

AGENTS FOR CHANGE

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Agents for Change
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Battered Women's Legal
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1611 Park Ave South
Suite 2
Minneapolis, MN 55404

Office: 612.343.9842

Toll Free: 800.313.2666

Fax: 612.343.0786

Email: info@bwlap.org

Website: www.bwlap.org

Staff

Dorian Eder

Maria Gloria Fressia

Rana SA Fuller

EDITORIAL: A Presumption of Joint Physical Custody: Bad for Battered Women, Dangerous for Children

Currently, Minnesota law presumes that joint legal custody is in the best interests of children, but that when joint physical custody is sought, a court must consider the capacity of the parents to cooperate and resolve disputes. The law also presumes that it is not in the best interests of children to award joint physical custody when domestic abuse has occurred.

But, over the past two legislative sessions, a concerted effort has been made to change Minnesota's law to presume that joint physical custody should be the "default" presumption. One provision suggests that, in the case that parents cannot agree on custody within 90 days, the Court will issue a joint physical custody award. In addition, if the court finds that sole custody is warranted, the court should use the "Friendly Parent" factor to decide which parent should get sole physical custody. This is dangerous to battered women specifically, and contrary to the best interests of children generally.

All proposals maintain some exceptions in cases of domestic violence. Such an exception to the "Friendly Parent" provision currently exists in the custody statutes, and is under-utilized at best and dismissed out of hand at worst. What constitutes a "finding" of domestic violence is nebulous, and even in cases where it is well-documented, custody evaluators often over-look it. There is no reason to believe these exceptions would suddenly be appropriately applied should the presumptions of custody change. Moreover, many of the same proponents of a joint physical custody presumption are trying to weaken the domestic violence exceptions that currently exist.

Battered women's advocates know that most batterers perform very well under scrutiny, but that battered women who raise legitimate concerns about the safety or well-being of their children will largely be viewed as problematic. There are obvious, inherent dangers to battered women and their children when joint physical custody is awarded. But this is an issue that extends beyond the issues present in domestic violence cases. If the "Friendly Parent" provision becomes the standard by which all custody disputes are resolved, parents will simply be coached by their attorneys to appear more "friendly", whether this bears any relationship to reality or not. Even in cases in which there is no domestic violence, there may be other legitimate parenting and safety concerns that should be considered.

Lastly, these proposals seem largely driven by a desire to equally divide the child among the parties, so no one feels slighted or disadvantaged. How does this serve the best interests of children? Minnesota has historically gotten in right by focusing on the children's best interests, not the personal feelings of the parents. In fact, good parents are expected to put their hurt feelings aside to promote the best interests of their children. These new proposals seem an attempt to "split the baby". Sole physical custody provides the child with stability, security, structure and a sense of place, all while providing for a meaningful relationship with the other parent through joint legal custody and parenting time.

Reasonable and good people can and may disagree on whether joint physical custody serves the broad best interests of children when abuse, neglect and violence are not at issue. But in cases of domestic violence, there is no question that its application is inappropriate. Until and unless meaningful standards for assessing domestic violence, and clear prohibitions on issuing joint physical custody awards when it is present are enacted and enforced, we entertain a presumption of joint physical custody at our peril.

Upcoming Events at BWLAP

SAVE THE DATE

May 16th and 17th, 2006

IRBWTF Conference to be held at Alexandria Technical College hosted by Listening Ear Crisis Center. More info coming out shortly.

New Laws 2006 is approaching. As always we intend to facilitate two trainings in Northern MN, two trainings in Southern MN and one in Central MN. If your Agency is interested in hosting this upcoming event please contact us at (612) 343 9842.

MCBW, the Minnesota Indian Women's Sexual Assault Coalition, the Minnesota Coalition Against Sexual Assault, and the Minnesota Network on Abuse in Later Life:

Tuesday, March 28:

Legislative Training and Dinner at the Best Western Kelly Inn, 161 St. Anthony Ave., St. Paul. from 4 to 8 p.m

Wednesday, March 29:

Meet with your legislators; Violence Against Women Action Day Rally at the Minnesota Capitol Rotunda, Noon. . Includes the Memorial for the 2005 Femicide Victims and Sexual Assault Victims.

