No. 84-1904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Appellant,

v.

ANTHONY J. GALIOTO,
Appellee.

On Appeal from the United States District Court for the District of New Jersey

---

BRIEF OF *AMICUS CURIAE* AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF APPELLEE

Of Counsel:
ARLENE S. KANTER
MENTAL HEALTH
LAW PROJECT
2021 L Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 467-5730

February 10, 1986

MARGARET FARRELL EWING
(Counsel of Record)
DAVID W. OGDEN
DONALD N. BERSOFF
ENNIS, FRIEDMAN, BERSOFF
& EWING
1200 17th Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 775-8100
Attorneys for Amicus Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
INTRODUCTION	4
ARGUMENT	10
I. BECAUSE PRESENTLY AND FORMERLY MENTALLY DISORDERED PEOPLE SHARE MANY CHARACTERISTICS WITH CLASSIFICATIONS CONSIDERED SUSPECT, THE EQUAL PROTECTION CLAUSE REQUIRES, AT A MINIMUM, THAT THE CLASSIFICATION ACTUALLY FURTHER THE PURPOSES OF THE ACT	10
II. THE STATUTE IRRATIONALLY DISCRIMINATES AGAINST APPELLEE ON THE BASIS OF FORMER MENTAL DISORDER AND COMMITMENT	12
A. The Sole Asserted Purpose Of The Statute Is To Prevent Misuse Of Firearms By Persons Who Are Especially Dangerous	12
B. The Statute's Permanent Disqualification Of Formerly Committed People Is Irrational Because The Commitment Decision Is At Most Based On Unreliable Predictions Of Short-Term Dangerousness	13
C. No State Or Other Federal Statute Of Which *Amicus* Is Aware Imposes A Permanent, Unreviewable Disability Solely On The Basis Of A History Of Mental Disorder Or Commitment To A Mental Institution	18
D. As Applied To Appellee And Others With No History Of Arrest Prior To Commitment, The Statute Does Not Prevent Firearms Abuse Because Such People Are No More Likely Than The General Population To Commit Violent Acts	22

TABLE OF CONTENTS—Continued

Page

E. Administrative Convenience Alone Does Not Constitutionally Justify Permanent Disqualification Under An Overbroad Classification Based On False, Stigmatizing Stereotypes 28

CONCLUSION 30

TABLE OF AUTHORITIES

CASES:

Page

Addington v. Texas, 441 U.S. 418 (1979) 8, 14
Barefoot v. Estelle, 463 U.S. 880 (1983) 15, 16
Bell v. Burson, 401 U.S. 535 (1971) 30
Brockett v. Spokane Arcades, Inc., —— U.S. ——, 86 L.Ed.2d 394 (1985) 22
Cantwell v. Connecticut, 310 U.S. 296 (1940) 22
City of Cleburne v. Cleburne Living Center, —— U.S. ——, 87 L.Ed.2d 313 (1985) ..... *passim*
Dixon v. Attorney General of Pennsylvania, 325 F. Supp. 966 (N.D. Pa. 1971) 16
Estelle v. Smith, 451 U.S. 454 (1981) 15
Fasulo v. Arafeh, 378 A.2d 553 (Conn. 1977) 16
Galioto v. Department of Treasury, 602 F. Supp. 682 (D.N.J. 1985) 5
Jimenez v. Weinberger, 417 U.S. 628 (1974) 27, 29
In re K.K.B., 609 P.2d 747 (Sup. Ct. Okla. 1980) 4
Lewis v. United States, 445 U.S. 55 (1980) 12
NAACP v. Button, 371 U.S. 415 (1963) 22
O'Connor v. Donaldson, 422 U.S. 563 (1974) 14
People v. Medina, 705 P.2d 960 (Sup. Ct. Colo. 1985) 4
Plyler v. Doe, 457 U.S. 202 (1982) 11, 12, 13, 27
Reed v. Reed, 404 U.S. 71 (1971) 27
Robinson v. California, 370 U.S. 660 (1962) 13
Rogers v. Commissioner, 390 Mass. 489, 458 N.E.2d 308 (1983) 4
San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) 11
Schweicker v. Wilson, 450 U.S. 221 (1981) 11
Stanley v. Illinois, 405 U.S. 645 (1972) 29
State v. Fields, 390 A.2d 574 (N.J. 1978) 16
United States Dept. of Agriculture v. Murry, 413 U.S. 508 (1973) 30
United States Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973) 28
United States v. Grace, 461 U.S. 171 (1983) 22
Vlandis v. Kline, 412 U.S. 441 (1973) 30

TABLE OF AUTHORITIES—Continued

CONSTITUTION AND STATUTES: Page

U.S. Constitution, Amendment V ..... *passim*

FEDERAL:

18 U.S.C. §§ 922(g) (4) & (h) (4) ..... *passim*
18 U.S.C. § 925 28
18 U.S.C. App. § 1202(a) (3) 4
20 U.S.C. § 1412 8
29 U.S.C. § 794 8
42 U.S.C. §§ 2681-2687 8

STATE:

Ark. Stat. Ann. § 41-3103(b) (Supp. 1983) 18
Cal. Bus. and Prof. Code § 2947 (West 1974 and Supp. 1983) 20
Cal. Civ. Code § 4201 (West 1970 and Supp. 1981) 21
Cal. Welf. Inst. Code § 8100 (West 1984) 18
Colo. Rev. Stat. § 1-2-103(5) (1980) 21
Colo. Rev. Stat. § 12-36-118 (1978 and Supp. 1982) 20
Colo. Rev. Stat. § 12-38-119(1) (Supp. 1980) 20
Conn. Gen. Stat. Ann. § 46b-29 (West 1978 and Supp. 1981) 21
D.C. Code §§ 6-1901 *et seq.* (1981) 4
D.C. Code § 6-2313(6) (1973 & Supp. 1978) 18
D.C. Code § 21-501 (1981) 4
D.C. Code § 21-1501 (1981) 4
D.C. Code Ann. § 30-103 (1981 and Supp. 1982) 21
Del. Code Ann. tit. 11, § 1448 (1983) 18, 19
Del. Code Ann. tit. 13, § 101(b) (2) (1981) 21
Del. Code Ann. tit. 24, § 1741(a) (7) (1981 and Supp. 1982) 20
Ga. Code Ann. § 16-11-129(b) (4) (1980 & Supp. 1981) 18
Ga. Code § 84-916(a) (12) (Supp. 1981) 20
Ill. Stat. Ann. tit. 38 § 83-8(e) (Smith-Hurd Supp. 1984) 18
Iowa Code Ann. §§ 601A.6 & 601A.8 (West 1975 & 1982-1983) 8
Ky. Rev. Stat. Ann. § 402.020(1) (Michie 1972 & Supp. 1980) 21

TABLE OF AUTHORITIES—Continued

Page

Mass. Ann. Laws tit. 207, § 5 (Michie 1981 & Supp. 1981) 21
Mass. Gen. Laws Ann. ch. 140 § 129(B) (b) (Michie Supp. 1985) 18
Me. Rev. Stat. Ann. tit. 25 § 2032(C) (6) (e) 18
Minn. Stat. Ann. §§ 363.03.1-363.03.2 (West Supp. 1982) 8
Minn. Stat. Ann. § 517.03 (West 1969 and Supp. 1981) 21
Mont. Code Ann. § 37-15-321(1) (1981) 20
N.C. Gen. Stat. § 90-41(a) (7) (1981 and Supp. 1981) 20
N.J. Stat. Ann. § 2C:58-3(c) (3) (West Supp. 1985) 18, 19
N.J. Stat. Ann. § 10.5-4.1 (West Supp. 1982-1983) 8
N.J. Stat. Ann. § 37:1-9 (West 1968 & Supp. 1982) 21
Ohio Rev. Code Ann. § 44-1001 (1981) 8
R.I. Gen. Laws tit. 11, ch. 47 § 11-47-6 (1984) 18, 19

MISCELLANEOUS:

AMERICAN PSYCHIATRIC ASSOCIATION, THE HOMELESS MENTALLY ILL (H. Lamb ed. 1984) 7, 8
American Psychiatric Association Task Force Report, Clinical Aspects of the Violent Individual (1974) 15
Annot., 82 A.L.R. 2d 1040 (1962) 21
Ashley, *Outcome of 1,000 Cases Paroled from the Middletown State Homeopathic Hospital,* 8 STATE HOSP. Q. 64 (1922) 25
Baron, *Changing Public Attitudes About the Mentally Ill in the Community,* 32 HOSP. & COMM. PSYCHIAT. 173 (1981) 9
N. BARTEL & S. GUSKIN, A HANDICAP AS A SOCIAL PHENOMENON, PSYCHOLOGY OF EXCEPTIONAL CHILDREN AND YOUTH (W. Cruickshank ed. 1981) 9
E. BEIS, MENTAL HEALTH AND THE LAW (1984) 5, 6, 14

TABLE OF AUTHORITIES—Continued

Page

Blumstein & Graddy, *Prevalence and Recidivism in Index Arrests: A Feedback Model*, 16 L & SOC. REV. 265 (1981-82) 27
F. BOWE, HANDICAPPING AMERICA (1978) 5
S. BRAKEL, J. PARRY & B. WEINER, THE MENTALLY DISABLED AND THE LAW (3d ed. 1986) 7
Brill & Malzberg, *Statistical Report On the Arrest Record of Male Expatients, Age 16 and Over Released From N.Y. State Mental Hospitals During the Period 1946-1948*; MENTAL HOSP. SERVICES SUPP. R. 135 (1954) 24, 25
P. BROWN, THE TRANSFER OF CARE (1985) 6, 7
Burgdorf & Burgdorf, *The Wicked Witch Is Almost Dead: Buck v. Bell and the Sterilization of Handicapped Persons*, 50 TEMPLE L. Q. 997 (1977) 7
Cohen, *Crime Among Mental Patients—A Critical Analysis*, 52 PSYCHIAT. Q. 100 (1980) 22, 24
Cohen & Freeman, *How Dangerous To The Community Are State Hospital Patients?* 9 CONN. STATE MED. J. 697 (1945) 24, 25
Cuming & Cuming, *On the Stigma of Mental Illness*, 1 COMMUNITY MENTAL HEALTH J. 135 (Summer 1965) 9
A. DEUTSCH, THE MENTALLY ILL IN AMERICA: A HISTORY OF THEIR CARE AND TREATMENT FROM COLONIAL TIMES (2d ed. 1949) 5, 6
Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439 (1974) 16
Division of Biometry and Applied Sciences, The National Institute of Mental Health, Unpublished Data (1980) 17, 27
Durbin, Pasewark & Albers, *Criminality and Mental Illness: A Study of Arrest Rates in a Rural State*, 134 AM. J. PSYCHIAT. 80 (1977) 25
B. ENNIS & R. EMERY, THE RIGHTS OF MENTAL PATIENTS (1978) 16

TABLE OF AUTHORITIES—Continued

Page

Farina & Felner, *Employment Interviewer Reactions to Former Mental Patients*, 82 J. ABNORMAL PSYCHOL. 268 (1973) 9, 10
Farina, Felner & Boudreau, *Reactions of Workers to Male and Female Mental Patient Job Applicants*, 41 J. CONSULTING AND CLINICAL PSYCHOL. 363 (1973) 9, 10
B. FLINT, THE CHILD AND THE INSTITUTION: A STUDY OF DEPRIVATION AND RECOVERY (1966) 7
E. GINZBERG & D. BRAY, THE UNEDUCATED (1953) 25
Giovannoni & Gurel, *Socially Disruptive Behavior of Ex-Mental Patients*, 17 ARCH. GEN. PSYCHIAT. 146 (1967) 9
J. GLIEDMAN & W. ROTH, THE UNEXPECTED MINORITY (1980) 10
E. GOFFMAN, STIGMA: NOTES OF THE MANAGEMENT OF SPOILED IDENTITY (1963) 8
Joint Hearings on Examining the Issues Related to the Care and Treatment of the Nation's Institutionalized Mentally Disabled Persons, Before the Subcomm. on the Handicapped of the House Comm. on Labor and Human Resources, and the Subcomm. on Labor, Health and Human Services, Education and Related Agencies of the Senate Comm. on Appropriations, 99th Cong., 1st Sess. (1985) 10
Kanter, *Recent Zoning Cases Uphold Establishment of Group Homes for the Mentally Disabled*, 18 CLEARINGHOUSE REV. 515 (Oct. 1984) 7
N. KITTRIE, THE RIGHT TO BE DIFFERENT (1971) 10
Lamb & Guertzel, *Discharged Mental Patients: Are They Really in the Community?* 24 ARCH. GEN. PSYCHIAT. 29 (1971) 6
R. LUBOVE, THE PROFESSIONAL ALTRUIST: THE EMERGENCE OF SOCIAL WORK AS A CAREER, 1880-1930 (1965) .....

