

MITIGATING THE LACK OF WILLS ONE BROCHURE AT A TIME

*Katelyn Barker**

ABSTRACT

A majority of Americans die without a will, which floods the courts with lawsuits concerning the disbursement of the deceased's estate. Litigation also regularly ensues in the form of contested wills on behalf of individuals who die with an outdated will. The lack of knowledge surrounding estate planning is a leading factor contributing to the scarcity of wills in America. Incorporating a prompting system and informational brochure into the driver's license renewal process will deplete the lack of knowledge component, and people will be mandatorily reminded of estate planning; this will eventually cause the number of updated wills to increase. By targeting young people at the age of eighteen, the prompt and informational brochure will effectively reach the age group cited as having the least number of wills in place. If the estate planning prompt and brochure are adopted by the DMV, there will likely be a momentous drop in the number of lawsuits concerning the estates of those who have died intestate or with an outdated will.

ABSTRACT	257
I. INTRODUCTION	259
II. BACKGROUND.....	262
A. <i>What Is an Estate Plan and Why Is It Important?</i>	262
1. <i>What Types of Estate Planning Documents Exist?</i>	262
2. <i>Wills</i>	263
3. <i>Intestacy</i>	264
a. <i>Effect of Intestacy When There Is No Surviving Spouse</i> .	265
b. <i>Effect of Intestacy with a Surviving Spouse</i>	265
c. <i>Effect of Intestacy on Community Property</i>	265
4. <i>How Wills Can Help Avoid Estate Taxes</i>	266
a. <i>What Is Estate Tax?</i>	266
b. <i>Avoiding Estate Taxes</i>	267
B. <i>Why Do the Majority of Americans Not Have a Will and Who</i> <i>Is Likely to Have One?</i>	268
1. <i>Reasons Why Americans Do Not Have Wills</i>	268
2. <i>Young People are Least Likely to Have a Will</i>	269

* J.D. Candidate, Texas Tech University School of Law, May 2022.

C. <i>States Attempted to Change the Number of Americans with Wills, but to No Avail</i>	270
1. <i>The Coronavirus Pandemic and the Issuance of Emergency Orders</i>	270
2. <i>Electronic Wills Act</i>	270
D. <i>Organ Donation</i>	271
1. <i>Cost of Organ Donation Process</i>	271
2. <i>History of the Organ Donation Process</i>	272
3. <i>Organ Donation History in Texas</i>	273
4. <i>Attacking the Problem Through the DMV</i>	273
5. <i>Organ Donation in Other States' Eyes</i>	274
6. <i>Ability to Expand</i>	274
E. <i>Tax Exemptions</i>	274
1. <i>What Is a 501(c)(3) Nonprofit Organization?</i>	275
III. <i>ESTATE PLANNING PROMPT AND BROCHURE IS NECESSARY TO MITIGATE THE DEFICIT OF WILLS</i>	276
A. <i>Normalizing the Will</i>	276
B. <i>An Estate Planning Prompt and Brochure Given to Individuals During the Driver's License Renewal Process Will Normalize Estate Planning Forms</i>	277
1. <i>Incorporating the Estate Planning Prompt in Driver's License Renewal Process</i>	277
a. <i>The Importance of Updating a Will</i>	278
2. <i>Normalizing Estate Planning Forms</i>	280
3. <i>Anatomical Gifts v. Estate Planning Documents</i>	280
a. <i>Why the Estate Planning Prompt Should Mirror the Organ Donation Process</i>	281
b. <i>Why Estate Planning Should Create a 501(c)(3) Nonprofit Organization Like Organ Donation</i>	282
i. <i>Creating a Website</i>	283
c. <i>Who Will Govern the Estate Planning Prompt and Brochure?</i>	283
d. <i>Estate Planning Brochure</i>	284
i. <i>Creating a Brochure</i>	284
C. <i>Counterarguments</i>	286
1. <i>Cost</i>	286
2. <i>Will the Estate Planning Prompt and Informational Brochure Be Effective When Given at an Early Age?</i>	287
3. <i>Can the Estate Planning Prompt and Informational Brochure Be Distributed in an Online Platform?</i>	288
4. <i>Is This Essential Enough to Be Adopted by the DMV?</i>	289
D. <i>Practical and Policy Considerations</i>	290
1. <i>All State Incorporation</i>	290
2. <i>Expanding the Distribution of the Informational Brochure</i>	291

IV. CONCLUSION 291

I. INTRODUCTION

Many famous Americans die without wills in place.¹ Recently, Chadwick Boseman, *The Black Panther* star, died without a will in August of 2020 after a battle with colon cancer.² Boseman's estate is now in the hands of the California court and will be distributed according to the state's intestacy laws.³ Notably, Prince Rogers Nelson, "Prince", died in 2016 leaving an estate worth hundreds of millions of dollars.⁴ Four years later, Prince's vast estate is still in the midst of litigation and has not been distributed to his heirs.⁵ If Prince had simply created a will, he could have saved his family years of litigation and worry.⁶ Barry White, singer and songwriter, died without a will in 2003, and his entire estate was distributed to his second wife.⁷ However, at the time of White's death, he and his second wife were separated and he was living with his girlfriend, who ended up suing White's second wife for a portion of the estate.⁸ This suit could have been avoided if White had a will in place that portrayed his wishes.⁹

Cases such as Heath Ledger's prove that outdated wills can wreak as much havoc on the family of the deceased as dying intestate.¹⁰ In Ledger's case, he died before updating his will to include his child, resulting in heavy litigation over his estate.¹¹ Litigation would not have ensued if Ledger's will had been updated to reflect his child.¹²

1. See, e.g., *infra* notes 2–12.

2. Satie Munn, *Chadwick Boseman, Star of Black Panther, Dies Without a Will—Who's Entitled to His Estate?*, LINDLEY L. (Oct. 21, 2020), <https://lindleylawoffice.com/blog/2020/10/21/chadwick-boseman-star-of-black-panther-dies-without-a-will-whos-entitled-to-his-estate/> [http://perma.cc/EXG3-FELZ] (explaining that months before Boseman's death, he married his longtime girlfriend who is now entitled to his entire estate, valued at approximately \$938,500, under California probate laws).

3. Mario A. Godoy, *Black Panther Star Chadwick Boseman Died Without a Will: Why You Need a Will*, EST. & PROB. LEGAL GRP., <https://estateandprobatelegalgroup.com/black-panther-star-chadwick-boseman-died-without-a-will-why-you-need-a-will/> (last visited Jan. 23, 2020) [http://perma.cc/C5mQ-VJ62].

4. Maria Puente, *Prince Died Three Years Ago, His Estate Is Still Unsettled: Here's Why*, USA TODAY (Apr. 18, 2019, 3:11 PM), <https://www.usatoday.com/story/life/2019/04/18/prince-died-3-years-ago-his-estate-still-unsettled-heres-why/3344038002/> [http://perma.cc/CD2V-6N7H].

5. *Id.*

6. See *id.*

7. *15 Celebrities Who Died Without Updating or Writing Wills*, SMART ASSET, <https://smartasset.com/life-insurance/celebs-without-updated-wills-2> (last visited Jan. 7, 2021) [http://perma.cc/XE8G-6KTA].

8. *Id.*

9. See *infra* Section III.B.1.a.

10. See *Famous Mistakes: Celebrity Wills That Went Wrong*, LOVETT & HOUSE, <https://lovettlawoffice.com/practice-areas/estate-planning/famous-mistakes-celebrity-wills-went-wrong/> (last visited Jan. 7, 2021) [http://perma.cc/B23Q-29H4].

