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In 1993, the Center for Disease Control ("CDC") devised a strategy to control the spread of tuberculosis ("TB"), a highly contagious, serious disease, and set a goal for its elimination by 2010.¹ The plan included the development of new tools for the diagnosis and treatment of TB, the creation and maintenance of public support for such measures, and the tracking of progress on both an individual and national scale.² A few states had already implemented statutes to control the disease, resulting in a small body of case law that addresses the treatment, contamination, and disclosure of TB.³ In *City of Milwaukee v. Washington*,⁴ the Wisconsin Supreme Court considered whether the Tuberculosis Control Statute, section 252.07(9) of the Wisconsin Statutes, permits the

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³ See, e.g., School Bd. of Nassau County v. Arline, 480 U.S. 273, 289 (1987) (stating infection with tuberculosis qualifies a person as handicapped under the Rehabilitation Act of 1973 and protects person from discrimination based on their tuberculosis status); Hofmann v. Blackmon, 241 So.2d 752, 752 (Fla. App. 1970) (explaining physician has duty to inform immediate family members of communicable disease that presents itself in a patient who lives with those immediate family members); Earle v. Kuklo, 98 A.2d 107, 109 (N.J. Super. Ct. App. 1953) (holding landlord liable for the injury sustained by tenant who contracted tuberculosis from landlord on failure-to-warn cause of action). See also CDC, *Tuberculosis Control Laws*, supra note 1 (addressing public health regulations to be followed when dealing with tuberculosis as a communicable disease that causes a public health risk).

⁴ 735 N.W.2d 111 (Wis. 2007).
state to confine a person to a Criminal Justice Facility ("CJF"), rather than a medical center, for failure to comply with the prescribed treatment order. In Washington, the Wisconsin Supreme Court held that the Tuberculosis Control Statute authorized long-term confinement to jail of a person with non-infectious TB who fails to comply with the ordered treatment regimen; that the no less restrictive alternative language referred to confinement generally; that a circuit court may consider costs to determine an appropriate place of confinement; and that placement in jail was not an abuse of discretion.

A tuberculosis-control-clinic public health nurse diagnosed petitioner, Ruby Washington, with TB in June 2005 while she was living in a homeless shelter and did not have a fixed address. The Tuberculosis Control Clinic (the "Clinic"), operated by the City of Milwaukee Health Department ("Department"), immediately started Washington on a treatment regimen of medication. This treatment failed because Washington neglected to appear for her next two appointments with the Clinic. After Washington failed to attend these two appointments, the Clinic considered her to have disappeared from the public view.

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5 Id. at 114 (reasoning if Washington's tuberculosis was not treated, she would become contagious and a threat to public health and therefore her confinement was in the interest of public health). See State v. Terrell, 721 N.W.2d 527, 530 (Wis. 2006). The Milwaukee County Criminal Justice Facility ("CJF") is a correctional institution. See also Benedict Center, Jail Chaplain Program, http://www.benedictcenter.org/Jail%20Chaplain%20Program (last visited Oct. 8, 2008). The CJF is a pretrial detention facility where citizens are detained; it includes the Milwaukee County Jail, where Washington was confined. Id.

6 735 N.W.2d at 114. The Circuit Court of Milwaukee County heard the case, granted petition, and Washington appealed. Id.

7 See In re Washington, 716 N.W.2d 176, 176 (Wis. Ct. App. 2006). The Court of Appeals of Wisconsin stated the preliminary undisputed facts of the case. Id. at 177.

8 In re Washington, 735 N.W.2d at 115 (noting Keenan Health Center Tuberculosis Control Clinic is operated by the City of Milwaukee Health Department). The Clinic tested Washington for tuberculosis through sputum specimens and prescribed Washington with medicine for treatment. Id.

9 In re Washington, 716 N.W.2d at 178. The Clinic provided Washington with bus tickets so she could return to the Clinic for periodic appointments to follow her treatment. Id.