TABLE OF AUTHORITIES—Continued

Page

J. MONAHAN, THE CLINICAL PREDICTION OF VIOLENT BEHAVIOR (1981) 16

J. MONAHAN & H. STEADMAN, *Crime and Mental Disorder: An Epidemiological Approach*, reprinted in 4 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 145 (M. Tonry & N. Morris eds. 1983) 23, 24, 26, 27

Monahan, Ruggiero & Friedlander, *Stone-Roth Model of Civil Commitment and the California Dangerousness Standard*, 39 ARCH. GEN. PSYCHIAT. 1267 (1982) 14, 15

Mor, Sherwood & Gutkin, *Psychiatric History as a Barrier to Residential Care*, 35 HOSP. & COMM. PSYCHIAT. 368 (1984) 10

Morse, *Crazy Behavior, Morals and Science: An Analysis of Mental Health Law*, 51 S. CAL. L. REV. 598 (1978) 16

NATIONAL INSTITUTE OF MENTAL HEALTH, MENTAL HEALTH, UNITED STATES 1985 (1985) 25

Note, *Mental Disability and the Right to Vote*, 88 YALE L.J. 1044 (1979) 21

Note, *Mental Illness: A Suspect Classification?* 83 YALE L.J. 1237 (1984) 11

Page, *Effects of the Mental Illness Label in Attempts to Obtain Accommodation*, 9 CANADIAN J. BEHAV. SCI. 85 (1977) 9

Pollock, *Is the Paroled Patient a Menace to the Community?* 12 PSYCHIAT. Q. 236 (1938) 24

President's Committee On Employment Of The Handicapped, *Disabled Americans: A History*, 27 PERFORMANCE 1 (1976-77) 5, 6

Rabkin, *Public Attitudes toward Mental Illness: A Review of the Literature*, 10 SCHIZO. BULL. 9 (1974) 9, 24

Rappeport & Lassen, *Dangerousness-Arrest Rate Comparisons of Discharged Patients and the General Population*, 121 AM. J. PSYCHIAT. 776 (1965) 25

TABLE OF AUTHORITIES—Continued

Page

Report of the American Psychological Association Task Force on the Role of Psychology in the Criminal Justice System, 33 AM. PSYCHOL. 1099 (1978) 15, 16

Ribner & Steadman, *Recidivism Among Offenders and Ex-Mental Patients: A Comparative Analysis*, 19 CRIMINOL. 411 (1981) 22

Rossi, Jacobs, Monteleone, Olsen, Surber, Winkler & Wommack, *Violent or Fear-Inducing Behavior Associated with Hospital Admission*, 36 HOSP. & COMM. PSYCHIAT. 643 (1985) 15, 17, 26

D. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA (1980) 6

D. ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC (1971) 6

B. SALES, D. POWELL, R. VAN DUIZEND, 1 DISABLED PERSONS AND THE LAW (1982) 20

S. SEGEL & V. AVIRAM, THE MENTALLY ILL IN COMMUNITY-BASED SHELTERED CARE: A STUDY OF COMMUNITY CARE AND SOCIAL ISOLATION (1977) 10

Steadman, *Predicting Dangerousness Among the Mentally Ill*, 6 INTERN. J. L. PSYCHOL. 381 (1983) 15-16

Steadman, Cocozza & Melick, *Explaining the Increased Arrest Rate Among Mental Patients: The Changing Clientele of State Hospitals*, 135 AM. J. PSYCHIAT. 816 (1978) 23, 26

Steadman & Felson, *Self-Reports of Violence*, 22 CRIMINOL. 321 (1984) 22, 24

Steadman, Monahan, Duffee, Hartstone & Robbins, *The Impact of State Mental Hospital Deinstitutionalization on United States Prison Populations 1968-1975*, 75 J. CRIM. L. & CRIMINOLOGY 474 (1984) 25, 26

Steffensmeier & McCobb, *Sex Differences in Urban Arrest Patterns, 1934-79*, 29 SOC. PROBS. 41 (1981) 26

TABLE OF AUTHORITIES—Continued

Page

Tardiff & Koenigsberg, *Assaultive Behavior Among Psychiatric Outpatients*, 142 AM. J. PSYCHOL. 960 (1985) 23

Teplin, *The Criminality of the Mentally Ill: A Dangerous Misconception*, 142 AM. J. PSYCHIAT. 593 (1985) 23, 24, 26

Teplin, *Criminalizing Mental Disorder: The Comparative Arrest Rate Of The Mentally Ill*, 39 AM. PSYCHOL. 794 (1984) 26

The President's Comm'n. on Mental Health, *Report to the President* (1978) 8

Tringo, *The Hierarchy of Preference Toward Disability Groups*, 4 J. SPECIAL EDUCA. 295 (1970) .. 9

U.S. COMMISSION ON CIVIL RIGHTS, ACCOMMODATING THE SPECTRUM OF INDIVIDUAL ABILITIES (September 1983) 5, 6, 7

U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1980) 26

U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1984) 26

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, STEERING COMMITTEE ON THE CHRONICALLY MENTALLY ILL, TOWARD A NATIONAL PLAN FOR THE CHRONICALLY MENTALLY ILL (December 1980) 9

U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES—1984 (1985) 23

R. WETTSTEIN, THE PREDICTION OF VIOLENT BEHAVIOR AND THE DUTY TO PROTECT THIRD PARTIES (1981) 16

J. WILSON & R. HERRNSTEIN, CRIME & HUMAN NATURE (1985) 23, 26

Wolfe, *How the Disabled Fare in the Labor Market*, MONTHLY LABOR REV. 50 (1980) 10

W. WOLFENSBERGER, NORMALIZATION: THE PRINCIPLE OF NORMALIZATION IN HUMAN SERVICES (1972) 8

Zitrin, Hardesty, Burdock & Drossman, *Crime and Violence Among Mental Patients*, 133 AM. J. PSYCHIAT. 142 (1976) 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1904

UNITED STATES DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Appellant,

v.

ANTHONY J. GALIOTO,
Appellee.

On Appeal from the United States District Court for the District of New Jersey

BRIEF OF *AMICUS CURIAE* AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF APPELLEE

INTEREST OF *AMICUS CURIAE*

The American Psychological Association ("APA"), a nonprofit scientific and professional organization founded in 1892, is the major association of psychologists in the United States. The APA has more than 60,000 members and includes the vast majority of psychologists holding doctoral degrees from accredited universities in this country.

One of APA's major functions has been to foster understanding about mental illness, its causes, consequences, and cures, through the promotion of psychological research, the improvement of research methods, and the dissemination of information through meetings, scientific publications and special reports. A substantial number of APA's

members are concerned with the collection of data and development of research pertaining to persons who have been or may become dangerous to themselves or others and the provision of therapy to such persons. The APA wishes to inform the Court about scientific knowledge bearing on the legal issues to be decided in this case.

The APA has participated as *amicus* in many cases in this Court involving mental health issues, including, in the current Term, *Smith v. Sielaff*, No. 85-5487 (admissibility of testimony by defendant's mental health expert in capital cases); *Lockhart v. McCree*, No. 84-1865 (whether "death qualified" juries are "conviction prone"); *Ford v. Wainwright*, No. 85-5542 (constitutionality of applying death penalty to condemned persons who are mentally incompetent); and *Bowers v. Hardwick*, No. 85-140 (constitutionality of outlawing private, consensual sexual conduct between adults).

Appellant and Appellee have both consented to the filing of this *amicus* brief. Their letters of consent are on file with the Clerk of this Court.

SUMMARY OF ARGUMENT

Traditionally, mentally disordered and formerly mentally disordered people have been discriminated against, scorned, and rendered politically powerless. As such, they share many central characteristics with classifications deemed constitutionally suspect. This Court need not decide in this case, however, the still-unresolved issue of the level of scrutiny appropriate to legislative classifications that single out the mentally disordered for special burdens. Application of the careful "rational basis" analysis that, in *City of Cleburne v. Cleburne Living Center*, —— U.S. ——, 87 L. Ed. 2d 313 (1985), invalidated a statute burdening the mentally retarded similarly invalidates the statute here at issue under the Equal Protection Clause. Point I.

Title 18, sections 922(g)(4) and (h)(4) of the United States Code ["the statute"] automatically and permanently disqualifies from shipping, transporting or receiving any firearm in interstate or foreign commerce "any person . . . who has been committed to any mental institution." The statute is anachronistic, based on the stereotype of mentally disordered people as permanently dangerous. No other current state or federal law of which *amicus* is aware permanently and unreviewably imposes legal disabilities based solely on a history of mental disorder or civil commitment. Moreover, the stereotype underlying the statute is false; in fact, the large majority of individuals committed to hospitals who, like Appellee, have no arrest record prior to their commitment are no more likely than the general population to misuse firearms after being discharged.

This is not surprising, because commitment is not designed to identify permanently dangerous people. Contrary to the Appellant's suggestion, commitment does not require a finding of imminent dangerousness to others in every case. In fact, a majority of commitments are based either on a finding that the person is so passive as to be harmful to him- or herself or on highly suspect, short-term predictions of imminent dangerousness to self.

Finally, the alleged "administrative convenience" of permanently disqualifying nonviolent formerly committed people, along with a small minority who may be violent, is not a sufficient justification for using this sweeping, overbroad, and stigmatizing classification. The Act distinguishes between less and more dangerous felons by providing the former with an opportunity to apply for removal of their legal disqualification. There is no rational reason, apart from simple prejudice, to provide this opportunity to presumptively less dangerous criminals but not to identifiably less dangerous individuals who at one time were mentally disordered and committed. Point II.

Amicus respectfully urges this Court to affirm the judgment of the United States District Court for the District of New Jersey.

