REGULATING THE SALE OF HUMAN ORGANS

In September 1983, H. Barry Jacobs, a doctor whose license to practice in Virginia was revoked after a 1977 mail-fraud conviction, established a Virginia company to broker human kidneys.¹ Jacobs intended to solicit healthy individuals to sell one of their kidneys at their chosen price.² A person needing a transplant would pay for the cost of the kidney plus $2000 to $5000 for Jacobs' services.³

Jacobs' proposal to broker kidneys from live donors was legal when originally announced.⁴ Within six months, however, Virginia passed legislation specifically prohibiting the sale of human organs.⁵ Several states have followed with similar legislation,⁶ and Congress recently passed a federal law prohibiting organ sales.⁷ Whereas the state statutes simply prohibit organ sales, the comprehensive federal statute is designed to alleviate the shortage of transplantable organs.⁸ The statutory prohibitions of organ sales suffer from two important failings. First, the state statutes contain various ambiguities that make the scope of the prohibitions uncertain; consequently, exactly what activities these statutes prohibit is not clear. Second, both the federal and state statutes may be inappropriate. Instead of banning all organ sales, the legislatures could have permitted a regulated organ market as a potential solution to the problem of organ scarcity.

Part I of this note describes the present organ supply system and the persisting scarcity of donated organs. It then discusses the specifics of Jacobs' proposal to alleviate the shortage of kidneys. Part II reviews the recent federal and state statutes prohibiting the sale of human organs. Part III examines the ambiguity of the state statutes to suggest amending the existing statutes and to provide guidance for states that pass organ

² Id.
³ Id.
⁴ See infra notes 62-78 and accompanying text for a discussion of Jacobs' proposal.
sale statutes in the future. Part IV discusses the value of a regulated organ market and questions the appropriateness of a complete ban on sales. This section argues that a properly regulated organ market, rather than the wholesale prohibition of organ sales, may be a better solution to the problem of scarcity. The note concludes by suggesting some alternatives to a complete prohibition of organ sales.

I. THE ALLOCATION OF HUMAN ORGANS

A. The Present Organ Supply System

Donations made at the donor's death, consented to either by the donor or posthumously by the donor's family, are the major source of transplantable organs.9 The Uniform Anatomical Gift Act (the Uniform Act)10 regulates these donations and specifies who may be a donor or donee, how a donation should be made, and for what purposes an organ may be donated.11 The Uniform Act is silent on whether payment is appropriate for a donation or an agreement to donate.

Under the Uniform Act, any adult of sound mind can either permit or forbid the posthumous use of his organs for the purposes of transplantation, research, or teaching.12 An individual may donate all or part of his body by will13 or by a nontestamentary document such as a donor card carried on the person.14 If an individual fails to express a preference, his

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9 See Washington Post, supra note 1, at A1. Another source of supply is organs and tissue donated by the recipient's living relatives. See Note, Tax Consequences of Transfers of Bodily Parts, 73 Colum. L. Rev. 842, 842 (1973). Donations from live donors are obviously limited to paired organs, such as kidneys, and replenishable tissue, such as bone marrow and skin.


12 Id. § 2(b).

13 Id. The major drawback of using a will to make a donation is that organs must be removed immediately at death to be transplantable. Even if the will is not probated, by the time it is located and read, the organs are often no longer suitable for transplantation.

14 Id. § 4. Although donor cards are an efficient method for donating organs, the cards have not substantially increased the availability of organs or tissues. H.R. Rep. No. 769, 98th Cong., 2d Sess. 4 (1984). At the University of Pittsburgh, for example, only one or two of the 50 to 60 annual donations are attributable to the use of donor cards. Organ transplants: Hearings Before the Subcomm. on Investigations and Oversight of the House Comm. on Science and Technology, 98th Cong., 1st Sess. 145 (1983) (Testimony of Donald W.
next of kin can donate his organs posthumously under the Uniform Act.\textsuperscript{16} Potential donees include hospitals and doctors, accredited medical and dental schools, organ banks and storage facilities, and individuals in need of transplants.\textsuperscript{16}

The Uniform Act purposely left open the question of payment for anatomical gifts.\textsuperscript{17} E. Blythe Stason, the chairman of the drafting committee, explained this decision by noting that although problems could arise if donors customarily demanded payment, not every payment would necessarily be unethical.\textsuperscript{18} Stason also noted the difficulty in drafting a provision to forbid payment and suggested that “until the matter of payment becomes a problem of some dimensions, the matter should be left to the decency of intelligent human beings.”\textsuperscript{19}

Although the Uniform Act regulates organ donations, the donations are coordinated by various nonprofit organ procurement agencies. Currently, there are approximately 120 organ procurement agencies throughout the country, representing both state and federal government involvement and some private sector interests.\textsuperscript{20} These agencies perform a variety of tasks, including locating potential donors, collecting and preserving donated organs, and matching organs with potential transplant recipients.\textsuperscript{21} The agencies locate transplant recipients through a national telephone hotline that lists transplant centers in need of nonrenal organs.\textsuperscript{22} The agencies also have access to a central computer registry of potential kidney recipients.\textsuperscript{23}

The effectiveness of this procurement system is questionable. Although the system has been praised as “exceedingly effective” in retrieving and distributing donated organs,\textsuperscript{24} it has also been criticized as involving “too many private agencies, organizations and groups [engaged] in inefficient

\textsuperscript{17} Id. § 3.
\textsuperscript{18} Note, supra note 10, at 1191.
\textsuperscript{20} Id. at 927-28.
\textsuperscript{22} Organ Transplantation: Hearings Before the Senate Comm. on Labor and Human Resources, 98th Cong., 1st Sess. 104 (1983) (Testimony of Carolyne K. Davis, Ph.D.) [hereinafter cited as Senate Hearings].
\textsuperscript{24} Id.

\textsuperscript{24} National Organ Transplant Act: Hearings on H.R. 4080 Before the Subcomm. on Health and Environment of the House Comm. on Energy and Commerce, 98th Cong., 1st
and redundant activities." For example, the House Committee on Energy and Commerce reported that the current low donation rates result primarily from the poor organization of the nation's procurement efforts. The committee also found that the computerized kidney registry was not truly national in scope and was not serving patients in need of other organs.

