

## The International Marriage Broker Regulation Act: Protecting Foreign Women or Punishing American Men?\*

### INTRODUCTION

It's Friday evening. You are sitting at a corner bar in New York City, hoping to meet someone you can get to know—and possibly love. Then, the most beautiful woman walks in the door and immediately makes eye contact with you. She is looking for “Mister Right,” and she wants to know if you are him. You walk up to her and ask her for her name. She smiles and giggles, then tells you her name. You introduce yourself and offer to buy her a drink, but before you can ask her another question a government agent interrupts. He says that before you can learn any more about this beautiful woman you have to disclose your entire criminal record, the ages of all your children, all of the states in which you have lived since the age of eighteen, and your complete marital history. The agent then informs you that you will not be given any of this same information about the woman. Would you offer this very private information and stay, not knowing anything about the woman other than her name and physical appearance?

This sounds far-fetched and few men (and women) in the United States would offer private and personal information such as this before a first date. However, that is exactly what the government is requiring of individuals hoping to find their mate through International Marriage Brokers (IMBs), services which provide communication between American men and foreign women. In January 2006, the 109th Congress passed the International Marriage Broker Regulation Act (IMBRA).<sup>1</sup> IMBRA affects thousands of American men who wish to bring their mail-order brides to the United States. This Act was Congress' reaction to the highly scrutinized “mail-order bride” industry. The goal of IMBRA is to protect foreign women from abuse, and several parts of the regulation are justifiable means in which that goal can be attained. Several requirements of IMBRA, however, severely infringe upon the constitutional rights of American males as well as IMBs.

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1. 8 U.S.C.S. § 1375a (LexisNexis 2007).

## I. MEET THE HAPPY COUPLE

A. *The Groom*

Thousands of American men go online every year to find a mate through one of over five hundred IMBs.<sup>2</sup> These men are usually caucasian males in their mid- to late thirties.<sup>3</sup> Many of them have put settling down on the back burner while focusing on their careers.<sup>4</sup> Most of them feel that they are too old for the bar scene; thus, they go online to find someone with whom they can share their lives.<sup>5</sup> The men usually possess a high degree of education and earn decent salaries.<sup>6</sup> They are primarily from metropolitan areas, with almost one quarter of American men using IMBs residing in the state of California.<sup>7</sup>

These men typically possess very conservative ideals and are looking for a wife with “traditional values” who will be devoted to keeping up the house and rearing children.<sup>8</sup> Most of the men have previously been married and have gone through a divorce from an American wife.<sup>9</sup> Many of these men have been discouraged by American women because they find the women to be too concerned with their own professional and social lives and not committed to family.<sup>10</sup> Thus, these men go online to find wives who share their same values and goals.

B. *The Bride*

It is estimated that over 200,000 women advertise themselves through IMBs in hopes of finding a potential spouse.<sup>11</sup> These women are predominately age twenty-five and younger.<sup>12</sup> Many are seeking a better life for themselves and for their children. Senator Maria

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2. Proposed Law Would Regulate International Marriage Brokers: Statement of Senator Maria Cantwell, 108th Cong. (2004) (during hearing before the U.S. Senate Foreign Relations Committee), <http://usinfo.state.gov/gi/Archive/2004/Jul/15-596569.html>.

3. Robert J. Scholes, *The ‘Mail-Order Bride’ Industry and Its Impact on U.S. Immigration*, <http://www.clas.ufl.edu/users/rscholes/writeup.htm> (last visited Mar. 24, 2007).

4. Dave Root, *Marriage Law an ‘Unnecessary Bureaucratic Entanglement,’* CUMB. TIMES NEWS (July 20, 2006), available at [http://www.times-news.com/opinion/local\\_story\\_201095119.html](http://www.times-news.com/opinion/local_story_201095119.html).

5. *Id.*

6. Scholes, *supra* note 3.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

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Cantwell, the main proponent of IMBRA, testified to the U.S. Senate Foreign Relations Committee, "Most of the foreign brides advertised by the international marriage brokers come from countries where women are oppressed, have few educational or professional opportunities, and where violence against women is condoned, if not encouraged."<sup>13</sup> The vast majority of the women placing ads with these services are from the Philippines and the former Soviet Union.<sup>14</sup> "In the Ukraine domestic violence is not even a crime."<sup>15</sup> And in the former Soviet Union, over half of the murder victims every year are women who were murdered by their partners.<sup>16</sup>

Most of the women looking for American husbands are adverse to the men in their native countries.<sup>17</sup> The women also say American men are more handsome than their native men and make more loving and faithful husbands.<sup>18</sup> Texas attorney Lisa Schwamkrug says, "American men appeal to foreign women, especially those in Russia, because the men are willing to adopt their children and American men live longer than Russian men on average. They are also perceived to drink less."<sup>19</sup>

### C. *The Marriages*

Between 4,000 and 6,000 marriages in the United States are arranged through IMBs each year,<sup>20</sup> yet represent only 0.004% of all marriages in the United States.<sup>21</sup> These marriages have over an eighty percent success rate as opposed to a mere forty-nine percent success rate in the United States as a whole.<sup>22</sup> These unconventional relationships between American men and foreign brides have been highly scrutinized after the media frenzy surrounding the deaths of three

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13. Proposed Law Would Regulate International Marriage Brokers, *supra* note 2.

14. Scholes, *supra* note 3.

15. Mark Muckenfuss, *Mail-Order Brides: A Surprise in Every Package; Web Brides Can Be Abused, Some Warn*, THE PRESS ENTERPRISE, Feb. 26, 2006, at E01.

16. Scholes, *supra* note 3.

17. *Id.*

18. *Id.*

19. Craig Harris, *Marriage Brokers Scrutinized; Critics Fear Exploitation Of Foreign Women; Local Dating Service Defends Romance Tours*, ARIZ. REPUBLIC, Oct. 15, 2005, at 1A.