INTRODUCTION

In *amicus*' view, the central issue in this case is Congress' use of false stereotypes to impose a permanent civil disability on formerly mentally disordered people who once were civilly committed to a mental institution.[1] Appellee in this case admitted himself voluntarily to a psychiatric hospital in 1971. When he expressed the intention to leave, he was committed upon application of his physician. With the hospital's consent, he was discharged less than one month after his admission. Nonetheless, because of his brief stay in a psychiatric hospital years ago, he is permanently prohibited from shipping, transporting or receiving firearms. Therefore, this case exemplifies in the most dramatic way the stigma attached to having been once labeled mentally disordered.

[1] Section 922(g)(4) and (h)(4) prohibit any person adjudicated a "mental defective" and any person "who has been committed to any mental institution" from receiving or transporting firearms in interstate commerce. Interestingly, 18 U.S.C. App. § 1202(a)(3) prohibits from possessing firearms a person adjudicated a "mental incompetent," but not mental defectives or persons with a history of commitment. The terms used by these statutes are not synonymous. Mental incompetents are persons adjudicated by the State, for a variety of reasons, to be incapable, permanently or temporarily, of managing their personal and financial affairs. *See, e.g.*, D.C. Code § 21-1501. Mental defectives are persons, such as mentally retarded people, who suffer from a long-term or permanent impairment to their intellectual functioning. *See, e.g.*, D.C. Code §§ 6-1901 *et seq.* Persons committed to mental institutions, as discussed more fully below, are people who are found to be mentally ill and who otherwise meet the standards of state commitment statutes. *See, e.g.*, 21 D.C. Code 501 *et seq.* Although it may be convenient for Appellant to use the phrase "persons with a history of commitment" to refer to all categories of persons described in §§ 922(g)(4) & (h)(4) and § 1202(a)(3), Brief for Appellant at 13, n. 7, it is highly inaccurate and misleading. The statuses are quite distinct. For example, it is well established that some people committed to mental institutions are nevertheless competent to make treatment decisions or other important personal decisions, and some incompetent people do not meet the gravely disabled or dangerousness standards necessary for commitment to an institution. *See, e.g., Rogers v. Commissioner*, 390 Mass. 489, 458 N.E.2d 308 (1983). *People v. Medina*, 705 P.2d 960 (Sup. Ct. Colo. 1985) (en banc), *In re K.K.B.*, 609 P.2d 747 (Sup. Ct. Okla. 1980). *See* pp. 13-17, *infra*.

Amicus does not dispute the plenary power of Congress to control the sale and possession of firearms. But basic constitutional principles of equal protection are offended when, as in the statute at issue, Congress exercises that power based on irrational prejudice against a traditionally shunned, disdained and legally disadvantaged group of people. The district court in this case struck down the statute at issue on these grounds, finding "no rationale for the statute but an archaic, stigmatizing, unreasoning fear of the mentally ill." *Galioto v. Department of Treasury*, 602 F. Supp. 682, 690 (D.N.J. 1985).

Throughout this Nation's history, people suffering from mental disorder, or labeled as such, have been subjected to derision, unequal treatment under the law, segregation, and indefinite confinement.[2] Since the days of Colonial America, their condition has been variously ascribed to moral defect, disease, dereliction or evil spirits, and they have been treated as undesirables, criminals, or both.[3]

[2] *See*, E. BEIS, MENTAL HEALTH AND THE LAW 3-6 (1984); F. BOWE, HANDICAPPING AMERICA 3-8 (1978). *See generally* A. DEUTSCH, THE MENTALLY ILL IN AMERICA: A HISTORY OF THEIR CARE AND TREATMENT FROM COLONIAL TIMES (2d ed. 1949).

[3] *See* President's Committee on Employment of the Handicapped, *Disabled Americans: A History*, 27 PERFORMANCE 1-2 (1976-77) (hereafter *"Disabled Americans: A History"*); U.S. COMMISSION ON CIVIL RIGHTS, ACCOMMODATING THE SPECTRUM OF INDIVIDUAL ABILITIES 18 (September 1983) (hereafter "ACCOMMODATING THE SPECTRUM").

In the early 19th century, almost all States encouraged or mandated the confinement of the "insane" in jails or almshouses.[4] The result was the total exclusion of mentally disordered people from society. Most of these facilities were merely custodial and many were unsanitary and overcrowded.[5] By the 1850's, these conditions led reformers to regard mentally disabled people as the unfortunate victims of society, not as delinquents, and to crusade for the improvement of institutional facilities.[6] Efforts such as those by Dorothea Dix resulted in the construction of new state-run asylums for the mentally disordered, with the aim of providing a stable, orderly and healthful environment for their mentally disordered residents.[7]

These therapeutic objectives were defeated, however, by inadequate public funding and a growing demand for segregation of deviants to "protect society." Just like the almshouses before them, asylums became custodial warehouses.[8] Responding to the advent of Social Darwinism and its "survival of the fittest" doctrine, state legislatures also acted to eliminate the evil influence supposedly exercised by mentally disordered people by curbing what was believed to be their propensity for sexual excess and the resulting transmission of genetic and social defects to future generations. The "eugenics move-

[4] A. DEUTSCH, *supra* note 2, at 129.

[5] *Disabled Americans: A History*, *supra* note 3, at 20.

[6] ACCOMMODATING THE SPECTRUM, *supra* note 3, at 19; E. BEIS, *supra* note 2, at 5; R. LUBOVE, THE PROFESSIONAL ALTRUIST: THE EMERGENCE OF SOCIAL WORK AS A CAREER, *1880-1930* (1965).

[7] *See* P. BROWN, THE TRANSFER OF CARE 27-29 (1985); D. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA 293-316 (1980); D. ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC xiii (1971).

[8] ACCOMMODATING THE SPECTRUM, *supra* note 3, at 19; P. BROWN, *supra* note 7, at 28.

ment" was born. States restricted the rights of mentally disordered people to marry and authorized their involuntary sterilization, while their extrusion from society continued.[9]

Simultaneously, other repressive state laws categorically disqualified mentally disordered people from exercising their civil rights. For example, many States passed statutes flatly prohibiting mentally disordered persons from voting and permitting adoption of their children without their consent.[10] States also enacted laws preventing mentally disordered people from obtaining licenses to drive or to practice certain professions.[11] By the end of the 1920's, scientists had discredited many of the basic tenets of the eugenics movement. Nevertheless, statutes remained in force that reflected its philosophy that mentally disordered people are a threat to society.

After World War II, the public developed a more humanitarian concern for disabled people, particularly those returning from military service.[12] At the same time, the debilitating effects of rigidly ordered institutional life began to be understood; empirical evidence and clinical studies showed that prolonged stays in institutions warped personalities, reduced cognitive ability and impaired social skills.[13] In response, reformers sought to remove

[9] *See* Burgdorf & Burgdorf, *The Wicked Witch Is Almost Dead: Buck v. Bell and the Sterilization of Handicapped Persons*, 50 TEMPLE L. Q. 997 (1977) (collecting authorities); N. KITTRIE, THE RIGHT TO BE DIFFERENT 70 (1971).

[10] *See, e.g.*, ACCOMMODATING THE SPECTRUM, *supra* note 3; S. BRAKEL, J. PARRY & B. WEINER, THE MENTALLY DISABLED AND THE LAW (3d ed. 1986). *See generally*, Note, *Mental Disability and the Right to Vote*, 88 YALE L.J. 1044 (1979).

[11] S. BRAKEL, J. PARRY & B. WEINER, *supra* note 10.

[12] P. BROWN, *supra* note 7, at 29-32; E. GINZBERG & D. BRAY, THE UNEDUCATED 41-42 (1953).

[13] AMERICAN PSYCHIATRIC ASSOCIATION, THE HOMELESS MENTALLY ILL (H. Lamb ed. 1985); B. FLINT, THE CHILD AND THE

mentally disabled people from institutions and give them the care and services in the community that would allow them to live in society.[14] Congress and many state legislatures have recognized that mentally disordered people are subject to invidious discrimination, passing laws designed to protect them from certain consequences of societal prejudice.[15]

The community mental health and deinstitutionalization movements of the 1960's and 1970's have encountered many obstacles, however, and although most mentally disordered people may no longer be subjected to the egregious mistreatment they suffered earlier in this century, today they suffer as much from abuse, stigmatization, and discrimination.[16] *See Addington v. Texas*, 441 U.S.

INSTITUTION: A STUDY OF DEPRIVATION AND RECOVERY 16 (1966); W. WOLFENSBERGER, NORMALIZATION: THE PRINCIPLE OF NORMALIZATION IN HUMAN SERVICES 122-35 (1972).

[14] *See, e.g.*, The Mental Retardation Facilities and Community Health Centers Construction Act (Community Mental Health Centers Act), 42 U.S.C. §§ 2681-2687 (repealed).

[15] *See, e.g.*, Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Education For All Handicapped Children Act, 20 U.S.C. § 1412. Some States have passed laws or constitutional amendments prohibiting certain types of discrimination against the mentally handicapped, such as discrimination in employment and housing. *See, e.g.*, Ohio Rev. Code Ann. § 44-1001 (1981); Iowa Code Ann. §§ 601A.6 and 601A.8 (West 1975 & Supp. 1982-1983); Minn. Stat. Ann. §§ 363.03.1-363.03.2 (West Supp. 1982); N.J. Stat. Ann. § 10.5-4.1 (West Supp. 1982-1983).

[16] Inadequate funding at both the federal and state level, administrative fragmentation, and lack of knowledge concerning effective community service systems have obstructed realization of objectives embodied in these laws. *See* The President's Comm'n. on Mental Health, *Report to the President*, Vol. 1, pp. 42, 55-57 (1978). *See also* AMERICAN PSYCHIATRIC ASSOCIATION, THE HOMELESS MENTALLY ILL 60-74 (H. Lamb ed. 1984). Most recently, instances of abuse and mistreatment of institutionalized mentally disabled persons were documented in congressional hearings. *See generally* Joint Hearings on Examining the Issues Related to the Care and

418, 429 (1979). As recognized in 1980 by the Department of Health and Human Services, continued stigma attaching to mental illness is well documented, and public ignorance about mental disorder and fear of its victims is prevalent across the country.[17]

Studies conclude that both the fact of mental hospitalization and the labeling of people as mentally ill stigmatize those so hospitalized and labeled with lasting, negative effects on their lives.[18] Mentally disordered people discharged from hospitals or outpatient treatment programs who are ready and able to resume their lives find

---

Treatment of the Nation's Institutionalized Mentally Disabled Persons, Before the Subcomm. on the Handicapped of the House Comm. on Labor and Human Resources, and the Subcomm. on Labor, Health and Human Services, Education and Related Agencies of the Comm. on Appropriations, 99th Cong., 1st Sess. (1985).

[17] U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, STEERING COMMITTEE ON THE CHRONICALLY MENTALLY ILL, TOWARD A NATIONAL PLAN FOR THE CHRONICALLY MENTALLY ILL 2-129 to 2-136 (December 1980).