10 Id. The City of Milwaukee Health Department was unable to locate Washington after she left the Clinic and did not return. Id. Washington never contacted the Department to reschedule her appointments. Id. A "directly-observed therapy" is a treatment plan whereby a health care worker, acting under the authority of the local department of health, observes the ingestion of the tuberculosis medication. Id. Directly-observed therapy is one type of treatment option. Id. Doctors use this type of treatment with patients who are unlikely to take their prescribed medication. In re Washington, 735 N.W.2d at 115. Another treatment option is to send patients home with tuberculosis medicine and provide them with the means to return to the clinic for
In August 2005, the Department found Washington at the Aurora Sinai Medical Center ("Medical Center"), where she was delivering a baby. At that time, the Department kept Washington at the Medical Center against her will, pursuant to section 252.07(9) of the Wisconsin Statutes, for TB treatment. Washington agreed to remain at the Medical Center at least for one month, or until medical professionals determined she was no longer contagious, and that upon discharge from the Medical Center she would continue with supervised treatment. In September 2005, the trial court issued a treatment order. The order mandated that Washington return to the Tuberculosis Control Clinic for routine treatment and, in the case of noncompliance with the provisions, she may be imprisoned if necessary.

periodic testing. World Health Organization, Pursue High-Quality DOTS Expansion and Enhancement, http://www.who.int/tb/dots/en/ (last visited Oct. 20, 2008). This treatment was originally used with Washington, as she was given medication to take at home and bus tickets to return to the clinic. In re Washington, 735 N.W.2d at 115.

See In re Washington, 735 N.W.2d at 115. A nurse at the Medical Center informed the Department that Washington had been admitted. Id. The Department served Washington with the isolation and treatment order that day. Id.

See In re Washington, 716 N.W.2d at 178. The court referred to the state statute:

If the court orders confinement of an individual under this subsection, the individual shall remain confined until the department or local health officer, with the concurrence of a treating physician or advanced practice nurse prescriber, determines that treatment is complete or that the individual is no longer a substantial threat to himself or herself or to the public health.

§252.07(9)(c). An individual can be confined for over six months, however if this is the case, the individual’s medical prognosis must be evaluated every six months. §252.07(9)(c).

In re Washington, 716 N.W.2d at 178. The court issued an order in accordance with the state statute:

The department or a local health officer may petition any court for a hearing to determine whether an individual with infectious or suspect tuberculosis should be confined for longer than 72 hours in a facility where proper care and treatment will be provided and spread of the disease will be prevented. The department or local health officer shall include in the petition documentation that demonstrates all of the following:

1. That the individual named in the petition has infectious tuberculosis; that
In late September 2005, after Washington failed to comply with the circuit court treatment order, police arrested and confined her to the CJF. In October 2005, the circuit court granted a hearing in accordance with the Tuberculosis Control Statute. At the hearing, Washington admitted noncompliance with her medication schedule but argued that she should not be confined to jail. The court rejected Washington's argument and found her in violation of the previous court order that required confinement and treatment at the CJF, in accordance with section 252.07(9) of the Wisconsin Statutes. Washington appealed to the Wisconsin Court of Appeals, and the appellate court affirmed the circuit court's ruling and held that the CJF qualifies as an appropriate place for confinement. The appellate court held that the language of

the individual has noninfectious tuberculosis but is at high risk of developing infectious tuberculosis; or that the individual has suspect tuberculosis.
2. That the individual has failed to comply with the prescribed treatment regimen or with any rules promulgated by the department under sub. (11); or that the disease is resistant to the medication prescribed to the individual.
3. That all other reasonable means of achieving voluntary compliance with treatment have been exhausted and no less restrictive alternative exists; or that no other medication to treat the resistant disease is available.
4. That the individual poses an imminent and substantial threat to himself or herself or to the public health.

Wis. Stat. §252.07(9)(a).