20. Associated Press, *Mail Order Bride Bill in Works*, CBS NEWS, July 5, 2003, <http://www.cbsnews.com/stories/2003/07/05/politics/main561828.shtml>.

21. Scholes, *supra* note 3.

22. *Id.*

mail-order brides at the hands of their husbands.<sup>23</sup> There is no concrete data, however, that these unions are more susceptible to domestic violence and homicide than traditional marriages.<sup>24</sup> Domestic violence is unacceptable under any circumstances, but the regulations that the government has imposed upon potential grooms go beyond protecting these women and infringe upon the freedoms we should enjoy as American citizens.

## II. AN INCIDENT THAT PROVOKED A RESPONSE

The mail-order bride industry has been part of American society since the Gold Rush.<sup>25</sup> Men who moved west in hopes of striking it rich mining gold sent lonely letters to the east coast looking for ladies who were willing to move out west to start a new life.<sup>26</sup> Even the Sears catalogue carried ads from single gentlemen looking for love.<sup>27</sup> So why is Congress now regulating an industry that has been part of our history for so long?

Recently, the mail-order bride industry has been under constant scrutiny since the highly publicized murders of two mail-order brides in Washington State.<sup>28</sup> Susanna Blackwell, a Philippine woman who came to America as a mail-order bride, was killed by her estranged husband in a Washington State courthouse in 1995.<sup>29</sup> Anastasia King, a twenty-year-old mail-order bride from Kyrgyzstan, was shot by her husband in 2000.<sup>30</sup> "Cases like Anastasia King's have given the mail-order bride industry a bad name."<sup>31</sup> These tragedies sparked regulations in Washington, Hawaii, and Texas, which required marriage brokers to provide the male client's criminal and marital history to his new spouse.<sup>32</sup>

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23. Laudan Aron, *Something Borrowed, Something (Black and) Blue*, SALT LAKE TRIB., July 25, 2006, available at <http://www.urban.org/publications/900982.html>.

24. Wendy McElroy, 'Mail-Order Bride' Law Brands All American Men Abusers, FOX NEWS, Jan. 10, 2006, <http://www.foxnews.com/story/0,2933,180487,00.html>.

25. Jane O. Hansen, *Mail Order Bride Business is Popular, Controversial*, ATL. J.-CONST., Dec. 8, 2004, at F1, available at <http://ajc.com/search/content/news/breaking/1204/08bride.html>.

26. *Id.*

27. *Id.*

28. McElroy, *supra* note 24.

29. Susan Paynter, *Washington is Blazing a Trail to Help Mail-Order Brides*, SEATTLE POST-INTELLIGENCER, Apr. 19, 2006, available at [http://seattlepi.nwsourc.com/paynter/267111\\_paynt19.html](http://seattlepi.nwsourc.com/paynter/267111_paynt19.html).

30. *Id.*

31. *Mail Order Bride Bill in Works*, *supra* note 20.

32. Harris, *supra* note 19.

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## III. CONGRESS' RESPONSE

Senator Maria Cantwell from Washington State sponsored IMBRA, which was based upon the regulations that were already in effect in her home state.<sup>33</sup> IMBRA was proposed in the 108th Congress in 2005 and was passed by the 109th Congress in January 2006.<sup>34</sup> IMBRA was piggy-backed onto the final pages of the Violence Against Women Act.<sup>35</sup> The Act was passed on a "voice vote" without testimony, witnesses or information about relevant empirical or statistical data.<sup>36</sup>

IMBRA requires United States citizens seeking to find a spouse from a foreign nation to disclose: (1) any court orders restricting their physical conduct with another person; (2) any arrests or convictions of homicide, murder, manslaughter, assault, battery, domestic violence or rape; (3) any arrests or convictions for prostitution or attempting to procure a prostitute; (4) any arrests or convictions for drug or alcohol violations; (5) their entire marital history, including how many times they have been married, how those marriages were terminated, and if they have previously sponsored a foreign fiancé; (6) the ages of all of their children under the age of eighteen; and (7) a list of all the states in which they have resided since age eighteen.<sup>37</sup>

The Act also requires the U.S. Department of Homeland Security (DHS) to compile pamphlets which inform potential foreign spouses of: (1) the K-3 nonimmigrant visa application process; (2) the illegality of domestic violence and sexual abuse; (3) the availability of domestic violence and sexual abuse services in the United States; (4) the legal rights of immigrant victims of abuse or assault; (5) the obligations of parents to support their children; (6) what constitutes marriage fraud in the United States and the punishment for such fraud; and (7) a warning to the immigrant about potential abuse by their sponsoring spouse.<sup>38</sup> These pamphlets are to be distributed to the foreign female, in her native language, by the IMB before the IMB has disclosed any of her contact information to an American male.<sup>39</sup>

Other important requirements of IMBRA include prohibiting IMBs from marketing women under the age of eighteen and requiring IMBs to search the National Sex Offender Public Registry or state registries

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33. Paynter, *supra* note 29.

34. *Id.*

35. Posting of Gary Bala to Gary Bala's Immigration Blog, <http://usaimmigrationattorney.com/nucleus/index.php?itemid=3> (Jan. 16, 2006).

36. *Id.*

37. 8 U.S.C.S. § 1375a(d)(2) (LexisNexis 2007).

38. §§ 1375a(a)(2)(A)-(2)(H).

39. § 1375a(d)(3)(A)(iii)(III).

before allowing the men to communicate with a potential mail-order bride.<sup>40</sup>

#### IV. WHAT CONGRESS GOT RIGHT

“The primary goal of [this] legislation is to better inform women entering this country as a prospective spouse about the past history of the man she may be marrying and to better inform them of their rights as residents of the United States if they become victims of domestic violence.”<sup>41</sup> IMBRA has two sections that directly advance the government’s goal of protecting women from domestic violence. These include the prohibition of listing girls younger than eighteen and the use of pamphlets to inform women of their rights before they marry their American visa sponsor.