11. *Id.*

12. See *infra* Section III.B.1.a.

On the other hand, famous people are not the only people who die without a will.¹³ In *Hamilton v. Butler*, T.R. Rhodes died intestate in 1963 without a surviving wife or child.¹⁴ Under Texas probate laws, Mr. Rhodes's estate passed to his only grandchild, Lela Kate Butler.¹⁵ Ms. Butler was legally adopted by T.R. Rhodes's only child, Forrest Rhodes, who died intestate in 1943.¹⁶ Two years after T.R. Rhodes's death, his grandnephews and grandnieces sued the adopted granddaughter and claimed that they were entitled to more than half of T.R. Rhodes's estate.¹⁷ The court found that the adopted grandchild was the "sole heir at law."¹⁸ The court was legally required to distribute T.R. Rhodes's estate to the adopted grandchild due to the probate laws in Texas, disregarding the potential wishes of T.R. Rhodes that could have been expressed in a will.¹⁹ It is possible that T.R. Rhodes had a close relationship with his grandnephews and grandnieces and even told them that he was going to distribute his estate to them, but without a will, the estate was distributed to the sole heir at law, Lela Kate Butler.²⁰

In *Parker v. Swain*, Swain died with an outdated will that reflected that only two of her three sons were to receive a portion of her estate.²¹ The third son sued his two brothers based on the belief that he should receive the same portion of his mother's estate that his brothers did.²² This lawsuit was only brought forth because Ms. Swain did not update her will.²³

Cases such as Chadwick Boseman's, Prince Rogers Nelson's, Barry White's, Heath Ledger's, T.R. Rhodes's, and Swain's are far too common in today's times.²⁴ "[I]f you die without a [w]ill in Texas, a statutory formula, that does not take into account your wishes and unique circumstances, determines how your property will be distributed."²⁵ According to a recent survey, 35% of people went through or knew someone who went through "internal family conflict regarding inheritance."²⁶ Even when someone does

13. See *Hamilton v. Butler*, 397 S.W.2d 932, 933 (Tex. App.—Eastland 1965, writ ref'd n.r.e.); *Parker v. Swain*, 223 S.W. 231, 231 (Tex. App.—Amarillo 1920, no writ).

14. *Hamilton*, 397 S.W.2d at 933.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. See *id.*

21. *Parker v. Swain*, 223 S.W. 231, 231 (Tex. App.—Amarillo 1920, no writ).

22. *Id.*

23. *Id.*

24. See generally *supra* notes 2–23 (referring to individuals who died intestate).

25. Rania Combs, *Dying Without a Will: The Texas Intestacy Statutes*, RANIA COMBS L., PLLC (Apr. 9, 2020), <https://texaswillsandtrustslaw.com/2020/04/09/dying-without-a-will-the-texas-intestacy-statutes/> [http://perma.cc/LWG4-BRW6].

26. Nathan Fort, *Why Do Americans Struggle So Much With Estate Planning?*, ARBOR MUT. WEALTH MGMT. (Sept. 1, 2017), <https://arbormutualwealthmanagement.multiscreensite.com/americans-struggle-with-estate-planning> [http://perma.cc/2Y9F-N2VP].

create a will, it is just as important to update it to prevent issues, such as what happened to Heath Ledger's daughter and Ms. Swain's son.²⁷

To mitigate this issue, a prompting system should be added to the driver's license renewal process, informing people about estate planning—wills in particular—and providing brochures discussing how to create a will and why it is important to do so.²⁸ Studies show that individuals between the ages of eighteen and thirty-four are the least likely to have a will due to a lack of knowledge on what a will is, how to create one, and the belief they do not have enough assets to create one.²⁹ By implementing a solution targeted towards that age group, the number of wills created within that group would likely rise.³⁰ Incorporating a prompting system into the driver's license renewal process will reveal all of the necessary information about a will to those younger individuals, while also teaching or reminding older individuals who are getting their licenses renewed about the importance of wills.³¹ The prompt and brochure will actively work together to normalize the execution of estate planning documents and mitigate the prevalent issues surrounding those documents.³²

Part II of this Comment will provide history on estate planning and describe various estate planning documents.³³ It will then go into more detail on specifically what a will is, what statutes govern it, and why it is necessary.³⁴ Section B will show who is most likely to have a will and the most cited reasons for not having one.³⁵ Part II Section C will explore what states have attempted to mitigate this issue.³⁶ The focus of the background will then transition to the organ donation process in Part II Section D.³⁷ Finally, Part II will conclude with information regarding tax exemptions.³⁸

Part III will uncover how the estate planning prompt will be implemented, how it will work to mitigate the lack of wills, and why the prompt should mirror that of the organ donation process.³⁹ Part III Section C will propose counterarguments such as cost, the prompt's effect on younger individuals, its online format, and whether the issue is prevalent enough to be adopted by the Department of Motor Vehicles (DMV).⁴⁰ Following the counterarguments, Part III Section D will explore some practical and policy

27. See *infra* Section III.B.1.a.

28. See *infra* Section III.B.

29. See *infra* Section II.B.2.

30. See *infra* Section II.B.2.

31. See *infra* Part III.

32. See *infra* Part III.

33. See *infra* Section II.A.

34. See *infra* Sections II.A.2–3.

35. See *infra* Section II.B.

36. See *infra* Section II.C.

37. See *infra* Section II.D.

38. See *infra* Section II.E.

39. See *infra* Part III.

40. See *infra* Section III.C.

considerations to contemplate regarding the estate planning prompt and brochure.⁴¹ This Comment will conclude with some final thoughts about the proposed solution and how it will mitigate the lack of wills seen in today's society.⁴²

II. BACKGROUND

In order to further understand how and why the estate planning prompt and brochure will mitigate the absence of wills in America, one must first have a general understanding of estate planning.⁴³ With knowledge about estate planning, intestacy laws, estate taxes, statistics on wills in America, mitigation attempts, laws surrounding the organ donation process, and tax exemptions, the estate planning prompt and brochure will prove to be the best solution to increase awareness on the need for proper will execution.⁴⁴

A. What Is an Estate Plan and Why Is It Important?

According to the American Bar Association, “[e]state planning covers the transfer of property at death as well as a variety of other personal matters. . .” with the will being the most commonly associated document.⁴⁵ If you die without a will, your state’s intestacy laws will determine how your estate is distributed.⁴⁶ By creating a will, you are “alter[ing] the state’s default plan to suit your personal preferences.”⁴⁷ By creating an estate plan, an individual can effectively “(1) avoid probate, (2) reduce estate taxes, (3) avoid a mess, (4) protect beneficiaries, and (5) protect assets.”⁴⁸

1. What Types of Estate Planning Documents Exist?

Estate planning is a broad term that encompasses various documents such as a will, durable power of attorney, medical power of attorney, declaration of guardian, and more.⁴⁹ Each estate planning document achieves

41. See *infra* Section III.D.

42. See *infra* Part IV.

43. See *infra* Part III.

44. See *infra* Part III.

45. *Estate Planning Info & FAQs*, AM. BAR ASSOC., https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/ (last visited Oct. 20, 2020) [<https://perma.cc/49R4-9R34>].

46. See *Introduction to Wills*, AM. BAR ASSOC., https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/an_introduction_to_wills/ (last visited Oct. 20, 2020) [<http://perma.cc/C6WG-B92G>].

47. *Id.*

48. Julie Garber, *5 Reasons You Need an Estate Plan*, BALANCE (Aug. 5, 2021), <https://www.thebalance.com/top-reasons-why-you-need-an-estate-plan-3505444> [<http://perma.cc/ZQ9F-V38D>].