Reception at the MNCASA Offices at 161 St. Anthony Ave. directly following the rally.

For information on travel scholarships for MCBW members,

please call MCBW at (651) 646-6177 or (800) 289-6177.

IMMIGRATION CORNER

VAWA 2005 Immigration Update*

VAWA 2005 entered into effect on January the 5th, 2006. This long piece of legislation contains new statutes aimed to remove obstacles interposed by immigration laws that prevent immigrant victims from safely fleeing domestic violence and prosecuting their abusers. While the improvements reached through this new legislation do not reflect the whole expectation human rights activists had, we do need to recognize that the new law provides improved tools for immigrant victims of violence.

In the following pages we summarize these changes.

1.- Implements new ways to stop deportation of immigrant victims of domestic violence, sexual assault, or trafficking.

Section 825 exempts VAWA cancellation of removal or suspension of deportation applicants from the motion to reopen filing deadlines and numerical limits, provided that they are physically present in the U.S. at the time of filing. Filing this motion will stay their removal pending final disposition of the motion including exhaustion of all appeals, if the motion establishes a prima face case for the relief sought.

Section 813(a): Adds battery or extreme cruelty to the list of exceptional circumstances in removal proceedings for motions to reopen in absentia orders. There are no sanctions for victims of domestic abuse, sexual assault, or trafficking for failing to voluntarily depart. Technical amendment Improves VAWA cancellation of removal through so judges can grant VAWA 2000 domestic violence victim waivers. This section also provides further relief for Nicaraguan immigrant victims, so that the victim can apply even if the abuser did not apply for status and the filing deadline has passed. There is also further relief for Haitian refugee victims, under the Haitian Refugee Immigration Fairness Act, where the victim can apply for immigration status on their own without their abuser also applying.

The provisions also encourage the use of the I-212 process. This is the application for permission to reapply for admission into the U.S. after deportation or removal. The Department of Homeland Security will therefore waive prior entry and removal problems for immigrant victims of domestic violence, sexual assault, or trafficking so that immigrant victims who qualify for VAWA, T, or U relief can overcome reinstatement of removal problems.

2.- The VAWA provisions improve the U visa requirements. First, it extends protection for children of U visa recipients. This allows certain family members accompanying or following to join can receive U visas without having to show that the visas are necessary to avoid extreme hardship or without having to obtain a government certification attesting that a criminal investigation or prosecution would be harmed without the assistance of those family members. Second, trafficking victims may waive the requirement to cooperate with law enforcement if their physical or psychological trauma impedes their ability to do so. Finally, the provisions amend the good moral character definition (INA 101(f)(3)) to clarify that a prior removal order[INA 212(a)(9)(A)] does not constitute a bar to establishing good moral character.

3.- The provisions extends immigration relief to larger group of family violence victims.

Child abuse and incest victims may self-petition up to age 25 as long as the child abuse was at least one central reason for the filing delay. Elder abuse victims who have been battered or subjected to extreme cruelty by their adult U.S. citizen son or daughter, may self-petition for VAWA relief. The provisions also removes the 2-year custody and residency requirement for abused adopted children by if the child has been battered or subject to extreme cruelty by the adoptive parent or by a family member of the adoptive parent. [Section 805(d)].

Abused immigrant children and children of battered immigrants will no longer be cut off from VAWA protection because they turn 21 and can additionally access any Child Status Protection Act relief for which they qualify.

The provisions prohibit petitioning for abusers as family members. An alien who was a VAWA petitioner, or granted a T or U visa may not file an application on behalf of the person who committed

(Continued on page 3)

the battery, extreme cruelty, or trafficking against the individual, which established the individual's eligibility as a VAWA petitioner, or for T or U status.

4.- Provides economic stability and security for trafficking victims

The provisions protect trafficking victims' family members living abroad to receive T visas without having to show extreme hardship. The changes provide them an exception to the penalties for being unlawfully present where the trafficking was at least one central reason for the unlawful presence. In addition, the provisions Allows change of status to T or U for aliens who entered the U.S. on C (transit), D (crewmen), K (fiancée, non-immigrant spouse, child), S (criminal informant), or J (exchange/visitor) visas; as visitors under the visa waiver program; or as visitors from Guam.