The present system is likely to change in the near future, especially if, as recently reported, the Red Cross enters the area. The Red Cross already operates several organ and tissue programs. The first program began in 1983 when the Red Cross blood service took over the University of Minnesota's organ procurement service. Although the smaller agencies feel threatened by the potential competition, the well-funded Red Cross might provide the coordination and organization needed to make the organ procurement system more effective.

B. The Problem of Scarcity

Despite the present organ procurement system, the supply of donated organs has been inadequate for years. In 1970, only eight years after organ transplantation became a plausible alternative, the supply of donated organs, especially kidneys, was already insufficient. The demand in recent years has risen significantly because improvements in tissue typing, surgical techniques, and transplant patient care have made transplantation an increasingly successful procedure. The new immunosuppressive drug, cyclosporine, is perhaps the most important improvement because it has greatly reduced the risk of rejection. Unfortunately,
the supply of donor organs has not kept pace with the increased demand, resulting in greater shortages than ever before.\textsuperscript{38}

Obviously, the problem of scarcity is acute for the individuals who require organ transplants. Scarcity means long waiting lists, often measured in years rather than months.\textsuperscript{37} Unlike kidney dialysis, practical technology is not available to keep patients requiring liver, heart, or heart-lung transplants alive.\textsuperscript{38} As a result, many patients die awaiting transplants.\textsuperscript{39}

Scarcity does more than limit the number of people who can receive transplants. Without an extremely large pool of donors, finding a perfectly matched replacement organ for a recipient is very difficult.\textsuperscript{40} Consequently, the recipient must settle for an imperfect organ match. This results in fewer successful transplants because rejection is more likely when the match is imperfect.\textsuperscript{41}

Another problem caused by scarcity is the need for family members to seek organs by appealing to the media.\textsuperscript{42} As a result, patients’ private medical problems become public news events, and the publicity may interfere with important treatment decisions that the patients and their families must make.\textsuperscript{43} Aside from the harm inflicted on transplant patients and their families, this media appeal is an unfair method of distributing organs because the success of the appeal depends on the family’s
dangerous and unreliable. See House Hearings, supra note 14, at 74 (testimony of Thomas E. Starzl). At the University of Pittsburgh, one of the first transplant centers in the United States to use cyclosporine, the survival rate for kidney transplant patients rose from 50% to 80% when the hospital began to use cyclosporine in 1980 and subsequently increased to 90% in 1981. Id. The survival rate for nonrenal transplant patients has also increased dramatically. When hospitals began using cyclosporine in liver transplants, the one-year survival rate doubled to approximately 65-70%. Id. At Stanford University, the Shumway Heart Transplant Team reported that with the use of cyclosporine, 80% of heart transplant recipients survive two years or longer. Before the introduction of cyclosporine, only 20% of heart transplant recipients survived one year or more. Id.

\textsuperscript{38} Although approximately 5,000 kidneys are transplanted annually, 5,000 more people are on dialysis waiting for a suitable kidney. House Hearings, supra note 14, at 1 (Statement of Albert Gore, Jr.). The University of Pittsburgh encounters similar shortages of livers and hearts. From February 1981 to February 1983, the University performed 112 liver transplants while 54 people died because no organ was available. Id. at 2.

\textsuperscript{37} National Act Hearings, supra note 24, at 296 (letter from the American Society of Transplant Physicians).

\textsuperscript{39} Id.

\textsuperscript{40} See supra note 36.

\textsuperscript{41} Note, supra note 10, at 1203-05.

\textsuperscript{42} Id.

\textsuperscript{43} Capron, Transplants: Begging for Life, Washington Post, Aug. 9, 1983, at A15, col. 2. One such case involved Charles Fiske, “who mounted a dramatic-and-successful media campaign” in the fall of 1982 to find a liver for his daughter. Id.

\textsuperscript{44} Id.
ability to obtain media coverage.\textsuperscript{44} Additionally, individualized media attention may be counterproductive to the needs of other potential transplant recipients.\textsuperscript{45} Although such appeals do place the problem of organ procurement in the public light, they also tend to remove the focus from the inability of the existing system to provide organs for everyone in need of transplants.\textsuperscript{46}

In addition to these medical and privacy problems, the scarcity of organs raises ethical concerns. As the demand for transplantable organs increases, the question of how to allocate a limited organ supply becomes acute.\textsuperscript{47} Underlying any allocation decision is the stark reality that nonrecipients may die.\textsuperscript{48}

Ironically, this scarcity exists despite an adequate number of potential donors.\textsuperscript{49} An estimated 20,000 potential donors die each year, but less than fifteen percent of these individuals donate their organs.\textsuperscript{50} This low donation rate is caused by the small number of medical centers equipped to perform an organ transplant,\textsuperscript{51} the failure of many doctors to ask the deceased's family for an organ donation,\textsuperscript{52} and the inefficient working relationship between many hospitals and procurement agencies.\textsuperscript{53}

\textbf{C. The Jacobs Proposal}

The problem of scarcity has engendered widespread debate on methods of increasing organ supply. Several commentators have argued that the most effective solution is to create a commercial market in transplantable organs. These commentators have offered different proposals ranging from permitting organ sales in limited circumstances,\textsuperscript{54} to supporting their legalization,\textsuperscript{55} to encouraging their sale.\textsuperscript{56} Another proposal suggests

\textsuperscript{44} Id.
\textsuperscript{46} See Capron, supra note 42, at A15. Evidence exists that the publicity generated by the media attention may increase the overall supply of organs. See Senate Hearings, supra note 21, at 91-93 (testimony of Everett Koop). This increase, however, may be offset by the complacency that develops once the publicized patient receives an organ.
\textsuperscript{47} See Note, supra note 10, at 1206.
\textsuperscript{48} Organ Allocation Hearings, supra note 25, at 287 (Testimony of Alexander Morgan Capron). A potential donor of cadaveric organs is an individual who has died of a head injury, brain tumor, or stroke and was in good health prior to death. See N.Y. Times, Oct. 5, 1982, at C2, col. 4.
\textsuperscript{50} Id.
\textsuperscript{53} Id.
\textsuperscript{54} See Dukeminier, supra note 33, at 865.
\textsuperscript{55} See Note, supra note 10, at 1216.
\textsuperscript{56} See Note, supra note 9, at 864.
that state law should establish a combined altruistic-market system of organ procurement. A final commentator would provide financial incentives for organ donation by requiring private and government health insurance agencies to pay $2500 to the closest relative of an organ donor.