49. Gerry W. Beyer, *Texas Estate Planning Forms*, WEBSITE PROFESSOR GERRY W. BEYER, http://professorbeyer.com/Estate_Planning_Forms/Estate_Planning_Forms.html (last visited Oct. 18, 2020) [<http://perma.cc/4PuM-B7Bm>].

a different purpose, but all are important.⁵⁰ The purpose of a will is to distribute “all the estate, right[s], title, and interest in property the person has at the time of the person’s death.”⁵¹ A durable power of attorney “grant[s] an attorney in fact or agent powers with respect to a person’s property and financial matters.”⁵² A medical power of attorney “delegat[es] to an agent authority to make health care decisions”⁵³ A declaration of guardian designates “a person to serve as guardian of the person or estate of the declarant if the declarant becomes incapacitated.”⁵⁴ This Comment focuses on the importance of a will because it is the most common form of estate planning, and it is a contributor to the lack of wills in America.⁵⁵

2. Wills

In Texas, wills are governed by the Texas Estates Code, which reveals who can lawfully create a will, what a will can accomplish, and what happens when someone dies intestate.⁵⁶ According to Section 251.001 of the Texas Estates Code, a person can make a will if they are of sound mind and “18 years of age or older, is or has been married, or is a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.”⁵⁷ In *Williams v. Noland*, the court defined a will as “an instrument by which a person makes a disposition of his property, to take effect after his decease, and which, in its own nature, is ambulatory and revocable during his lifetime.”⁵⁸

Simply put, a will is described as a writing which indicates how the deceased’s assets will be distributed and names a representative to “administer the estate and be responsible for distributing the assets to the beneficiaries.”⁵⁹ Section 251.002 of the Texas Estates Code describes the types of interests that a person who executes a will may pass: “(1) disinherit an heir; and (2) direct the disposition of property or an interest passing under the will or by intestacy.”⁶⁰ A will can also be used to designate a guardian for your children and to name a representative who would be in charge of settling your estate following your death.⁶¹ For a will to become valid and

50. Author’s original thoughts.

51. TEX. EST. CODE ANN. § 251.002(a).

52. *Id.* § 752.001(a).

53. TEX. HEALTH & SAFETY CODE ANN. § 166.002(11).

54. EST. § 1104.202(a).

55. *See Estate Planning Info & FAQs*, *supra* note 45.

56. *See* EST. §§ 251.001–002, 201.001–003.

57. *Id.* § 251.001.

58. *Williams v. Noland*, 10 Tex. Civ. App. 629, 630 (Dallas 1892, writ ref’d).

59. *Glossary of Estate Planning Terms*, AM. BAR ASSOC., https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/glossary/#W (last visited Oct. 20, 2020) [<http://perma.cc/EAE6-83NF>].

60. EST. § 251.002.

61. *See Introduction to Wills*, *supra* note 46.

enforceable, it must be admitted to probate after the death of the person who created the will.⁶² Probate is the “court-supervised process of administering your estate and transferring your property at death pursuant to the terms of your will.”⁶³ Probate is required whether a will exists or not.⁶⁴ However, when a decedent dies intestate, the process involves the disbursal of the deceased’s estate according to the intestacy laws of the particular state and not according to the desires of the deceased.⁶⁵

3. Intestacy

It is crucial to understand the effect of not having a will.⁶⁶ If a person dies intestate, the person died without making a will.⁶⁷ “[I]ntestacy laws are state statutes that substitute for a will when someone dies without one.”⁶⁸ Sections 201.001, 201.002, and 201.003 of the Texas Estates Code govern intestacy in Texas.⁶⁹ These sections can be further broken down into dying intestate without a surviving spouse (found in Section 201.001), and dying intestate with a surviving spouse (found in Section 201.002).⁷⁰ Section 201.003 of the Texas Estates Code describes what happens to the deceased’s community estate.⁷¹

In brief, Sections 201.001, 201.002, and 201.003 of the Texas Estates Code describe the laws of intestacy in Texas and the formula that the courts follow in distributing the deceased’s estate.⁷² Section 201.001 of the Code reveals that if an individual dies intestate without a spouse, the deceased’s estate goes to the child or children first; to the deceased’s parents if there are no children; to siblings if there are no children or parents; and finally to the maternal and paternal kindred if there are no children, parents, or siblings.⁷³ Section 201.002 of the Code discloses the protocol for when the deceased dies intestate with a surviving spouse: the estate will be distributed into thirds if there are children, and the deceased’s spouse will receive one-third while the children will receive two-thirds of the estate; however, if there are no children, the estate will be split in half and the surviving spouse will be

62. EST. §§ 256.001–002.

63. *The Probate Process*, AM. BAR ASSOC., https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/the_probate_process/ (last visited Oct. 20, 2020) [<http://perma.cc/uuM2-KTNA>].

64. *See id.*

65. *See* Julie Garber, *What Is Probate?*, BALANCE (June 24, 2021), <https://www.thebalance.com/what-is-probate-3505244> [<http://perma.cc/A95J-R738>].

66. Author’s original thoughts.

67. *Intestate*, BLACK’S LAW DICTIONARY (2d ed. 1910).

68. Munn, *supra* note 2.

69. *See* TEX. EST. CODE ANN. §§ 201.001–003.

70. *Id.* §§ 201.001–002.

71. *Id.* § 201.003.

72. *Id.* §§ 201.001–003.

73. *Id.* § 201.001.

entitled to one-half while the other half will be distributed to the deceased's parents, siblings, or other kindred—depending on who has survived the deceased.⁷⁴ Lastly, Section 201.003 of the Code explains that community property is distributed entirely to the surviving spouse if there are either no children or if the children are also the surviving spouse's children; however, the community estate will be divided if there is a surviving child that is not the child of the surviving spouse.⁷⁵

a. Effect of Intestacy When There Is No Surviving Spouse

Section 201.001 of the Texas Estates Code describes the effects of dying without a will when you are not married.⁷⁶ This section explains that if one dies intestate and does not leave a spouse, the deceased's estate will be distributed accordingly: (1) to the deceased's children, (2) if there are no children, then to the deceased's parents, (3) if there are no surviving parents, then to the deceased's siblings, and (4) if there are no siblings, then the deceased's estate will be split equally among the deceased's paternal and maternal kindred.⁷⁷

b. Effect of Intestacy with a Surviving Spouse

Section 201.002 of the Texas Estates Code describes partition of the estate when an individual dies intestate with a surviving spouse.⁷⁸ If an individual dies intestate and does leave a spouse, the deceased's estate will be distributed as follows: (1) one-third of the estate goes to the surviving spouse while the other two-thirds are passed down to the deceased's children, or (2) if the deceased has no children, the spouse receives all of the deceased's personal estate and half of the land, while the other half of land is distributed to the deceased's surviving parents or siblings.⁷⁹

c. Effect of Intestacy on Community Property

Section 201.003 of the Texas Estates Code describes the effect on the community estate of someone who dies intestate.⁸⁰ In *Burgess v. Hargrove*, the distribution of community property after the death of a spouse is “all the common property belonging to the community estate of the husband and wife shall go to the survivor, if the deceased have no child or children;” however,

74. *Id.* § 201.002.

75. *Id.* § 201.003.

76. *Id.* § 201.001.

77. *Id.*

78. *Id.* § 201.002.

79. *Id.*

80. *Id.* § 201.003.

if there is a child or children present, the “survivor shall be entitled to one-half of said property, and the other half shall pass to the child or children of the deceased.”⁸¹

4. How Wills Can Help Avoid Estate Taxes

It is important to create a will so that you can determine how your estate will be distributed and who is to govern your estate.⁸² Taxes are another key consideration when creating a will.⁸³ Dying without a will may have negative tax consequences.⁸⁴ A properly executed will can work to diminish the amount of taxes inflicted on the deceased’s estate, which will help the executor of the estate tremendously.⁸⁵

a. What Is Estate Tax?

