

2016

## How the E-Government Can Save Money by Building Bridges Across the Digital Divide

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### Recommended Citation

Alison Rogers, *How the E-Government Can Save Money by Building Bridges Across the Digital Divide*, 22 MICH. J. RACE & L. 163 (2016).

Available at: <https://repository.law.umich.edu/mjrl/vol22/iss1/6>

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BUILDING THE SUPERHIGHWAY FOR INFORMATION  
AND COMMERCE: HOW THE E-GOVERNMENT  
CAN SAVE MONEY BY BUILDING BRIDGES  
ACROSS THE DIGITAL DIVIDE

Alison Rogers\*

*As government agencies and federal aid recipients begin to build a presence online, they must recognize that language accessibility is morally required, fiscally responsible, and compulsory under federal civil rights law. This Note explores statutes, federal policies, and case law that purport to protect the rights of limited English proficient (“LEP”) individuals in cyberspace. The Note suggests reforms, policies, and programs that should be adopted by federal aid recipients to ensure that LEP individuals have meaningful access to online services.*

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INTRODUCTION

There is a growing socioeconomic divide between those with internet access and those without it. A national infrastructure that will support basic and meaningful access for vulnerable populations to government resources must be built to bridge this divide. Providing meaningful access for vulnerable populations to government resources offline and online is socially responsible, legally required, and fiscally feasible.

Part I argues that historically embedded discrimination plagues cyberspace. It introduces the concept of an emerging Digital Class, which consists of populations and geographic regions with ready access to the internet and computer literacy skills. This Digital Class enjoys increased

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sociopolitical power, while those without access are increasingly disenfranchised. The people most likely to lack access are groups historically subjected to discrimination based on race and ethnicity, gender, physical and mental impairment, and economic class. Further, even after gaining access, these same groups experience disparate treatment online.

Part II explains key legal prohibitions against national origin-based discrimination online. Title VI of the Civil Rights Act of 1964 (“Title VI”), the Food Stamp Act of 1977, and federal implementing regulations require government websites and internet services to be multilingual. These laws create and protect the right to meaningful access e-government, regardless of English language proficiency.

Part III suggests that language-accessible e-government is fiscally responsible. Well-designed and efficient websites can provide necessary language accommodations.

Ultimately, the law requires web accessibility, people with limited English proficiency skills need web accessibility, and “[i]t’s good coding practice, good usability practice, [and] good for business.”<sup>1</sup>

#### I. NATIONAL ORIGIN DISCRIMINATION IN CYBERSPACE

Like the use of roads, highways, parks, and sidewalks, the ability to access and navigate the internet is an important part of an individual’s social and economic well-being. In their seminal paper regarding internet access and civil rights, Joshua L. Friedman and Gary C. Norman argued that “imbuing science and technology with principles of universal design and accessibility will increasingly allow individuals with disabilities to benefit society through greater opportunities for socioeconomic commerce.”<sup>2</sup> Friedman and Norman held the conviction that the internet could create valuable opportunities for all, and not just for the able-bodied. They were also concerned that the failure to address information and digital access would lead to “injustice, denigrating affirmative civil rights already on the book.”<sup>3</sup> Norman and Friedman searched for ways “to fortify or expand existing [accessibility rights] protections” to the internet.<sup>4</sup> For example, they advocated that governments invest in efforts to build “an accessible Internet—a ‘superhighway’ for information, designed for the needs of people with disabilities—[that] can provide the disabled, the world’s largest minority population, with enhanced opportunities for inclusion and integration.”<sup>5</sup>

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1. *More Delay for DOJ Web Regs- Does It Matter?*, LAW OFFICE OF LAINEY FEINGOLD (June 2, 2014), [hereinafter FEINGOLD] <http://llegal.com/2014/06/doj-delay/#ADA> (discussing ADA web accessibility reforms).

2. Joshua L. Friedman & Gary C. Norman, *The Norman/Friedman Principle: Equal Rights to Information and Technology Access*, 18 TEX. J. C.L. & C.R. 47, 49 (2012).

3. *Id.*

4. *Id.*

5. *Id.* at 48.

While Norman and Friedman rightfully emphasize the need to expand accessibility rights protections, they are too enthusiastic about the internet's power to remedy societal ills. When discussing the extensive history of scientific and technological innovation, the scholars write:

Regardless of the rate of change and where it originates, technology is globalizing humanity, bringing all of us closer through a network of information about which Gutenberg could have only dreamed. The printing press arguably democratized knowledge by taking the information access that was solely in the hands of the privileged few and spreading it to the masses. An accessible Information Age may serve a similar purpose—namely, it could be an equalizer among the able-bodied and the disabled.<sup>6</sup>

This optimistic view of the internet's potential societal influence is not substantiated by evidence; the internet is not “an equalizer.”<sup>7</sup> Instead, the internet facilitates a widening chasm, dividing those with internet access from those without it. While populations and geographic regions with the internet enjoy increased income and consumer welfare, those without access to modern information and communications technology are left behind.<sup>8</sup>

#### A. *The Digital Divide*

The growing disparity between those with internet access, and those without it, is widely referred to as the “Digital Divide.”<sup>9</sup> Data suggests that the Digital Divide is a new symptom of historically embedded discrimination based on race, gender, physical and mental impairment, and national origin. The U.S. Department of Commerce (“DOC”) reports, for example, that while 80% of White Americans have access to home computers, only 62% of African-Americans and 63% of Hispanics have access to computers at home.<sup>10</sup> Asian-Americans fare better, with 85% having access to

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6. *Id.* at 56.

7. *Id.*

8. *Id.* at 76.

9. See, e.g., *The Digital Divide Bridging the Technology Gap: Hearing Before the H.R. Subcomm. on Empowerment of the Comm. on Small Bus.*, 106th Cong. 2 (1999); DAVID B. BOLT & RAY A. K. CRAWFORD, *DIGITAL DIVIDE* (2000); RANETA LAWSON MACK, *THE DIGITAL DIVIDE: STANDING AT THE INTERSECTION OF RACE AND TECHNOLOGY* (2001); PIPPA NORRIS, *DIGITAL DIVIDE: CIVIC ENGAGEMENT, INFORMATION POVERTY, AND THE INTERNET WORLDWIDE* (2001); DANIEL VEIT & JAN HUNTGEURTH, *FOUNDATIONS OF DIGITAL GOVERNMENT* (2014).