Furthermore, the provisions:

- Extend duration of U and T visas for up to 4 years, with the option to extend year by year if law enforcement certifies that such extension is necessary to assist in the criminal investigation or prosecution.

- Allows some trafficking victims earlier access to permanent residency by allowing continued presence to count towards the three-year residence requirement and allowing DHS discretion to reduce three year wait upon receipt of certification that law enforcement officials do not object.

- For purposes of T visa certifications clarifies that victims of trafficking are participating in investigations and prosecutions when they respond to and cooperate with requests for evidence and information. [Section 804(b)]

5.- Protects safety of victims of domestic abuse, stalking, sexual assault, trafficking

There is an extension of VAWA confidentiality to trafficking victims. First, the Department of Homeland Security and the Department of State shall be covered by VAWA confidentiality rules. There will be Congressional oversight by permitting disclosure, in a manner that

protects victim confidentiality and safety, to the chairs and ranking members of the House and Senate Judiciary Committees, including the Immigration Subcommittees.

VAWA 2005 also gives the specially trained VAWA unit the discretion to refer victims to nongovernmental organizations with expertise serving immigrant victims for victim and legal services.

The provisions also protect confidentiality in the following ways:

- Establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA.

- When removal proceedings are initiated based on immigration enforcement actions taken at a domestic violence shelter, a rape crisis center, or a courthouse (where the alien is appearing in connection with a protection order or child custody case), DHS must disclose these facts in the Notice to Appear issued against the alien. DHS must certify that it did not violate the requirements of IIRIRA.

The Department of Homeland Security and the Department of Justice will provide guidance to their officers and employees who have access to information protected by Section 384 of IIRIRA including the purposes to protect victims of domestic violence, sexual assault, trafficking and other crimes from the harm that could result from inappropriate disclosure of information.

- Protects driver's license information for limited group of crime victims whose confidential address is critical for their safety; DHS and the Social Security Administration shall give special consideration to victims who are eligible for such protection.

- Special immigrant juveniles shall not be compelled to contact the abusive family member at any stage of the SIJS application process.

6.- Guarantees economic security for immigrant victims and their children

Any Legal Services Corporation-funded program may use any source of funding, including LSC funding, to represent any victim of domestic violence, sexual assault, trafficking, or other crime, regardless of the victim's immigration status.

Derivative spouses admitted to the U.S. under the A, E(iii), G, or H non-immigrant visa programs who are accompanying or following to join the principal shall be granted work authorization if the derivative spouse demonstrates that during the marriage he or she (or a child) has been battered or subjected to extreme cruelty perpetrated by the principal. There will be employment authorization for victims with approved VAWA petitions and T visas.

7.- There are improvements in processing VAWA cases and technical amendments

The provision creates uniform definition of "VAWA petitioner" and mandates promulgation of regulations implementing VAWA 2000 and VAWA 2005 within 180 days after enactment of VAWA 2005.

The provisions also require International Marriage Broker Regulation. Requires U.S. citizen filing K petitions to disclose criminal background information. U.S. citizens filing K visa petitions disclose criminal background information to international marriage brokers and to DHS/CIS. The DHS will be required to transmit this criminal history information, along with results of any database search, to the foreign fiancé or spouse. There will also be a government database to track serial K petitions filed by same U.S. citizen petitioner and to notify foreign fiancé or spouse of prior K petitions. Notification requirement triggered after petitioner has filed three

K petitions within the past 10 years. Also, the DOS cannot issue a K visa (unless DHS grants a waiver or the domestic violence victim exception applies) if the U.S. citizen has previously filed two K visa petitions, and less than two years have passed since the date of filing of the most recent K visa petition. DHS can waive this bar, but not when the U.S. citizen has a history of committing domestic abuse or other violent crimes

There will be further education for all foreign fiancées and spouses. The DOS, DHS, and DOJ shall create pamphlet on domestic abuse laws and resources for immigrant victims in the U.S and send them to all foreign fiancés and spouses. DHS shall also send results from any criminal background checks conducted in the course of adjudicating the K visa petition, along with the petitioner's disclosure of any criminal history. U.S. consular officers shall orally inform foreign fiancées/spouses of the petitioner's criminal history. DOS and DHS cannot disclose location or personal information about prior victims of the U.S. citizen petitioner.