Estate taxes may also be called estate transfer taxes or death taxes.⁸⁶ Estate taxes are governed by Subtitle B, Chapter 11, of Title 26 of the United States Code.⁸⁷ “A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.”⁸⁸ Simply put, estate tax “is a tax on your right to transfer property at your death” and “shall be paid by the executor” of the estate.⁸⁹ After death, each individual’s gross estate is valued based on the fair market value of their belongings and interests, which may include “cash and securities, real estate, insurance, trusts, annuities, business interests, and other assets.”⁹⁰ According to Section 2031 of the United States Code, the gross estate includes “the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.”⁹¹ After the gross estate is determined, deductions are taken out which leaves what is known as the taxable estate.⁹² An individual’s taxable estate can be “determined by deducting from the value of the gross estate the deductions provided for in this part.”⁹³ Many deductions exist such

81. *Burgess v. Hargrove*, 64 Tex. 110, 112 (1885) (quoting TEX. REV. CIV. STAT. art. 1653).

82. *See supra* Section II.A.3.

83. Author’s original thoughts.

84. *See* Lisa Smith, *What Is a Will and Why Do I Need One Now?*, INVESTOPEDIA (Apr. 25, 2021), <https://www.investopedia.com/articles/pf/08/what-is-a-will.asp> [<http://perma.cc/FG7R-URRK>].

85. *See infra* Section II.A.4.a.

86. Derek Silva, *What Is Estate Tax?*, POL’Y GENIUS (Nov. 9, 2020), <https://www.policygenius.com/retirement/what-is-estate-tax/> [<https://perma.cc/U8ZM-56RX>].

87. *See* 26 U.S.C. Subt. B, Ch. 11.

88. *Id.* § 2001(a).

89. *Estate Tax*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> (Sept. 15, 2021) [<http://perma.cc/HC4G-B2T8>]; *Id.* § 2002.

90. *Estate Tax*, *supra* note 89.

91. 26 U.S.C. § 2031(a).

92. *Estate Tax*, *supra* note 89.

93. 26 U.S.C. § 2051.

as mortgages, debts, expenses, and property passed to spouses or charities.⁹⁴ In 2021, most states observe that if an individual's taxable estate is less than \$11.7 million, they do not have to file estate taxes; however, twelve states, as well as Washington D.C., have created their own lesser estate tax exemption.⁹⁵ Individuals in states with a lower tax exemption will not have to pay any federal taxes if their taxable estate is valued at less than \$11.7 million, but they may still have to pay estate taxes based on their individual state's estate tax exemption.⁹⁶ States that have a lower estate tax exemption than the federal tax exemption are: Connecticut at \$7.1 million, Washington D.C. at \$5.68 million, Hawaii at \$5.49 million, Illinois at \$4 million, Maine at \$5.8 million, Maryland at \$5 million, Massachusetts at \$1 million, Minnesota at \$3 million, New York at \$5.85 million, Oregon at \$1 million, Rhode Island at \$1.58 million, Vermont at \$5 million, and Washington at \$2.19 million.⁹⁷

b. Avoiding Estate Taxes

Estate taxes can be lessened or even eliminated if a will is drafted properly to decrease the taxable estate of the deceased.⁹⁸ In *Driftmyer v. Carlton*, Karen Driftmyer, administrator of her deceased brother's estate, brought suit against her brother's insurance agent and business partners, "for failing to properly advise Gary Driftmyer to set up a separate trust and/or ensure that Gary Driftmyer named a proper beneficiary to whom his life insurance proceeds could be paid to."⁹⁹ Karen Driftmyer alleged their failures caused excessive estate taxes and fees.¹⁰⁰ Testimony showed that the insurance agent did recommend that the business partners, including Gary Driftmyer, set up a will in order "to receive the annuities and life insurance proceeds, and to act as a tax shelter to preserve assets for their families."¹⁰¹ The defendant's testimony continued by stating that the pension plan did include a major disadvantage—"all of that money at a man's death is subject to IRD—that's income in respect of a decedent, and it is a horror story beyond belief."¹⁰² Here, if Gary Driftmyer would have had a proper estate plan that included a separate will, this "horror story" could have been avoided completely; however, without an estate plan, the estate's administrator was required "to pay taxes it otherwise would not have had to pay."¹⁰³

94. *Estate Tax*, *supra* note 89.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Driftmyer v. Carlton*, No. 06-1029, 2007 WL 1229305, at *2 (Ohio Ct. App. Apr. 27, 2007).

100. *Id.*

101. *Id.* at *3.

102. *Id.* at *5.

103. *Id.* at *10.

Phillip Seymour Hoffman, former actor, director, and producer, failed to develop an estate plan which protected his estate from federal and state taxes, and the estate taxes ended up decreasing the value of his entire estate by 40%.¹⁰⁴ A proper estate plan that accounted for the deceased's taxable estate could have avoided the 40% decrease in value.¹⁰⁵

If an individual's estate is worth more than the federal estate tax exemption of \$11.7 million, or if they live in a state with its own lesser estate tax exemption and have an estate worth more than that amount, estate planning could help mitigate those estate taxes.¹⁰⁶ By decreasing the value of the taxable estate, estate taxes can be circumvented.¹⁰⁷ The value of the taxable estate may be reduced by (1) transferring or gifting assets to specified individuals, (2) making charitable donations, or (3) moving assets into a trust.¹⁰⁸ Another way to avoid estate taxes is the marital deduction, which allows the transfer—before or after death—of an unlimited amount of assets to a spouse.¹⁰⁹ In conclusion, estate taxes can be minimized with the help of a proper estate plan, as seen in *Driftmyer*.¹¹⁰

B. Why Do the Majority of Americans Not Have a Will and Who Is Likely to Have One?

Numerous studies have revealed that more than half of Americans lack a will.¹¹¹ This section will explore the causes for the shortage of wills in America.¹¹² Age will also be discussed.¹¹³ By focusing on age, surveys have been able to determine the group which is the least likely to have a will; this helps to mitigate the lack of wills because it reveals which age group should be targeted in order to make the biggest impact.¹¹⁴

1. Reasons Why Americans Do Not Have Wills

In a survey of 2,400 Americans, 23.9% reported that they had a will, meaning that the remaining 76.1% of Americans surveyed revealed they did not.¹¹⁵ People have cited to a variety of reasons for not having a will

104. *Famous Mistakes: Celebrity Wills That Went Wrong*, LOVETT & HOUSE, <https://lovetlawoffice.com/practice-areas/estate-planning/famous-mistakes-celebrity-wills-went-wrong/> (last visited Jan. 7, 2021) [<http://perma.cc/B23Q-29H4>].

105. *See Estate Tax*, *supra* note 89.

106. *See id.*

107. *See id.*

108. *See id.*

109. *See id.*

110. *See Driftmyer v. Carlton*, No. 06-1029, 2007 WL 1229305, at *3 (Ohio Ct. App. Apr. 27, 2007).

111. *See infra* Section II.B.1.

112. *See infra* Section II.B.1.

113. *See infra* Section II.B.2.

114. *See infra* Section II.B.2.