[18] *See, e.g.*, Rabkin, *Public Attitudes Toward Mental Illness: A Review of the Literature*, 10 SCHIZO. BULL. 9 (1974); Farina & Felner, *Employment Interviewer Reactions to Former Mental Patients*, 82 J. ABNORMAL PSYCHOL. 268 (1973); Farina, Felner & Boudreau, *Reactions of Workers to Male and Female Mental Patient Job Applicants*, 41 J. CONSULTING AND CLINICAL PSYCHOL. 363 (1973); Cuming & Cuming, *On the Stigma of Mental Illness*, 1 COMMUNITY MENTAL HEALTH J. 135 (Summer 1965); *see also* Page, *Effects of the Mental Illness Label in Attempts to Obtain Accommodation*, 9 CANADIAN J. BEHAV. SCI. 85 (1977); Baron, *Changing Public Attitudes About the Mentally Ill in the Community*, 32 HOSP. & COMM. PSYCHIAT. 173 (1981); N. BARTEL & S. GUSKIN, A HANDICAP AS A SOCIAL PHENOMENON, PSYCHOLOGY OF EXCEPTIONAL CHILDREN AND YOUTH 94 (W. Cruickshank ed. 1981). *See also* J. GLIEDMAN & W. ROTH, THE UNEXPECTED MINORITY 23-24, 30 (1980). One study, which ranked stigma attaching to certain types of disabilities, ranging from the least to the most stigmatizing, ranked mental illness the most stigmatizing of all disabilities, even above criminal record. Tringo, *The Hierarchy of Preference Toward Disability Groups*, 4 J. SPECIAL EDUC. 295 (1970).

themselves feared, pitied, and patronized. In large part due to this stigma,[19] such ex-patients are often crowded into "psychiatric ghettos," [20] socially isolated,[21] and unable to secure suitable employment.[22]

The disability imposed by the statute does more than reflect this stigmatization of the formerly mentally disabled. It also perpetuates the false stereotype upon which it is based, giving it undeserved credibility in other contexts.

ARGUMENT

I. BECAUSE PRESENTLY AND FORMERLY MENTALLY DISORDERED PEOPLE SHARE MANY CHARACTERISTICS WITH CLASSIFICATIONS CONSIDERED SUSPECT, THE EQUAL PROTECTION CLAUSE REQUIRES, AT A MINIMUM, THAT THE CLASSIFICATION ACTUALLY FURTHER THE PURPOSES OF THE ACT.

This Court has not decided whether governmental discrimination based on mental *disorder* or former mental disorder is "suspect" or "semi-suspect" and therefore

[19] The stigmatized person is one who "possesses a trait which makes him different from normals [and] which separates him from the rest of society." E. GOFFMAN, STIGMA: NOTES OF THE MANAGEMENT OF SPOILED IDENTITY 5 (1963).

[20] *See, e.g.*, Lamb & Guertzel, *Discharged Mental Patients: Are They Really in the Community?* 24 ARCH. GEN. PSYCHIAT. 29 (1971); Mor, Sherwood & Gutkin, *Psychiatric History as a Barrier to Residential Care*, 35 HOSP. & COMM. PSYCHIAT. 368 (1984).

[21] S. SEGEL & V. AVIRAM, THE MENTALLY ILL IN COMMUNITY-BASED SHELTERED CARE: A STUDY OF COMMUNITY CARE AND SOCIAL ISOLATION (1977). *See also* Kanter, *Recent Zoning Cases Uphold Establishment of Group Homes for the Mentally Disabled*, 18 CLEARINGHOUSE REV. 515 (Oct. 1984) (efforts to establish housing alternatives for mentally disabled people are often thwarted by local zoning laws or restrictive covenants).

[22] Farina & Felner, *supra* note 18; Farina, Felner & Boudreau, *supra* note 18; Wolfe, *How the Disabled Fare in the Labor Market*, MONTHLY LABOR REV. 50-51 (1980).

subject to heightened judicial scrutiny.[23] *See Schweicker v. Wilson*, 450 U.S. 221, 229 n.13 (1981). In *City of Cleburne v. Cleburne Living Center*, —— U.S. ——, 87 L. Ed. 2d 313, 324 (1985), this Court held that mental *retardation* does not constitute a suspect classification that, when used by government to deny benefits or impose burdens on citizens, must be submitted to strict judicial scrutiny. However, the *Cleburne* Court carefully analyzed the asserted purposes and effects of zoning restrictions that discriminated against mentally retarded people, and found that the restrictions were based on "irrational prejudice against the mentally retarded," and therefore were unconstitutional. *Id.* at 327.

Similarly, the Court need not hold that the mentally disordered are a suspect class to decide this case. Yet it is surely aware, in light of the history of isolation, prejudice, and stigma reviewed above, that citizens affected by this statute constitute a stigmatized and traditionally powerless minority sharing many of the characteristics the Court has indicated require a statute to satisfy a higher standard of legitimacy.[24] *Plyler v. Doe*, 457 U.S. 202, 216-218, & n.14 (1982); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). "Mental disorder" is a term used to denote a number of involuntarily acquired mental conditions that have long been misunderstood, greatly feared, and often regarded—inaccurately—as permanent. Although in many cases mental disorder does abate, it is an involuntarily acquired status over which the individual has little or no control. Furthermore, as discussed earlier, like other

[23] As used in this brief, the term "mental disorder" includes persons sometimes referred to as mentally ill, insane, lunatics, deranged, or crazy. It does *not* include people with a low level of intellectual functioning sometimes referred to as mentally retarded, idiots, imbeciles, incompetents, and mental defectives.

[24] *See* Note, *Mental Illness: A Suspect Classification?* 83 YALE L. J. 1237 (1974).

groups who have been found entitled to heightened scrutiny, people afflicted with mental disorder are an insular minority that has been subject to a long, continuing history of prejudice and stigma. After hospitalization or treatment in the community, many formerly mentally disordered people find they are isolated from others in their pursuit of employment, education, living arrangements, and social outlets.

Although *amicus* believes that heightened scrutiny of the classification at issue would be appropriate, it is unnecessary for this Court to reach that issue in this case. Like mentally retarded people, the class harmed by the statute has been subjected throughout our history to a "tradition of disfavor." *See City of Cleburne v. Cleburne Living Center*, 87 L. Ed. 2d at 328-29 (Stevens, J., concurring). As in *City of Cleburne* and as demonstrated in Point II, *infra*, careful analysis under the rational basis test reveals that the statute's denial to Appellee of rights afforded to others "rest[s] on an irrational prejudice" against persons formerly committed to mental institutions. 87 L. Ed. 2d at 327 (majority opinion). *See Plyler v. Doe*, 457 U.S. at 223. As applied to Appellee and others similarly situated, the statute is not a rational way to achieve the statute's legitimate purpose.

II. THE STATUTE IRRATIONALLY DISCRIMINATES AGAINST APPELLEE ON THE BASIS OF FORMER MENTAL DISORDER AND COMMITMENT.

A. The Sole Asserted Purpose Of The Statute Is To Prevent Misuse Of Firearms By Persons Who Are Especially Dangerous.

The Appellant seeks to justify the statute's permanent disqualification of people who have formerly been committed to a mental institution solely on the basis that the disqualification keeps firearms away from people who are particularly dangerous. Brief of Appellant at 7; *see, e.g., Lewis v. United States*, 445 U.S. 55, 64 (1980).

Other purposes, such as punishment, might be advanced as justifying *other* disqualifications contained in the Act.[25] But formerly committed people acquire involuntarily the status resulting in their disqualification; that status is in no respect blameworthy, illegal, or immoral. Congress therefore cannot be presumed to have intended to punish formerly mentally disordered people. *Cf. Plyler v. Doe*, 457 U.S. at 240 (Powell, J., concurring); *Robinson v. California*, 370 U.S. 660 (1962). Accordingly, the statute's prohibition may be justified—if at all—only as a preventative measure.

B. The Statute's Permanent Disqualification Of Formerly Committed People Is Irrational Because The Commitment Decision Is At Most Based On Unreliable Predictions Of Short-Term Dangerousness.

One of the most persistent stereotypes of mentally disordered people is that they are dangerous persons against whom society must defend itself. As demonstrated below, with respect to the large identifiable majority of those formerly committed to institutions to which Appellee belongs, this stereotype is simply wrong; this identifiable majority is no more likely to commit violent acts than is the population-at-large. And the minority that can be identified as more likely to act violently following discharge is nevertheless no more likely to be violent than are demographically similar people who have *not* been committed. This lack of correlation between commitment and violence results, in part, from the fact that the commitment process is not designed to identify a

---

[25] The groups Congress selected included juveniles, persons under indictment, fugitives from justice, substance abusers, persons dishonorably discharged from the military, persons who have renounced citizenship, certain felons, mental incompetents, mental defectives, and people who have been committed to mental institutions. 18 U.S.C. §§ 922(g) & (h) § 1202(a). Many of the classifications not here at issue are composed of people who have acquired their status by voluntarily engaging in acts Congress might have considered illegal, immoral, or otherwise blameworthy.

group of people found to have a permanent proclivity for dangerous behavior.

1. *Many commitments are based not on dangerousness but on passivity and neglect of a person's own physical needs.* A great many commitments are not based on findings of dangerousness at all.[26] Notwithstanding Appellant's brief to the contrary, this Court has never determined whether the Constitution requires a finding of dangerousness before a State may commit a mentally disordered person.[27] More than two-thirds of the States authorize commitment of a person who is gravely disabled without a finding that the person poses a risk of immediate danger.[28] Gravely disabled people are those whose well-being is threatened by their passivity and

[26] Monahan, Ruggiero & Friedlander, *Stone-Roth Model of Civil Commitment and the California Dangerousness Standard*, 39 ARCH. GEN. PSYCHIAT. 1267, 1268-1271 (1982). As discussed in note 1, *supra*, commitment should not be confused with a determination of incompetence, which in most States is based on a finding that a person is incapable of managing his or her personal and/or financial affairs.

[27] Brief for Apellant at 9, 19. In *O'Connor v. Donaldson*, 422 U.S. 563 (1974), the Court held only that a nondangerous person could not be confined without treatment if he or she could survive in the community with the assistance of family or friends. The Court stated "[s]pecifically, there is no reason now to decide . . . whether the State may compulsorily confine a nondangerous, mentally ill individual for the purpose of treatment." 422 U.S. at 573. In *Addington v. Texas*, 441 U.S. 418, 431 (1978), the Court held only that the varying substantive standards for involuntary commitment established by the State must be proved by clear and convincing evidence and not by a mere preponderance of the evidence. The Court noted that the Appellant there had challenged the constitutionality of the Texas standards of commitment in the Texas courts, but that "no challenge to the constitutionality of any Texas statute was presented" in this Court. *Id.* at 422.

[28] *See* Appendix A to this brief. *See also* E. BEIS, *supra* note 2, at 297-322.

neglect of their own personal needs (food, shelter, and clothing), hygiene, and safety.

Although the number varies from institution to institution, up to 30 percent of all commitments are based on a finding that the person is gravely disabled, and 55-63 percent of all commitments are not associated with dangerousness to others at all.[29] Because of their passivity, people institutionalized by such commitments are very unlikely to use guns aggressively against themselves or others even during a period of mental incapacity.

2. *Commitments premised on dangerousness are usually based on unreliable predictions of future behavior.* Commitments that are based on a determination of dangerousness to others need not be based on proof of past dangerous acts.[30] Instead, they are usually based on *predictions* of dangerousness made by mental health professionals—predictions that the Appellant in this case, the Court, the American Psychiatric Association, and a Task Force organized by *amicus* APA agree are highly unreliable.[31] In fact, such predictions are believed to be right *at best* only one-third of the time, and greatly to

[29] *See, e.g.*, Monahan, Ruggiero & Friedlander, *supra* note 26, at 1267-1271.