IMBRA prohibits the “marketing” of girls younger than eighteen.<sup>42</sup> This portion of IMBRA directly advances the government’s goal of protecting women. In his testimony to the Senate Committee on Foreign Relations, John Miller, Director of the State Department’s Office to Monitor and Combat Trafficking in Persons, discussed the prevalence of marriage fraud in human trafficking.<sup>43</sup> Miller recounted the case of a seventeen-year-old Asian girl who was sold by her husband to a brothel, and now, only in her twenties, she is diseased and looks like a woman twice her age.<sup>44</sup> Human trafficking has become a widespread and tragic epidemic around the world in recent years,<sup>45</sup> so regulations that protect young girls from becoming sex slaves are justifiable. In almost all fifty states, an individual must be over the age of eighteen in order to get married without some form of parental or judicial consent.<sup>46</sup> For example, in North Carolina a couple must be eighteen to get married, or, if they are between sixteen and eighteen years of age, they can marry with written consent from their parents.<sup>47</sup> As a result, the requirement that IMBs only list women who are eighteen or older is not an infringement upon marriage rights of American males, because

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40. See generally 8 U.S.C.S. § 1375a (LexisNexis 2007).

41. Proposed Law Would Regulate International Marriage Brokers, *supra* note 2.

42. 8 U.S.C.S. § 1375a(d)(1) (LexisNexis 2007).

43. Potential for Trafficking by Marriage Brokers Called Serious: Statement of John Miller Hearing, 108th Cong. (2004) (during hearing before U.S. Senate Foreign Relations Committee), <http://usinfo.state.gov/gi/Archive/2004/Jul/15-123355.html>.

44. *Id.*

45. *Id.*

46. Legal Information Institute, *Marriage Laws of the Fifty States, District of Columbia and Puerto Rico*, [http://www.law.cornell.edu/topics/Table\\_Marriage.htm](http://www.law.cornell.edu/topics/Table_Marriage.htm) (last visited Mar. 14, 2006).

47. N.C. GEN. STAT. § 51-2 (2005).

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if the women were American citizens, they could not yet marry. Thus, this portion of IMBRA is a justifiable and effective tool for preventing domestic violence and human trafficking.

The pamphlet requirement also advances the government's goal of protecting women without infringing upon the rights of male citizens. The pamphlet provides a plethora of information to the woman in her native language, so she can make an informed decision about disclosing her information to an American male or choosing to come to America to start a life with him.<sup>48</sup> If a mail-order bride knows her rights once in America, she will not fall victim to the belief that she will automatically be deported if she leaves her husband.<sup>49</sup> If these women know that domestic violence is illegal and that leaving their husbands to escape such abuse will not lead to automatic deportation, these women may be more likely to leave a bad situation. This regulation does not infringe upon a potential husband's rights; in fact, it protects American males.

Many American males fall victim to marriage fraud because their brides are not looking for love in America but instead for a green card. If mail-order brides know of the illegality of marriage fraud and the punishments for perpetrating such a fraud, they will be less likely to harm a man in this manner. Since this requirement protects both the mail-order brides and their potential husbands, this is the best safeguard for all parties involved.

Even though parts of IMBRA substantially further the government's interest in protecting women from domestic violence, there are parts of the Act which do not directly advance this goal and have the effect of depriving American citizens of their constitutional rights.

#### V. WHAT CONGRESS GOT WRONG

Congress reacted to the recent media frenzy surrounding the mail-order bride industry with a poorly drafted and mostly ineffective statute. IMBRA requires IMBs to collect a plethora of personal information from the male, translate all of that information into the woman's native language, disclose the information to her, and then get her consent before the IMB even gives the male her contact information.<sup>50</sup> The statute is based upon faulty assumptions on the part of its proponents; its effect is disproportionate to the problem; it is underinclusive; and it

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48. Barbara Ferry, *Web Dreams, Wedding Realities*, THE NEW MEXICAN, Sept. 24, 2006, at A-1.

49. *Id.*

50. 8 U.S.C.S. § 1375a (LexisNexis 2007).

violates the constitutional rights of males using IMBs and the rights of the IMBs themselves.

A. *Faulty Assumptions*

The proponents of IMBRA do not rely upon facts or law in supporting the Act; they merely rely upon faulty assumptions about the males and females involved in these relationships.<sup>51</sup> Their position rests upon the belief that men are in a position of dominance in these relationships and that they will use this dominance to abuse and intimidate their foreign spouse.<sup>52</sup> This idea was best described by Wendy McElroy in “‘Mail-Order Bride’ Law Brands All American Men Abusers.”<sup>53</sup> This law is founded on the presumption that all American men would use any power they possess in these marriages in a way to disadvantage their spouse. Instead of punishing the men who abuse the power they might hold in these relationships, IMBRA acts as a prior restraint and says that all American men are guilty of abuse until proven innocent.

Thus, IMBRA labels foreign women as naïve and views them as completely innocent victims in these relationships. The United States Government has assumed the role of defender for these women while severely abridging the rights of its own male citizens. It would seem these women hold an enormous amount of power in these arrangements, as they alone choose whether to advertise themselves through dating services. They can choose whether to continue communication with a particular gentleman and whether they want to leave their country and start a new life with the man they love in America.

Over 150,000 foreign women are placing advertisements with marriage brokers looking for American husbands.<sup>54</sup> The “mail-order” marriages that fail seem to indicate there was fraud at the inception of the marriage.<sup>55</sup> The most common times for mail-order marriages to dissolve are six months after the union, when the woman gets a green card, and two years into the marriage, when she obtains unconditional permanent residence in the United States.<sup>56</sup> This illustrates that men are not the only ones in these situations with the potential to exploit their position.

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51. McElroy, *supra* note 24.