The argument that permitting sales will encourage organ donations is plausible considering that various individuals have actually attempted to sell their organs. According to news reports, poor people in Brazil, through newspaper advertisements, have offered to sell their kidneys or corneas. Although there have been no confirmed sales of organs in the United States, the House Subcommittee on Health and the Environment has received letters from individuals desiring to sell their organs. One individual wanted to sell a kidney to finance an education and another offered to sell an organ to pay for her daughter's medical treatment.

H. Barry Jacobs formulated the first serious proposal to buy and sell human organs, and his plan generated a great deal of publicity. According to initial reports, Jacobs established a company to broker human kidneys. Unlike an earlier proposal by another entrepreneur in which people could contract to sell their organs after death, Jacobs intended to broker kidneys from healthy live donors. Under this brokering arrangement, the donor would set a price for his kidney, and Jacobs would collect $2000 to $5000 for his brokerage services. The buyer would normally pay these charges, unless the recipient were entitled to Medicare benefits. Jacobs also planned to bring Third World indigents to the United States so that they could sell one of their kidneys for a nominal price. Jacobs maintained that the indigents could give informed consent, despite their inability to read, through tape recorded conversations.

See Brans, Transplantable Human Organs: Should Their Sale be Authorized by State Statute?, 3 Am. J. L. Med. 183 (1977). Brans suggests that only cadaveric organs should be sold. Id.


Washington Post, Oct. 12, 1981, at A22, col. 1. Although Brazilian health officials condemned this market in human organs, Brazilian law, at the time, did not prohibit organ sales.


Id.

See Washington Post, supra note 1, at A9.

Id.

Another entrepreneur proposed a short-lived plan in which people could sell their organs after death and have the proceeds paid to their beneficiaries. Goodman, Life for Sale, Washington Post, Oct. 1, 1983, at A15, col. 1.

Washington Post, supra note 1, at A9.

Id.

Id.
In an appearance before the House Subcommittee on Health and the Environment, Jacobs presented his proposal differently from the way the press originally interpreted it. Jacobs testified that he intended to establish a two-fold "monetary program."68 First, Jacobs proposed a private arrangement in which people could will their organs to him for posthumous use, and the donor's family would receive the compensation. Second, he suggested that the federal government could compensate informed and consenting adults for kidneys donated while alive.69 Although Jacobs said he preferred government involvement, he stated that the private sector should act if the government would not.70 Jacobs also disclosed his intention to use Third World indigents as kidney donors for affluent Americans,71 referring to his plan as a "very lucrative, potential business."72

Individual commentators and medical organizations have uniformly expressed offense at Jacobs' proposal. One commentator describes it as commissioning the sale of kidneys from Third World persons for whatever price will induce them to sell.73 He criticizes the proposal for profiteering on the desperation both of people beset by extreme poverty and of those suffering end-stage renal failure.74 The American Society of Transplant Surgeons,75 the Association of Independent Organ Procurement Agencies,76 the American Society of Transplant Physicians,77 and the National Kidney Foundation78 have also condemned the proposal.

II. RECENT LEGISLATIVE PROHIBITION OF ORGAN SALES

Before the passage of the Uniform Anatomical Gift Act, a few states prohibited the sale of human organs and bodies after death.79 Most of

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68 National Act Hearings, supra note 24, at 238.
69 Id. at 251.
70 Id. at 243.
71 Id. at 246.
72 Washington Post, supra note 1, at A9.
74 Id.
75 National Act Hearings, supra note 24, at 196 (statement of Oscar Salvatierra, M.D., Pres. of the American Society of Transplant Surgeons).
76 Id. at 224 (statement of Keith Johnson).
77 Id. at 294 (statement of Robert B. Etteneger).
78 Id. at 360 (statement of David A. Ogden).
these states proscribed an individual from arranging to sell his organs after death but did not expressly ban the posthumous sale of his organs by his next of kin. Of the state statutes listed in supra note 79, only the Massachusetts statute prohibited payment to any individual for cadaveric organs. See Act of June 12, 1967, ch. 353, 1967 Mass. Acts 202, 202 (repealed 1971).

A. The National Organ Transplant Act

Congress addressed the problem of organ scarcity by passing the National Organ Transplant Act. Unlike the state statutes, which simply prohibit the sale of organs, the federal law attempts to alleviate the problem of scarcity by increasing organ donations and improving the process of matching organs with recipients. The Act directs the Secretary of Health and Human Services to establish a Task Force on Organ Procurement and Transplantation and provides financial assistance for the establishment, initial operation, and expansion of organ procurement organizations. The Act also creates a nationwide Organ Procurement and Trans-

death); Law of April 22, 1964, ch. 702, § 1, 1964 N.Y. Laws 1827, 1828 (repealed 1971) (prohibiting the sale of eyes, body parts, or bodies after death).


See supra note 10.

See supra note 79 for examples of states that repealed their statutes prohibiting paid donations. Delaware was alone in adding a sales prohibition to its version of the Uniform Anatomical Gift Act. See Del. Code Ann. tit. 24, § 1783(f) (1981).


See National Act Hearings, supra note 24, at 89 (statement of Henry A. Waxman).


Id.
plantation Network to match organs with potential recipients and to develop and to maintain a scientific registry of organ recipients to monitor the status of transplant technology.

In response to the issues raised by the Jacobs proposal, the federal law prohibits organ sales by providing, in part:

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "human organ" means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

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89 Id. § 274.
90 Id. § 274(a).
91 In reporting the bill, a House Subcommitte noted that a commercial kidney market raises several moral issues and that the problems with legal organ sales would be exacerbated if the sellers were Third World indigents. See H.R. Rep. No. 575, 98th Cong., 1st Sess. 8 (1983).

The statute has two major flaws. First, the precise definition of "valuable consideration" is uncertain; the federal statute might not prohibit the exchange of an organ for noncash compensation. For example, members of Congress have asked the Justice Department to investigate an insurance plan to give an organ donor's family members priority if they need an organ in the future and to make a $10,000 donation to the donor's favorite charity in exchange for the donated organ. See Washington Post, Sept. 9, 1985, at A5, col. 1. Second, the broad definitional discretion given to the Health and Human Services Department may be undesirable. The Secretary may define blood, which is commonly considered a tissue, as
An individual who wishes to sell his organs might first attack the constitutionality of this federal prohibition. Although the Supreme Court has never considered the right of an individual to dispose of his body parts, the federal ban of organ sales should be constitutional. A litigant may claim that an individual's decision to sell his organs is within the sphere of "personal autonomy" protected by the due process clause of the Constitution. So far, the Supreme Court has extended this personal autonomy right only to decisions within the areas of marital sex, marriage, childbearing, and childrearing.