16 In re Washington, 735 N.W.2d at 116. Washington's sister informed police and the manager of the Tuberculosis Clinic that Washington had left her residence. Id.
17 Id. at 117 (admitting Washington violated the court order by staying with a friend instead of her sister). Washington's sister called the Tuberculosis Clinic to report that Washington had left her sister's residence and had been spotted at a local store. Id. A worker at the Tuberculosis Clinic and the Milwaukee police found Washington at a local store, and detained her for violating the order. Id. See also In re Washington, 716 N.W.2d at 180 (ordering Washington confined to the CJF and to comply with treatment regimen while confined there).
18 See In re Washington, 735 N.W.2d at 116 (stating Washington agreed to be confined to Medical Center until hearing could be held to determine place for further confinement).
19 Id. (concluding confinement was appropriate based on Washington's violation of the court order). See also New York v. Antoinette R. 165 Misc. 2d 1014, 1020 (N.Y. Sup. Ct. 1995) (upholding lower court's decision that person's past behavior regarding treatment demonstrated clear and convincing evidence of person's inability to comply with treatment regimen). The New York Supreme Court held this behavioral pattern suggests a more restrictive environment is necessary for treatment of tuberculosis and a promise on the part of the petitioner to continue therapy outside of a controlled setting is not enough to convince the court that treatment will be followed. Id.
20 In re Washington, 735 N.W.2d at 116. Washington asserted Wis. Stat. §252.07(9) requires she be confined to the least restrictive alternative and the mental health facility was less restrictive
section 252.07(9) of the Wisconsin Statutes referred to the act of confinement generally and did not mandate where Washington should be confined.\textsuperscript{21}

Historically, the CDC has taken an active role in the elimination of TB.\textsuperscript{22} In accordance with the 1993 Recommendations of the Advisory Council for the Elimination of Tuberculosis ("ACET"), many states passed and updated laws relating to tuberculosis.\textsuperscript{23} In Wisconsin, section 252.07(9) of the Wisconsin Statutes is the state law that governs actions taken by the state when dealing with cases of infectious or suspect tuberculosis.\textsuperscript{24} Like many other state laws, section 252.07(9) of the Wisconsin Statutes allows for confinement of a person who has infectious TB or non-infectious TB but has not followed prescribed treatment.\textsuperscript{25}

There is limited case law that addresses the application of these tuberculosis-control statutes because tuberculosis is a fairly uncommon disease and the state statutes

\textsuperscript{21} Id.
\textsuperscript{22} See CDC, Tuberculosis Control Laws, supra note 1. Tuberculosis is an airborne infectious disease. Id. Due to the nature of the infectiousness of tuberculosis, there are stringent measures taken to reduce transmission. Id. State laws exist to govern public policy for the elimination of tuberculosis and to regulate how cases are handled. Id. In 1989, the CDC developed a plan for the elimination of tuberculosis; this plan was updated in 1993. Id. See also Edward P. Richards, Collaboration between public health and law enforcement: The Constitutional Challenge, 8 EMERGING INFECTIONOUS DISEASES 10 (Oct. 2002), available at http://www.cdc.gov/ncidod/EID/vol8no10/02-0465.htm. When the United States Constitution was written in 1789, epidemic disease in the colonies led drafters to grant very broad state power over public health issues. Id. This public health authority developed into police power of the 10th Amendment. Id.
\textsuperscript{23} Id. The ACET plan included a national goal of eliminating cases of tuberculosis by the year 2010. CDC, Tuberculosis Control Laws, supra note 1. Tuberculosis is considered eliminated with a case rate of less than one affected person per one million people in the general population. CDC, Tuberculosis Control Laws, supra note 1.
\textsuperscript{24} Wis. STAT. §252.07(9). The CDC defines Infectious Tuberculosis as "[a] disease in a communicable or infectious stage as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, or other diagnostic procedures." CDC, Tuberculosis Control Laws, supra note 1. A person with suspect tuberculosis is "a person with signs of symptoms of tuberculosis for whom the results of diagnostic studies are still pending completion." CDC, Tuberculosis Control Laws, supra note 1.
\textsuperscript{25} Wis. STAT. §252.07(9) (stating purpose of confinement is to prevent transmission of tuberculosis bacteria to others and to ensure patients complete their treatment). But cf. Antoinette R., 165 Misc. 2d at 1015 (explaining the petitioner was detained in a hospital, although the statute allows for other treatment facilities). Other treatment facilities were not addressed in the case of this petitioner. Id.
were only recently passed. However, given the serious threat of TB to public health, courts often place heightened scrutiny on the interpretation of these statutes. To supplement the decision process, courts often look to precedents unrelated to TB for guidance on public policy decisions relating to infectious disease. In Washington, the Wisconsin courts had no state law precedent upon which to base their decision.