**Summarized by Meghan Cook over brief provided by Legal Momentum at www.legalmomentum.org.*

Housing Solutions for a Stronger Minnesota: 2006 Lobby/Rally Day March 28, 2006

Join the Minnesota Coalition for the Homeless, HousingMinnesota and Minnesota NAHRO in making housing and home-
less prevention top priorities in the 2006 legislative session. Help insure all Minnesotans are adequately housing and advocate for a better Minnesota. This year topics for discussion will include establishing a dedicated, secure funding source for affordable housing, bonding initiatives, and transitional housing to name a few.

To register, email Maile Seimon at lobbyday@mhponline.org. Please include your name, home address, phone number and email address. You will be provided training with an experienced lobbyist in how to communicate effectively with your legislator. Finally, you will be able to help lobby your legislator for affordable housing with constitutes from your area on March 28, 2006 from 9 am to 2 pm. There will also be a rally at the steps of the capitol from 11 am to 11:30 am. Please join BWLAP, Minnesota Coalition for the Homeless, HousingMinnesota and Minnesota NARHO on March 28th and help make a difference in the lives of ALL Minnesotans.

OFP Trouble?

Do you have a case in which an un-adjudicated father (without any paternity documents, or only with a Recognition of Parentage) was awarded custody or parenting time in an Order for Protection hearing, over the objections of the mother? We are interested in gathering further information about these cases from all over Minnesota. Please call us at 612-343-9842 or 1-800-313-2666 and speak with Rana or Dorian.

Attention Legal Advocates!

BWLAP is developing a list-serve for legal advocates in Minnesota. Over the next two weeks, our office will be contacting you and asking you to sign up. The purpose of this list-serve will be to share ideas, resources and strategies for solving persistent problems in legal advocacy. If you have question or comments about the list, please contact Dorian Eder at 612) 343-9845.

Do you need technical assistance with Minnesota's current domestic violence issues?

Check out BWLAP's

Website

www.bwlap.org

Supreme Court Maintains Health Exception with Unanimous Decision in *Ayotte v. Planned Parenthood*.

The U.S. Supreme Court on January 18th, 2006 vacated and remanded the case *Ayotte, Attorney General of New Hampshire v. Planned Parenthood of Northern New England* to the Court of Appeals First Circuit for further proceedings.

The decision put to rest the reproductive rights activists' fear that the Supreme Court might use it to abandon the principle that the Constitution prohibits abortion restrictions that endanger a pregnant woman. The Supreme Court's unanimous decision endorsing that principle is a significant victory.

New Hampshire's Parental Notification Prior to Abortion Act, in relevant part, prohibited physicians from performing an abortion on a pregnant minor until 48 hours after written notice of such abortion was delivered to her parent or guardian. The Act did not require notice for an abortion necessary to prevent the minor's death if there was insufficient time to provide notice, and permitted a minor to petition a judge to authorize her physician to perform an abortion without parental notification. The Act did not explicitly permit a physician to perform an abortion in a medical emergency without parental notification. Respondents, who provided abortions for pregnant minors and expected to provide emergency abortions for them in the future, filed suit under 42 U.S. C. 1983, claiming that the Act was unconstitutional because it lacked a health exception and because of the inadequacy of the life exception and the judicial bypass' confidentiality provision. The District Court declared the Act unconstitutional and permanently enjoined its enforcement, and the First Circuit affirmed.

However, on the important subject of the proper remedy for this unconstitutional statute, the Supreme Court decision sustained a position that was not what reproductive rights activists would have preferred.

The Court wrote "we try not to nullify more of a legislature's work than is necessary", and suggested that "we prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force." On the other hand, the Court explained that "we restrain ourselves from rewriting state law to conform it to constitutional requirements."

In this particular case, severance of the unconstitutional portion of the statute was not an available remedy, for there was nothing to sever; rather, what the statute was lacking was an additional language, providing the missing health exception. But, as Justice Breyer pointed out, writing the text of such an injunction would have required choosing among numerous potential definitions of the health exception, and therefore seemed likely to involve the Court in legislating from the bench.