[30] Rossi, Jacobs, Monteleone, Olsen, Surber, Winkler & Wommack, *Violent or Fear-Inducing Behavior Associated with Hospital Admission*, 36 HOSP. & COMM. PSYCHIAT. 643, 645-46 (1985) [hereafter Rossi, Jacobs, *et al.*].

[31] *Estelle v. Smith*, 451 U.S. 454, 473 (1981); *Barefoot v. Estelle*, 463 U.S. 880, 889, n.7 (1983); *id.* at 921, n.2 (Blackmun, J., dissenting); Brief of Appellant 11-12; American Psychiatric Association Task Force Report, Clinical Aspects of the Violent Individual 28 (1974) (90 per cent error rate "unfortunately . . . is the state of the art"); *Report of the American Psychological Association Task Force on the Role of Psychology in the Criminal Justice System*, 33 AM. PSYCHOL. 1099 (1978) [hereafter "APA Report"]. *See generally,*

over-predict dangerousness.[32] Given the low accuracy level of such predictions of dangerousness, we can safely assume, and the empirical data confirm, that the overwhelming majority of committed patients were not dangerous at the time they are committed.

Further, commitment to a mental institution is based on predictions of dangerousness in the near future. Experts agree that predictions become less reliable the farther into the future they are projected. *See Barefoot v. Estelle*, 463 U.S. at 920 (Blackmun, J., dissenting) (collecting authorities).[33] The laws of almost every State, if not the Constitution, require that involuntarily committed mental patients be periodically re-evaluated to determine whether they continue to satisfy the criteria for commitment.[34] An original determination of dangerousness is

---

Steadman, *Predicting Dangerousness Among the Mentally Ill*, 6 INTERN. J. L. PSYCHOL. 381-390 (1983).

[32] *Barefoot v. Estelle*, 463 U.S. at 920, 922 (Blackmun, J., dissenting); J. MONAHAN, THE CLINICAL PREDICTION OF VIOLENT BEHAVIOR, 21-39, 47-49, 86 (1981); Brief of the American Psychiatric Association *Amicus Curiae*, *Barefoot v. Estelle*, No. 82-6080, 9, 13 (U.S. 1983); APA Report, *supra* note 31, at 1110; Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439, 447-50 (1974); B. ENNIS & R. EMERY, THE RIGHTS OF MENTAL PATIENTS 20 (1978). *See generally* Morse, *Crazy Behavior, Morals and Science: An Analysis of Mental Health Law*, 51 S. CAL. L. REV. 598-600 (1978). R. WETTSTEIN, THE PREDICTION OF VIOLENT BEHAVIOR AND THE DUTY TO PROTECT THIRD PARTIES (1981).

[33] *See, e.g.*, J. MONAHAN, *supra* note 32, at 6-7, 47-49.

[34] *See* Appendix B to this Brief. *See, e.g., Dixon v. Attorney General of Pennsylvania*, 325 F. Supp. 966 (N.D. Pa. 1971) (due process clause requires that no commitment order may exceed six months); *Fasulo v. Arafeh*, 378 A.2d 553 (Conn. 1977) (automatic judicial review required under Connecticut Constitution's due process clause); *State v. Fields*, 390 A.2d 574 (N.J. 1978) (automatic judicial review of civil commitment orders required under equal protection clause).

not considered sufficient to support long-term hospitalization. In fact, long-term commitment is the exception rather than the rule. The median length of stay for a person civilly committed to a mental hospital in 1980 was no longer than 25 days.[35]

3. *People who, like Appellee, have been released after commitment have been specifically determined not likely to be dangerous.* The unreasonableness of a permanent disability based on commitment is compounded by the fact that people committed to mental hospitals on the basis of dangerousness are released only upon a specific finding that they are *not* dangerous to themselves or to others. The effect of the statute is thus to credit and elevate to a status of permanence an initial finding of temporary dangerousness—when dangerousness was in fact the basis for commitment—while ignoring a later finding that this temporary condition no longer prevails. It is irrational to dismiss the later prediction as unreliable, as the Appellant does, while defending the statute on the basis of the earlier prediction. It is unreasonable to base a long-term, indeed permanent, civil disability on a commitment decision that may or may not be based on a finding of short-term dangerousness and then to disregard a subsequent finding of nondangerousness.[36]

---

[35] Division of Biometry and Applied Sciences, The National Institute of Mental Health, Unpublished Data (1980) [available from The Survey and Reports Branch] [hereafter NIMH, Unpublished Data].

[36] The significance that rationally can be attached to the fact of commitment is further minimized by the lack of a practical distinction in many cases between commitment and voluntary admission. Many people admitted to mental hospitals, particularly those admitted repeatedly and familiar with the system, prefer to "volunteer themselves in" when they are threatened with commitment. This enables them to sign themselves out when they are ready to leave. Yet, by and large such individuals suffer from the same disabilities and present the same risks as people who refuse to become voluntary patients, and consequently are civilly committed. *See generally*, Rossi, Jacobs, *et al.*, *supra* note 30.

C. No State Or Other Federal Statute Of Which *Amicus* Is Aware Imposes A Permanent, Unreviewable Disability Solely On The Basis Of A History Of Mental Disorder Or Commitment To A Mental Institution.

Although all States deny some civil rights to mentally disordered people, they deny such rights only to people whose mental functioning and exercise of those rights are *currently* impaired by their disorder. *Amicus* is aware of no State that, in granting licenses to drive, marry, practice a profession, possess firearms or for any other purpose, uses a history of commitment to a mental institution as a criterion for permanent, unreviewable disqualification.

Thirty-one States and the District of Columbia currently restrict the sale of firearms to, or possession of firearms by, people with mental disabilities.[37] But *not one* makes a history of hospitalization sufficient for the automatic, permanent denial of a license. Most States deny licenses only upon evidence of current mental illness or evidence that the applicant is a patient in a mental hospital at the time of the sale or the application for the license.[38] Only eight States even inquire whether the applicant has previously been hospitalized.[39] All but two of these will nonetheless grant a license to someone who has been hospitalized upon a showing that the person has

[37] For identification and a compilation of the relevant statutes in these States, see Appendix B of Brief *Amicus Curiae* of The Coalition for the Fundamental Rights and Equality of Ex-Patients.

[38] *E.g.* Cal. Welf. Inst. Code § 8100 (West 1984) (possession prohibited for a person who is currently a patient in a mental hospital); Ark. Stat. Ann. § 41-3103(b) (Supp. 1983) (possession prohibited for person adjudicated mentally defective).

[39] *See* Del. Code Ann. tit. 11 § 1448 (1983); D.C. Code § 6-2313(6) (1973 & Supp. 1978); Ga. Code Ann. § 16-11-129(b)(4) (1980 & Supp. 1981); Ill. Stat. Ann. tit. 38 § 83-8(e) (Smith-Hurd Supp. 1984); Me. Rev. Stat. Ann. tit. 25 § 2032(C)(6)(e); Mass. Gen. Laws Ann. ch. 140 § 129(B)(b) (Michie Supp. 1985); N.J. Stat. Ann. § 2c:58-3(c)(3); R.I. Gen. Laws § 11-47-6 (1984).

recovered,[40] that the disability will not affect firearm possession,[41] or that the circumstances surrounding the hospitalization are not sufficient to deny the license.[42] The remaining two States do not impose an automatic, permanent disqualification like that imposed by the statute.[43]

The same pattern pertains at the state level in another area equally important to public safety, licensing to drive a motor vehicle. In granting licenses to drive, 46 States and the District of Columbia[44] have enacted legislation that expressly disqualifies people who are mentally disabled and unable to drive,[45] adjudicated disabled and not restored to health,[46] currently institutionalized,[47] or certi-

[40] Del. Code Ann. tit. 11 § 1448 (1983); D.C. Code tit. 6 § 6-2313(6) (1973 & Supp. 1978); N.J. Stat. Ann. § 2C:58-3(c)(3); R.I. Gen. Laws tit. 11, ch. 47 § 11-47-6 (1984).

[41] Mass. Gen. Laws Ann. ch. 140 § 129(B)(b).

[42] Ga. Code Ann. § 16-11-129(b)(4).

[43] Maine's application for a firearms permit asks if the person has ever been committed to a mental institution but does not require that the application be denied if the answer is in the affirmative. *See* Me. Rev. Stat. Ann. tit. 25 § 2032(C)(6)(e). Illinois prohibits issuance of a firearm owners's identification card to people who have been patients within the last five years. Ill. Stat. Ann. tit. 38, § 83-8(c).

[44] *See* Appendix C. *See also* S. BRAKEL, J. PARRY & B. WEINER, *supra* note 10, at 443-44, Table 8.3.

[45] *See* Appendix C (citing statutes of Alabama, Alaska, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington and Wyoming).

[46] *See* Appendix C (citing statutes of Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming).

[47] *E.g.*, statutes of Nebraska, New York and Oregon, cited in Appendix C.

fied by an institution's superintendent as unable to drive.[48] Each statute refers only to the individual's *current* mental state. Not one prohibits a person from driving because of a mere *history* of mental disorder or past commitment to a mental institution. The American Bar Association's Commission on the Mentally Disabled has proposed that the granting of driver's licenses should be based solely on a functional ability to drive, and that such determinations should be made individually according to established procedures and should provide each person a meaningful opportunity to challenge adverse determinations in administrative hearings.[49]

Similarly, every State limits occupational licensing of mentally disabled persons, but only while the affected professionals are having mental problems, and even then only if their mental condition renders practice of their profession unsafe.[50] Most States prohibit certain classes of mentally disabled persons from exercising their right to vote,[51] but, again, none disenfranchises voters solely on

[48] *E.g.*, statutes of Wisconsin, cited in Appendix A.

[49] B. SALES, D. POWELL, R. VAN DUIZEND, 1 DISABLED PERSONS AND THE LAW 132-42 (1982).

[50] Many state laws permit denial, suspension or revocation of a license on the grounds of mental impairment at the discretion of a professional board. *E.g.*, Mont. Code Ann. § 37-15-321(1) (1981). Some States, however, provide for mandatory suspension of licenses of mentally disabled health care professionals, but *only* during their period of incapacity. *E.g., Ga. Code* § 84-916(a)(12) (Supp. 1981); Colo. Rev. Stat. § 12-38-119(1) (Supp. 1980). Others place members of certain professions on probation during a period of mental instability. *E.g.*, Cal. Bus. and Prof. Code § 2947 (West 1974 and Supp. 1983) (podiatrists); Colo. Rev. Stat. § 12-36-118 (1978 and Supp. 1982) (physicians); Del. Code Ann. tit. 24, § 1741(a)(7) (1981 and Supp. 1982) (medical doctors or osteopaths); N.C. Gen. Stat. § 90-41(a)(7) (1981 and Supp. 1981) (dentists).

[51] Twenty-four states deny voting rights to "idiots," "insane persons," "mentally incompetent persons," or those of "unsound mind." (*See* Appendix D-1. Sixteen states and the District of Columbia disqualify only people who are formally adjudicated incompetent or

the basis of a *history* of disorder or commitment.[52] The law has long required sufficient mental capacity to give consent as a necessary condition for a valid marriage, and many States prohibit people suffering from a current mental disability from marrying.[53] No State, however, prohibits a person from marrying based merely on a history of mental illness or institutionalization.