In reaching its decision in Washington, the Supreme Court of Wisconsin granted de novo review of section 252.07(9) of the Wisconsin Statutes and considered three primary perspectives. First, the Court evaluated whether Washington was within the class of persons that section 252.07(9) of the Wisconsin Statutes authorized to confine. If Washington was not within the designated class, the circuit court would not have the authority to confine her for the treatment of her TB. The statute did not explicitly

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26 See Diane Bennett, et al., Prevalence of Tuberculosis Infection in the United States Population, 177 AM. J. OF RESPIR. & CRT. CARE MED. 348, 348 (2008) (reporting a national survey found the estimated prevalence of latent tuberculosis infection in 2000 was 4.2%, roughly 11,213,000 individuals in the United States). See also Center for Disease Control, Trends in Tuberculosis—United States, 2007, 57 MORBIDITY AND MORTALITY WEEKLY REPORT 281-85 (Mar. 21, 2008), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5711a2.htm (detailing in 2007, there were 13,293 cases of tuberculosis reported in the country). This number correlates to a 4.2% decrease since 2006 in the rate of tuberculosis infections. Id. Despite this decline, health officials are concerned with the incidence of multi drug-resistant tuberculosis (“MDR Tuberculosis”). Id. In 2006, the number of reported MDR Tuberculosis cases was 116. Id.

27 See, e.g., Robin K. v. Lamanda M., 718 N.W.2d 38, 44 (Wis. 2006) (commenting statutory language is best understood through its ordinary and common meaning); Mueller v. McMillian Warner Ins. Co., 714 N.W.2d 183, 189 (Wis. 2006) (reasoning all statutory words should be given effect); State ex rel. Kalal v. Circuit Court for Dane County, 681 N.W.2d 110, 125 (Wis. 2004) (explaining the interpretation of a statute begins with the language of the statute); Wis. Citizens Concerned for Cranes Doves v. DNR, 677 N.W.2d 612, 617-18 (Wis. 2004) (explaining legal terms and phrases are interpreted according to their legal meaning, as opposed to their colloquial, non-legal, meaning).

28 In re D.E.R. v. LaCrosse County, 455 N.W.2d 239, 243 (Wis. 1990) (stating legislature did not expressly permit costs to be a factor in a court’s decision). Id. at 244-45. See generally Dunn County v. Judy K., 647 N.W.2d 799, 808 (Wis. 2002) (maintaining the legislature later amended the statute to allow for fiscal consideration when dealing with protective placement matters). The court addressed the issue of costs when determining individual situations that might affect public policy. Id. When determining placement, a court may consider funding. Id.

29 See In re Washington, 735 N.W.2d at 129 (identifying this opinion as the precedent to follow).

30 735 N.W.2d at 121-30 (considering appropriate application of WIS. STAT. §252.07(9), in the case of Ruby Washington).

31 Id. at 117. Washington was diagnosed with pulmonary tuberculosis that was not presently contagious but, if left untreated, would become contagious within a month. Id.

32 See WIS. STAT. §252.07(5) (stating statute applies only to those with infectious or suspect tuberculosis).
refer to persons with non-infectious TB.\textsuperscript{33} The Wisconsin Supreme Court concluded that section 252.07(9) of the Wisconsin Statutes extends to the non-infectious person in this case.\textsuperscript{34} This interpretation is supported by the preceding subparagraphs of the statute, which suggest that a person with non-infectious TB is within the scope of the statute because non-infectious TB quickly becomes infectious.\textsuperscript{35}

Second, the Supreme Court of Wisconsin reviewed section 252.07(9) of the Wisconsin Statutes to determine the type of facility to which it was authorized to confine Washington.\textsuperscript{36} Washington argued that the statute did not authorize confinement to jail because a "less restrictive alternative" existed, however, the circuit court originally rejected this contention.\textsuperscript{37} The Supreme Court of Wisconsin determined that the language of section 252.07(9) of the Wisconsin Statutes did not provide guidance on the meaning of the "facility," leaving such term open to the court's interpretation.\textsuperscript{38} In the absence of legal precedent in Wisconsin relating to involuntary confinement for persons with TB, the court followed similar methodology to other cases that reviewed vague

\textsuperscript{33} See WIS. STAT. §252.07(9). The court construed the statutory language "suspect tuberculosis" to mean persons with non-infectious tuberculosis who are at a high risk of developing infectious tuberculosis. \textit{In re} Washington, 735 N.W.2d at 120.