10. U.S. DEP'T OF COMMERCE, *EXPLORING THE DIGITAL NATION: AMERICA'S EMERGING ONLINE EXPERIENCE* 26 (2013), [http://www.ntia.doc.gov/files/ntia/publications/exploring\\_the\\_digital\\_nation\\_americas\\_emerging\\_online\\_experience.pdf](http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_americas_emerging_online_experience.pdf).

computers at home.<sup>11</sup> 53% of individuals with a disability have computer access at home.<sup>12</sup>

Economic class also demarcates differences: urban dwellers who make less than \$25,000 are less likely to own a computer across various racial categories.<sup>13</sup> In this income group, 59% of White individuals, 45% of African-American individuals, and 44% of Hispanic individuals own a computer.<sup>14</sup>

National origin also affects the likelihood of home access to computers and the internet. According to the 2013 US Census, 84.7% of English speaking households have access to a computer, and 75.5% of that population have some internet subscription.<sup>15</sup> In contrast, only 63.9% of limited English speaking households have computers, and only 51.4% have some internet subscription.<sup>16</sup>

Thus, the Digital Divide confounds Norman and Friedman's optimistic thesis. Instead of "democratiz[ing] knowledge by taking the information access that was solely in the hands of the privileged few and spreading it to the masses,"<sup>17</sup> the internet continues to remain out-of-reach for marginalized groups.<sup>18</sup>

In addition to exacerbating economic disparity, technological innovation can result in sociopolitical disenfranchisement. Cyberspace is dynamic, active, and increasingly rich with vital resources that are useful to those with internet access. The recent mass immigration of Syrian refugees to Europe exemplifies this resource-rich territory. Refugees used Smartphones, texting, and social networking platforms like Facebook to help navigate the treacherous journey from war-torn Syria to Europe.<sup>19</sup> The internet is an important tool for large-scale political and cultural

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11. *Id.*

12. *Id.*

13. *Id.* at 29.

14. Note that the DOC did not report the number of urban dwellers who own computers in other racial or ethnic categories. Nor did it report the number of people with disabilities that owned computers, lived in urban areas, and made less than \$25,000 a year. *Id.*

15. Thom File & Camille Ryan, *Computer and Internet Use in the United States: 2013*, 28 AM. COMM. SURVEY REP. 3 (2014), <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>.

16. *Id.*

17. Friedman & Norman, *supra* note 2, at 56.

18. *See supra* note 9.

19. Jess Mchugh, *Refugee Crisis Europe 2015: How Syrians Are Using Smartphones to Travel Through Western Europe*, INT'L BUS TIMES (Oct. 28, 2015, 1:48 PM), <http://www.ibtimes.com/refugee-crisis-europe-2015-how-syrians-are-using-smartphones-travel-through-western-2152496>.

movements. For example, Germany launched an online assimilation campaign to “teach refugees the right way to have sex.”<sup>20</sup>

Ethnologist Victoria Bernal, who studies the African Eritrean Diaspora as it engages with the internet, characterized cyberspace as a valuable “alternative public sphere,” similar to other sociopolitical spaces.<sup>21</sup> Indeed, as observed by Bernal, new media and transnational migration are “altering the lived experience of citizenship, community, and nationalism as well as the ways in which these can be collectively imagined.”<sup>22</sup>

The Digital Class, those with internet access, benefit from increased opportunities to connect with their government and civil society online, while those without access experience virtual disenfranchisement. The disparity between populations and geographic regions that have access to modern information and communications technology, and those that have restricted or no access, is widely recognized as a serious problem emerging in the Digital Era.<sup>23</sup>

As the U.S. government begins to establish an online presence within this alternative public sphere, it should take measures to ensure citizens without access to the internet are not alienated. Well-funded educational programs that teach computer literacy skills<sup>24</sup> and public facilities, such as libraries, that provide free and convenient access points to the internet, can help address the Digital Divide and virtual disenfranchisement. Certainly, the government can adopt any number of policies, programs, and practices that will provide people with support and basic access to the internet.<sup>25</sup> Scholars, politicians, and social justice advocates promote initiatives that help people gain internet access and basic computer literacy skills.<sup>26</sup>

As with any construction project, building a robust and accessible internet infrastructure will take time. Meanwhile, in order to protect the

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20. Anthony Faiola & Stephanie Kirchner, *Germany Is Trying to Teach Refugees the Right Way to Have Sex*, WASH. POST (May 13, 2016), <http://www.washingtonpost.com/news/worldviews/wp/2016/05/13/germany-is-trying-to-teach-refugees-the-right-way-to-have-sex>.

21. Victoria Bernal, *Eritrea On-line: Diaspora, Cyberspace, and the Public Sphere*, 32 AM. ETHNOLOGIST 660, 661 (2005).

22. *Id.*

23. See Friedman & Norman, *supra* note 2, at 49; Cecilia Kang, *The Challenges of Closing the Digital Divide*, N.Y. TIMES, June 9, 2016, at F5; COUNCIL OF ECON. ADVISERS, MAPPING THE DIGITAL DIVIDE (2015), [https://www.whitehouse.gov/sites/default/files/wh\\_digital\\_divide\\_issue\\_brief.pdf](https://www.whitehouse.gov/sites/default/files/wh_digital_divide_issue_brief.pdf).

24. For example, having recognized that inequalities in accessibility to information technology limit people’s opportunity to find jobs, obtain education, participate in political discourse, engage in civic activities, and build networks of social support, “policy-makers in Europe have started to launch several initiatives that foster participation of all individuals and communities in all aspects of the information society.” VEIT & HUNTGBURTH, *supra* note 9, at 38.

25. Edward Wyatt, *A Push to Connect Millions Who Live Offline to the Internet*, N.Y. TIMES (Aug. 18, 2013), [http://www.nytimes.com/2013/08/19/technology/a-push-to-connect-millions-who-live-offline-to-the-internet.html?\\_r=1](http://www.nytimes.com/2013/08/19/technology/a-push-to-connect-millions-who-live-offline-to-the-internet.html?_r=1).

26. See VEIT & HUNTGBURTH, *supra* note 9, at 38.

social, economic, and political well-being of those without access to the internet, the government must continue to fund and staff physical office spaces. If such space is not readily available, or worse, becomes entirely defunded, dollars spent on the internet infrastructure will disproportionately service the already affluent Digital Class, to the detriment of the rest.<sup>27</sup> Without prioritizing accessibility offline, technological investment will not just fail to be a solution to socioeconomic differences, but it will amplify the effects of those differences online.<sup>28</sup>

Accessing the internet is just one dimension of the Digital Divide. Once people enter cyberspace, they may not be treated equally there. For example, as Norman and Friedman point out, physical impairment matters both online and offline.<sup>29</sup> Even with access to the internet, the blind cannot use government resources and websites if they are not “rendered accessible, meaning that [they have] been constructed to meet accessibility standards, guidelines, and parameters.”<sup>30</sup> People with visual impairments are not the only group treated unequally online.

Limited English language proficiency (“LEP”) individuals cannot meaningfully access e-government websites that do not provide multilingual accommodations. 63.9% of LEP households have computers, and 51.4% have some internet subscription.<sup>31</sup> These numbers show that a slight majority of LEP individuals do have access to the internet. Unfortunately, they still must cope with discriminatory treatment online. A simple case study illustrates how the accessibility of online interfaces to LEP individuals is a civil and human rights issue.