52. Proposed Law Would Regulate International Marriage Brokers, *supra* note 2.

53. McElroy, *supra* note 24.

54. Scholes, *supra* note 3.

55. *Id.*

56. *Id.*

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B. *Disproportionate Effect*

There is no concrete evidence pointing to an increase in domestic violence against foreign brides.<sup>57</sup> The proponents of the Act admit that there is little data linking the mail-order industry with domestic violence rates. They merely rely upon their perceptions and stereotypes about the men and women involved in international unions to assume that the instances of violence are greater in these relationships.<sup>58</sup> Looking at the available data on the rate of domestic violence in broker-arranged marriages, there seems to be little justification for such a dramatic and disproportionate response.

Almost three million marriages occur in the United States every year.<sup>59</sup> None of the American women, however, have the same amount of information these foreign women receive under IMBRA.<sup>60</sup> With 24-hour chapels in Las Vegas, almost anyone over the age of eighteen can get married within hours of meeting a prospective spouse. According to the Center for Disease Control, almost 1,250 women die at the hands of their partners every year in the United States.<sup>61</sup> That translates to 12,500 domestic violence deaths since 1996. However, only three women who met their American husbands through IMBs have reportedly died from domestic abuse in the past ten years.<sup>62</sup> The three mail-order brides murdered by their husbands represent less than one percent of all domestic violence deaths in the United States.<sup>63</sup>

IMBRA is punishing American males for the misdeeds of a few. According to Gary Bala, a United States Immigration Attorney, IMBRA is like “a sledge hammer going after a small problem.”<sup>64</sup> Out of the 730,000 petitions filed by United States citizens to sponsor non-citizen family members in 2005, only 420 of those petitions were filed by 398

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57. McElroy, *supra* note 24.

58. Proposed Law Would Regulate International Marriage Brokers, *supra* note 2.

59. Scholes, *supra* note 3.

60. *Id.*

61. NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTR. FOR DISEASE CONTROL, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 19 (2003), [http://www.cdc.gov/ncipc/pub-res/ipv\\_cost/IPVBook-Final-Feb18.pdf](http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf).

62. *U.S. Mail Order Brides Fight Back*, CHINA DAILY, Nov. 9, 2005, [http://www.chinadaily.com.cn/english/doc/2005-11/09/content\\_492744.htm](http://www.chinadaily.com.cn/english/doc/2005-11/09/content_492744.htm).

63. International Matchmaking Organizations: A Report to Congress, Part II - Data Collection and Statistical Analysis, Information on Marriages Based on Mail Order Introductions, (4) Domestic Abuse in Mail Order Marriages, *available at* <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9ba5d0676988d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=2c039c7755cb9010VgnVCM10000045f3d6a1RCRD> (last visited April 1, 2007).

64. Bala, *supra* note 35.

convicted sex offenders.<sup>65</sup> These represent only .06% of all visa applications, not just fiancé visas.<sup>66</sup> “Immigration law does not prohibit convicted sex offenders from petitioning to bring their spouses, fiancés, or children into the United States.”<sup>67</sup> Not only is it legal for a sex offender to sponsor a visa application, but the “United States Citizenship and Immigration Services cannot deny a petition based solely on the fact that the petitioner is a convicted sex offender.”<sup>68</sup>

Based upon the small amount of data that exists on domestic violence in mail-order marriages, the strict requirements imposed by IMBRA are unjustified and disproportionate to the actual problem of abuse.

### C. *Underinclusive Application*

IMBRA is underinclusive in its application because it only applies to IMBs and not to larger sites such as Yahoo! Personals or Match.com. The Act defines an IMB as:

[A] corporation . . . or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens . . . and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.<sup>69</sup>

In a 1999 report by the former Immigration and Naturalization Service, it was estimated that over 200 companies fitting this definition were operating in the United States.<sup>70</sup> It is now estimated that the number of IMBs operating in the United States has grown to almost 500.<sup>71</sup>

When defining an IMB, the Act states that the definition does not include:

[A]n entity that provides dating services if its principal business is not to provide international dating services between United States citizens . . . and foreign nationals and it charges comparable rates and offers

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65. U.S. GEN. ACCOUNTING OFFICE, IMMIGRATION BENEFITS: CIRCUMSTANCES UNDER WHICH PETITIONERS' SEX OFFENSES MAY BE DISCLOSED TO BENEFICIARIES (2006).

66. *Id.*

67. *Id.*

68. *Id.*

69. 8 U.S.C.S. § 1375a(e)(4)(A) (LexisNexis 2007).

70. International Marriage Broker Regulation Act of 2005, H.R. 3657, 109th Cong. (1st Sess. 2005), available at <http://www.govtrack.us/congress/billtext.xpd?bill=H109-3657>.

71. Eduardo Porter, *Law on Overseas Brides is Keeping Couples Apart*, N.Y. TIMES, Oct. 17, 2006, at A14.

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comparable services to all individuals it serves regardless of the individual's gender or country of citizenship.<sup>72</sup>

As a result of this exception, the required disclosure of IMBRA will not affect citizens using large online dating organizations such as Match.com or Yahoo! Personals to find a mate.<sup>73</sup> Because only ten percent of Match.com and Yahoo! Personal's clientele is international and arranging international relationships is not their main goal, these sites fall within this exemption.<sup>74</sup> Yahoo! Personals boasts over 1.5 million members<sup>75</sup> while Match.com has "15 million members worldwide."<sup>76</sup> The small "mom and pop" marriage brokers regulated by this Act only host a few thousand clients.<sup>77</sup>

One member of Citizens Against Dating Discrimination (CADD) noted, "A lady is just as likely to meet an abusive male at Yahoo then [sic] a smaller international site."<sup>78</sup> Knowing that these exemptions exist for the larger sites such as Yahoo! Personals and Match.com, any man with bad intentions for his prospective spouse could use one of these services to undermine the purpose of the law. One Filipino woman who is married to the webmaster of an international site said, "The first time one of my sisters is killed by an abusive male member who belongs to one of the exempted sites allowed by law, lawmakers should be held accountable . . . ."<sup>79</sup> This law does not go as far as necessary to protect foreign women from American males who might take advantage of them.