\textsuperscript{34} \textit{In re} Washington, 735 N.W.2d at 121 (concluding all words written into a statute must be taken into consideration). "A statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect." \textit{Mueller}, 714 N.W.2d at 188.

\textsuperscript{35} WIS. STAT. §252.07(9)(a). Individuals who have non-infectious tuberculosis who are at a high risk of developing tuberculosis are included under this statute. §252.07(9)(a). If the statute is read so that such individuals were not included, it would be counter to the legislative intent to safeguard public health. See \textit{In re} Washington, 735 N.W.2d at 124. Since Tuberculosis Control Statutes were drafted with the intention to promote public health, the statute must be interpreted to apply to those with non-infectious tuberculosis as well. See \textit{Id}.

\textsuperscript{36} \textit{In re} Washington, 735 N.W.2d at 118-19. The Supreme Court of Wisconsin qualified the Criminal Justice Facility as "a facility where treatment can be rendered." \textit{Id}. To confine Washington to a hospital would require 24-hour security to ensure she remains confined. \textit{Id}. The court also rejected confining Washington to the Mental Health Complex because the criteria for qualifying to stay at such a facility were not at issue in this case. \textit{Id} at 118.

\textsuperscript{37} \textit{Id}. at 119 (restating Washington's contention that the Medical Center was a less restrictive alternative available for purposes of confinement, in accordance with the statute, where she could be treated). The court opined it would not make the taxpayers pay for Washington to be confined to the Medical Center. \textit{Id}. The court stated Washington would be permitted to stay at another locked facility where treatment could be rendered, if the petitioner knew of another placement option. \textit{Id}.

\textsuperscript{38} 735 N.W.2d at 122 (interpreting the term facility within the context of the statute to find that jail satisfies the criterion for a permissible placement for confinement). When a word is analyzed, it is generally given its common accepted meaning. \textit{Id}. A word or phrase that is a legal term of art is construed to pertain to its accepted legal meaning. \textit{Id}.
Third, the Wisconsin Supreme Court considered the long-term confinement provisions of section 252.07(9) of the Wisconsin Statutes. The Wisconsin Supreme Court concluded that it is within its discretion to determine if a person with TB fits the criteria for long-term confinement. Such discretionary determination must be based upon the facts of the case, applicable law, and rational thinking. The court reviewed de novo whether the trial court exercised proper discretion.

The Wisconsin Supreme Court yielded four holdings in Washington. The court held that section 250.07 of the Wisconsin Statutes provided the circuit court with the authority to order long-term confinement of an individual with non-infectious tuberculosis who fails to comply with their treatment. The court also held that the restriction regarding "least restrictive alternative" in section 250.07 of the Wisconsin Statutes applied to the act of confinement generally. Next, the court ruled that it was proper for the lower courts to consider the costs of confinement when deciding the proper location to confine an individual infected with tuberculosis. Finally, the court held that confining Washington to jail during her treatment was not an abuse of discretion.