For that reason, the Court decided to take recourse in the principle that "the touchstone of any decision about remedy is legislative intent,; and highlighted the existence of a live dispute over whether, in fact, the New Hampshire legislature would have preferred no statute at all to a statute with the constitutionally mandated health exception.

The result, as we said, was a remand to the lower courts to determine legislative intent. This decision burdens the lower courts with determining a contested issue of legislative intent that will be unusually difficult to resolve, in particular because the New Hampshire legislature enacted the bill knowing that the lack of the health exception was clearly against constitutional requirements.

If the Court of Appeal comes to the conclusion that including an exception for medical emergencies would have doomed the statute, then it should be struck down in its entirety, otherwise if the legislature would have preferred a parental notification law with a health exception to no law at all, then an injunction against unconstitutional applications – means prohibiting application of the statute when an emergency abortion is needed to preserve a minor's health – should issue.

**CHECK OUT OUR
WEBSITE!
WWW.BWLAP.ORG**

Attention Advocates! Responding to numerous phone calls BWLAP created the following U Visa Fact Sheet**Definition:**

Created by the Victims of Trafficking and violence Prevention Act, the U is a temporary visa for those who have suffered physical or mental injury from a crime and will be helpful in the investigation or prosecution of that crime

Benefits:

It provides eligible immigrants with authorized stay in the U.S. and employment authorization
After four years the applicant will be eligible to apply for lawful permanent resident status

Requirements:

1. The immigrant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity
2. The applicant possesses information concerning that criminal activity
3. The applicant has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity
4. The immigrant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity
5. The applicant possesses information concerning that criminal activity
6. The applicant has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity

Types of Criminal Activity:

Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury or attempt, conspiracy or solicitation to commit any of the above mentioned crimes

Immigration Status of the Abuser:

The applicant does not have to be married to the abuser, and the abuser is not required to be a U.S. citizen or a legal permanent resident

Availability:

The CIS has not yet published regulations of the U visa, so it is not yet available. An applicant can be given interim relief, which has the same requirements

The interim relief is available for one year, but can be extended through application

How to Apply for Interim Relief:

Collect documentation to establish eligibility for U-visa status:

1. Proof of being a victim of a crime
2. Proof of suffering substantial physical or mental abuse as a result of the crime
3. Proof of being helpful to law enforcement officials in the investigation and/or prosecution of the crime
4. Get certification that these conditions are met from a law enforcement official who is working with you in the investigation or prosecution

Definition of Law Enforcement Certification:

1. There is no official certification form
 2. May come as a letter or other form created by the applicant's representative
- Must be signed by the law enforcement official within the past six months and must state

Items to Include in Application:

1. Cover letter
2. Applicant's declaration detailing the abuse and how the application meets the U visa requirements
3. Personal information with a form of identification
4. Description of the crime committed, in either a U visa certification form, a police report of the crime, a copy of a restraining order and any documents used to obtain the restraining order
5. Documents showing substantial physical or mental abuse
6. Law enforcement certification signed within the last 6 months showing that the applicant was a victim of one or more

crimes protected by the U visa, identifying the crime, and verifying the victim is, has been, or is likely to be helpful to the prosecution or investigation of the criminal activity

Examples of Documents Showing Substantial Physical or Mental Abuse:

1. Detailed in the applicants declaration
2. Declarations of witnesses to the abuse
3. Declarations of police, health care workers, etc.
4. Medical records
5. Reports or evidence of appointment of counselors, shelters, etc, and/or photographs that show the abuse

Fees:

There is no filing fee required

Punto de Vista Latino

ALERTA: Si el proyecto de ley HR2576 es finalmente aprobado nuestras comunidades están en peligro de convertirse en paraísos para el crimen.

Pese a que más de veinte expertos - abogados, economistas, profesores de la Universidad de Minnesota, expertos en inmigración de diferentes organizaciones sin fines de lucro - testificaron ante la comisión parlamentaria de seguridad pública el pasado jueves 2 de marzo, dando enfáticos argumentos contra el proyecto de ley H.R. 2576 por el cual se prohíbe a los gobiernos locales aprobar cualquier ordenanza que impida a sus empleados colaborar con las autoridades inmigratorias, el proyecto fue aprobado por 15 votos contra 3 y fue pasado a estudio de la comisión de asuntos civiles.