## VI. *Constitutional Issues Raised by IMBRA*

IMBRA not only "brands all American men abusers"<sup>80</sup>—it also significantly infringes upon their constitutional rights. The Act has

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72. 8 U.S.C.S. § 1375a(e)(4)(B)(ii) (LexisNexis 2007).

73. Press Release, Citizens Against Dating Discrimination, Citizens Against Dating Discrimination (CADD), Believe that International Marriage Broker Act (IMBRA) 2005 Fails to Protect Immigrant Women From Abuse by Exempting Larger Online Dating Sites From Having to Comply with IMBRA 2005 (Mar. 6, 2006), available at <http://www.prweb.com/releases/2006/3/prweb354100.htm>.

74. *Id.*

75. Yahoo! Personals, <http://uk.match.yahoo.net/uk/yahoosem.aspx> (last visited Mar. 25, 2006).

76. Match.com, <http://www.match.com/help/aboutus.aspx> (last visited Mar. 25, 2006).

77. See Press Release, CADD, *supra* note 73.

78. *Id.*

79. *Id.*

80. McElroy, *supra* note 24.

already been challenged twice in district courts.<sup>81</sup> Opponents have argued IMBRA chills speech protected by the First Amendment, violates Equal Protection, and limits each individual's fundamental rights of privacy and marriage.<sup>82</sup> The required disclosure of IMBRA is overbroad and goes further than necessary to reach the government's goal of protecting foreign women from entering abusive relationships.

A. *First Amendment Rights of International Marriage Brokers*

Under IMBRA, a man using an IMB to find a companion has to disclose large amounts of personal information to the broker before communicating with any female in a foreign country.<sup>83</sup> Once the IMB receives this information it must translate the information into the woman's native language.<sup>84</sup> The IMB must then give the male's information to the potential bride and receive a signature from the woman before the IMB can release the woman's contact information to the male client.<sup>85</sup> This is a prohibitively burdensome task for the IMB because it may have thousands of male and female clients from numerous countries speaking different languages.<sup>86</sup> "One has to keep in mind the nature of this industry for the broker. They have signed up hundreds, or thousands, or even hundred [sic] of thousands of women. If you multiply that out, it's a commercially prohibitive task."<sup>87</sup> Thus, a court could likely find this is an unconstitutional restriction upon commercial speech, protected by the First Amendment.<sup>88</sup>

The four-prong test from *Central Hudson Gas & Electric Corporation v. Public Service Commission* should be used to determine whether commercial speech is protected by the First Amendment.<sup>89</sup> The court must determine: (1) whether the speech concerns "lawful activity" and is "not misleading"; (2) whether the regulation serves a "substantial" governmental interest; (3) whether the regulation materially and "directly advances" the state's asserted interest; and (4) whether the

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81. Ferry, *supra* note 48.

82. *Id.*

83. 8 U.S.C.S. § 1375a(d)(3) (LexisNexis 2006).

84. *Id.*

85. *Id.*

86. Bala, *supra* note 35.

87. Brandon Swanson, *Law to Protect 'Mail Order Brides'*, PRAGUE POST, Feb. 15, 2006, available at <http://www.praguepost.com/articles/2006/02/15/law-to-protect-mail-order-brides.php> (quoting Gary Bala).

88. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

89. *Id.* at 566.

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regulation is no “more extensive than is necessary to serve that interest.”<sup>90</sup>

The mail-order industry is legal in the United States, as is correspondence between American citizens and foreign individuals.<sup>91</sup> The government’s interest behind the regulation is the protection of women from violent and potentially deadly relationships.<sup>92</sup> There is no argument that this is not a substantial and justifiable goal. However, it does not appear that IMBRA “directly and materially advances” that interest or that the “regulation is no more extensive than necessary.”<sup>93</sup> These issues have already been addressed by one district court.

The United States District Court for the Northern District of Georgia granted a temporary restraining order against IMBRA on March 7, 2006. Judge Cooper found that the IMBs’ speech was protected commercial speech under the First Amendment.<sup>94</sup> In order for a statute that regulates protected commercial speech to be valid, it must immediately advance a substantial government interest and must be reasonably tailored to achieve that interest.<sup>95</sup> The court granted the temporary restraining order against enforcement of IMBRA based upon the finding that the Act did not meet the last two factors of the *Central Hudson* test.<sup>96</sup> “The Act is more extensive than necessary to serve the governmental interest in protecting immigrant women from domestic abuse by United States males in that the disclosures required to be made by the IMBs are overbroad.”<sup>97</sup>

However, on September 25, 2006, Judge Cooper dissolved the temporary restraining order against the enforcement of IMBRA.<sup>98</sup> On March 23, 2007, Judge Cooper denied European Connections’ motion for permanent injunctive relief.<sup>99</sup> This time the district court refused to apply the *Central Hudson* test and instead applied a less restrictive

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90. *Id.*

91. McElroy, *supra* note 24.

92. Proposed Law Would Regulate International Marriage Brokers, *supra* note 2.

93. *See Cent. Hudson*, 447 U.S. at 566.

94. *European Connections & Tours, Inc. v. Gonzales*, No. 1:06-CV-00426-CC (N.D. Ga. Mar. 7, 2006) (order granting preliminary injunction), available at <http://www.usa.immigrationattorney.com/images/CourtOrderTRO.pdf>.

95. *Cent. Hudson*, 447 U.S. at 566.

96. *European Connections*, *supra* note 94.

97. *Id.* at 5.