The scope of the federal act may be limited because it prohibits only organ sales that affect interstate commerce. One commentator suggests that courts may narrowly construe the act not to prohibit organ sales when the removal and transplant occur in the same state. The courts, however, will probably continue their broad construction of Congress' commerce clause power and will find that intrastate organ sales do "affect interstate commerce." Consequently, the federal act should prohibit all organ sales in the United States. One commentator has criticized this interpretation because it views organs as objects of commerce, which is precisely what the statute intended to prevent.

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a human organ, even though the legislative history shows that Congress did not intend to ban the sale of blood. See S. Rep. No. 382, 98th Cong., 2d Sess. 16-17 (1984); National Act Hearings, supra note 24, at 129 (statement of Rep. Albert Gore, Jr.). A doctor who testified at the congressional hearings, however, noted that plausible arguments could be made for banning the sale of blood. See id. at 291 (statement of Bernard Towers, M.D.). A decision by HHS to define blood as a human organ may be defensible because the federal law regulates other tissues such as corneas and bone marrow. See 42 U.S.C.A. § 274(e)(1) (West Supp. 1985).

** Virginia Delegate Marshall, who introduced the bill in Virginia, has noted that "there is a policy question of whether the state can legally prohibit individuals from selling their body parts." See Legislative Impact Statement of Va. Delegate Marshall [Copy on file with the Virginia Law Review Association].

* See U.S. Const. amend. XIV, § 1.

** For example, the Supreme Court has held that individuals have a fundamental right to an abortion, Roe v. Wade, 410 U.S. 479 (1973), to use contraceptives, Griswold v. Connecticut, 381 U.S. 479 (1965), and to live with their families, Moore v. East Cleveland, 431 U.S. 494 (1977).

** The federal statute adopts the definition of interstate commerce found in the Federal Food, Drug, and Cosmetic Act: "(1) commerce between any state or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other territory not organized with a legislative body." 21 U.S.C. § 321(b) (1982).

* See Organ Allocation Hearings, supra note 25, at 317.

** For cases discussing Congress' power to prohibit activity of a seemingly local nature on the grounds that local activity could affect interstate commerce, see Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964); Wickard v. Filburn, 317 U.S. 111 (1942).

** See National Act Hearings, supra note 24, at 317 (statement of George J. Annas).
The broad scope of the federal prohibition raises another important issue. Under the supremacy clause of the Constitution, federal law preempts state statutes "that interfere with, or are contrary to" federal law. Although a full analysis of the preemption issue is not undertaken in this note, Congress did not explicitly indicate in the National Organ Transplant Act an intent to preempt state laws regulating organ sales. Where the state provisions conflict with the federal act, the federal law will preempt these state provisions.

B. The State Statutes

Shortly after Jacobs announced his proposal, Virginia Delegate Mary Marshall, the future sponsor of the Virginia legislation, vowed to make it illegal. Marshall was disturbed at the prospect of Jacobs' profiting from organ shortages and was especially concerned about his intention to buy kidneys primarily from Third World indigents. In March 1984, the Virginia legislature responded to Jacobs' proposal by passing the following statute:

With the exception of hair, blood and other self-replicating body fluids, it shall be unlawful for any person to sell, to offer to sell, to buy, to offer to buy or to procure through purchase any natural body part for any reason including, but not limited to, medical and scientific uses such as transplantation, implantation, infusion or injection. Nothing in this section shall prohibit the reimbursement of

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100 U.S. Const. art. VI, § 2.
102 Additionally, the federal statute may have entirely preempted the state regulation of organ sales. A federal court could find that Congress intended to preempt all state regulation even though Congress did not explicitly state this intent in the federal statute. See Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947); Hines v. Davidowitz, 312 U.S. 52 (1941). The Court indicated in Hines that the preemption issue must be resolved on a case-by-case basis and that the Court has not adopted a single test. See Hines, 312 U.S. at 67. "There is not—and from the very nature of the problem there cannot be—any rigid formula or rule . . . ." Id. In Rice, the Court listed several factors that it may consider to determine whether Congress intended to preempt state law: 1) the pervasiveness of the federal regulation; 2) the dominance of the federal interest in the particular field; 3) whether the federal and state law serve the same purpose; and 4) whether the state law conflicts with the purpose of the federal law. Rice, 331 U.S. at 230. Modern preemption cases continue to focus on these factors set forth in Rice. See, e.g., Pacific Gas & Elec. Co. v. State Energy Comm'n, 461 U.S. 190 (1983); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963).
103 See 42 U.S.C.A. § 274e (West Supp. 1985). For example, the federal statute prohibits the sale of bone marrow for transplantations, id. § 274e(c)(1), therefore, a state cannot permit the sale of bone marrow.
105 Id., Jan. 17, 1984, at A9, col. 3.
expenses associated with the removal and preservation of any natural body parts for medical and scientific purposes.\textsuperscript{106}

The legislature needed to act because prior Virginia law prohibited only the sale of organs from dead bodies;\textsuperscript{107} consequently, Jacobs could legally solicit kidneys from live donors. By prohibiting the buying and selling of “any natural body part,” the new legislation forbids the sale of organs from both live persons and dead bodies.