#### B. *Case Study: An Iraqi Refugee’s Struggle to Access Health Care in Michigan*

In 2014, I met “Mr. M”<sup>32</sup> while working as a student-attorney at the University of Michigan Law School’s Pediatric Advocacy Clinic (“the Clinic”). The Clinic provides free legal aid services to low income clientele. The Clinic has access to translator services for clients who do not speak English.

Mr. M is an Arabic-speaking American citizen. In 2009, he sought refuge from war-torn Iraq, and was granted asylum in Massachusetts. A year later, he moved to Michigan. He lives with his wife and their three

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27. See *infra* p. 19–22 (discussing how Michigan’s million-dollar investment in internet healthcare portals failed to service Medicaid users without access to the Internet).

28. See KENTARO TOYAMA, GEEK HERESY: RESCUING SOCIAL CHANGE FROM THE CULT OF TECHNOLOGY 17–32 (2015).

29. Friedman & Norman, *supra* note 2, at 51–60.

30. *Id.* at 59.

31. File & Ryan, *supra* note 15.

32. The client and the Clinic have given permission for this story to be shared in this Note. Names have been changed to protect the client’s privacy.

daughters, who are also Iraqi refugees. Only his eldest daughter speaks proficient English.

Mr. M's household is riddled with illness. He suffers from diabetes, his wife is legally blind, and their middle daughter suffers from a fatal skin disease, Epidermolysis Bullosa. The family lost a child to the same illness in 2009, just before moving to Michigan. The daughter's illness requires frequent hospital visits. She requires blood transfusions, and her skin bandages must be changed frequently. The family shares a small apartment about thirty minutes from her treating hospital. It has very few amenities. The stress of finding work, facing illness, managing finances, and the resulting loss of sleep causes constant tension between Mr. M and his wife.

Because of illness and poverty, Mr. M has a dire need for government aid, including cash assistance, food stamps, and Medicaid. Sadly, in addition to the complex and arduous procedures that all public benefits recipients must face to apply for and maintain their benefits, Mr. M faces a nearly insurmountable language barrier. He cannot communicate in English to his caseworker, and his caseworker does not speak Arabic. This language barrier causes Mr. M repeated troubles, detracting from the time he needs to take care of his family and maintain employment.

For example, in 2012 the Michigan Department of Health and Human Services ("MDHHS") mailed Mr. M forms in English that requested he update his case file information. Mr. M could not read those forms because he only reads in Arabic. Consequently, MDHHS discontinued his cash assistance. When Mr. M realized he was no longer receiving cash assistance, he sought help. His daughter's physicians referred Mr. M to the Clinic. The Clinic assisted Mr. M, and restored his lost benefits. Also, they informed his caseworker that he did not speak English, and that future MDHHS notices must be sent to him in Arabic.

In February 2013, MDHHS discontinued Mr. M's cash assistance, again. Like before, MDHHS sent him a notice of this discontinuation. Mr. M returned to the Clinic. The Clinic spoke with his case manager, who explained that the discontinuation occurred because Mr. M failed to participate in a work requirement program. The Clinic asserted that due to the severe medical needs of his wife and daughter, of which MDHHS was already aware, Mr. M should be relieved of the work requirement. MDHHS agreed and restarted his cash assistance. The Clinic insisted that MDHHS begin to serve Mr. M in Arabic.

In May 2013, MDHHS sent an English notice of case action to Mr. M for a third time. The notice indicated that for his failure to participate in an employment training program, his cash benefits would be cut off the following month. Once again, because Mr. M could not read the English form, his cash benefits were cut off without warning. And, because of a language barrier, he could not dispute the inappropriateness of his enrollment in the employment work program with his caseworker without the help of the Clinic.



His student-attorneys requested a hearing before an administrative law judge. The Clinic succeeded in restoring his cash assistance and obtaining back payments owed to Mr. M due to the improper reductions in cash assistance. During this hearing, Mr. M's student-attorneys pointed out that MDHHS sent all notices and forms to Mr. M in English. This action may have violated MDHHS's Limited English Proficiency Policy and the Bridges Administrative Manual (BAM) 220, which requires the office to provide Mr. M with translated Arabic notices and forms when possible.<sup>33</sup> The administrative law judge agreed that by not sending the notice of case action in Arabic, the local office was violating MDHHS policy.

Even after this finding, the caseworker and her supervisor would not take action to send Mr. M Arabic forms. When Mr. M's attorneys asked if Mr. M could receive his paperwork in Arabic after the judge made his ruling, the caseworker stated, "No." The caseworker told the Clinic and Mr. M that his local MDHHS office does not provide Arabic forms, regardless of the MDHHS policy. Instead, the office refers recipients to a separate organization, Access International, Inc. That organization provides interpretation and translation services. To use their services, Mr. M would have to miss work and meet with an Access International representative. That representative would sit with Mr. M and fill out the English forms with him in person.

In July 2014, Mr. M received a notice (in English) that his medical benefits were inexplicably reduced.<sup>34</sup> Mr. M returned to the Clinic for help. The Clinic discovered that due to a technological glitch, MDHHS mistakenly flipped his status from regular Medicaid to a more limited coverage: Medicaid emergency services only ("ESO").<sup>35</sup> ESO would not cover his diabetes medicine or primary physician care.<sup>36</sup> (This glitch affected thousands of refugees in Michigan.) After the Clinic intervened, and with the help of the Center for Civil Justice, Mr. M's Medicaid status was restored. His cash assistance remained interrupted.

Desperate to find expedient and more lasting solutions to help Mr. M independently maintain his Medicaid eligibility and entitlements, the Clinic turned to MiBridges.michigan.gov ("MI Bridges"). MI Bridges is a

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33. MICH. DEP'T OF HEALTH & HUMAN SERVS., BAM 220, BRIDGES ADMINISTRATIVE MANUAL (2016), [hereinafter BAM 220], <http://www.mfia.state.mi.us/OLMWEB/EX/BP/Public/BAM/220.pdf>.

34. For an explanation regarding this reduction, see *Unan v. Lyon*, Case No. 2:14-cv-13470 (E.D. Mich. Jan. 11, 2016) (denying a motion for summary judgment by lawfully immigrated refugees and permanent resident aliens who claimed they wrongfully received notices approving them for emergency health care services but not for comprehensive Medicaid coverage).