Through careful analysis of section 250.07 of the Wisconsin Statutes, the court

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39 *Id.* at 128. Statutes should be interpreted in a manner consistent with the obvious purpose of the statute. *State ex rel. Kalal*, 681 N.W.2d at 125.
40 *In re Washington*, 735 N.W.2d at 119. Confinement lasting longer than 72 hours is allowable only if all four (4) provisions of WIS. STAT. §252.07(9) are met. *See id.* at 116 (stating four provisions of the statute).
41 *Id.* at 120 (explaining the decision of whether to confine a person with tuberculosis is discretionary).
42 *See State v. Manuel*, 697 N.W.2d 811, 818 (Wis. 2005) (explaining proper exercise of judicial discretion is a combination of facts, law, and reasoning). Facts must be on the record and the law must be applicable law. *Id.*
43 *See Landwehr v. Landwehr*, 715 N.W.2d 180, 184 (Wis. 2006) (stating interpretation of a statute is matter of law that should be given de novo review).
44 *In re Washington*, 735 N.W.2d at 114 (listing four holdings made by the court).
45 *Id.* (stating circuit court ordered confinement of Washington for failure to comply with statutory treatment).
46 *Id.* at 119 (explaining language "least restrictive alternative" referred to the court's decision to confine a person).
47 *Id.* (concluding cost to taxpayers could be considered when determining a proper place for confinement).
48 *Id.* (affirming circuit court's decision to confine Washington to jail for treatment).
concluded that the statute applied to Washington and did not restrict her confinement to the CJF for TB treatment.\(^4\) Although in this instance the statute did not prohibit confinement to the CJF, it seems overly punitive given that Washington was not contagious.\(^5\) In a similar case in New Jersey, a man with active, contagious TB was confined to a hospital for treatment.\(^5\) In that case, the court applied the "least restrictive alternative" rationale and ruled that a hospital was the least restrictive option for treating the contagious TB.\(^5\) In the case at bar, the Wisconsin Supreme Court appears to be unduly harsh against Washington.\(^5\)

Surprisingly, Washington did not raise her constitutional due process rights.\(^5\) One explanation could be that, in both *City of Newark v. J.S.* and *Green v. Edwards*, the court did not find that the defendants' procedural due process rights were violated.\(^5\) In a similar situation, a California man alleged his due process rights were violated after he was detained for TB treatment without having counsel appointed to him, but the court...

\(^4\) See *In re Washington*, 735 N.W.2d at 114 (concluding Wis. Stat. §252.07(9) applies and does not restrict confining Washington to jail for tuberculosis treatment).

\(^5\) See *Souvannarath v. Hadden*, 116 Cal. Rptr. 2d 7, 13-15 (Cal. Ct. App. 2002) (holding county jail was not an appropriate detention center for noncompliant tuberculosis patients). Even though the Tuberculosis Control Statute authorized the detention of noncompliant tuberculosis patients to jail for treatment, the county never inspected the facility to determine if treatment could be adequately administered to patients being detained in jail. *Id.* at 9-10. Finding the county jail was not an appropriate place for treatment, the Court of Appeals found use of the county jail to confine noncompliant tuberculosis patients was restricted. *Id.* at 12-13.

\(^5\) *See City of Newark v. J.S.*, 652 A.2d 265, 268 (N.J. Super. Ct. Law Div. 1993) (stating defendant, J.S., was diagnosed with active tuberculosis, meaning he was contagious). After failing to comply with the treatment regimen, he was committed to a hospital. *Id.*

\(^5\) *Id.* at 279. The court concluded a hospital was the least restrictive alternative for confinement in order to protect the public health of New Jersey. *Id.*

\(^5\) *But see City of Newark*, 652 A.2d at 279 (concluding least restrictive alternative for defendant was a hospital and not a jail). *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (concluding Eighth Amendment was not appropriate means of evaluating restrictions on pre-trial detainees). Washington did not assert a violation of her Eighth Amendment rights. *In re Washington*, 735 N.W.2d at 114-15.

\(^5\) See *In re Washington*, 716 N.W.2d at 182 (explaining at appellate level, Washington asserted she had a constitutional right to be detained in a hospital setting, but this argument was not developed). The Court of Appeals refused to address an undeveloped argument based solely on a law review article. *Id.*

\(^5\) *See Greene v. Edwards*, 263 S.E.2d 661, 662 (W. Va. 1980) (alleging West Virginia Tuberculosis Control Act did not afford procedural due process rights). The defendant claimed he was not afforded the right to counsel or cross-examine and confront witnesses. *Id.* The defendant asserted the prosecutor did not bear his burden of clear and convincing proof. *Id.* *See also City of Newark*, 652 A.2d at 270 (explaining need for Newark to protect its citizens is an example of state's police power granted by the Constitution).
held that his rights were not violated. The Department granted Washington the right to due process of law by following the hearing provisions of Section 252.07(9) of the Wisconsin Statutes in the events leading up to the trial.