Maryland also enacted legislation prohibiting the sale of human organs. The Maryland prohibition provides in relevant part:

\begin{quote}
Except for a nonprofit organization that qualifies under § 501(c)(3) of the Internal Revenue Code, a person may not sell, buy, or act as a broker for a profit in the transfer of any human organ that:
(i) is removed from a human body which is alive or dead at the time of removal; and
(ii) is not under the exclusive control of the [State Anatomy] Board.\textsuperscript{108}
\end{quote}

The statute defines “human organ” to include all organs except plasma and blood.\textsuperscript{109} This legislation, like its Virginia counterpart, was most likely a response to Jacobs’ proposal. The bill was requested one month after Jacobs announced his plan and was introduced in January 1984, the same month as the Virginia bill.\textsuperscript{110} Maryland’s reaction to Jacobs’ proposal is not surprising, given its geographical proximity to Virginia. Senator Julian Lapides, the bill’s sponsor, told the Maryland Senate Finance Committee that although he knew of no proposals to market organs in Maryland, the issue was becoming a national concern.\textsuperscript{111}

Although this bill encountered little opposition, a Maryland Senate Finance Committee member did note that the prohibition of organ sales might abolish a potentially effective system of organ procurement.\textsuperscript{112} He also claimed that people in need of transplants might be desperate

\textsuperscript{106} Va. Code § 32.1-289 (1985). The provision does not apply to article 3, chapter 8 of the same title, which authorizes furnishing unclaimed bodies to state medical schools for scientific study. The Commonwealth collects a $1,000 bond from each institution that receives an unclaimed body. See Va. Code §§ 32.1-298 to -304 (1985).

\textsuperscript{107} Va. Code § 32.1-303 (1984). The relevant statute, part of an article that deals with the use of dead human bodies for scientific study, imposes a penalty for trafficking in bodies.


\textsuperscript{109} See id. § 5-408(a)(3).

\textsuperscript{110} Baltimore Sun, supra note 110, at A1.

\textsuperscript{111} Statement of Senator Julian Lapides before the Maryland Senate Finance Committee, Jan. 12, 1984 [Copy on file with the Virginia Law Review Association].

\textsuperscript{112} See Baltimore Sun, supra note 10, at A1.
enough to ignore any prohibition on the purchase of organs.\textsuperscript{113} Additionally, the State Medical Society requested that an organ recipient be allowed to pay for the donor’s medical and legal expenses.\textsuperscript{114} The legislature enacted the bill without this requested exception.

California also enacted a statute to regulate the sale of human organs.\textsuperscript{115} The statute makes it a felony for “any person to knowingly acquire, receive, sell, promote the transfer of, or otherwise transfer any human organ, for purposes of transplantation, for valuable consideration.”\textsuperscript{116} Various exceptions, however, show that the California statute is specifically designed to eliminate the brokering of organs rather than prohibiting two-party sales.

The statute allows individuals to purchase an organ for their own transplant or to sell an organ to a recipient.\textsuperscript{117} Moreover, the statute’s proscription on organ sales does not apply to a recipient’s next-of-kin who assists in obtaining the needed organ.\textsuperscript{118} Finally, a physician or surgeon who transplants a brokered organ is not liable if the transplant was performed under life threatening or emergency conditions.\textsuperscript{119} Because of these exceptions, the statute applies only to a middleman who brokers an organ sale or to a doctor who transplants a brokered organ in a nonemergency situation.

Two additional California laws deal with the sale of organs and tissues. The first law is of limited application and makes it a misdemeanor to sell unlawfully the body, and presumably the organs, of an unclaimed dead person.\textsuperscript{120} The second law makes it illegal\textsuperscript{121} for a physician to perform a transfusion using blood obtained from a paid donor.\textsuperscript{122} Although this stat-

\footnotesize
\textsuperscript{113} Id.
\textsuperscript{114} Id.
\textsuperscript{116} Id. § 367f(a). This section defines valuable consideration:
“Valuable consideration” means financial gain or advantage, but does not include the reasonable costs associated with the removal, storage, transportation, and transplantation of a human organ, or reimbursement for those services, or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.
\textsuperscript{117} Id. § 367f(2). The statute defines a human organ as including, but not limited to, “a human kidney, liver, heart, lung, pancreas, or any other human organ or nonrenewable or nonregenerative tissue except plasma and sperm.” See id. § 367f(c)(1).
\textsuperscript{118} Id. § 367f(e).
\textsuperscript{119} Id.
\textsuperscript{120} Id. § 367f(f).
\textsuperscript{122} Violation of the provision is a misdemeanor punishable by a fine of not less than $100 nor more than $1000, or by imprisonment for not more than 30 days, or both. Cal. Health & Safety Code § 1620 (West Supp. 1985).
\textsuperscript{122} See Cal. Health & Safety Code § 1626(a) (West 1979). This provision is not applicable
ute does not prohibit the buying and selling of human blood, it does inhibit a commercial blood market by discouraging physicians from using purchased blood.

III. AMBIGUITY OF THE STATE STATUTES

The federal act is clearly the most important statute that regulates organ sales because it applies in each of the fifty states. The individual state statutes, however, still play an important role in the prohibition of organ sales. The state statutes subject an individual to a second prosecution for an organ sale and may prohibit a greater range of activities than the federal statute. Thus, an examination of the state statutes is necessary for a complete understanding of the present prohibitions against organ sales.

Moreover, an examination of the state statutes is important because the statutes contain ambiguities that make their scope uncertain. This statutory ambiguity may be undesirable for two reasons. First, individuals may unknowingly subject themselves to state prosecution. Second, the recent state legislation apparently represents a trend by the states to prohibit organ sales. If other legislatures use the present statutes as models for future legislation, the existing ambiguities will be spread to additional statutes. Consequently, examining the state statutes' ambiguity will help determine the potential scope of the statutes and may avoid future statutory uncertainty.

The statutes' ambiguity begins with the statutory definition of a human organ. The states apparently attempted to prohibit only the sale of solid organs, but the statutes' breadth may result in a ban on the sale of body parts not commonly thought to be organs. For example, Virginia prohibits the sale of "any natural body part with the exception of hair, blood, or any other self-replicating bodily fluid."123 This statute may conceivably prohibit certain artificial conception techniques that use a purchased ovum because an ovum is a natural body part.124

Another uncertainty in the definition of organs concerns the statutes' treatment of bone marrow. The Maryland statute, which bans the sale of any human organ except blood and plasma, may prohibit the sale of bone


124 The techniques most likely to be affected are embryo transfers and surrogate motherhood. In an embryo transfer, which is still an experimental procedure, the donor's sperm is used to fertilize the ovum of a third party. The embryo is then implanted in the womb of the donor's wife. See Wadlington, Artificial Conception: The Challenge for Family Law, 69 Va. L. Rev. 465, 473-74 (1983). In surrogate motherhood, a woman is artificially inseminated, carries the fetus to term, and gives the child to the sperm donor for a fee. Id. at 475.
marrow if bone marrow is considered an "organ."\textsuperscript{125} In contrast, the Virginia statute, which excludes from its coverage "self-replicating bodily fluids," appears on its face to allow bone marrow sales. Although bone marrow, like blood, is regenerative, and its donation poses little risk to the donor,\textsuperscript{126} it is also similar in an important respect to solid organs. The HLA typing system employed to match solid organs must also be used to match bone marrow before it is transplanted,\textsuperscript{127} and finding a proper match may be quite difficult. Thus, whether the Maryland and Virginia statutes apply to bone marrow sales is not clear. The language of both statutes is ambiguous partially due to the uncertainty in the meaning of the medical terminology the legislatures used.

