

members of [a] . . . disadvantaged class."³⁷⁶ Thus, the analysis should at least include elements of legitimacy and neutrality.³⁷⁷

Hawaii's refusal to exempt guide dogs harms persons with disabilities both physically and financially.³⁷⁸ A quarantined guide dog may lose its effectiveness, jeopardizing its owner's safety.³⁷⁹ Additionally, if the guide dog loses its skills during the quarantine, its owner faces the serious financial burden of retraining.³⁸⁰ Considering the undue burden the quarantine imposes on the guide dog user, it will be difficult to conclude that the quarantine, as a means to prevent rabies, transcends harm to the members of this disadvantaged class.

In addition, by refusing to grant a guide dog exemption, Hawaii has created an arbitrary classification between guide dogs, which are not exempt, and those animals which are exempt. The exemption Hawaii granted to a celebrity best demonstrates the irrationality of the quarantine's exceptions.³⁸¹ In striking contrast, Hawaii refuses to exempt guide dogs despite the minimal risk of rabies and their unique, indispensable relationship to their owners' safety and ability to function independently. Hawaii's blanket refusal to exempt the small group of highly regulated guide dogs shows the statute's irrationality.

Hawaii's current quarantine law and its concomitant exemptions will have great difficulty satisfying all three standards of review under the Equal Protection Clause. By adopting the Task Force's proposed exemption, Hawaii could pass all levels of review. Since the proposal imposes stringent reporting and testing requirements upon the guide dog owner, it would not compromise the public health of Hawaii and, thus, would foster Hawaii's compelling state interest. Simultaneously it would accommodate the needs of persons with disabilities without violating equal protection or any fundamental right. Hawaii's quarantine not only implicates the Equal Protection Clause, but it also implicates the Due Process Clause of the Fourteenth Amendment.

376. *City of Richmond v. Croson Co.*, 488 U.S. 469, 514 n.6 (1989) (Stevens, J., concurring).

377. *Id.*

378. *See supra* part V.

379. *See supra* part V.

380. *See supra* part V.

381. *See supra* note 33 and accompanying text.

D. Due Process Clause

The Due Process Clause of the Fourteenth Amendment prohibits states from depriving individuals of "life, liberty or property, without due process of law."³⁸² Privacy rights protected as a substantive liberty interest under the Due Process Clause include the right of personal security,³⁸³ personal autonomy, and bodily integrity.³⁸⁴

Determining violations of due process and equal protection involves identical constitutional analyses. Strict scrutiny, as well as the rational basis test, places the same constitutional requirements on the regulation regardless of which clause applies. As previously discussed, the Hawaii quarantine law does not pass constitutional muster under Equal Protection nor under the Due Process Clause. The law implicates the Due Process Clause and should be found unconstitutional regardless of the standard of review applied.

1. Violations of the fundamental rights of personal autonomy and security

Freedom of movement and personal autonomy are fundamental rights at the core of the substantive liberty interests protected by the Due Process Clause.³⁸⁵ The Court has traditionally applied strict scrutiny to determine if legislation that impinges on these rights is a constitutional invasion into a "zone of privacy." The Constitution guarantees a realm of personal liberty which the government may not enter.³⁸⁶

Hawaii's quarantine law affects the very interests protected by substantive due process. Guide dogs are essential in allowing individuals with disabilities to function independently in society to participate in major life activities. Denying a visually-impaired person the use of a guide dog imposes a severe limitation on the individual's

382. U.S. CONST. amend. XIV.

383. *Ingraham v. Wright*, 430 U.S. 651, 673 (1977).

384. *Id.* at 673-74.

385. See *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261, 278 (1990) ("[That a] competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions."); *Ingraham*, 430 U.S. at 673 ("Among the historic liberties so protected was a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security."); *Roe v. Wade*, 410 U.S. 113, 164 (1973) (finding statute prohibiting abortion violates individuals right to privacy).

386. See *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2805 (1992).

ability to move freely and safely. Strict scrutiny applies in this situation because the regulation considerably limits an individual's liberty to move freely in a safe manner,³⁸⁷ to effectively comprehend the surroundings, and to use an accepted and legal treatment for the disability.

Visually-impaired individuals have available alternatives regarding the methods of assistance they choose. The existence of these alternatives enables Hawaii to argue that the state is only temporarily restricting the use of a particular means, not depriving the visually impaired of constitutional interests; the quarantine does not affect a visually-impaired person who has chosen to use a cane instead of a guide dog. However, the individual made the decision to use a guide dog rather than a cane long before and independent of the decision to visit Hawaii, and because of the safety issues, returning to cane usage is not a viable alternative.

The inadequacy of the available alternatives indicates that the choice is in effect involuntary. This assertion is analogous to the following: To determine whether individuals at mental institutions suffered a restriction or loss of due process rights, courts viewed their voluntary admission to the facility as "an illusory concept. Few if any residents now have, nor did they have at the time of admission, any adequate alternative to their institutionalization."³⁸⁸

Similarly, the visually impaired have very little choice in how they choose to maintain their personal autonomy and safety. The primary alternative to a guide dog is a cane. However, once this choice is made, the visually-impaired person has committed to the use of one method over the other and use of a cane in most cases does not present a practical alternative.³⁸⁹

Hawaii's goal to prevent the spread of rabies is a compelling state interest; however, other less restrictive means exist. Given the state's inconsistent practices in granting exemptions, a court should

387. Although incarceration implicates the same rights, prisoners are afforded less than strict scrutiny, because applying strict scrutiny to prison or institution regulations places an undue burden on the administrators. Special expertise required to manage such facilities entitles the rulemaking authority to greater deference. No such special circumstances can justify the application of a standard of review lower than strict scrutiny for the quarantine law. See *Turner v. Safely*, 482 U.S. 78, 84-85 (1987); *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

388. See *Association for Retarded Citizens v. Olson*, 561 F. Supp. 473, 485 (D. N.D. 1982) (quoting *Halderman v. Pennhurst State Sch. & Hosp.*, 446 F. Supp. 1295, 1311 (E.D. Pa. 1977)).

389. See *supra* part VI.

find that the law violates due process regardless of the standard of review applied.

IX. CONCLUSION

Hawaii's quarantine law violates the rights of persons with disabilities. It assumes that visually-impaired persons cannot control their guide dogs. The federal statutes and the United States Constitution protect persons with disabilities from discrimination and, therefore, the Hawaii quarantine law must be overturned. Hawaii's own Task Force has recommended that the laws be amended and, only upon such an amendment, will the rights of persons with disabilities be protected.