Este proyecto de ley tiene por finalidad impedir que autoridades locales promulguen ordenanzas como la que actualmente rigen en las ciudades de Minneapolis y Saint Paul, por las cuales se les asegura a sus habitantes la tranquilidad de que pueden colaborar con la policía para el esclarecimiento de cualquier delito cometido en la zona, con la tranquilidad de que la policía no preguntará ni averiguará sobre la situación inmigratoria de la persona dispuesta a colaborar y testificar.

Estas ordenanzas, que el proyecto de ley quiere anular, surgieron de la necesidad de la policía de contar con la confianza de los vecinos para esclarecer eficazmente los casos criminales.

Tanto en Minneapolis como en Saint Paul existen barrios enteros compuestos por familias de inmigrantes (Latinos, Somalis, Hmong) de muy diferente estatus inmigratorio.

Es evidente que la policía no puede hacer con eficacia su trabajo, si no desarrolla una política de acercamiento con la comunidad. Los vecinos de Minneapolis y de Saint Paul, en conocimiento de que no serán indagados acerca de su status inmigratorio, se han mostrado dispuestos a colaborar con la policía y testificar si es necesario para erradicar los delitos de su comunidad. Esto ha favorecido el crecimiento de vecindarios pacíficos que están floreciendo económicamente. En este mismo sentido, en más de una oportunidad hemos escuchado a la policía asegurar que ellos festejan la llegada de nuevos vecinos inmigrantes en barrios inseguros, pues saben que es el principio para que esos barrios se transformen en lugares tranquilos, prósperos, con familias que trabajan duro con el sano propósito de llevar el pan a sus hijos.

En contra del proyecto de ley al que nos referimos, los jefes de la policía de Saint Paul y Minneapolis advirtieron el pasado jueves 2 de Marzo a los legisladores de la comisión de seguridad, que – de aprobarse esta ley – los barrios habitados predominantemente por inmigrantes se transformarán en paraísos para los delincuentes y las gangs protegidos por el temor de los inmigrantes de denunciar actividades criminales.

Inexplicablemente, pese a todas las elocuentes y coincidentes declaraciones de expertos en la materia el proyecto fue aprobado por 15 votos contra 3. Cómo puede suceder algo así? Se demostró que este proyecto favorecería la inseguridad y el delito en nuestras comunidades, se demostró que las ordenanzas aprobadas por Saint Paul y Minneapolis no contrarían ninguna ley federal, se demostró que sin la ayuda de la comunidad la policía poco podía hacer para mantener nuestras comunidades libres de los delitos que la asolan, pero nada de eso fue suficiente para la comisión (oh paradoja!) de seguridad pública.

Pero la batalla no termina aquí, el próximo 13 de Marzo, otra vez libraremos la batalla ante la comisión de asuntos civiles. **Por todo esto pedimos a la comunidad Latina que se mantenga en alerta contra esta propuesta y le haga saber a sus legisladores que deben votar en contra de este nefasto proyecto de ley o de lo contrario serán responsabilizados por la inseguridad en nuestros vecindarios.**

Battered Women's Legal Advocacy Project, Inc.
1611 Park Ave South, Suite 2
Minneapolis, MN 55404

Non Profit Organization US Postage Paid St. Paul, MN Permit 3542

BWLAP is a Minnesota-based, statewide, non-profit organization that provides legal information, consultation, training, litigation support, and policy development assistance to battered women, their advocates, civil/criminal justice, and social service systems.

Cell Phone Donations

BWLAP is still collecting old cell phones for reuse as emergency phones for battered women. Many of you have old cell phones gathering dust at the bottom of a desk drawer. These phones can be put to good use and you may also be able to get a tax deduction based on the value of the phone you donate. Please consider donating cell phones that you no longer use. Drop off used phones at our office or you can mail them to us.

Thank you!

BWLAP extends its heartfelt gratitude to our funders:

It is only with the help of our funders that we may help others. *Thank you!*

Alkire Foundation
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Bremer Foundation
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