The California statute, however, may contain the most problematic definition of human organ. The statute provides that "'[h]uman organ' includes, but is not limited to, a human kidney, liver, heart, lung, pancreas, or any other human organ or nonrenewable or nonregenerative tissue except plasma and sperm."\textsuperscript{128} The problem with the statute is the application of the phrase "except plasma and sperm." The statute appears to exempt plasma and sperm from the immediately preceding phrase "nonrenewable or nonregenerative tissue." The legislature may have intended to allow explicitly the sale of plasma and sperm by this specific exception. They are, however, renewable and regenerative tissues and should not have to be exempted from a ban on the sale of nonrenewable organs. The special mention of plasma and sperm casts doubt on the statute's treatment of unmentioned tissues such as bone marrow, whole blood, and other blood products. The section's internal ambiguity is probably a result of inartful drafting and may raise problems of interpretation in the future.

The Maryland and Virginia prohibitions are worded more narrowly


\textsuperscript{126} See M. Gordon & M. Barrett, Bone Marrow Disorders 335-66 (1985) for a discussion of bone marrow transfers and the medical aspects of donations.

\textsuperscript{127} Id. at 346. Thus, an individual in need of a bone marrow transplant often has trouble in finding a donor if a suitable family member is not available. See Head v. Colloton, 331 N.W. 2d 870 (Iowa 1983) (individual in need of bone marrow transplant unsuccessfully sought to compel hospital to disclose identity of a known potential donor). Individuals may be more inclined to pay for a donation because of the difficulty in locating a suitable donor. The willingness of donees to pay for bone marrow may be the reason some of the legislatures defined bone marrow as a human organ. The National Organ Transplant Act may help alleviate the bone marrow matching problem. The federal statute addresses the possibility of establishing a national registry of voluntary bone marrow donors. See 42 U.S.C.A. § 274a (West Supp. 1985). Although there is no present registry in the United States, Johns Hopkins recently performed a transplant using bone marrow obtained from a registry in England. See Baltimore Sun, Jan. 1, 1985, at B1, col. 2.

than the federal statute, which prohibits the transfer of organs "for valuable consideration." Maryland stipulates that "a person may not sell, buy, or act as a broker for profit in the transfer" of a human organ. In Virginia, it is "unlawful for any person to sell, to offer to sell, to buy, to offer to buy, or to procure through purchase" a human organ. By using the terms "buy" and "sell," these two statutes may not prohibit a barter or exchange transaction. Thus, the breadth of transactions these legislatures intended to prohibit is unclear.

The Maryland and Virginia statutes contain no clear limitation on the medicinal procedures covered. The Maryland law addresses the removal of a human organ, and the Virginia law prohibits selling "for any reason including, but not limited to, medical and scientific uses such as transplantation, implantation, infusion or injection." Consequently, Virginia and Maryland may prohibit an overly-broad range of medical uses of human body parts. For example, individuals are often paid to participate in medical experiments that occasionally involve the removal of small amounts of body tissue such as muscle, skin, or bone marrow. Under the Maryland and Virginia statutes, payment for participating in these experiments may be a felony. If the state legislatures did not intend to prohibit these activities, they should explicitly prohibit the use of organs for transplantation and specifically exempt these experimental uses from the statutes' coverage.

The scope of the statutory exceptions for reimbursement of donation expenses creates another important ambiguity. All of the state statutes allow for the reimbursement of certain expenses. Altruistic donations and nonprofit procurement activities would be discouraged if donors and organ procurement agencies are not reimbursed for their expenses. The Virginia statute permits the reimbursement of "expenses associated with the removal and preservation of any natural body parts for medical and scientific purposes." By focusing on procurement costs, the provision may allow for the reimbursement of procurement agencies' costs but not

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131 Md. Health-General Code Ann. § 5-408(a)(2) (Supp. 1984); see supra text accompanying note 108.
133 Dukeminier, supra note 33, at 848 (citing Moore, Biological and Medical Studies in Human Volunteer Subjects: Ethics and Safeguards, 1 Clinical Pharmacology & Therapy 149, 153-54 (1960)).
for the costs incurred by the donor. Although the original Maryland bill did not contain an exception provision, the enacted version exempts any nonprofit organization that qualifies under section 501(c)(3) of the Internal Revenue Code. Nevertheless, the statute does not allow individual donors to be reimbursed. By prohibiting the reimbursement of a donor’s expenses, the Virginia and Maryland statutes may significantly deter altruistic organ donations.

The current state statutes are useful guides to other state legislatures considering legislation to regulate the sale of organs. If a state chooses to ban organ sales in the future, the state should specifically define “human organ,” preferably by following the federal approach and listing the specific organs to which the statute applies. The statute should also allow for the reimbursement of the donor’s and the procurement agency’s expenses. Finally, the statutory ban should be limited to the sale of organs for transplantation and should not prohibit common medical experiments or other important scientific uses.

IV. RECOMMENDED APPROACH TO THE REGULATION OF ORGAN SALES

A. The Appropriateness of a Complete Ban on Organ Sales

In reaction to Jacobs’ proposal, the various legislatures prohibited all organ sales. This broad prohibition may have been a hasty and inappropriate response. The legislatures could have responded by regulating the market in human organs to eliminate the most undesirable elements of Jacobs’ proposal. This section reviews the arguments both for and against the complete prohibition of all organ sales.