115. Daniel Cobb, *2020 Estate Planning and Wills Study*, CARING.COM, <https://www.caring.com/>

including: (1) lack of knowledge on the subject, (2) cost, (3) not wanting to talk about death, (4) not possessing enough assets for a will, (5) document accessibility, and more.¹¹⁶ In detail, the first reason is cited as being a main reason for the scarcity of wills in America due to people not knowing what a will can accomplish; the second reason refers to those who associate wills with the cost of an attorney, which is usually expensive; the third reason alludes to people who think of wills narrowly, such as only deciding on the disbursement of their estate after death; the fourth reason references those who do not have many assets, and therefore do not see the benefit in creating a will; and the fifth reason refers to people who are not aware of how to access the forms.¹¹⁷ In order to effectively increase the amount of Americans with wills, the solution must target those who have claimed one or more of the cited reasons.¹¹⁸ This Comment will focus on how to mitigate the lack of wills for people who have cited to not having one due to their lack of knowledge and confusion on the subject.¹¹⁹ Many unsuccessful attempts have been made to mitigate the scarcity of wills; however, none of those endeavors targeted the lack of knowledge on the subject, which will hopefully be the key to the rise of wills in America today.¹²⁰

2. *Young People are Least Likely to Have a Will*

Of the people surveyed who responded that they do have a will, 16.4% were between the ages of eighteen and thirty-four years old, 27.2% were between thirty-five and fifty-four years old, and 47.9% were over fifty-five years old.¹²¹ Based on these statistics, young people between the ages of eighteen and thirty-four are the least likely to have a will.¹²² Targeting the group with the least amount of wills reported will efficiently increase the total number of people with a will.¹²³ In addition, the proposed solution of a prompt and informational brochure incorporated into the driver's license renewal process will not only target the younger group but will reach each age group due to the driver's license renewal requirement being every eight years.¹²⁴ By focusing on such a broad audience, the prompt and brochure will alleviate the shortage of wills.¹²⁵

caregivers/estate-planning/wills-survey/2020-survey/ (last visited Sept. 20, 2020) [<http://perma.cc/ZFC7-27DC>].

116. *Id.*

117. *Id.*

118. Author's original thoughts.

119. *See infra* Part III.

120. *See infra* Part III.

121. Cobb, *supra* note 115.

122. *See id.*

123. Author's original thoughts.

124. *See infra* Part III.

125. Author's original thoughts.

C. States Attempted to Change the Number of Americans with Wills, but to No Avail

There have been many attempts to increase the number of Americans with wills.¹²⁶ States have tried to make wills more easily accessible to people by allowing wills to be validated without witnesses, by allowing witnesses to appear through video communication, and by passing various electronic wills acts.¹²⁷ The many attempts taken to mitigate the undersupply of wills are all aimed at making wills more accessible.¹²⁸ While accessibility is a cited reason, the lack of knowledge on wills is more heavily specified, which may be why the number of wills has not increased as a result of states' attempts.¹²⁹

1. The Coronavirus Pandemic and the Issuance of Emergency Orders

Due to the Coronavirus pandemic of 2020, many states made efforts to increase the accessibility of wills to Americans by "allow[ing] testators to make holographic wills without witnesses."¹³⁰ States have also adopted the "harmless error" rule which "allows a judge to enforce a writing that does not comply with the Wills Act if there is strong evidence that the testator intended it to be his or her will" to allow wills to be created even if all of the formalities are not met.¹³¹ Some states also issued emergency orders that allowed witnesses to appear via video communication.¹³² According to a recent survey, the amount of wills in America has not seen an increase, even with states' recent efforts in making them more attainable.¹³³

2. Electronic Wills Act

The Electronic Wills Act "permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect."¹³⁴ Under the Electronic Wills Act, states are given the ability to enact remote witnessing in order to make wills more accessible, but that aspect is solely up to each state.¹³⁵ The Electronic Wills Act has only been wholly adopted by one

126. See Cobb, *supra* note 115.

127. See *infra* Sections II.C.1–2.

128. See *supra* Section II.B.1.

129. See *supra* Section II.B.1.

130. Reid Weisbord, *68% of Americans Do Not Have a Will*, CONVERSATION (May 19, 2020, 8:13 AM), <https://theconversation.com/68-of-americans-do-not-have-a-will-137686> [http://perma.cc/2XAP-VXZR].

131. *Id.*

132. *Id.*

133. See Cobb, *supra* note 115.

134. *Electronic Wills Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=a0a16f19-97a8-4f86-afc1-b1c0e051fc71> (last visited Oct. 19, 2020) [http://perma.cc/F2Q5-PLXW].

135. *Id.*

state—Utah, in August of 2020.¹³⁶ However, many states have adopted their own version of an Electronic Wills Act.¹³⁷ Nevada was the first state to enact an Electronic Wills Act, where individuals are able to electronically create, sign, and store a will.¹³⁸ Florida, Arizona, and Indiana have also recently passed acts allowing electronic wills in order to create more accessibility.¹³⁹ Electronic wills are new technology only adopted by a few states in the past three years; however, according to a recent study, the number of Americans with a will has actually decreased by about 25% since 2017, suggesting that the efforts have not resulted in a positive impact on the percentage of Americans with wills.¹⁴⁰

D. Organ Donation

Organ donation is similar to the proposed estate planning prompt and brochure.¹⁴¹ The cost, language used in the statute, creation of the website and brochure, reasoning behind the importance of the process, and distribution of the information are all closely related.¹⁴² In order to fully understand the implementation and functionality of an estate planning prompt and brochure, it is crucial to understand the history and evolution of the organ donation process.¹⁴³

1. Cost of Organ Donation Process

Section 522.152(a) of the Transportation Code provides that “when an individual applies for an original or renewal commercial driver’s license under this chapter, the individual may contribute \$1 or more to the nonprofit organization administering the registry.”¹⁴⁴ The department may deduct a limited portion of these funds to cover the “the reasonable expenses incurred by the department in administering” this registry.¹⁴⁵

The organ donor registry is set up as a trust fund in which the Department of Public Safety (DPS) acts as a “trustee on behalf of the statewide donor registry maintained for the benefit of the citizens of this state.”¹⁴⁶ The trust is funded by donations made by individuals who elect to contribute \$1 or more to the fund during their application for an original or

136. H.B. 6001, 2020 Leg., 6th Special Sess. (Utah 2020).

137. *See Estate Tax*, *supra* note 89.

138. NEV. REV. STAT. ANN. § 133.085 (West 2017).

139. Connie Eyster, *An Update on Electronic Wills Statutes*, ACTEC TR. & EST. TALK (June 2, 2020), <https://actecfoundation.org/podcasts/electronic-wills-statutes/> [http://perma.cc/QXB2-7NAA].

140. Cobb, *supra* note 115.

141. *See infra* Section III.B.3.

142. *See infra* Section III.B.3.

143. *See infra* Section III.B.3.

144. TEX. TRANSP. CODE ANN. § 522.152(a).

145. *Id.* § 522.152(c).

146. TEX. HEALTH & SAFETY CODE ANN. § 692A.020(i).

renewal driver's license.¹⁴⁷ The nonprofit organization that is maintaining the organ donor registry is given the funds accumulated in the trust and is allowed to use these funds to pay for: "1) maintaining, operating, and updating the Internet-based registry and establishing procedures for an individual to be added to the registry; 2) designing and distributing educational materials for prospective donors as required under this section; and 3) providing education under this chapter."¹⁴⁸ To recap, the organ donor registry is set up as a trust, appoints the DPS as the trustee, and is funded by individuals who elect to donate \$1 or more to the cause.¹⁴⁹ The estate planning prompt and brochure will be set up in the same way, making it entirely funded by donations.¹⁵⁰

2. History of the Organ Donation Process

Becoming an organ donor requires an individual to register in their state—most likely through the Department of Transportation (DOT).¹⁵¹ In fact, "95 percent of Pennsylvanians who register to be organ and tissue donors" do so through the Pennsylvania DOT.¹⁵² However, there are other ways to register for organ donation: (1) through a will; (2) "during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness;" or (3) "by donor card or other record."¹⁵³ Each state's DOT has incorporated organ donor registry into the process of obtaining a driver's license.¹⁵⁴ The DOT is also required to give out information regarding organ donation in the form of brochures during the original and renewal driver's license processes.¹⁵⁵ The informational brochures are created by the nonprofit organization maintaining the donor registry and are then distributed by the DOT.¹⁵⁶

The organ donation process has also been incorporated into the Health and Safety Code in Section 692A.020.¹⁵⁷ After death, if your organs are fit for donation, a representative from the Organ Procurement Organization (OPO) is sent to the hospital to see if the deceased is registered as a donor on

147. *Id.* § 692A.020(i).