At the federal level, *amicus* is aware of no law, other than this Act, that imposes an automatic, permanent disability on people solely on the basis of commitment to a mental institution. The statute is out of step with state

placed under guardianship and two states, Maryland and Missouri, do not allow institutionalized persons to vote (see Appendix D-2).

[52] *See* Note, *Mental Disability and the Right to Vote*, 88 YALE L. J. 1644 (1979). Colorado, for example, specifically provides that "[n]o person confined in a state institution for the mentally ill shall lose his right to vote because of such confinement." Colo. Rev. Stat., 1-2-103(5) (1980). In fact, several States have recently decided that there is no necessary relationship between mental disability and rational exercise of the right to vote and therefore do not restrict in any way the voting rights of mentally disordered people. These States include Colorado, Illinois, Indiana, Kansas, Michigan, New Hampshire, North Carolina, Pennsylvania and Tennessee.

[53] *See*, Annot., 82 A.L.R. 2d 1040 (1962) and Later Case Service (1979 and Supp. 1982). They do so by disqualifying persons loosely and archaically termed "idiots," "lunatics," and "imbeciles" from entering a valid marriage. *E.g.*, Cal. Civ. Code § 4201 (West 1970 and Supp. 1981); D.C. Code Ann. § 30-103 (1981 and Supp. 1982). A number of States, however, have recently improved their statutes by using more definite and modern terms and now prohibit marriages only of persons "adjudged incompetent," *e.g.*, N.J. Stat. Ann. § 37:1-9 (1968 and Supp. 1982); Ky. Rev. Stat. Ann. § 402.020(1) (Michie 1972 and Supp. 1980), or "under guardianship," *e.g.*, Conn. Gen. Stat. Ann. § 46b-29 (West 1978 and Supp. 1981) (written consent of guardian will permit marriage to go forward); Minn. Stat. Ann. § 517.03 (West 1969 and Supp. 1981) (written consent of commissioner of public welfare will permit marriage to go forward), or currently institutionalized, *e.g.*, Del. Code Ann. tit. 13, § 101(b)(2) (1981); Mass. Ann. Laws tit. 207, § 5 (Michie 1981 and Supp. 1981).

and other federal legislation. It is out of step for a reason: It is based solely on irrational prejudice against mentally disabled people.

D. As Applied To Appellee And Others With No History Of Arrest Prior To Commitment, The Statute Does Not Prevent Firearms Abuse Because Such People Are No More Likely Than The General Population To Commit Violent Acts.

In *City of Cleburne*, the Court ruled unconstitutional a municipal zoning ordinance requiring group homes for the mentally retarded to obtain a special use permit, but it did so only in the circumstances of that case. 87 L. Ed. 2d 325.[54] Similarly, because, as demonstrated below, Appellee is a member of an identifiable majority of persons legally disabled by the statute as to whom the statute serves no rational purpose, the Court should affirm the decision of the district court and rule that the statute is unconstitutional as to Appellee and others similarly circumstanced.

Studies show that the best predictor of arrest for violent crimes is prior history of arrests, whether the population measured is the general public, prisoners, or discharged mental patients.[55] Thus, studies of discharged

[54] This Court has recently held that "a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it." *Brockett v. Spokane Arcades, Inc.*, —— U.S. ——, 86 L.Ed.2d 394, 405 (1985). *See United States v. Grace*, 461 U.S. 171 (1983) (law prohibiting demonstrations on Supreme Court grounds invalidated only as applied to picketing on public sidewalks); *NAACP v. Button*, 371 U.S. 415 (1963) (State's rules against solicitation by attorneys invalidated only as applied to activities of the NAACP in that case); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (state breach of the peace ordinance invalidated only as applied to prevent peaceful distribution of literature).

[55] Cohen, *Crime Among Mental Patients—A Critical Analysis*, 52 PSYCHIAT. Q. 100, 104-105 (1980); Ribner & Steadman, *Recidivism Among Offenders and Ex-Mental Patients: A Comparative Analysis*, 19 CRIMINOL. 411, 418 (1981). *See* Steadman & Felson, *Self-Reports of Violence*, 22 CRIMINOL. 321, 329-333 (1984); J. MONAHAN & H. STEADMAN, *Crime and Mental Disorder: An Epidemiological Approach*, reprinted in 4 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 145-188 (M. Tonry & N. Morris eds. 1983); Steadman, Cocozza & Melick, *Explaining the Increased Arrest Rate Among Mental Patients: The Changing Clientele of State Hospitals*, 135 AM. PSYCHIAT. J. 816, 818 (1978). The FBI reports nationwide arrests for "index crimes" in general (murder, manslaughter, forcible rape, robbery, aggravated assault, larceny-theft, motor vehicle theft, and arson) and for "violent index crimes" in particular (murder, forcible rape, robbery, and aggravated assault). U.S. DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES—1984 1, 41 (Table 1, n.4), 172-173 (1985) [hereafter U.S. DEPARTMENT OF JUSTICE]. The research discussed in this brief which used arrest data as a measure of dangerousness relies almost entirely on data of arrest for violent index crimes reported by the FBI and regards such data as an indicator of the incidence of actual criminal behavior in the United States. *See generally* J. WILSON & R. HERRNSTEIN, CRIME & HUMAN NATURE ch. 3-7 (1985); Tardiff & Koenigsberg, *Assaultive Behavior Among Psychiatric Outpatients*, 142 AM. J. PSYCHOL. 960, 962 (1985). Although such data cannot capture all true criminal behavior, *amicus* believes they are the best readily available data that can be used as a basis for assessing the proclivity of a group to engage in violent or threatening behavior. J. WILSON & R. HERRNSTEIN, *supra*, at 26-40; J. MONAHAN & H. STEADMAN, *supra*, at 150; Teplin, *The Criminality of the Mentally Ill: A Dangerous Misconception*, 142 AM. J. PSYCHIAT. 593, 594 (1985) [hereafter Teplin 1985].

[56] Steadman, Cocozza & Melick, *supra* note 55, Table 2 at 818 (19 month follow-up study of state-wide sample of patients discharged from New York State psychiatric facilities). *See also* J. MONAHAN & H. STEADMAN, *supra* note 55, at 157-58.

[57] The overriding importance of prior arrest as a predictor becomes clear when the 1975 annual post-release arrest rate for the

mental patients show that people who were offenders before they entered a mental hospital tended to continue to offend after they were discharged. But patients who, like Appellee, had no arrest record before hospitalization were extremely unlikely to be arrested after discharge.[56] Consistent with this expectation, nothing in the record suggests that, in more than a decade since his discharge, Appellee has ever been arrested or acted violently.[57]

Research based on samples of men and women in the entire New York State mental health system demonstrates that 75 percent of persons released from mental hospitals entered without a prior arrest record. That large majority was found *less likely* to commit violent crimes after release than the general population.[58] Studies of other mental hospital populations report the same phenomenon.[59] The identifiable majority—of which Appellee is a member—of the disqualified class therefore appears no more likely to misuse firearms than the general public.

Mental disorder and commitment are extremely poor predictors of future violence. Before 1965, the entire group of persons discharged from mental institutions had a lower annual arrest rate for violent crime than the

group of 98.50/1,000 is broken down. Those with no prior arrests had a rate of 22.06/1000; with one prior arrest, 138.00/1000; with multiple prior arrests, 413.50/1000. *See* J. MONAHAN & H. STEADMAN, *supra* note 55, at Table 3.

[58] *Id.* The annual arrest rate for all felonies for the 75 per cent of the New York patients released in 1975 who had no police records before admission (22.06/1,000) was actually lower than that of the general New York State population (32.51/1,000). Their annual arrest rate for violent crimes (murder, manslaughter, and assault), 2.2/1000, is also lower than the general population's rate of 3.6/1000. Thus, for arrests for both violent and nonviolent crimes, non-arrested discharged persons' rate is only about two-thirds that of the general population. Patients with one prior arrest had a subsequent annual arrest rate that was about the same as that for the general population, and those with multiple prior arrests had a rate about twenty times as great. J. MONAHAN & H. STEADMAN, *supra* note 55, at 158.

[59] *See, e.g.*, Cohen, *supra* note 55, at 104; Cohen & Freeman, *How Dangerous To The Community Are State Hospital Patients?* 9 CONN. STATE MED. J. 697 (1945); Brill & Malzberg, *Statistical Report On the Arrest Record of Male Expatients, Age 16 and Over Released From N.Y. State Mental Hospitals During the Period 1946-1948*, MENTAL HOSP. SERVICES SUPP. R. 135 (1954); Steadman & Felson, *supra* note 55, at 321-323; Teplin 1985, *supra* note 55, at at 593-94, 596-97; Rabkin, *supra* note 18, at 1, 12-27; *Pollock, Is the Paroled Patient a Menace to the Community?* 12 PSYCHIAT. Q. 236 (1938).

general population.[60] Since then, the post-release arrest rate for the group as a whole has increased, exceeding the rate for the population-at-large.[61] This increase in post-release arrest rate coincides with an increase in the committed population of individuals who have demographic characteristics that are associated with higher rates of violence regardless of their mental status or whether they have been committed, i.e., young males with prior arrest records.[62] Controlling for these demographic characteris-

[60] Ashley, *Outcome of 1,000 Cases Paroled from the Middletown State Homeopathic Hospital*, 8 STATE HOSP. Q. 64-70 (1922); Pollock, *supra* note 59, at 236-244; Cohen & Freeman, *supra* note 59, at 697-700; Brill & Malzberg, *supra* note 59; Rappeport & Lassen, *Dangerousness-Arrest Rate Comparisons of Discharged Patients and the General Population*, 121 AM. J. PSYCHIAT. 776-783 (1965).

[61] *See* Giovannoni & Gurel, *Socially Disruptive Behavior of Ex-Mental Patients*, 17 ARCH. GEN. PSYCHIAT. 146-153 (1967), Zitrin, Hardesty, Burdock & Drossman, *Crime and Violence Among Mental Patients*, 133 AM. J. PSYCHIAT. 142, 142-44 (1976); Durbin, Pasewark & Albers, *Criminality and Mental Illness: A Study of Arrest Rates in a Rural State*, 134 AM. J. PSYCHIAT. 80-83 (1977).

Almost all studies of the connection between admission or commitment to a mental hospital and subsequent violence are based on the populations of state and county hospitals. Psychiatric patients in private and general hospitals have not been studied. Available statistical information indicates that these populations are older, more female, and have substantially shorter lengths of stay than those of state and county institutions, and therefore probably have substantially lower subsequent arrest rates. *See* NIMH, MENTAL HEALTH, UNITED STATES *1985* 50-53 (1985).

Studies that deal with all mental hospital admissions consider a larger population than the "committed" population. Nevertheless, conclusions about the committed population still may validly be drawn from them. First, involuntary commitments now comprise 60 per cent of all admissions. NIMH, Unpublished Data, *supra* note 35. Second, as discussed *supra* note 36, the distinction between "voluntary" admissions and commitment is often purely a matter of form.

[62] Steadman, Monahan, Duffee, Hartstone & Robbins, *The Impact of State Mental Hospital Deinstitutionalization on United States*

tics, discharged people still have subsequent arrest rates no higher than the general population; that is, the committed group would be no more violent than a randomly selected, comparably young, male, and previously arrested group that had never been committed.[63] As noted, dis-

Prison Populations 1968-1975, 75 J. CRIM. L. & CRIMINOLOGY 474 (1984); J. MONAHAN & H. STEADMAN, *supra* note 55, at 155-60.