35. *Id.*

36. See MICH. DEP'T OF CMTY. HEALTH, Bulletin MSA 05-61 (2005), [https://www.michigan.gov/documents/MSA\\_05-61\\_142996\\_7.pdf](https://www.michigan.gov/documents/MSA_05-61_142996_7.pdf).

web portal run by MDHHS that allows Michigan residents to apply online for a variety of benefits, including food assistance, energy assistance, and health care coverage.<sup>37</sup> English speaking users benefit from MI Bridges. Those users can skip their visits to the local MDHHS office and avoid difficult-to-schedule, in-person meetings with their all too often over-worked case managers.

Through MI Bridges, users can view a menu of applications and features online. The website allows them to check their benefits, report changes, upload documents, and renew benefits at their convenience. Other features allow users to view notices of case action from MDHHS online, rather than wait to receive notices by U.S. postal service.

However, the Clinic discovered that MI Bridges is only available in English. Mr. M, solely because of his limited English proficiency, is not equally served by MDHHS's online services. Thus, the language-access barriers Mr. M faced locally found no relief online.

Mr. M's arduous and intricate story is about the very real harms that are caused by national origin based discrimination, both offline and online.

## II. LEGAL FOUNDATIONS

The law recognizes that adequate language access resources and assistance are necessary for public benefit programs to function purposefully, effectively, and efficiently. For example, Title VI of the Civil Rights Act of 1964 ("Title VI") prohibits discrimination based on national origin,<sup>38</sup> the Food Stamp Act contains robust language-accessibility mandates,<sup>39</sup> and Executive Order 13,166<sup>40</sup> ensures LEP individuals have meaningful access to federally funded programs. These laws and their implementing regulations apply to programs administered online and offline.

### A. Title VI

*Title VI has been called the "sleeping giant" of civil rights law. Title VI's breadth of coverage is extensive and it can address a huge array of injustices: from environmental racism to discriminatory profiling, and from disparities in health care and basic services to inequities in transportation, housing, and education. Title VI offers federal agencies a*

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37. MIBRIDGES, <https://www.mibridges.michigan.gov/access/> (last visited Aug. 12, 2016).

38. "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000(d) (2012).

39. 7 U.S.C. §§ 2011-2036(a) (2012).

40. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (August 11, 2000).

*powerful tool to fight discrimination based on race, color, and national origin. Yet all too frequently this authority is underutilized.*

—Thomas E. Perez<sup>41</sup>

Title VI prohibits discrimination based on national origin.<sup>42</sup> Court precedent establishes that language-based discrimination is national origin discrimination under Title VI.<sup>43</sup>

In the landmark case, *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court held that a denial of language accommodation for non-English speaking students constituted national origin discrimination. In *Lau*, a Californian school system failed to provide bilingual education programs to some of its Chinese-speaking students.<sup>44</sup> The students brought suit, asserting that the failure to provide bilingual programs denied them equal access to education as required under the Fourteenth Amendment and Title VI.<sup>45</sup> The district court denied relief, and the court of appeals affirmed.<sup>46</sup> But the Supreme Court found for the petitioners pursuant to Section 601 of Title VI.<sup>47</sup>

*Lau* held that Title VI prohibits policies that discriminatorily impact LEP individuals.<sup>48</sup> The Supreme Court has since found that a private action for intentional discrimination also exists under Title VI.<sup>49</sup> However, the Court has never abrogated the finding that discrimination against individuals on the basis of their English language proficiency is a form of national origin discrimination.<sup>50</sup> Lower courts continue to find that national origin discrimination includes language discrimination under Title VI.<sup>51</sup>

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41. Memorandum from Thomas E. Perez, Ass't Att'y Gen., U.S. Dep't of Justice, to Fed. Funding Agency Civil Rights Dir. (Aug. 19, 2010), [http://www.justice.gov/crt/about/cor/titlevi\\_memo\\_tp.pdf](http://www.justice.gov/crt/about/cor/titlevi_memo_tp.pdf).

42. 42 U.S.C. § 2000(d) (2012).

43. *Lau v. Nichols*, 414 U.S. 563 (1974) (holding that a public school system violated Title VI and its implementing regulations by failing to provide bilingual education programs); *see also Nat'l Multi Hous. Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008).

44. *Lau*, 414 U.S. at 564–66.

45. *Id.* at 565.

46. *Id.* at 566.

47. *Id.* at 569.

48. *Id.* at 566.

49. *Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001).

50. *See, e.g., id.* at 279 (“We do not inquire here whether the DOJ regulation was authorized by § 602, or whether the courts below were correct to hold that the English-only policy had the effect of discriminating on the basis of national origin.”); *Alexander v. Choate*, 469 U.S. 287, 301 n. 21 (1985) (referring to *Lau*).

51. *See, e.g., United States v. Maricopa Cty., Ariz.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012); *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116–17 (9th Cir. 2009) (noting *Lau* concluded “discrimination against LEP individuals was discrimination based on national origin in violation of Title VI”); *see also U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV'N*,

### B. *The Food Stamp Act*

The United States Congress enacted the Food Stamp Act (“FSA”) to help “low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”<sup>52</sup> The FSA authorizes the U.S. Department of Agriculture (“USDA”) to provide food stamps through qualified state agencies.<sup>53</sup>

Section 2020 of the FSA requires participating state agencies to “submit for approval a plan of operation specifying the manner in which such program will be conducted within the State in every political subdivision.”<sup>54</sup> The plan must use “appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English.”<sup>55</sup>

The FSA contains specific rules about websites. For example, in paragraph (B) of Section 11, the FSA states that “if the State agency maintains a website for the State agency, [it] shall make the application available on the website in each language in which the State agency makes a printed application available.”<sup>56</sup>

These provisions are enforceable by private plaintiffs through Section 1983: “Section 1983 imposes liability on anyone who, under color of state law, deprives a person ‘of any rights, privileges, or immunities secured by the Constitution and laws.’”<sup>57</sup> In *Gonzaga University v. Doe*,<sup>58</sup> the Supreme Court established that Section 1983 provides for a private right of action where Congress demonstrates through “clear and unambiguous” terms and “individually focused rights-creating language” that it intended to create such a right.<sup>59</sup>

In 2002, private plaintiffs sought to enforce the FSA’s language accessibility requirements by bringing a Section 1983 action. In that case, *Almendares v. Palmer*,<sup>60</sup> Spanish-speaking recipients of food stamps, sued an Ohio food stamp program. The program received federal funding from the USDA, and therefore was covered by both Title VI and the FSA. The

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TITLE VI LEGAL MANUAL 54–55 (2001), <https://www.justice.gov/sites/default/files/crt/legacy/2011/06/23/vimanual.pdf>.

52. 7 U.S.C. § 2011 (2012).

53. 7 U.S.C. § 2013(a) (2012).

54. 7 U.S.C. § 2020(d) (2012).

55. 7 U.S.C. § 2020(e)(1)(B) (2012).

56. 7 U.S.C. § 2020(e)(2)(B)(ii)(II) (2012).