148. *Id.* § 692A.020(i)(1)(2)(3).

149. *See supra* Section II.D.1.

150. *See infra* Section III.B.3.

151. *See Donation After Life*, HEALTH RES. & SERV. ADMIN., <https://www.organdonor.gov/learn/process/donation-after-life> (last visited Nov. 5, 2020) [<http://perma.cc/W9P2-Z4XM>].

152. Howard Nathan, *Your View: More People Need to Select 'Organ Donor' on Their Driver's Licenses*, MORNING CALL (Sept. 26, 2018, 6:00 AM), <https://www.mcall.com/opinion/mc-opi-organ-donor-pennndot-20180925-story.html> [<http://perma.cc/P565-A9DF>].

153. UNIF. ANATOMICAL GIFT ACT § 5 (UNIF. L. COMM'N, amended 2009).

154. *See* TEX. TRANSP. CODE ANN. § 522.153.

155. *See id.* § 522.153(f).

156. *See id.* § 522.153(c).

157. *See* TEX. HEALTH & SAFETY CODE ANN. § 692A.020.

their state registry.¹⁵⁸ If the individual is registered, such registration will serve as legal consent for donation.¹⁵⁹

3. Organ Donation History in Texas

Section 522.153 of the Texas Transportation Code provides that an individual may elect to be an organ, tissue, or eye donor on the original or renewal driver's license form.¹⁶⁰ The Glenda Dawson Donate Life Texas Registry was established in 2005 by the 79th Texas Legislature.¹⁶¹ When it was developed, the registry simply "allow[ed] individuals to record legal consent for organ, eye and tissue recovery after death."¹⁶² In 2009, Donate Life Texas created a partnership with the DOT.¹⁶³ Since that partnership was formed, the registry has grown from around one million registered donors to more than ten million.¹⁶⁴

4. Attacking the Problem Through the DMV

A study revealed that about 85% of Americans have their driver's license, which equates to nearly 231.6 million people.¹⁶⁵ In Texas, the percentage of licensed drivers amounts to almost 83% of the population, about 23.7 million people.¹⁶⁶ Donate Life Texas, Texas's nonprofit organization that maintains organ donation, saw the benefit in partnering with the DMV and reaped the benefits when the number of registered donors jumped by about 10 million people after their merge.¹⁶⁷ The increase of donor registrants has proven that the partnership between Donate Life Texas and the DMV is productive—this success can be credited, in significant part, to the DMV for providing such a populated platform that allows for organ donation to reach so many.¹⁶⁸ If information about estate planning—particularly regarding wills—was distributed in this same way, there would likely be a similar result.¹⁶⁹

158. *See Donation After Life*, *supra* note 151.

159. *See id.*

160. TRANSP. § 522.153.

161. *About Donate Life Texas*, DONATE LIFE TEX., <https://www.donatelifetexas.org/donate-life-texas/> (last visited Nov. 5, 2020) [<http://perma.cc/E6LR-R9FN>].

162. *Id.*

163. S.B. 1803, 2009 Leg., 81st Sess. (Tex. 2009).

164. *About Donate Life Texas*, *supra* note 161.

165. *Distribution of Licensed Drivers*, U.S. DEP'T. TRANSP. FED. HIGHWAY ADMIN., <http://www.fhwa.dot.gov/policy/ohim/hs05/pdf/dl20.pdf> (last visited Oct. 6, 2020) [<http://perma.cc/PC3F-GGGN>]; *How Many Licensed Drivers Are There In The U.S.?*, HEDGES CO., <https://www.hedgescompany.com/blog/2018/10/number-of-licensed-drivers-usa/> (last visited Oct. 6, 2020) [<http://perma.cc/F556-YW55>].

166. Lisa Minton, *Fiscal Notes*, TEX. COMPTROLLER PUB. ACCT. (Oct. 2019), <https://comptroller.texas.gov/economy/fiscal-notes/2019/oct/license.php> [<http://perma.cc/7PTU-73DG>].

167. *See About Donate Life Texas*, *supra* note 161.

168. *See id.*

169. Author's original thoughts.

5. Organ Donation in Other States' Eyes

Organ donation has partnered with the DMV in all states, making collaboration with the DMV an attractive option to consider due to the number of people it could reach.¹⁷⁰ In California, a prompt is given on original and renewal driver's license forms that simply asks, "[d]o you wish to register to be an organ and tissue donor?"¹⁷¹ Since California decided to partner their DMV with organ donation, more than 16.5 million people have registered as organ donors.¹⁷² Arizona also provides a box on the driver's license form for people to check to become registered organ donors.¹⁷³ Every state has a similar provision when referring to organ donor registration.¹⁷⁴

6. Ability to Expand

Organ donation has found ways to expand their registry and education material to more than just the DMV.¹⁷⁵ In Minnesota, they expanded the organ donation registry option and included it on hunting and fishing licenses, gaining 32,350 registrations in just the first year of expansion.¹⁷⁶ New York has taken many efforts in expanding the organ donation registry by adding the option to voter registration forms and online health insurance applications, and the state has seen a 500,000 person increase in donor registrations since the expansion.¹⁷⁷ If the estate planning prompt and brochure experiences the same positive results as organ donation did after they partnered with the DMV, estate planning could easily be expanded, making this partnership an attractive option for future growth possibilities.¹⁷⁸

E. Tax Exemptions

A tax exemption works to reduce an individual's total amount of taxable income, thereby reducing the total amount of taxes owed.¹⁷⁹ Tax exemptions

170. See *Organ Donation FAQs, How to Register as a Donor*, U.S. GOV'T INFO. ON ORGAN DONATION & TRANSPLANTATION, <https://www.organdonor.gov/learn/faq> (last visited Dec. 5, 2020) [<http://perma.cc/S9MX-7VJ3>].

171. *About the Donate Life California Donor Registry*, DONATE LIFE CAL., https://www.onelegacy.org/docs/DLC604_Backgrounder_071009.pdf (last visited Nov. 6, 2020) [<https://perma.cc/6JJ4-WRH3>].

172. *Latest News*, DONATE LIFE CAL. (Oct. 22, 2020), <https://donatelifecalifornia.org/stories-events/latest-news/> [<http://perma.cc/CEL8-82ML>].

173. *About Donation*, DONATE LIFE ARIZ., <https://www.donatelifearizona.org/about-donation/?lang=En> (last visited Nov. 6, 2020) [<https://perma.cc/J5PM-SPDA>].