TB control statutes raise the legal implications of a person's right to refuse treatment. A person's right to refuse treatment is based on several constitutional protections. The court would have considered Washington's First Amendment rights if she asserted her personal or religious beliefs against treatment. Other state courts recognize that a facility does not have the right to substitute its judgment for that of the patient. A competent person has a liberty interest, granted by the Fourteenth Amendment, to control what is done to their body. TB control statutes, like the one in Washington, infringe upon this important constitutional right; such rights ensure that constitutional protections are afforded to every person and are not to be suspended by the state capriciously. However, states are permitted to enact treatment and quarantine statutes, such as Section 252.07(9) of the Wisconsin Statutes, under the police power authority of the state. To determine if a constitutional right has been violated, the Supreme Court of the United States balances the liberty interests of the individual

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56 Ventura County Public Health Officer v. Adalberto M., 156 Cal. App. 4th 288 (Cal. Ct. App. 2007). Although he did not prevail on this due process theory, the appellant claimed he was improperly detained without first having a right a counsel. Id. at 293. The appellate court ruled that regardless of the delay in appointing counsel, the appellant was not prejudiced and there was no error on behalf of the trial court. Id. at 297.

57 See In re Washington, 716 N.W.2d at 177-80. The Department complied with the provisions of WIS. STAT. §252.07(9). Id. The court told Washington she would face confinement if she did not comply with the treatment order and she was granted a timely hearing. Id.


60 See Stamford Hosp. v. Vega, 674 A.2d 821, 824 (Conn. 1996) (ruling hospital has no right to transfuse blood to a patient who objects on religious grounds). A patient has a First Amendment right to refuse treatment. Id.

61 Id.

62 See Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 279 (1990) (explaining Fourteenth Amendment provision that no person shall be deprived of "life, liberty, or property, without due process of law" includes the right to control what is done to one's own body).


64 See Jacobson v. Commonwealth, 197 U.S. 11, 24-25 (1905) (addressing whether city of Cambridge needed to submit to a board of health regulation requiring vaccinations).
against the relevant state interests.\textsuperscript{65} Even though the Wisconsin Supreme Court balanced the interest of the state against Washington’s right to refuse treatment, the court neglected to address the issue of Washington’s constitutional rights.\textsuperscript{66} Given the complexity of treatment options and the balance of an individual’s civil rights against the public welfare, the court should more thoroughly analyze the options to determine the appropriate actions in treating TB patients.\textsuperscript{67} It is not too onerous to ask the judiciary to consider an individual’s constitutionally protected personal freedoms when suspending such rights and liberties.\textsuperscript{68}

Although the TB control statutes are meant to protect the public from the spread of TB, they infringe on individuals’ constitutional rights. Whereas the current statutes authorize the confinement of contagious individuals, or those at risk of becoming so, the country may fall prey to the slippery slope of becoming a police state. If TB or other diseases become more widespread in the future, constitutional protections may be further compromised. Although the Wisconsin Supreme Court analyzed and ruled on Washington’s case within the boundaries of acceptable statutory interpretation, the court should have considered other factors in exercising its discretion to authorize confinement. Such factors include the “least restrictive alternative” of treatment facilities and protecting an individual’s constitutional rights, including the right to refuse treatment. The Wisconsin Supreme Court confirmed that the lower courts were justified in their rationale to treat Washington’s TB while protecting the City of Milwaukee.

\textsuperscript{65} See Cruzan, 497 U.S. at 262 (explaining the balancing test that must be used to determine whether a statute has violated a constitutional right). \textit{But cf.} Buck v. Bell, 274 U.S. 200, 207 (1927) (justifying involuntary sterilization with public welfare).

\textsuperscript{66} See In re Washington, 735 N.W.2d at 114-15 (not addressing Washington’s constitutional rights in Wisconsin Supreme Court’s reasoning).

\textsuperscript{67} See Cruzan, 497 U.S. at 262 (explaining balancing test used to weigh an individual’s constitutional rights against state interest).

\textsuperscript{68} See id.