57. *Almendares v. Palmer*, No. 3:00CV7524, 2002 U.S. Dist. LEXIS 23258, at \*5 (N.D. Ohio Dec. 3, 2002).

58. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).

59. *Id.* at 276, 302.

60. *Almendares v. Palmer*, 284 F. Supp. 2d 799 (N.D. Ohio 2003).

plaintiffs alleged that the food stamp program did not provide bilingual services.<sup>61</sup> For example, the Ohio program sent out materials in English only. As a result, LEP individuals did not have the same access to food stamps as English speakers did.<sup>62</sup>

Plaintiffs argued that defendants purposefully implemented this policy or practice, knowing of its impact on Spanish-speaking food stamp recipients.<sup>63</sup> The district court held that if this were true, “one could logically infer that the policy [of not providing Spanish language notices] was implemented and [was] continued ‘because of’ its impact on national origin.”<sup>64</sup>

However, the court rejected the FSA claim brought by plaintiffs.<sup>65</sup> The court held that, unlike Title VI, the FSA did not provide for a private right of action through Section 1983 because it did not contain the kind of rights-creating language required under *Gonzaga*.<sup>66</sup>

The language of the FSA has since been amended, and now clearly provides a private right of action: In 2008, Congress added Section 4118 to the 2008 Farm Bill.<sup>67</sup> This section amends Section 11(e)(1) of the FSA by inserting mandatory language (“shall. . . comply with the regulations of the Secretary. . .”).<sup>68</sup> In a floor statement, Senator Harkin clarified that this Section was enacted in response to *Almendares*.<sup>69</sup> Senator Durbin spoke to the issue as well.<sup>70</sup> Thus, the amendment codified LEP individuals’ rights under the FSA.<sup>71</sup>

The 2008 Farm Bill and Title VI make clear that national origin discrimination, in the form of language-based discrimination, is prohibited in federally funded programs. Title VI, the Food Stamp Act, and the 2008 Farm Bill make clear that LEP individuals must be afforded meaningful

61. *Id.* at 800.

62. *Id.*

63. *Id.*

64. *Id.* at 808.

65. *Id.* at 811.

66. *Almendares v. Palmer*, No. 3:00CV7524, 2002 U.S. Dist. LEXIS 23258, at \*12 (N.D. Ohio Dec. 3, 2002) (granting in part and denying in part defendants’ motion for summary judgment).

67. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, § 4118, 122 Stat. 1651 (2008). Section 4118 states “Codification of Access Rules. Section 11(e)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(e)(1)) is amended . . . (2) by striking ‘and (B) use’ and inserting ‘and ‘(B) comply with regulations of the Secretary requiring the use of’”. *Id.*

68. *Id.*

69. 154 CONG. REC. § 4753 (daily ed. May 22, 2008) (statement of Sen. Harkin) (“Congress has always operated on the assumption, and with the intent, that the program’s regulations would be fully enforceable and fully complied with to the same extent as the statute. . . [and] no less than the statute, create rights for households to ensure that they can receive benefits.”).

70. 154 CONG. REC. §§ 4747–48 (daily ed. May 22, 2008) (statement of Sen. Durbin).

71. For further discussion, see *Amicus Curiae Brief* at 10–21, *Howard v. Hawkins*, No. 09-51063, 2010 WL 3761205 (5th Cir. 2010) (case later dismissed without opinion).

access to most, if not all, government services. However, the degree to which federally funded programs must accommodate LEP individuals is not detailed in these laws. Implementing rules and regulations fills the gap.

### C. *Federal Rules and Regulations*

Section 602 of Title VI authorizes federal agencies to issue implementing regulations.<sup>72</sup> The Department of Justice (“DOJ”) regulations forbid federally funded programs from using “criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”<sup>73</sup>

The DOJ regulations require that:

[When] a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program . . . needs service or information in a language other than English . . . the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons.<sup>74</sup>

The USDA has subsequently developed implementing rules for recipient organizations that receive funding, effective November 14, 2014.<sup>75</sup> This guidance clarifies that “to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge.”<sup>76</sup>

In addition to these regulations, the DOJ released a policy memorandum, which recommended how other federal agencies might develop their own guidelines.<sup>77</sup> DOJ’s Policy Guidance explains how program adminis-

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72. 42 U.S.C.A. § 2000(d) (Westlaw through Pub. L. 114-221).

73. 28 C.F.R. § 42.104(b)(2).

74. 28 C.F.R. § 42.405(d)(1).

75. 7 C.F.R. § 15.

76. Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency, 79 Fed. Reg. 70771 (Nov. 28, 2014) (“In order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge.”).

77. Dep’t of Just., Guidance to Federal Financial Assistance Recipients Regarding Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002); *see also* Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug.

trators can adequately provide LEP individuals with “meaningful access” to their federally funded programs.<sup>78</sup>

According to the DOJ, Title VI and Executive Order 13166 do regulate websites.<sup>79</sup> However, the guidelines obfuscate the steps for proper *online* Title IV compliance. First, the guidelines recommend a fact-specific inquiry to determine whether and to what degree an offline program should provide language accommodations, called the “four factor analysis”.<sup>80</sup> These four factors require program administrators to consider:

- (1) The number or proportion of LEP persons in the eligible service population;
- (2) The frequency with which LEP individuals come into contact with the program;
- (3) The importance of the service provided by the program; and
- (4) The resources available to the recipient.<sup>81</sup>

Second, the DOJ guidelines require program administrators to consider websites only in light of their supplemental value to offline programs and activities that are determined to be eligible for language accommodation under the four-factor analysis. The DOJ has explicitly suggested, “entire websites need not be translated.”<sup>82</sup> Instead, to determine whether websites should be translated, the DOJ published yet another four-step approach:

- (1) The recipient determines that a particular hardcopy of a document or piece of information falls within the definition of a “vital written document”
- (2) The recipient posts the English-language version on its website
- (3) The translation should also be posted on the website
- (4) If documents are translated within a website, the existence of the translation should be noted (in the appropriate lan-

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11, 2000) (directing that federal agencies develop guidelines that are consistent with Title VI standards).

78. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (August 11, 2000).

79. 65 C.F.R. § 159 (2000); Dep’t of Just., Policy Guidance, Enforcement of Title VI of the Civil Rights Act of 1964, 65 Fed. Reg. 50,123 (Aug. 16, 2000), <https://www.lep.gov/13166/eolep.pdf>; *see also* Memorandum from Eric Holder, Att’ Gen., to Heads of Federal Agencies, General Counsels, and Civil Rights, p. 4 ¶ 5 (February 17, 2011) (suggesting that websites must comply with language accessibility requirements).

80. 65 C.F.R. § 159 (2000).