174. Author's original thoughts.

175. See *About Donate Life Texas*, *supra* note 161.

176. *Id.*

177. *Id.*

178. Author's original thoughts.

179. *What Are Tax Exemptions?*, TURBO TAX (July 28, 2021), <https://turbotax.intuit.com/tax-tips/irs-tax-return/what-are-tax-exemptions/L5xCsvZKO> [<https://perma.cc/LD9L-ZNZ4>].

exist for social welfare organizations, employee benefit associations or funds, labor and agricultural organizations, social clubs, fraternal societies, veterans' organizations, nonprofit organizations, and more.¹⁸⁰ Any payment made as a charitable contribution "shall be allowed as a deduction . . ."¹⁸¹ A charitable contribution is "a contribution or gift to or for the use of" many different things, including: "[a] corporation, trust, or community chest, fund, or foundation," which is "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . ."¹⁸² The organ donor registry is run by the nonprofit organization, Donate Life Texas, which is funded solely by generous donations that are tax-deductible.¹⁸³ Donations to the organization picked to operate the estate planning prompt and brochure will also be fully tax-deductible, making it appealing to individuals when choosing whether to donate.¹⁸⁴

1. What Is a 501(c)(3) Nonprofit Organization?

A 501(c)(3) organization is a nonprofit organization that has been approved by the Internal Revenue Service (IRS) as tax-exempt and is considered charitable.¹⁸⁵ Many entities can qualify as 501(c)(3) organizations such as LLCs, corporations, and trusts, but the vast "majority of 501(c)(3) organizations are nonprofit corporations."¹⁸⁶ A 501(c)(3) organization enjoys benefits such as the tax deductibility of donations.¹⁸⁷ In order to be considered a 501(c)(3) organization, the nonprofit must meet one or more of the following criteria: "religious, charitable, scientific, testing for public safety, literary, educational, fostering of national or international amateur sports, and prevention of cruelty to animals and children."¹⁸⁸ There are also restrictions on 501(c)(3) organizations; for example, any "director, officer, or any private individual" is barred from benefitting unfairly by the activities or earnings of the nonprofit, and all assets earned by the nonprofit must be used for a charitable cause.¹⁸⁹ All an organization must do to obtain 501(c)(3) status is file a Form 1023 with the IRS and get approved.¹⁹⁰ After securing 501(c)(3)

180. *Requirements for Exemption*, IRS, <https://www.irs.gov/charities-non-profits/other-non-profits/requirements-for-exemption> (Apr. 2, 2021) [<http://perma.cc/HJ7U-C85T>].

181. 26 U.S.C. § 170(a)(1).

182. *Id.* §§ 170(c), 170(c)(2), 170(c)(2)(B).

183. *See supra* Section II.D.3.

184. *See infra* Section III.B.3.

185. *What does it mean to be a 501(c)(3) Organization?*, FOUND. GRP. (Dec. 4, 2018), <https://www.501c3.org/frequently-asked-questions/what-does-it-mean-to-be-a-501c3-organization/> [<https://perma.cc/D78P-YADP>].

186. *What Is a 501(c)(3)?*, FOUND. GRP., <https://www.501c3.org/what-is-a-501c3/> (last visited Jan. 6, 2021) [<http://perma.cc/CA9X-9JC2>].

187. 26 U.S.C. § 170.

188. *What Is a 501(c)(3)?*, *supra* note 186.

189. *Id.*

190. *Id.*

status, the organization must follow all compliance requirements such as the filing of an annual IRS Form 990 as well as filing a “state charitable solicitations registration and renewal.”¹⁹¹

III. ESTATE PLANNING PROMPT AND BROCHURE IS NECESSARY TO MITIGATE THE DEFICIT OF WILLS

An estate planning prompt and brochure incorporated into the driver’s license renewal process that mirrors organ donation will help alleviate and mitigate the lack of wills in America by normalizing the form, reaching individuals at a young age, and focusing on those who do not have a will because they lack knowledge on the subject or do not want to contemplate death.¹⁹²

A. Normalizing the Will

There are a flood of cases in courts today regarding the estate of individuals who died without any estate planning documents, specifically without wills.¹⁹³ Additionally, countless lawsuits are brought over outdated wills.¹⁹⁴ Studies show that the main reasons people do not create a will are: lack of knowledge, cost, not wanting to talk about death, and the thought of not possessing enough assets to make a will.¹⁹⁵ Many solutions have been introduced to target individuals who have cited to not having wills due to their inaccessible nature; however, these solutions have not afforded any growth in the amount of Americans with wills.¹⁹⁶ The estate planning prompt and brochure attempts to resolve the issue by attacking it from a new direction—focusing on the lack of knowledge.¹⁹⁷

Informing young individuals of what a will is, how to create one, and the effects of not having an updated will can help normalize estate planning document forms.¹⁹⁸ Normalizing estate planning documents will hopefully decrease the number of people who die without an updated will, which will reduce the number of cases flooding the courts over this issue.¹⁹⁹ By implementing a prompting system through the Texas Transportation Code, people will realize the importance of wills much earlier in life, and it will eventually desensitize the idea of death—making people feel more

191. *Id.*

192. *See infra* Section III.A.

193. *See, e.g.,* Hamilton v. Butler, 397 S.W.2d 932, 933 (Tex. App.—Eastland 1965, writ ref’d).

194. *See infra* Section III.B.1.a.

195. *See* Cobb, *supra* note 115.

196. *See supra* Section II.C.

197. Author’s original thoughts.

198. *See infra* Section III.B.

199. *See infra* Section III.B.

comfortable to discuss wills.²⁰⁰ The prompting system has potential to make the will a standard form in society, which will ultimately decrease the number of individuals who die intestate.²⁰¹

B. An Estate Planning Prompt and Brochure Given to Individuals During the Driver's License Renewal Process Will Normalize Estate Planning Forms

On the driver's license renewal form there would be a prompt asking if the individual has created a will.²⁰² An educational brochure with information regarding what a will is, how to create one, and the effects of having a will would accompany the form.²⁰³ The prompt could be effortlessly incorporated into the driver's license renewal process by mirroring how organ donation was incorporated into the original and renewal driver's license form.²⁰⁴ By forming a relationship between estate planning documents and the DMV, the will could reach a broad audience and gain popularity, just like organ donor registrants increased dramatically after Donate Life Texas partnered with the DMV.²⁰⁵

1. Incorporating the Estate Planning Prompt in Driver's License Renewal Process

According to Section 521.271(a) of the Texas Transportation Code, a person holding a provisional or learner's license must renew it on their eighteenth birthday.²⁰⁶ Section 521.271(a)(1) of the Texas Transportation Code provides "a driver's license expires on the first birthday of the license holder occurring after the eighth anniversary of the date of the application."²⁰⁷ Therefore, a license holder must renew their license when they turn eighteen and then every eighth birthday.²⁰⁸

Texas Transportation Code Section 522.053(a) describes the driver's license renewal process and reveals "[a] person applying for renewal of a commercial driver's license must complete the application form required by the department, including updating information and required certifications."²⁰⁹ Vague language was used in Section 522.053(a) of the Texas Transportation Code such as "including updating information and

200. See *infra* Section III.B.

201. See *infra* Section III.B.

202. See *infra* Section III.B.1.

203. See *infra* Section III.B.1.

204. See *infra* Section III.B.3.

205. See *supra* Section II.D.4.

206. TEX. TRANSP. CODE ANN. § 521.271(a)(2).

207. *Id.* § 521.271(a)(1).

208. See *id.* § 521.271(a).

209. *Id.* § 522.053(a).

required certifications.”²¹⁰ This allows for requirements such as the opportunity to become an organ donor to be included in the driver’s license renewal process.²¹¹

If individuals were given a brochure with information about wills when they first renewed their license at age eighteen and then every renewal following, young people would have the knowledge needed to create a will and would be reminded of this form at scheduled times throughout their adulthood.²¹² Those outside the ages of eighteen and thirty-four will also benefit from the implementation of an estate planning prompt and brochure.²¹³ This will remind them to create or update their will and educate them on aspects of wills they may not be familiar with—because they, even more critically than younger individuals, need an updated will.²¹⁴

a. The Importance of Updating a Will

It is crucial to create a will for a variety of reasons such as choosing how an individual’s estate is to be distributed, who is going to be the administrator of the estate, and who is going to care for minors.²¹⁵ On the other hand, it is just as important to update a will that was already created.²¹⁶ Individuals should review their wills often in order to make sure that they still accurately reflect their wishes.²¹⁷ Specific times when a will should be updated are: (1) if a child is born, (2) if a marriage or divorce occurs, (3) if something happens to the chosen administrator, (4) if beneficiaries die, (5) if new legislation is passed that affects the will such as a higher estate tax, (6) if a large amount of money is obtained, and more.²¹⁸ The estate planning prompt and brochure will be distributed each time an individual gets their driver’s license renewed, essentially every eight years.²¹⁹ This will act as a built-in reminder for individuals to review and update their wills, as well as educate them on any aspects of a will they may not have known or have forgotten.²²⁰

A prompt and brochure about wills could have changed the result for many who died with outdated wills, causing havoc on their families.²²¹ Heath Ledger, a former movie star, had a valid will but failed to update it when he

210. *Id.*

211. *See id.* §§ 522.053(a), 522.151–154.