A frequently cited virtue of a commercial organ market is its potential to save thousands of lives by generating a sufficient supply of organs. The effect, however, of an organ market on the supply of available organs is uncertain. The supporters of organ sales argue that if organs could be sold, more organs would become available for use in transplants. One commentator asserts that common sense, supported by economic theory,
suggests that people who do not want to donate their organs may be willing to sell them. 142

The opponents of organ sales dispute a commercial market’s ability to increase the supply of organs. They argue that commercial sales may lead to a collapse of the voluntary donation system and result in an overall decrease in available organs. 143 To support this conclusion, opponents refer to the effect on supply of the commercial blood market. When the states first permitted the sale of blood, the overall blood supply dropped sharply because the decrease in voluntary donations was larger than the increase in paid donations. 144

In addition to disputing the impact of a commercial market on organ supply, commentators disagree over the appropriateness of distributing organs based on the recipient’s ability to pay. According to the opponents of organ sales, a commercial market would wrongly discriminate against individuals who were unable to pay for the needed organ. 146 Supporters of the market respond that individuals may not be required to purchase an organ with their personal wealth. The government could subsidize the cost of organs, 148 or Medicare and private insurance companies could pay for the transplanted organ as a cost of surgery. 147 Moreover, discrimination already exists in the present medical care system. The wealth discrimination argument logically applies to all medical care allocated by market forces and would thus prohibit any life-saving health care from being bought or sold.

The foregoing arguments analyzed the effects of a commercial organ market from a broad societal viewpoint. Commentators have also examined the organ market from an individual seller’s perspective, focusing on the risks of donating a kidney and the coercive effect of a monetary payment. The removal of an organ is not without risk; at least sixteen people have died while donating a kidney to a relative. 148 According to

142 Organ Allocation Hearings, supra note 25, at 256 (testimony of Marvin Brams, M.D.).
144 Organ Allocation Hearings, supra note 25, at 290 (statement of Rep. Albert Gore, Jr.).
145 See House Hearings, supra note 14, at 338-39 (testimony of Robert M. Veatch). For example, a liver transplant, which is often not covered by insurance, is prohibitively expensive for people without significant assets. Senate Hearings, supra note 21, at 216 (statement of Ill. State Rep. Topinka). Occasionally, hospitals force critically ill patients to provide large sums of money in advance as a requirement for receiving life-saving medical treatment. Organ Allocation Hearings, supra note 25, at 233 (testimony of Peter Dobrovitz).
146 See Note, supra note 9, at 849.
147 Perry, Human Organs and the Open Market, 91 Ethics 63, 70 (1980).
148 See Organ Allocation Hearings, supra note 25, at 269 (testimony of Oscar Salvatierra, M.D. Pres. of the American Society of Transplant Surgeons). Poorer individuals, who would be the most likely donors in a commercial system, may be at greater risk because of health problems caused by their poverty. Id.
some opponents of organ sales, a monetary inducement to donate is so coercive that it deprives some sellers of the ability to give informed consent to this potentially risky operation.\footnote{See id. at 347 (statement of Robert M. Veatch).} Supporters of an organ market respond by noting that society often allows individuals to risk their lives for money by engaging in high-paying, hazardous occupations.\footnote{See Dukeminier, supra note 33, at 358.} For example, the issue of informed consent does not arise when coal miners and racecar drivers receive a monetary premium for the risks they undertake.

One response to this argument is that existing evidence shows that individuals who “voluntarily” donate a kidney to a relative may be subject to greater coercion than those who sell their organs.\footnote{J. Katz & A. Capron, Catastrophic Diseases: Who Decides What? 202-03 (1975).} People often decide to donate a kidney to a needy relative before they have been informed of the potential risks.\footnote{House Hearings, supra note 14, at 365 (statement of James Childress).} Donors often describe their choice as “necessary” and family members may even openly pressure them to donate.\footnote{Id.} Because of this subtle coercion, doctors occasionally provide bogus medical excuses for reluctant potential donors.\footnote{Id.} Thus, a market system may actually be less coercive than the present voluntary system.

In addition to addressing the societal and individual effects of an organ market, commentators have raised ethical objections to organ sales. Congresswoman Gore, the House sponsor of the National Organ Transplant Act, has argued that “[i]t is against our system of values to buy and sell parts of human beings.”\footnote{See National Act Hearings, supra note 24, at 128 (testimony of Rep. Albert Gore, Jr.).} Another commentator argues that monetary considerations should play no role in life and death decisions.\footnote{See Organ Allocation Hearings, supra note 25, at 344 (statement of Robert M. Veatch).} This second argument suggests, however, abolishing all market allocation decisions in medicine, meaning that no life-saving health care should be bought or sold.\footnote{Id. at 348.}

Supporters of organ sales have made strong ethical arguments for a commercial market. One ethicist asserted that any system that alleviates human suffering and death is acceptable, regardless of the participants’ underlying motivations.\footnote{See Perry, supra note 147, at 67.} He further noted that the medical profession is humanely oriented even though doctors receive high fees for their services.\footnote{Id.} Another philosopher found no “morally relevant” difference between organ donations and organ sales or between compensating the doc-
tor, but not the donor, for his contribution.\textsuperscript{160} Thus, the ethical arguments, like the previous arguments, support both sides of the issue.

Finally, transplant surgeons have addressed the propriety of a commercial organ market. Three medical transplant associations recently adopted a resolution calling for the expulsion of any member who participates in a commercial organ market.\textsuperscript{161} The resolution also condemned the “recent scheme” as “abhorrent” and “completely morally and ethically irresponsible.”\textsuperscript{162}

In sum, although most commentators agree that Jacobs’ proposal was inappropriate, they disagree on the desirability of prohibiting all organ sales. The next section suggests some alternatives to an unrestrained organ market or to a complete ban on organ sales. These suggestions are designed to increase the supply of organs and avoid the undesirable effects of an unregulated organ market.

\textbf{B. Alternatives to a Complete Prohibition of Organ Sales}

Rather than responding to Jacobs’ proposal by banning all organ sales, the legislatures could have regulated the commercial organ market. Many observers believed that this approach would have increased the availability of organs while minimizing the problems associated with organ sales.\textsuperscript{163} Commentators have posed a number of regulatory alternatives that include permitting individuals to sell organs without a broker, permitting the sale of cadaveric organs, providing noncash incentives to those who donate organs, and allowing monetary payments to family donors.

The first alternative to the wholesale prohibition of organ sales is to allow sales between the donor and recipient but to forbid organ “brokering” by third parties.\textsuperscript{164} This regulation has the advantage of responding directly to the situation that the legislatures apparently tried to pre-

\textsuperscript{160} See Mavrodos, The Morality of Selling Human Organs, in Ethics, Humanism and Medicine, 38 Progress in Clinical & Biological Research 133, 139 (1980).