81. *Id.*

82. *See also*, DEP’T OF JUSTICE, Commonly Asked Questions and Answers Regarding Executive Order 13166, JUSTICE.GOV, <https://www.justice.gov/crt/federal-coordination-and-compliance-section-167> (last updated August 6, 2015).

guage) at an initial entry point to the site (usually the homepage).<sup>83</sup>

In summary, the DOJ suggests that covered entities should try to imagine the hardcopy equivalent of particular web pages and services, and if the hardcopy equivalent would need translation under the vital written materials standard, then its cyber-equivalent needs translation online. This guidance fails to address the fact that websites often provide unique services and forms that are not available offline. Perhaps as a result of this standard, whole websites, even those that host vital public benefits services, like MI Bridges, are not translated.<sup>84</sup>

The DOJ's four-step guidance follows from an outdated perception of what the internet is. Websites, like MI Bridges, are not merely filing cabinets containing information that corresponds to offline programs and activities. The internet is a space hosting vital government programs and activities. More sophisticated guidelines, expressing an understanding of current technological capabilities, will better safeguard against discrimination by federal funding recipients as they increasingly build online infrastructures.

### III. BUILDING A MORE ACCESSIBLE E-GOVERNMENT

Web designers should follow best practices when designing multilingual portals, so they can provide meaningful access to LEP individuals online. Adequate and affordable models for e-government exist. Title VI requires web accessibility, people with limited English proficiency skills need web accessibility, and "it's good coding practice, good usability practice, [and] good for business."<sup>85</sup>

#### A. Best Practices in Web Design

There are many examples proving that the problem of national origin based discrimination online is surmountable.<sup>86</sup> One web-based undertaking worth examining is the Affordable Care Act's Health Exchange

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83. *Id.*

84. Nat'l Sci. Found., Policy Guidance on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (2001); Dept' of Labor, Policy Guidance on the Prohibition of National Origin Discrimination as it Affects Persons with Limited English Proficiency (2003); Health & Human Servs., Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (2003).

85. FEINGOLD, *supra* note 1.

86. The General Services Administration creates web accessibility standards for federal agencies, and recipients can look at those guidelines for help. U.S. Gen. Servs. Admin., *GSA 508 Tutorials, Guidance, Checklists*, <http://www.gsa.gov/portal/content/103565> (last visited Oct. 2, 2016). Also available are the ten best practices for multilingual websites. Laura Godfrey & Leilani Martinez, *Multilingual Digital Content*, DIGITALGOV (July 1, 2014), <http://www.digitalgov.gov/2014/07/01/multilingual-digital-content>.



(“Health Exchange”).<sup>87</sup> The Act addresses language accessibility, insisting that all information on the exchanges must be accessible to LEP individuals.<sup>88</sup> In fact, the broad language of the Act directly challenges the more narrowly drawn “vital documents” standard promulgated by DOJ guidance.<sup>89</sup> The Act even requires that plain language standards be applied. Specifically, the Act calls for “language [that] is concise, well-organized, and follows other best practices of plain language writing” so that all users, “including individuals with limited English proficiency, can readily understand and use [the Exchange].”<sup>90</sup>

In addition, the US Department of Labor warns against the use of automated and machine translations in its guidance.<sup>91</sup> Machine translations fail to provide a quality user experience for LEP individuals, in part because they fail to adequately translate graphics and acronyms.<sup>92</sup>

The New York Public Benefits Portal<sup>93</sup> provides a similar experience to all users regardless of their language preference. This webpage provides a vast scope of benefits. Not only are the web design features on the page impressive, but they provide a quality experience to one of the largest LEP populations in the country.

That these portals and standards exist to service large populations suggests that e-governments can afford to treat LEP individuals equally online.

### B. *Saving Taxpayer Money*

Best practices in web design should be implemented to combat national origin discrimination online. However, e-government administrators are unlikely to adopt proactive measures if budgetary constraints render the effort unreasonable or impossible. Helpfully, language accessible web design is economically efficient. For example, the projected costs for building and implementing a language accessible MI Bridges are far outweighed by the savings and benefits the program would generate.

As noted above, MI Bridges is a website that offers English speaking Michigan residents the opportunity to apply for food stamps, cash assistance, and Medicaid via an online, automated system. MI Bridges was developed out of budgetary necessity. According to MDHHS’s Information Technology Department, Office of Budget and Management:

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87. HEALTHCARE.GOV, <https://www.healthcare.gov/> (last visited Oct. 2, 2016).

88. 42 U.S.C.A. § 18116 (West 2010) (protecting LEP individuals by extending non-discrimination protection to the Health Insurance Exchanges and any other entity that administers a program or activity established under the Act).

89. See *supra* Part II.C.

90. 42 U.S.C.A. § 18051 (West 2010).

91. Laura Godfrey, *Lost in Translation*, DIGITALGOV (Oct. 1, 2012), <http://www.digitalgov.gov/2012/10/01/automated-translation-good-solution-or-not>.

92. *Id.*

93. *My Benefits*, N.Y. ST., <https://mybenefits.ny.gov> (last visited on August 12, 2016).

[In 2009] Michigan was facing a significant problem with caseload projections for assistive services anticipated to grow beyond staffing levels capable of responding in a timely fashion. Our assistance caseload showed 350,000 citizen's seeking first time human services assistance in 2009. This problem was exacerbated by structural budget deficits that prevented the Michigan Department of Human Services . . . from hiring new caseworkers—leading to an all-time caseload ratio approaching 600 active cases per [M]DHS worker and jeopardizing our Federal standard of promptness for handling cases in a timely manner. Mi-Bridges was deemed the most practical and immediate solution for providing flexibility to customers while reducing time consuming case-worker and client interaction at overcrowded field offices.<sup>94</sup>

To ensure that the new online infrastructure would reduce operating costs, the Michigan Department of Technology, Management and Budget (“DTMB”) partnered with vendor Deloitte Consulting to develop an achievable implementation plan.<sup>95</sup> The partnership determined that implementing MI Bridges would cost \$11 million.<sup>96</sup> Implementing phases one and two (online applications for food and energy assistance, respectively) were projected to cost MDHS \$6 million.<sup>97</sup> A customer case management portal, which would house an application for Michiganders to apply for all benefits, and a multilingual access platform would come later, during phases 3 and 4.<sup>98</sup> By utilizing federal Food and Nutrition Services Agency (FNS) administrative rates and private foundation donations, the state could dedicate less than \$1 million to the project.<sup>99</sup> Existing state staff resources absorbed all ongoing operational costs for MI Bridges.<sup>100</sup> All aspects of the plan have been implemented except the multilingual access platform (phase 4).<sup>101</sup>

Savings from MI Bridges make investment in phase four, the multilingual access platform, cost-effective. If the 123,490 LEP individuals currently receiving Medicaid could use MI Bridges, MDHHS would save an

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94. Jim Hogan, *Michigan Mi-Bridges Self Service Portal*, MI BRIDGES, [https://www.michigan.gov/documents/dmb/Michigan\\_MiBridges\\_Self\\_Service\\_Portal\\_394061\\_7.pdf](https://www.michigan.gov/documents/dmb/Michigan_MiBridges_Self_Service_Portal_394061_7.pdf) (last visited Oct. 2, 2016).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

estimated \$1,296,139.30 per year.<sup>102</sup> As implementing Spanish and Arabic language MI Bridges platforms (phase 4) would cost at or around \$5 million,<sup>103</sup> savings for Phase 4 would likely exceed its implementation cost in less than 4 years.