98. Gary Bala, Notice: TRO Issued Against IMBRA Is Lifted (Sept. 26, 2006), <http://fianceevisalawyer.com>.

99. *European Connections & Tours, Inc. v. Gonzales*, No. 1:06-CV-00426-CC, 2007 U.S. Dist. Lexis 22823, at \*73-\*74 (N.D. Ga. Mar. 23, 2007).

test under *Zauderer*.<sup>100</sup> The court categorized the requirements imposed by IMBRA as “disclosure requirements.”<sup>101</sup> As a result, the court found that “[b]ecause the First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed, we do not think it appropriate to strike down such requirements merely because other possible means by which the State may achieve its purposes can be hypothesized.”<sup>102</sup> The *Zauderer* test merely requires the government to show that the regulation is not unduly burdensome and that “there is a reasonable relationship to a legitimate governmental interest.”<sup>103</sup> In *European Connections*, the court found that the disclosure of personal information by males before communication has begun with a foreign woman has a reasonable relationship to the legitimate goal of preventing partner violence.<sup>104</sup> Notwithstanding the fact that the disclosures imposed by IMBRA have a “reasonable relationship” to protecting women, the regulation is still unduly burdensome, and, as such, should not pass the *Zauderer* test.

Even so, the *Zauderer* test should not even apply to IMBRA because the court’s categorization of the requirements of IMBRA as disclosure requirements is flawed. Disclosure requirements encompass those regulations which require an entity to disclose certain information about itself and its advertising practices.<sup>105</sup> The regulations addressed in *European Connections* require entities to disclose information about their clients, not about their business or operating practices. Furthermore, the disclosures required by IMBRA do not seek to prevent a misleading or unlawful activity.<sup>106</sup> “If the communication is neither misleading nor related to unlawful activity, the government’s power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech.”<sup>107</sup> Thus, the less restrictive *Zauderer* test is inapplicable here and the *Central Hudson* test should be applied. The Court stated that even if *Central Hud-*

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100. *Id.* at \*41-\*42.

101. *Id.*

102. *Id.* (quoting *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985))

103. *Zauderer*, 471 U.S. at 651.

104. *European Connections*, 2007 U.S. Dist. Lexis 22823, \*43.

105. See generally *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626 (1985), *In re R.M.J.*, 455 U.S. 191 (1982), *Cent. Hudson*, 447 U.S. 557, *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977), *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

106. *Zauderer*, 471 U.S. at 672-73.

107. *Cent. Hudson*, 447 U.S. at 564.

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son were applied to IMBRA, it would “pass muster.”<sup>108</sup> However, the court fails to provide any arguments in support of this contention.<sup>109</sup>

If a similar cause of action is brought in another jurisdiction or if this action is appealed, courts will likely apply the *Central Hudson* test and grant injunctive relief against IMBRA for the same reasons Judge Copper used in granting the temporary restraining order.

### B. First Amendment Rights of Potential Grooms

IMBRA also infringes upon the free speech rights of the men seeking partners through IMBs and makes it more difficult for women seeking a better life in America to find a potential husband. This occurs because the men are required to disclose all of their criminal, marital, and personal history to these women before beginning any type of relationship. “Most guys will say hi to 20 to 30 ladies before they meet the one that is right for them.”<sup>110</sup> Requiring this disclosure to every woman with whom a male wishes to communicate will severely chill his speech. One male who has been affected by this new law while in search of a bride summed up the situation: “If you had to disclose everything about yourself before you had dinner with someone, you’d never get a date.”<sup>111</sup>

This regulation creates fear in men looking for love internationally because they do not know to whom they are disclosing this information or how it will be used. There is no similar requirement for the foreign women to disclose their criminal, marital, or personal history before they can communicate with American males. As a result, this will cause men not to communicate with women through these sites. Corresponding with and marrying foreign persons is legal and has a long tradition in American history.<sup>112</sup> However, this law seeks to abridge this communication, if not put a stop to the industry as a whole.

In *Elrod v. Burns*, the Supreme Court held that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”<sup>113</sup> In granting a temporary restraining order against enforcement of IMBRA, the Georgia court quoted *Tillman v. Miller*: “[T]here is no harm to the public from grant-

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108. *European Connections*, 2007 U.S. Dist. Lexis 22823, at \*42.

109. *Id.*

110. CADD, *supra* note 73.

111. Dan Horn, *Overseas Matchmaking Law Fought*, CINCINNATI ENQUIRER, May 2, 2006, at 2B.

112. Hansen, *supra* note 25.

113. 427 U.S. 347, 373 (1996).

ing an injunction that would prohibit enforcement of the Statute until the Court has evaluated its constitutionality, especially when the Statute could impair a fundamental constitutional right to free speech as guaranteed under the First Amendment.”<sup>114</sup> As previously discussed, the first victory for opponents of IMBRA was short-lived because the temporary restraining order was dissolved on September 25, 2006, and on March 23, 2007 the district court denied permanent injunctive relief against IMBRA.<sup>115</sup> Now, IMBRA and its harsh requirements are in full effect.<sup>116</sup>

### C. *IMBRA and the Equal Protection Clause*

The language of IMBRA may be facially neutral, but it has a disproportionate impact upon the rights of American men seeking “mail-order brides” and the foreign women looking for American husbands. The Equal Protection Clause of the Fourteenth Amendment prohibits statutes that have a discriminatory effect upon a class of persons.<sup>117</sup> There are two Equal Protection arguments that can be made against IMBRA: one based upon alienage and the other based upon gender.

IMBRA first discriminates upon the basis of alienage. The Act treats American citizens differently than foreign persons wishing to gain citizenship through fiancé visas:

If I am a U.S. gentleman citizen and I want to communicate with a lady abroad, this law says that I have to cough up all of these documents just to say, “hi.” . . . Whereas, if I decide to marry a local lady, I don’t have to cough up any documentation. These two sets of individuals are not equal.<sup>118</sup>

According to the Supreme Court’s decision in *Sugarman v. Dougall*, aliens are persons under the Constitution and deserve constitutional protections.<sup>119</sup> “As a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny. In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available.”<sup>120</sup>

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114. *European Connections*, *supra* note 94, at 6 (quoting *Tillman v. Miller*, 917 F. Supp. 799, 801 (N.D. Ga. 1995)).

115. *Id.*

116. Gary Bala, *supra* note 98.

117. U.S. CONST. amend. XIV, § 1.

118. Swanson, *supra* note 87 (quoting Gary Bala).

119. *Sugarman v. Dougall*, 413 U.S. 634 (1973).