This increase necessarily raises the arrest rate for the committed population as a whole. National statistics show that 50 percent of the people arrested for violent crime are under the age of 25 and 80 percent are under the age of 35, U.S. DEPARTMENT OF JUSTICE, *supra* note 55, at 172-173; yet only 39 percent of the general population is under the age of 25 and 56 percent under the age of 35. U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1980); U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1984). The arrest rate for violent crime for persons 15 to 19 years old was three times the rate for the general population and twice as high as the rate for people aged 25 to 29, J. WILSON & R. HERRNSTEIN, *supra* note 55, at 128-129. Ninety percent of those arrested for violent crimes are men, U.S. DEPARTMENT OF JUSTICE, *supra* note 55, at 179, while they comprise only about half of the general population. J. WILSON & R. HERRNSTEIN, *supra* note 55, at 108. Women accounted for only 7.85 per cent of all arrests for weapons violations. Steffensmeier & McCobb, *Sex Differences in Urban Arrest Patterns, 1934-79*, 29 SOC. PROBS. 41 (1981).

[63] *See, e.g.*, J. MONAHAN & H. STEADMAN, *supra* note 55, at 181-82; Steadman, Cocozza & Melick, *supra* note 55, at 816-820; Teplin 1985, *supra* note 55, at 593-599; Teplin, *Criminalizing Mental Disorder: The Comparative Arrest Rate Of The Mentally Ill*, 39 AM. PSYCHOL. 794, 798-801 (1984). These arrest rate results were confirmed by self-report studies and observation reports. *See, e.g.* Teplin 1985, *supra* note 55, at 593; Rossi, Jacobs, *et al.*, *supra* note 30.

The population of mental hospitals now over-represents young males and people with a history of prior arrests. National statistics show that 60 percent of all involuntary admissions are of males, of whom an increasing number—more than 50 percent in some hospitals—have a history of prior arrest, while at the most about 25 percent of the males in the general population has a history of arrest. *Compare* Steadman, Monahan, Duffee, Hartstone & Robbins, *supra* note 62, and 474-490, Tables 1 and 4, *with* Blumstein & Graddy, *Prevalence and Recidivism in Index Arrests: A Feedback*

charged people who have no arrest record—the majority—are, if different at all, less violent than the general population.

Indeed, research on criminal recidivism in this area indicates that

> [t]he correlates of crime among the mentally ill appear to be the same demographic and life history factors that are the correlates of crime among any other group. Likewise, the correlates of mental disorder among criminals appear to be the same things that correlate with mental disorder in the general population. . . . When research does control for demographic and life history factors, no relation [between criminality and mental illness] or at best a much weaker relation is found.[64]

The stereotype underlying the challenged classification is therefore demonstrably false: The mentally disordered are not more dangerous than other demographically similar people.

Thus, for Appellee and the vast majority of persons discharged from mental institutions, the assumption inherent in the statute's prohibition, that they are especially likely to misuse guns, is false. Moreover, those within the classification who *are* likely to misuse guns can be more accurately identified by their history of prior violent acts, as measured by prior arrests or other criteria. At least as to Appellee and others similarly situated, the law's prohibition does not rationally further its purpose of keeping guns away from people who are particularly likely to misuse them. It is based on inaccurate stereotypes, and is therefore unconstitutional. *See City of Cleburne, supra*; *Plyler v. Doe*, 457 U.S. 202 (1982); *Jimenez v. Weinberger*, 417 U.S. 628 (1974); *Reed v. Reed*, 404 U.S. 71 (1971).

Model, 16 L. & SOC. REV. 265, 287 (1981-82). About 60 percent of all involuntarily committed people are men. NIMH, Unpublished Data, *supra* note 35.

[64] J. MONAHAN & H. STEADMAN, *supra* note 55, at 152. *See* Tardiff & Koenigsberg, *supra* note 55.

E. Administrative Convenience Alone Does Not Constitutionally Justify Permanent Disqualification Under An Overbroad Classification Based On False, Stigmatizing Stereotypes.

For several reasons, the irrationality of the statute's discrimination is not altered by any claim that the overbroad classification more conveniently identifies the minority of formerly committed people who are likely to be dangerous than would more accurate criteria or procedures. The overbreadth of the classification at issue is extreme. A large majority no more violent than the general population is swept up with the few who may be prone to violence. Second, the nonviolent majority could be readily separated from the potentially more violent minority by using such objective and rationally related characteristics as youth and a prior history of violence. Third, because mental disorder does not correlate with a propensity to be violent, the fact of prior commitment would add little or nothing to other characteristics of an individual—prior arrest history, age, sex, etc.—in determining the likelihood of violent behavior. *See United States Dept. of Agriculture v. Moreno*, 413 U.S. 528, 537-38 (1973) (lack of biological relationship between food stamp applicants added nothing to likelihood applicants would fraudulently misrepresent their income, and classification based on this lack was therefore without rational basis).

Finally, review of the overall structure of the Act reveals that Congress had no such goal as administrative convenience in mind when it denied to formerly committed people with no history of prior violence the opportunity to remove the disqualification. Congress disdained its supposed interest in administrative convenience when, in § 925, it allowed a subgroup of *felons* to apply to the Secretary of the Treasury for relief from their disqualification. Congress apparently recognized that felons without a prior history of abusing weapons may present a lower risk of future abuse, and afforded them the prospect of administrative relief. But, like this group of

former felons, formerly committed people with no history of violence present a dramatically lower risk—a risk, in fact, no greater than that posed by the general population. Congress could not rationally have decided that a procedure not too dear for criminals without a history of abusing weapons is too expensive for the nonviolent people who have been committed to and released from mental institutions. *Cf. Jimenez v. Weinberger*, 417 U.S. 628 (1974) (denial of benefits to one class of illegitimate children is irrational in light of provision of such benefits to other illegitimate children).

Indeed, Congress' willingness to separate felons into more and less dangerous groups and to provide the less dangerous with the prospect of administrative relief, while refusing to do the same with the formerly committed, indicates that concern about administrative convenience played no rational part in Congress' decision. *Cf. City of Cleburne*, 87 L. Ed. 2d at 326-27 (various asserted governmental reasons for discriminating against the mentally retarded rejected as insufficient because the asserted rationales applied with equal force to other, nonretarded groups treated more favorably by the ordinance). Had Congress truly been concerned with administrative convenience, it would have treated the two groups similarly.[65]

[65] Even if Congress had decided that it would be too costly to provide individualized relief from this overbroad classification, and even if its provision of such relief to a group of felons did not render this decision irrational, the classification cannot be sustained. In a wide variety of situations, this Court has ruled that although using classifications to deny rights and grant benefits is cheaper and easier to administer than individualized determinations, "[t]he Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Thus, the Court has invalidated a number of legislative classifications which unnecessarily burdened persons who, on the face of the statute, fell within the classification at issue but whose inclusion did not, in fact, further the legislative purpose for which the classification was enacted. In those cases, the Court held that the Due Process Clause requires government at least to provide members of the class the opportunity

As with the zoning ordinance in *Cleburne,* the true basis of the statute's permanent disqualification of all formerly committed people is "irrational prejudice." *Id.* at 327. "Administrative convenience" in this case is nothing more than prejudice and stereotype under a neutral label. If allowed to stand, the statute will perpetuate the false ideas that generated it. The statute cannot withstand the scrutiny this Court applied in *City of Cleburne.*

CONCLUSION

For the foregoing reasons, *amicus* respectfully urges this Court to affirm the decision of the United States District Court for the District of New Jersey.

Respectfully submitted,

Of Counsel:
ARLENE S. KANTER
MENTAL HEALTH
LAW PROJECT
2021 L Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 467-5730

February 10, 1986

MARGARET FARRELL EWING
(Counsel of Record)
DAVID W. OGDEN
DONALD N. BERSOFF
ENNIS, FRIEDMAN, BERSOFF
& EWING
1200 17th Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 775-8100
Attorneys for Amicus Curiae

---

to demonstrate that their inclusion does not serve the statutory purpose. *See, e.g., Vlandis v. Kline,* 412 U.S. 441 (1973) (persons without legal address in the State entitled to individualized determination of residence for the purpose of obtaining low-cost college tuition); *Bell v. Burson,* 401 U.S. 535 (1971) (uninsured motorist involved in automobile accident who failed to post security deposit entitled to hearing on issue of fault before revocation of driver's license); *United States Dept. of Agriculture v. Murry,* 413 U.S. 508 (1973) (households with member under 18 years old claimed by nonhousehold member as a dependent for tax purposes entitled to hearing on need for food stamps).

APPENDICES

APPENDIX A

STATE STATUTES AUTHORIZING CIVIL COMMITMENT WITHOUT A FINDING OF DANGEROUSNESS

Thirty-four states authorize involuntary commitment of people who do not present an immediate danger to themselves but who are at risk because they are unable to provide for their basic needs as a result of mental illness or disorder. *See* Ariz. Rev. Stat. Ann. § 36-540 (Supp. 1984); Ark Stat. Ann. § 59-1410 (Supp. 1983); Cal. Welf. & Inst. Code § 5358 (West 1977 and Supp. 1981); Colo. Rev. Stat. Ann. § 27-10-101(5) (1973 and Supp. 1982); Conn. Gen. Stat. Ann. §§ 17-176, 17-1786(c) (West Supp. 1984); Fla. Stat. Ann. § 394.467 (West Supp. 1985); Ga. Code Ann. §§ 37-3-1(11), (12) (1980 and Supp. 1981); Hawaii Rev. Stat. § 334-1 (Supp. 1984); Idaho Code § 66-317(1)-(n) (Supp. 1984); Ill. Ann. Stat. ch. 91½ § 1-119 (Smith-Hurd Supp. 1984); Ind. Stat. Ann. § 16-14-9.1-1(b) (Burns Supp. 1984); Kan. Stat. Ann. § 59-2902(a) (1983); Ky. Rev. Stat. Ann. § 202A.011(2) (Baldwin 1982); La. Stat. Ann. ch. 28 § 55(E) (West 1979 and Supp. 1980); Mass. Ann. Laws ch. 123 § 8 (Michie/Law Co-op.) (Supp. 1985); Mich. Stat. Ann. § 14.800 (401a, b) (1980 and Supp. 1981); Minn. Stat. Ann. § 253B.02(13) (West Supp. 1985); Miss. Code Ann. § 41-21-61 (1972 and Supp. 1981); Neb. Rev. Stat. § 83-1009 (1979 and Supp. 1981); Nev. Rev. Stat. § 433A.310(1) (1983); N.J. Stat. Ann. §§ 30:4-44, 30:4-23 (1968 and Supp. 1982); N.M. Stat. Ann. § 543-1-3(M) (1984); N.C. Gen. Stat. §§ 122-58.2, 122-58.7 (1978 and Supp. 1981); N.D. Cent. Code § 25-03.1-02 (1980 and Supp. 1981); Ohio Rev. Stat. Ann. § 5122.01 (Baldwin 1975 and Supp. 1980); Ok. Stat. Ann. tit. 43A § 54.3(o) (West 1976 and Supp. 1980); Or. Rev. Stat. § 426.005 (1983); Pa. Stat. Ann. tit. 50 § 7301 (Purdon Supp. 1980); S.D. Codified Laws Ann. § 27A-1-1 (1980 and Supp. 1981); Utah Code Ann.