MI Bridges also supports the Michigan economy. According to DTMB:

[T]he [FNS] has determined every \$5 dollars in food assistance returns 184% or \$9.20 in benefits. This higher return calculates the “rolling” economic impact that includes additional hiring by food stores, wage earnings etc. Michigan’s average monthly food benefit to families is \$267—resulting in an increased economic benefit of \$491 ( $\$267 \star 184\%$ ). For every additional 1,000 households served per month via Mi-Bridges, that would otherwise have foregone a face-to-face intake, Michigan is returned \$491,000. Michigan’s upfront investment of \$9 million is returning value to customers via time savings and reduced travel and office wait time. Worker morale and productivity has improved, and additional Federal dollars are returned to Michigan’s groceries’ and utility companies.<sup>104</sup>

Based on this estimation, if just 2,000 more households utilize MI Bridges as a result of the availability of a LEP-friendly interface, the Michigan economy could benefit by almost a million dollars.

Moreover, MI Bridges is cost-effective without sacrificing quality. In fact, 90% of MDHHS clients prefer using MI Bridges to face-to-face interactions with their case managers.<sup>105</sup> This project, then, had the potential to serve as evidence that innovative technology solutions can improve the efficiency of government across the United States within a reasonable budget.

The dollars saved could have been used to fund brick-and-mortar facilities that are needed to continue to provide vital services to the LEP population with no internet access. Also, the money could have been re-invested into the cyberspace national infrastructure, funding public access to computers and computer literacy programs for those who remain without internet access.

However, MI Bridges’ phase 4, which would have implemented the multilingual access platform, was never executed. MI Bridges remains an

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102. See *infra* App’x (calculating the costs and savings of implementing a multilingual MI-Bridges interface).

103. As stated, DTMB and Deloitte estimated that implementing effective technology would cost \$11 million. Implementing Phases 1 & 2 (food and energy assistance online applications) were projected to cost MDHS \$6 million. The remaining phases, including Phase 4 (multi-lingual access), therefore summarily cost \$5 million. Hogan, *supra* note 94.

104. *Id.* at 7.

105. *Id.*

English only service. And thus, MI Bridges is not a model for how government can use innovative technology to narrow the Digital Divide. Instead, MDHHS abandoned LEP individuals online.

### CONCLUSION

*[I]nformation technology management requires a new vision and determination by government leaders to prioritize resources for technological change, a new approach toward organizing departmental operations that can be more cost-effective, and a greater social concern with the economic and racial disparities in the digital society.<sup>106</sup>*

Both English proficient and LEP individuals will benefit from annual surpluses related to converting brick-and-mortar services to quality web-based programs. Importantly, LEP individuals with internet access will receive equal treatment online if web-based programs provide language accommodations. But also, future savings could be, and should be, dedicated to state efforts to expand internet access and computer literacy to underserved populations — if the plan is to be financially self-sustaining and socially justifiable. As Norman and Friedman suggest, “safeguarding against negative side effects” of technological innovation requires a balanced approach.<sup>107</sup>

Anthropologists and sociologists have long recognized that the internet has become a host to valuable civil activity and community interaction.<sup>108</sup> If, like anthropologists, regulators re-imagine the websites they host as dynamic public spaces, not merely mirrors or replicas of hardcopy documents and files, they might discover new best practices tailored to the kinds of unique interactions, services, relationships, and vital documentations occurring online. Reimagining cyberspace in this way will help protect the rights of all individuals online, ensuring investment in cyber-government does not contribute to the Digital Divide.

The failure of MDHHS to build multilingual capabilities for MI Bridges exemplifies how state and federal government regulators are neglecting civil rights in cyberspace, the alternative public sphere. To end this neglect, efforts to build a government presence online must be reimagined. Like the government’s interest in American roadways, building and maintaining an accessible internet should be viewed as a worthwhile project that creates value. Indeed, if done conscientiously, building the superhighway for information and commerce can save money, facilitate civic engagement, and provide more people with access to the economy and their government.

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106. Alfred Tat-Kei Ho, *Reinventing Local Governments and the E-Government Initiative*, 62.4 PUB. ADMIN. REV. 434, 441 (2002).

107. Friedman & Norman, *supra* note 2, at 60.

108. Bernal, *supra* note 21, at 661.

## APPENDIX: COSTS AND SAVINGS CALCULATION

There are currently 70,970 LEP Michigan residents who receive Medicaid.<sup>109</sup> These residents may also be eligible to receive other MDHHS benefits, including food assistance, cash assistance and energy assistance.<sup>110</sup> Because of the many benefits available, these LEP individuals are likely to utilize MI Bridges if a multilingual site were offered and accessible. One such benefit may be the expedition of simple transactions, especially in light of the tiresome communication difficulties LEP individuals experience during client-caseworker communications.

Just as MDHHS saved millions of dollars offering MI Bridges to its English-fluent clientele, offering LEP individuals a language-friendly interface would reap additional savings.<sup>111</sup> First, MDHHS will save money processing applications and redetermination forms. DHS estimates that each application for food and energy received online saves approximately an hour of labor.<sup>112</sup> Assistance payments workers in Michigan make between \$16.04 and \$24.28 an hour.<sup>113</sup> A complete redetermination, which requires applicants to fill out a new application, is required at least every 12 months.<sup>114</sup> Every year, then, MDHHS will save more than \$1,138,358.80 when LEP individuals submit their redetermination forms online.<sup>115</sup> The savings that will occur are actually much more than that number because some redeterminations occur more frequently than 12 months. For example, redeterminations can occur quarterly: “Food Assistance Program (FAP) cases with unstable circumstances [are] assigned a three-month benefit period.”<sup>116</sup>

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109. Gilbert Gonzales, *State Estimates of Limited English Proficiency (LEP) Individuals by Health Insurance Status*, ST. HEALTH ACCESS DATA ASSISTANCE CTR. at 11, tbl.5 (May 2014), [http://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2014/rwjf414189](http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2014/rwjf414189).

110. The MI Bridges web portal currently serves as a venue to process multiple benefit eligibility determinations and open case files, including Healthy Michigan Plan, Medicaid, MICHild, Food Assistance, Cash Assistance, Child Care, Emergency Services in English. MI BRIDGES, *supra* note 37.

