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Outsourcing: Promise of Growth or Doom of the American Worker?

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The outsourcing of American jobs has become a major political issue, and with the Presidential election only months away, the debate is likely to intensify.

The growth of the Internet has played a major role in the recent surge in American companies outsourcing to other countries. More and more, the jobs being sent to other countries are high-tech and professional jobs. According to analysts from Goldman Sachs, about six million more high-tech and professional jobs will be outsourced over the next decade.[1]

Companies now can send office work anywhere. By sending work to places like India and the Philippines, companies can hire college graduates for $1.50 to $2 per hour to do jobs that could cost $12 to $18 in the United States. Procter & Gamble says it has saved $1 billion since 1999 by concentrating back-office work in Costa Rica, the Philippines, and Britain. Ernst & Young uses accountants in India and the Philippines for tax work, and a number of Wall Street firms are considering using offshore researchers to analyze stocks.[2]

Some argue that we are quickly approaching a point where, if a job can be done using a computer, it is not cost effective to do it domestically.[3] However, according to Lori Wallach, director of consumer group Public Citizen's Global Trade Watch, the outsourcing of jobs to other countries spells potential disaster for U.S. workers.

Wallach says the number of jobs in this country has shrunk by about three million over the past three years, with most job losses coming in manufacturing. "U.S. tax and trade policies have encouraged the shift of jobs to overseas by allowing companies to dodge U.S. taxes and evade environmental and safety regulations," Wallach said.

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In addition to economic losses, Wallach says, the outsourcing of jobs creates a wide array of difficult privacy, consumer and security issues. She points out that sensitive personal information, such as medical records and tax returns, which qualify for privacy protection in the U.S. might not qualify for such protection in other countries. In addition, because other countries do not have the same requirements regarding education, testing and licensing, there is no way to guarantee that consumers will get the quality of services that they are paying for, Wallach contends.

But others assert that the benefits of outsourcing far outweigh any negatives. President Bush has said that "empty talk about jobs and economic isolation won't get anyone hired" and that "the way to create jobs is our pro-growth, pro-entrepreneur agenda."[4]

Growing anti-corporate sentiments in this country have contributed to the outrage against outsourcing. The several highly publicized corporate scandals in recent years have helped make outsourcing the issue of the year.[5]

President Bush's chief economic adviser, Greg Mankiw, was highly criticized for saying that "outsourcing...is something that we should realize is probably a plus for the economy in the long run." Mankiw defended his comments by saying: "We're very used to goods being produced abroad and being shipped here on ships or planes; what we're not used to is services being produced abroad and being sent here over the Internet or telephone wires. But does it matter from an economic standpoint whether values of items produced abroad come on planes and ships or over fiber-optic cables? Well, no, the economics is basically the same."

In response to remarks by John Kerry, the economist Jagdish Bhagwati, wrote on the New York Times op-ed page: "In a world economy, firms that forgo cheaper suppliers of services are doomed to lose markets, and hence production. And companies that die out, of course, do not employ people."

According to David Kirkpatrick of Fortune Magazine, off-shoring is inevitable, frequently makes business sense, and might even be beneficial. He cites a recent study by the McKinsey Global Institute, an economics think tank, which calculated that for every dollar spent on a business process that is outsourced to India, the U.S. economy gains at least $1.12. The largest chunk -- 58 cents -- goes back to the original employer. Job turnover, he says, is a sign of a healthy economy.

"The U.S. is helping the rest of the world work its way into wealth," Kirkpatrick writes. "That is in all of our interests. And it isn't a zero-sum game. American productivity, again fostered largely by intelligent use of technology, remains the highest in the world. That's likely to ensure we stay wealthy."

1. Public Citizen, at http://www.citizen.org.

2. David Kirkpatrick, In online age, company location hardly matters (May, 2003), at http://www.fortune.com/fortune/fastforward/0,15704,588382,00.html

3. Jeff Roehl, Outsourcing Offshore Good Business Sense, Chi. Trib., March 7, 2004.

4 Bush takes aim at Kerry (March 4, 2004), at http://www.cnn.com/2004/ALLPOLITICS/03/04/elec04.prez.bush/index.html

5. David Kirkpatrick, Rage against off-shoring is very real (February 23, 2004), at http://www.fortune.com/fortune/fastforward/0,15704,592118,00.html.

The ADA and Tennessee's Sovereign Immunity Crawl Into the Supreme Court

Mary E. O'Malley

A conflict between the due process rights of the disabled and a state's sovereign immunity looms large in the United States Supreme Court this term. After hearing oral arguments in January 2004, the Court will decide in *Tennessee v. Lane* whether Congress has the power under Title II of the Americans With Disabilities Act of 1990 ("ADA") to require states to prohibit discrimination against the disabled regarding accessibility to state courthouses.[1] The state of Tennessee claims the key issue implicates the ADA's intrusion upon the state's Eleventh Amendment sovereign immunity, which bars claims by citizens seeking money damages.[2] Conversely, those advocating for disability rights believe the overriding issue involves a violation of Due Process under Section 5 of the Fourteenth Amendment.[3]

Summoned to court in 1996, George Lane crawled upstairs to a Polk County, Tennessee courtroom to defend himself against misdemeanor charges.[4] He had no choice. The second floor of the courthouse was inaccessible to wheelchair-bound persons like Lane. On his second visit, Lane was arrested for failing to make a court appearance after he arrived at the courthouse and refused to crawl or allow officers to carry him into the courtroom. The court proceedings continued without Lane.

After a related misdemeanor indictment was returned in 1997, Lane's attorney requested that the court dismiss the case or least stay the proceedings until accessible facilities could be provided. The trial court denied the attorney's request. However, the judge suggested that Lane might have a right to bring an independent civil suit to make the courtroom accessible, but that inaccessibility was no basis for delaying the criminal case. Lane eventually pled guilty to driving on a revoked license after the Tennessee appellate courts declined to provide Lane emergency relief. Meanwhile, Circuit Court Judge Carroll Ross stayed all criminal proceedings in the Polk County Courthouse until the courthouse could be made accessible.[5] An elevator was installed in 1998.

Despite the construction of the elevator, Lane acted upon the original trial judge's suggestion. Seeking money damages and injunctive relief, Lane and a similarly situated plaintiff, Beverly Jones, filed suit claiming that the state of Tennessee humiliated them and violated the ADA by maintaining inaccessible courthouses.[6] The state of Tennessee moved to dismiss the case by claiming that the Eleventh Amendment protects Tennessee from private suits for money damages, but the district court denied the motion.[7]

The state appealed, but the Sixth Circuit affirmed. In an unpublished per curiam order in this case, the Sixth Circuit applied its ruling of a similar case, *Popovich v. Cuyhoga County Court of Common Pleas*.[8] In *Popovich*, the