120. *Bernal v. Fainter*, 467 U.S. 216, 219 (1984).

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In *Mathews v. Diaz*, however, the Supreme Court upheld a law denying Medicaid benefits to aliens.<sup>121</sup> This decision gave great deference to Congress regarding decisions of immigration and foreign affairs under the Supremacy Clause of the Constitution.<sup>122</sup>

Under the exception to the application of strict scrutiny defined by *Mathews*, the regulation only needs to meet the rational basis standard in order to be upheld.<sup>123</sup> Thus, the regulation must have a legitimate public purpose, and the means used must be rationally related to that objective.<sup>124</sup> Under this deferential standard, it is unlikely that a court would find that the disclosure of criminal records is not rationally related to the legitimate government interest of protecting immigrant women.

IMBRA also discriminates upon the basis of sex. “The act’s language is gender-neutral but its clear purpose is to protect foreign women from predatory American men. Application to ‘male-order husbands’ [sic] would be incidental as such ‘brides’ are relatively rare.”<sup>125</sup> Classifications based upon sex are subject to intermediate scrutiny.<sup>126</sup> Thus, the court must find that the regulation furthers an important government objective and that the means used are substantially related to that goal.<sup>127</sup> There can be no doubt that the protection of women and children from domestic violence is an important and compelling governmental interest. The means used by the government, however, required disclosure and are not substantially related to protecting women. Asking a man to divulge all of his personal information without asking his female counterpart to do the same is not substantially related to the prevention of domestic violence in international marriages.

IMBRA does provide for means which are substantially related to the protection of immigrant women, which include informing women of the dangers of domestic violence, the statistics regarding domestic violence, the kinds of help available to victims of abuse, and domestic violence laws in the United States.<sup>128</sup> Requiring and subsequently disseminating personal information via the internet to these IMB companies, however, is not substantially related to the protection of foreign

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121. 426 U.S. 67 (1976).

122. *See id.*

123. *See id.*

124. *See id.*

125. McElroy, *supra* note 24.

126. *Craig v. Boren*, 429 U.S. 190, 197 (1976).

127. *Id.*

128. *See generally* 8 U.S.C.S. 1375a (LexisNexis 2007).

women. Furthermore, women who are looking for a foreign spouse, such as an American male, may simply disregard the male's violent past or previous failed marriages because in their native country the men are more abusive and domestic violence may not be considered a crime.<sup>129</sup> Also, as previously discussed, if an ill-intentioned male knows that he can circumvent the application of IMBRA by using services such as Match.com and Yahoo! Personals, the law is affording no protection to these women at all.

Since the means employed by the government—required disclosure of personal information—are not substantially related to protecting foreign women from abuse by their American husbands, the law is unconstitutional. IMBRA violates the Equal Protection clause by drawing distinctions based upon gender, as well as alienage, in its application.

#### D. *IMBRA and the Right to Marry*

The right to marry is a fundamental human right that was first recognized in *dicta* by the Supreme Court in *Meyer v. Nebraska*.<sup>130</sup> In *Meyer*, the Court invalidated a Nebraska law that made it a crime to teach any modern language, other than English, to a child who had not successfully completed the eighth grade.<sup>131</sup> The Supreme Court found that the right to choose how one's own children are educated is a right fundamental to each individual.<sup>132</sup> Thus, Nebraska's law infringed upon the Fourteenth Amendment rights of the parents and was not a valid exercise of the State's power.<sup>133</sup> The Court held that the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual . . . to marry, establish a home . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."<sup>134</sup> The Supreme Court recognized that some fundamental rights, such as the right to marry and the right to choose how to raise your children, are personal decisions that should be outside the realm of the government's control.<sup>135</sup>

In *Griswold v. Connecticut*, the Supreme Court found a statute criminalizing the dissemination of birth control to be an unconstitu-

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129. Scholes, *supra* note 3.

130. 262 U.S. 390, 399 (1923).

131. *Id.* at 403.

132. *Id.* at 401.

133. *Id.* at 402-03.

134. *Id.* at 399.

135. *Id.*

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tional intrusion into the marriage rights of individuals.<sup>136</sup> The marriage relationship lies “within the zone of privacy created by several fundamental constitutional guarantees.”<sup>137</sup> The Court found that such regulation “[can]not be achieved by means which sweep unnecessarily broad and thereby invade the area of protected freedoms.”<sup>138</sup> That is exactly what IMBRA is doing to American males looking for wives through IMBs—it sweeps too broadly and infringes upon their private decisions about marriage and family.

The Supreme Court in *Loving v. Virginia* recognized that marriage is “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”<sup>139</sup> In *Loving*, the Court found Virginia’s regulations against interracial marriages to be an unconstitutional restriction upon marriage.<sup>140</sup> “Under our Constitution, the freedom to marry, or not to marry, a person of another race resides with the individual and cannot be infringed by the State.”<sup>141</sup> Prior to the *Loving* decision, Virginia was trying to tell its citizens whom to marry. IMBRA is the government’s way of telling American men not to use IMBs by making it more difficult, if not impossible, to form a union with a woman from another country.

In *Turner v. Safley*, the Supreme Court invalidated a Missouri prison regulation that restricted inmate marriages.<sup>142</sup> The regulation allowed inmates to marry only if the prison superintendent approved of the union, which only occurred when “compelling reasons,” such as pregnancy, existed.<sup>143</sup> The Court recognized that marriages are “expressions of emotional support and public commitment,” have “spiritual significance,” and “marital status [is often] a precondition to the receipt of government benefits.”<sup>144</sup> The Court stated that marriage may be restricted by the states when there are legitimate security concerns, but the regulation in question in the *Turner* case “represent[ed] an exaggerated response to such security objectives.”<sup>145</sup> That is exactly what IMBRA is, “an exaggerated response.”<sup>146</sup> Although less

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136. 381 U.S. 479 (1965).

137. *Id.* at 485 (quoting *NAACP v. Alabama*, 377 U.S. 288, 307 (1964)).