\textsuperscript{161} The three associations were the American Society of Transplant Surgeons, the American Society of Transplant Physicians, and the International Transplantation Society. See Organ Allocation Hearings, supra note 25, at 271 (testimony of Oscar Salvatierra, M.D., Pres. of the American Society of Transplant Surgeons).

\textsuperscript{162} See id.

\textsuperscript{163} Note, supra note 10, at 1227. Other commentators have advocated a regulated organ market. See Buc & Bernstein, supra note 140, at 3 (“Like any other market, the organ market could, if necessary, be regulated to deal with such issues as quality standards for transplantable organs, and required disclosure of risks.”). See also Brams, supra note 78, at 183 (advocating a statutory approach to organ sales in which the legislature would set the appropriate standards).

vent—the exploitive brokering of human organs. The limited prohibition eliminates the major problems of a commercial organ market, while allowing individuals to buy or to sell organs legally.

A second regulatory alternative is to allow only the sale of cadaveric organs.\textsuperscript{165} If this solution substantially increased the supply of organs, it might eliminate the need for live donations.\textsuperscript{166} A cadaveric organ market would thus have several advantages. It would eliminate the risk, however slight, that accompanies the removal of kidneys from live donors. Moreover, the market would avoid the coercion caused by family members and monetary inducement.\textsuperscript{167} This limited market is not permitted by any of the present statutes because the statutes are written broadly enough to prohibit organ sales from cadavers.

A third possible regulation would limit the compensation for an organ donation to specific noncash options. This regulation may be appropriate because nonpecuniary payment for an organ might be ethically justifiable even though a direct cash payment might not.\textsuperscript{168} A good example of a noncash payment is an unenacted congressional tax bill that would have provided income and estate tax deductions for decedents who donated organs for transplantation.\textsuperscript{169} In essence, the bill attempted to reduce the need for living donors and to increase the supply of organs by providing an incentive to donate organs posthumously. Other alternatives to a direct cash payment include providing the donor with free life insurance or medical care,\textsuperscript{170} giving his relatives transplant priority, or cancelling or reducing his hospital bill if the donation is made after a long hospital stay.\textsuperscript{171}

A system of organ "trading" is an additional form of noncash payment.\textsuperscript{172} Under this system, if a donor's organ is incompatible with the

\begin{itemize}
\item[-] \textsuperscript{165} Organ Allocation Hearings, supra note 25, at 257 (statement of Marvin Brans, M.D.);
\item[-] \textsuperscript{166} Buc & Bernstein, supra note 140, at 4.
\item[-] \textsuperscript{167} Buc & Bernstein, supra note 140, at 5.
\item[-] \textsuperscript{168} Organ Allocation Hearings, supra note 25, at 257 (statement of Marvin Brans, M.D.);
\item[-] \textsuperscript{169} Buc & Bernstein, supra note 140, at 5.
\item[-] \textsuperscript{169} Dukeminier, supra note 33, at 849.
\item[-] \textsuperscript{169} See H.R. 540, 98th Cong., 1st Sess. (1983). Specifically, the bill allowed the decedent to deduct $25,000 in his last taxable year for each qualified donation. Id. \S\ 2(a). The total amount would also be deducted from the value of the decedent's gross estate. Id. The National Kidney Foundation has opposed a tax break for donors because "[t]his would detract from the humanitarian aspect of organ donation and may have little benefit in expanding the number of organ donors." Senate Hearings, supra note 21, at 268 (draft statement of the National Kidney Foundation).
\item[-] \textsuperscript{170} See Dukeminier, supra note 33, at 848.
\item[-] \textsuperscript{171} See id.
\item[-] \textsuperscript{172} See Perry, supra note 147, at 70.
\end{itemize}
recipient, the donor could trade his organ for a suitable match. An opponent of organ sales has supported this trading system because "[i]f we permit a father to donate his kidney to his wife or child, however, it is difficult to justify not permitting him to at least trade his kidney for another (directly or through a brokerage firm) in the event that his tissue is not a close enough match." An organ trading system is justified because the quality of consent, the risks undertaken, and the donor's motivation are the same as in a direct intrafamily donation.

A fourth alternative to a complete prohibition of sales is to allow the recipient to purchase an organ from a family member. A wealthy individual in need of a kidney might prefer to pay a relative for donating the needed organ. A donee should be allowed to express his appreciation by a monetary gift; those not wanting to buy or sell an organ can engage in a purely donative transaction. This alternative of allowing intrafamily sales is consistent with the usual legal and medical views on intrafamily affairs. The law has traditionally respected private family decisions and the medical profession has stopped long ago analyzing the motives behind intrafamily donations.

V. Conclusion

Since 1983, when H. Barry Jacobs established a company to broker human kidneys from live donors, Congress has passed a federal law prohibiting the sale of human organs. A few states have also prohibited organ sales, and the trend of state regulation is apparently continuing in spite of the presence of a federal statute. Several of these statutes, however, contain ambiguous language that makes their scope uncertain, and drafters of legislation to regulate organ sales should recognize the problems with the current statutes. Moreover, Congress and the states unfortunately have chosen to proscribe all organ sales. This note argues:

173 Id.
174 Organ Allocation Hearings, supra note 25, at 319 (draft statement of George J. Annas, M.D., M.P.H.)
175 Id.
176 Id.
177 Id.
178 Dukeminier, supra note 33, at 860.
179 See Note, supra note 9, at 845.
180 The brother of a Maryland woman in need of a kidney reportedly offered to donate one of his kidneys if he were compensated "for his stress" with $25,000. The woman, uncomfortable with the offer, declined "as a matter of personal pride." See Baltimore Sun, Jan. 13, 1984, at A1, col. 3.
181 Organ Allocation Hearings, supra note 25, at 312 (draft statement of George J. Annas, M.D., M.P.H.).
182 See Freier, Organ Selling for Transplantation, in Ethics, Humanism and Medicine, 38 Progress in Clinical & Biological Research 141, 143 (1980).
that regulating an organ market would help alleviate organ scarcity without presenting the ethical problems raised by Jacobs' proposal to solicit donations from live donors.

S.H.D.