111. Hogan, *supra* note 94, at 5.

112. *Id.* at 8 (“DHS estimates that each online application received saves approximately 50 minutes for a caseworker”).

113. Compare MICH. CIVIL SERV. COMM’N, *Job Specifications*, MICHIGAN.GOV, <https://civilservice.state.mi.us/MCSCJobSpecifications/JobSpecMain.aspx> (last visited Nov. 15, 2016), with *Compensation Plan—Section A*, MICHIGAN.GOV, [https://www.michigan.gov/documents/mdcs/CompPlanSectionA1009\\_294577\\_7.pdf](https://www.michigan.gov/documents/mdcs/CompPlanSectionA1009_294577_7.pdf) (last visited Nov. 15, 2016).

114. MICH. DEP’T OF HEALTH & HUMAN SERVS., REDETERMINATION/EX PARTE REVIEW, BRIDGES ADMINISTRATIVE MANUAL 210 (2016), [hereinafter BAM 210], <http://www.mfia.state.mi.us/OLMWEB/EX/BP/Public/BAM/210.pdf>.

115. This is the product of 70,970 recipients, one annual eligibility redetermination, one hour of labor per application, and \$16.04 /hr wage (the minimum) for each worker processing the redetermination.

116. BAM 210, *supra* note 114.

Second, savings will accumulate every time an LEP individual updates or changes information in her open case file. The MI Bridges web portal currently allows users to create a profile and check benefits, report changes, renew benefits, and upload documents directly into their open case files.<sup>117</sup> Between 2009 and 2014, 215,000 user-profiles were created.<sup>118</sup> According to the Michigan Department of Budget Management (“MDBM”), users made 87,000 changes to their MI Bridges profiles in 5 years.<sup>119</sup> So, over the course of 5 years, about 40% of existing profiles required changes.<sup>120</sup>

Of the newly accessible 70,970 LEP profiles, updates and maintenance should occur at the same rate of 40%. Therefore, we can expect 28,388 changes to LEP profiles over a period of 5 years to the new profiles. If receiving, reviewing, and entering updates to profiles from LEP individuals represents an hour’s worth of a caseworker’s time, LEP individuals who directly enter their updates into their files through MI Bridges could potentially save at least 28,388 hours of caseworker time every 5 years, or an average of 5,677.6 hours a year. Therefore, if current LEP Medicaid recipients in Michigan could maintain the accuracy of their records online through MI Bridges rather than interact with their MDHHS caseworker to make those requisite changes, this could save MDHHS more than \$91,068.70 per year in wages.<sup>121</sup>

Third, MDHHS could save money by reducing the amount of mail it sends to benefits recipients. For example, MDHHS sends Notices of Case action to alert recipients that they must complete an eligibility determination every 12 months.<sup>122</sup> The results of that eligibility determination are also mailed to beneficiaries.<sup>123</sup> MDBM reported that MI Bridge’s “secure case management feature allows users to view documents online instead of

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117. Hogan, *supra* note 94, at 2.

118. *Id.*

119. *Id.* at 5.

120. *Id.*

121. This is the product of 5,677.6 hours of case work time saved on average per year, times \$16.04 (the minimum salary of an assistance payment worker). *See supra* note 113.

122. *See* 42 C.F.R. § 435.916 (Medicaid eligibility redeterminations required at least every twelve months); BAM 210, *supra* note 114, at 7:

Bridges generates a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. Bridges sends a DHS-2063B, Continuing Your Food Assistance Benefits, to FAP clients for whom FIP, SDA, or Medicaid are not active. The packet is sent to the mailing address in Bridges. The packet is sent to the physical address when there is no mailing address. The packet is also sent to the MA authorized representative on file.

*Id.* (emphasis omitted).

123. BAM 220, *supra* note 33, at 12 (“Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the

receiving them in the mail.”<sup>124</sup> If the 70,970 LEP individuals currently receiving Medicaid and other benefits opt to view their documents online only, then MDHHS will not have to send eligibility redetermination notices or the outcome of those determinations by mail. At \$0.47 per mailing,<sup>125</sup> this saves potentially \$66,711.80 in postage fees a year.<sup>126</sup> This calculation does not account for printing and envelope costs, nor the gamut of other notices and letters sent from MDHS to recipients. However, underestimating the savings from mail seems reasonable, given that it is difficult to estimate how many recipients who sign up for online profiles will opt to receive MDHS correspondences online only.

Conservatively then, MDHHS could save more than \$1,296,139.3 annually<sup>127</sup> just by converting the three processes above (eligibility redetermination, open case file maintenance, and document correspondences) from in-person to online transactions. This projection is a gross underestimation, arguably of a two- to threefold.

By these calculations, the changes outlined in this Article would pay back the implementation cost of MI Bridges in well under four years, and possibly under two years.

Admittedly, this estimation is based on the premise that all of the 70,970 LEP individuals currently receiving Medicaid and other benefits opt to view their documents online upon implementation of a multilingual platform.<sup>128</sup> Thus, it assumes 70,970 LEP users have some access to the internet. The problem remains that impoverished Michiganders, including LEP individuals receiving public benefits, do not have regular access to the internet, nor the computer literacy skills to navigate a well-designed portal. This means that investment in MI Bridges must not displace funding for quality brick-and-mortar access points, which will remain critical resources for both LEP and English proficient individuals. Nevertheless, even

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appropriate notice of case action. The notice of case action is printed and mailed centrally from the consolidated print center.”).

124. Hogan, *supra* note 94, at 7.

125. *Postal Store*, U.S. POSTAL SERVICES, <https://store.usps.com/store> (last visited Sept. 24, 2016).

126. This is the product of: 70,970 recipients receiving two letters a year that each require MDHS to purchase a \$0.47 stamp for mail service.

127. This equates to the sum of \$91,068.70 in savings for open case file maintenance, \$1,138,358.80 savings in annual redeterminations, and \$66,711.80 in savings for annual mailings to beneficiaries.

128. On the other hand, recall that 90% of MDHHS clients (both LEP and non-LEP) prefer using MI Bridges to face-to-face interactions with their case managers. Hogan, *supra* note 94, at 7. Thus, it is possible that LEP clients may enroll at a higher rate, given the difficulties of working with case managers. See, e.g., *supra* Part I.B.

if only half<sup>129</sup> of the 70,970 LEP users utilize MI Bridges, savings will still reach more than \$648,069.65. This money renders implementation payback in less than eight years.

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129. See File & Ryan, *supra* note 15, at 3. According to the U.S. Census, 51.4% of limited English speaking households have a computer and internet subscription. *Id.* The number of LEP individuals with internet access convenient enough for managing MI Bridges may be higher, given the use of cell phone technology and the availability of internet at public libraries. *Id.*