138. *Id.*

139. *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)).

140. *Id.*

141. *Id.*

142. 482 U.S. 78 (1987).

143. *Id.*

144. *Id.* at 96.

145. *Id.* at 97-98.

146. *Id.*

than one percent of all domestic violence deaths in the United States each year involve mail-order marriages, Congress has passed an Act that makes it incredibly difficult for an American male to communicate with and marry a mail-order bride.

Not only does IMBRA regulate communication between the domestic males and foreign women, making it more difficult to establish a relationship, it also limits their ability to marry. IMBRA limits each American citizen to one fiancé visa per year.<sup>147</sup> It also puts a lifetime cap on fiancé visas, limiting each individual to two K-3 visas.<sup>148</sup> With a divorce rate of almost 50 percent, millions of Americans will enter second, third, and even fourth marriages.<sup>149</sup> However, if an American wishes to marry a foreign citizen, he only has two chances.

All of these cases illustrate the importance that the institution of marriage has in our society, as well as in our legal system. The Supreme Court has been reluctant to uphold regulations that restrict an individual's right to marry or laws restricting choices concerning whom to marry. IMBRA is one such regulation that severely infringes upon an individual's right to decide who to marry. "The implementation of IMBRA is a fiasco that has destroyed the lives of thousands of [law-abiding, marriage-minded] men and women."<sup>150</sup>

## VII. THE EFFECTS OF IMBRA

The International Marriage Broker Regulation Act took effect in March 2006 but the U.S. Department of Homeland Security (DHS) missed its deadline for publishing the pamphlets, causing thousands of visas to be put on hold.<sup>151</sup> In June 2006, over 10,000 visas were frozen by the U.S. Department of Immigration and Naturalization because they did not meet the new requirements of the Act.<sup>152</sup> According to a Homeland Security spokesman, the 10,000 applications "are being held because they did not address the criminal or marriage bro-

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147. U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY, FORM I-129F: PETITION FOR ALIEN FIANCÉ(E), available at <http://www.uscis.gov/files/form/I-129F.pdf> (last visited Mar. 25 2007).

148. *Id.*

149. Matthew D. Bramlett and William D. Mosher, *Cohabitation, Marriage, Divorce, and Remarriage in the United States*, 23-22 VITAL AND HEALTH STATISTICS (Nat'l Ctr. for Health Statistics, Washington, D.C.), July 2002, available at [http://www.cdc.gov/nchs/data/series/sr\\_23/sr23\\_022.pdf](http://www.cdc.gov/nchs/data/series/sr_23/sr23_022.pdf).

150. Root, *supra* note 4.

151. *Red Tape Puts Many Weddings on Hold; Agency Slow to React After Congress Acts to Help Mail Order Brides*, RICHMOND TIMES DISPATCH, June 14, 2006, at A4.

152. Porter, *supra* note 71.

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ker issues.”<sup>153</sup> To rectify this discrepancy, the DHS sent out additional forms to men seeking visas for their fiancés in order to make their applications comply with the new requirements of IMBRA.<sup>154</sup>

One couple affected by the new regulations is Bill Hall, of Vermont, and his fiancée Debbie, from Canada, who met through an IMB.<sup>155</sup> Debbie and her two sons were supposed to move to Vermont this year when Debbie married Bill, her boyfriend of over six years.<sup>156</sup> However, the new regulations and DHS’s failure to meet its deadline have put Debbie and Bill, as well as thousands of other couples, “in limbo.”<sup>157</sup> They are now unable to plan their wedding because they do not know if and when their visa will be approved under the new regulations.<sup>158</sup>

The new requirements imposed by IMBRA have not only affected American men but have burdened the IMBs as well. The Act affects not only brokers that were formed under American laws but also foreign companies with clients in the United States.<sup>159</sup>

If a broker fails to comply with the requirements of IMBRA, they can face a fine up to \$20,000 and five years in prison for every violation.<sup>160</sup> Bala has predicted that the strict penalties and the difficulty in complying with the Act’s requirements will force many IMBs out of business and severely alter most brokers’ day-to-day business operations.<sup>161</sup>

## CONCLUSION

In order to protect foreign women from domestic violence, a comprehensive study needs to be conducted to ascertain the actual problem surrounding these arrangements. The study needs to take into account not only the personal perceptions and biases of a few, but also the perspectives of the men affected by the Act, the women seeking fiancée visas, the IMBs, and domestic violence statistics tailored to this issue. With this specific information, Congress can make an informed and narrowly-tailored decision that protects the rights of its own citizens, as well as those of prospective citizens.

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153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. 8 U.S.C.S. § 1375a (LexisNexis 2007).

160. *Id.*

161. *Id.*

The U.S. Department of Immigration and Naturalization already has procedures implemented that protect the six percent of immigrants coming to America each year as fiancés.<sup>162</sup> There is an extensive application procedure to obtain a K-3 visa. These procedures include background checks to uncover an individual's criminal history.<sup>163</sup> "There are already laws passed to protect immigrant women and their children from violence, including background checks done by Customs and Immigration since 9/11; self-petitioning residency status for battered women (VAWA), U and T Visas; and state and federal laws to punish perpetrators of domestic abuse."<sup>164</sup> These are more appropriate ways of handling the problem of disclosure because the women are given this information once there is already a relationship between the two individuals. This system protects the male's privacy concerns in that it is less likely, after a long courtship, that the female is going to use this private information against her potential husband.

All of the information IMBRA requires to be disclosed before a relationship begins should be disclosed during the visa application process. This way, the information is being collected and transmitted by a much more reliable source: the Department of Immigration and Naturalization, not individual marriage brokers. Any information of this kind should be collected from both parties, not just from the American male. The pamphlet requirement should be continued, and most importantly, this information should be more readily available to domestic brides, as foreign women are not the only women in America who need the government's protection.

*Erin K. Pleasant*

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162. Scholes, *supra* note 3.

163. *Id.*

164. Root, *supra* note 4.