§ 64-7-36 (10) (1978 and Supp. 1981); Vt. Stat. Ann. tit. 18 § 7101(17)(B)(ii) (1982 Cum. Supp.); Va. Code § 37.1-67.3 (1982 Cum. Supp.); Wash. Rev. Code Ann. §§ 71.05.020(1), 71.05.280 (1976 and Supp. 1980); W.Va. Code Ann. § 27-1-2 (Supp. 1984); Wisc. Stat. Ann. § 51.20(1) (West 1981).

APPENDIX B

STATE STATUTES REQUIRING PERIODIC REVIEW OF CIVIL COMMITMENT ORDERS

Thirty-two states provide for periodic judicial review either by limiting the duration of each commitment order and requiring a new hearing for recommitment or by mandating an automatic court review of the original order on a periodic basis. *See* Alaska Stat. § 47.30.745 (1984); Ariz. Rev. Stat. § 36-540 (Supp. 1984); Ark. Stat. Ann. § 59-1410 (Supp. 1983); Cal. Welf. and Inst. Code Ann. § 27-10-109 (1982); Conn. Gen. Stat. Ann § 17-178(g) (West Supp. 1984); Del. Code Ann. tit. 16 § 5102 (1983); Hawaii Rev. Stat. § 334-60.6 (Supp. 1984); Idaho Code § 66-329(k) (Supp. 1984); Ill. Ann. Stat. ch. 91½ § 3-813 (Smith-Hurd Supp. 1984); Kan. Stat. Ann. § 59-2917a (1983); Ky Rev. Stat. Ann. § 202A.051 (Baldwin 1982); La. Rev. Stat. Ann. § 28.56 (West 1979 and Supp. 1980); Me. Rev. Stat. tit. 34B § 3864(t); Mass. Ann. Laws ch. 123, § 8 (Michie/Law Co-op. Supp. 1985); Minn. Stat. Ann. § 253B.13(1) (West Supp. 1985); Mo. Ann. Stat. §§ 632.355, 632.360 (Vernon Supp. 1985); Mont. Rev. Codes Ann. § 53-21-128 (1983); Nev. Rev. Stat. § 433A.-310(2) (1983); N.H. Rev. Stat. Ann. § 135-B:38; N.J. Court Rule § 4:74-7(f) (1984); N.M. Stat. Ann. § 43-1-12(c) (1984); N.Y. Ment. Hyg. Law § 9.33(d) (McKinney); N. C. Gen. Stat. § 122.58.11(e) (1978 and Supp. 1981); Ohio Rev. Code Ann. § 5122.15(h) (Supp. 1984); Or. Rev. Stat. §§ 426.130, 426.301 (1983); Pa. Stat. Ann. tit. 50 § 7305(a) (Purdon Supp. 1980); R.I. Gen. Laws §§ 40.1-5-8(10), 40.1-5-11(3) (1984); Tex. Rev. Civ. Stat. Ann. § 5547-55(g) (Vernon Supp. 1985); Va. Code § 37.1-67.3 (1984); Wash. Rev. Code Ann. § 71.05.320(2); Wisc. Stat. Ann. § 51.20(13)(g) (West Supp. 1984-1985). Five additional states empower a hearing examiner or other staff outside the hospital to

review the commitment order. *See* Fla. Stat. Ann. § 394.467(2)(d) (West Supp. 1985); Ga. Code Ann. § 37-3-83; Md. Admin. Code tit. 10 § 21.01.08 (Supp. 1984); S.D. Codified Laws Ann. § 27A-9-18 (1984); W.Va. Code § 27-5-4(k)-4 (Supp. 1984). And in seven other states, the hospital must file a periodic report with the court detailing the patient's condition and the basis for continued commitment. *See* Ala. Code § 22-52-12(b) (1984); Ind. Code Ann. § 16-14-9.1(c) (Burns Supp. 1984); Iowa Code Ann. § 229.15 (West 1985); Mich. Stat. Ann. § 14.800(483) (1980 and Supp. 1981); Neb. Rev. Stat. § 83-1037; N.D. Cent. Code §§ 25-03.1-22(i), 25-03.1-31 (Supp. 1983); Wyo. Stat. § 25-10-116 (1982). Only six states and the District of Columbia do not require an automatic periodic independent review of commitment orders. *See* D.C. Code § 21-501; Miss. Code Ann. § 41-21-83 (Supp. 1984); Okla. Stat. Ann. tit. 43A § 54.4 (West Supp. 1984); S.C. Code Ann. § 44-17.580 (Law Co-op. 1985); Tenn. Code Ann. § 33-6-104 (Supp. 1984); Utah Code Ann. § 64-7-36(11); Vt. Stat. Ann. tit. 18 § 7621 (Supp. 1984).

APPENDIX C

STATE STATUTES LIMITING ISSUANCE OF DRIVER'S LICENSES TO THE MENTALLY DISORDERED

The forty-six state statutes are: Ala. Code §§ 32-6-7(5) & (6) (1975 & Supp. 1982); Alas. Stat. §§ 28.15.031(4) & (5) (1962 & Supp. 1982); Ariz. Rev. Stat. Ann. § 28-413(5) (1975 & Supp. 1982); Ark. Stat. Ann. § 75-309(5) (1976 & Supp. 1981); Cal. Veh. Code §§ 12805(e)(2) & 12806(a) (West 1977 & Supp. 1981); Colo. Rev. Stat. § 42-2-119(1)(b) (1973 & Supp. 1982); Conn. Gen. Stat. Ann. § 14-36(b) (West 1970 & Supp. 1981); Del. Code Ann. §§ 2707(b)(4) & (5) (1974 Supp. 1980); D.C. Code Ann. § 40-301(a)(1) (1973 & Supp. 1978); Fla. Stat. Ann. § 322.05(5) (West 1976 & Supp. 1980); Ga. Code Ann. § 68B-203(6)(4) (1980 & Supp. 1981); Hawaii Rev. Stat. Ann. § 286-104(6) (1976 & Supp. 1980); Idaho Code Ann. § 49-309(5) (1980 & Supp. 1981); Ill. Ann. Stat. tit. 95½, § 6-103(8) (Smith-Hurd 1971 & Supp. 1980); Ind. Code Ann. §§ 9-1-4-30(d)-(e) (Burns 1972 & Supp. 1981); Iowa Code Ann. §§ 321.177(5) & (7) (West 1966 & Supp. 1980); Kan. Stat. Ann. § 8-237(e) (1976 & Supp. 1980); Ky. Rev. Stat. Ann. §§ 186.440(5)-(6) (Michie 1980 & Supp. 1983); Md. Transp. Ann. Code § 16-103.1 (1980); Mich. Comp. Laws Ann. §§ 257.303(e)-(f) (Supp. 1980); Minn. Stat. Ann. §§ 171.04(5) & (9) (West 1975 & Supp. 1980); Miss. Code Ann. §§ 63-1-9(d) & (f) (1972 & Supp. 1981); Mo. Rev. Stat. § 302.060(5) (1980); Mont. Code § 61-5-105(5) (1979); Neb. Rev. Stat. § 60-419 (1979 & Supp. 1981); Nev. Rev. Stat. § 483.250(4) (1981); N.H. Rev. Stat. Ann. § 262.40 (1979); N.M. Stat. Ann. § 66.5-5E (1978 & Supp. 1981); N.C. Gen. Stat. §§ 20-9(d)-(e) (1978 & Supp. 1981); N.D. Cent. Code § 39-06-03(4) (1980 & Supp. 1981); Ohio Rev. Code Ann. § 4507.08(B) (Bladwin 1975 & Supp. 1980);

Okla. Stat. tit. 47, § 6-103(5) (West 1976 & Supp. 1980); Or. Rev. Stat. §§ 482.120(2) & 482.130(1)(b) (1979); Pa. Stat. Ann. tit. 75, § 1503(4) (Purdon 1977 & Supp. 1980); R.I. Gen. Laws § 31-10-3(5) (1969 & Supp. 1981); S.C. Code Ann. § 56-1-40(4) (Law Co-op. 1976 & Supp. 1980); S.D. Codified Laws Ann. § 32-12-32 (1980 & Supp. 1981); Tenn. Code Ann. § 55-7-105(a)(5) (1980); Tex. Rev. Civ. Stat. Ann. §§ 6687b(4), (6) & (8) (Vernon 1967 & Supp. 1980); Utah Code Ann. § 41-2-5(4) (1978 & Supp. 1981); Vt. Stat. Ann. tit. 23, § 603 (1978 & Supp. 1980); Wash. Rev. Code Ann. §§ 46.20.031(5) & (8) (1976 & Supp. 1980); W. Va. Code § 17B-2-3(5) (1981); Wisc. Stat. Ann. § 343.06(5) (West 1981); Wyo. Stat. §§ 31-7-108(b)(iii)-(v) (1980 & Supp. 1981). Four states, Louisiana, Maine, Massachusetts and New Jersey do not specifically disqualify persons with mental disabilities.

APPENDIX D

STATE STATUTES AFFECTING THE VOTING RIGHTS OF THE MENTALLY DISABLED

APPENDIX D-1:

Ala. Const. art. VIII, § 812, Ark. Const. art. III § 5; Cal. Const. art. II § 4; Conn. Gen. Stat. Ann. § 9-12(a) (West 1970 and Supp. 1981); Del. Const. art. V, § 2; Ga. Const. § 2-501; Hawaii Const. art. II, § 2; Iowa Const. art. II, § 5; Ky. Const. § 145.1; Miss. Const. art. XII, § 241; Neb. Const. art. VI, § 2; Nev. Const. art. II, § 1; N.J. Const. art. II, § 6; N.M. Const. art. VII, § 1; Ohio Const. art. V, § 6; Ore. Const. art. II, § 3; S.C. Code Ann. § 7-5-120(5)(a) (Law Co-op. 1976 and Supp. 1980); S.D. Const. art. VII, § 2; Tex. Const. art. VI, § 1; Utah Const. art. IV § 6; Vt. Const. ch. II, § 42; Wash. Const. art. VI, § 3; W.Va. Const. art. IV, § 1; and Wyo. Const. art. VI, § 6.

APPENDIX D-2:

Alas. Const. art. V, § 2; Ariz. Const. art. VII, § 2; D.C. Code Ann. § 1-1102(c) (1973 and Supp. 1978); Fla. Stat. Ann. § 97-041(3)(a) (West 1976 and Supp. 1980); Idaho Const. art. VI, § 3; La. Rev. Stat. Ann. § 18:102 (1) (West 1979 and Supp. 1980); Me. Const. art. II, § 1; Md. Const. art. I, § 4; Mass. Const. articles of amendment art. III, § 105; Minn. Const. art. VII, § 1; Mo. Const. art. VIII, § 2; Mont. Const. art. IV, § 2; N.Y. Elect. Laws § 5-106(6) (McKinney 1978 and Supp. 1980); N.D. Cent. Code § 16.1-01-04(5) (1980 and Supp. 1981); R.I. Const. articles of amendment art. XXXVIII, § 1; Va. Const. art. II, § 1; and Wisc. Stat. Ann. § 6.03(3) (West 1981).