212. *See supra* Section III.B.

213. *See supra* Section III.B.

214. *See supra* Section III.B.

215. *See supra* Sections II.A.2–3.

216. *See* Daniel A. Timins, *12 Different Times When You Should Update Your Will*, KIPLINGER (May 26, 2020), <https://www.kiplinger.com/slideshow/retirement/t021-s014-12-times-when-you-should-update-your-will/index.html> [<https://perma.cc/BE47-FHP8>].

217. Author’s original thoughts.

218. *See* Timins, *supra* note 216.

219. Author’s original thoughts.

220. *See supra* Section III.B.

221. Author’s original thoughts.

had a child.²²² Therefore, his will left his daughter out, and his entire estate was to be distributed to his parents and sister.²²³ Litigation ensued between family members over Ledger's estate and eventually passed to Ledger's daughter.²²⁴ Litigation could have been entirely avoided if Ledger would have updated his will.²²⁵ In *Parker*, Ms. Swain executed a will that included that her estate be given "in equal portions to her minor sons, John Bedford Cunningham and Joe Preston Cunningham, the children of her first marriage."²²⁶ This case was brought by Parker who was born to Ms. Swain about a year after her will was executed.²²⁷ Parker believed he was entitled to an equal portion of the estate that his two half-brothers were entitled to; however, Ms. Swain's will did not reflect this.²²⁸ If Ms. Swain would have simply updated her will, this litigation would likely not have ensued.²²⁹

In *Morgan v. Davenport*, Mr. Davenport executed his will and left everything to his only child, Mary.²³⁰ After the will was created, Mr. Davenport married the plaintiff, Martha, and they had one child together, Helen.²³¹ Mr. Davenport never updated his will, and after his death, Martha and Helen sued Mary in order to obtain a portion of Mr. Davenport's estate.²³² Martha and Helen claimed that the marriage and birth of another child acted as a revocation of the will and therefore they were entitled to compensation.²³³ The court ultimately decided that Martha and Helen were to recover nothing due to the law that a will may only be revoked in the case of a subsequent marriage or child if the child would otherwise be "unprovided for."²³⁴ The issues in *Morgan* could have been avoided completely if Mr. Davenport would have updated his will to include his wife and child.²³⁵

By implementing a prompt and educational brochure into the driver's license renewal process, individuals will be mandatorily reminded throughout their lives to update their wills.²³⁶ Updated wills will likely decrease the amount of litigation brought that mirrors cases like *Ledger*, *Parker*, and *Morgan*.²³⁷

222. *Famous Mistakes: Celebrity Wills That Went Wrong*, *supra* note 10.

223. *Id.*

224. *See 15 Celebrities Who Died Without Updating or Writing Wills*, *supra* note 7.

225. Author's original thoughts.

226. *Parker v. Swain*, 223 S.W. 231, 231 (Tex. App.—Amarillo 1920, no writ).

227. *Id.*

228. *Id.*

229. *See id.*

230. *Morgan v. Davenport*, 60 Tex. 230, 232 (1883).

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *See id.*

236. *See supra* Section III.B.1.

237. *See Parker v. Swain*, 223 S.W. 231, 231 (Tex. App.—Amarillo 1920, no writ); *Morgan*, 60 Tex. at 232.

2. Normalizing Estate Planning Forms

In order to make a substantial difference in the amount of Americans who die with a valid will, the solution must reach the majority.²³⁸ By implementing this prompting system in the driver's license renewal process, it is effectively reaching about 85% of Americans.²³⁹ If estate planning documents were standardized in society, more Americans would know about the forms, decreasing the number of people who claim they do not have a will due to lack of knowledge on the subject.²⁴⁰ Based on this plan, estate planning document forms, specifically the will, will become a standard form due to the prompt reaching a majority of Americans.²⁴¹

3. Anatomical Gifts v. Estate Planning Documents

One may draw a logical analogy between the anatomical gifts in the Texas Transportation Code and the need for Americans to have valid wills.²⁴² Organ donation was incorporated into the Texas Transportation Code due to the vague language of Section 522.053(a).²⁴³ Other requirements, such as indicating whether you have a will, could also be integrated into the broad language of Section 522.053(a).²⁴⁴

Subchapter J of Chapter 522 of the Texas Transportation Code is comprised of anatomical gifts, which are incorporated into the original and renewal driver's license forms.²⁴⁵ Under Subchapter J, people are given a space to indicate if they wish to donate money to various organizations, and if they wish "to be an organ, tissue, or eye donor . . .".²⁴⁶ Section 522.153(c)(2) of the Transportation Code reveals that the department shall "provide a means to distribute registry information to interested individuals in each office authorized to issue commercial driver's licenses."²⁴⁷ In the same way, people should be given a space to indicate if they have created a will, and the department should "provide a means to distribute . . . information to interested individuals . . .".²⁴⁸

Just like organ donation refers to the process of distributing people's organs, tissues, and eyes after they die, a will refers to the process of distributing an individual's estate after they die.²⁴⁹ If estate planning had the

238. See *Distribution of Licensed Drivers*, *supra* note 165.

239. See *id.*

240. See *supra* Section II.B.

241. See *Distribution of Licensed Drivers*, *supra* note 165.

242. See *supra* Section III.B.3.

243. See TEX. TRANSP. CODE ANN. § 522.053(a).

244. See *id.*

245. *Id.* §§ 522.151–154.

246. *Id.* §§ 522.152–153.

247. *Id.* § 522.153(c)(2).

248. *Id.* §§ 522.152–153.

249. Author's original thoughts.

same opportunity as anatomical gifts in the Texas Transportation Code, more Texans would likely become aware of the importance of estate planning documents, and there would eventually be a drop in the number of people who die intestate due to their lack of knowledge on the subject.²⁵⁰

a. Why the Estate Planning Prompt Should Mirror the Organ Donation Process

Over 165 million Americans have registered as organ donors since incorporating organ donation into the driver's license process.²⁵¹ According to the U.S. Census Bureau's population clock, there are 330,548,342 Americans and counting.²⁵² By calculating 85% of the total U.S. population, we learn that around 280,966,091 Americans have their driver's license.²⁵³ From that number, we can determine that about 59% of U.S. drivers have registered to be an organ donor.²⁵⁴ If the estate planning prompt reached Americans the same way that organ donation has, we would likely see a dramatic increase in the number of people with a will.²⁵⁵ By incorporating the estate planning prompt in the driver's license process, about 85% of the U.S. population can learn what a will is, how to create one, and the effect of having a will.²⁵⁶ The number of Americans with a will is likely to increase if the estate planning prompt and brochure reaches 85% of Americans.²⁵⁷ Mirroring the organ donation process also allows us to look beyond a partnership with the DMV to see a future of growth in places such as hunting and fishing licenses, voter registration forms, and online health insurance applications.²⁵⁸

Organ donation is funded by voluntary contributions of \$1 or more made by individuals getting their driver's license.²⁵⁹ The organ donation registry "receives no tax payer dollars" and "[a]ll funds are used to maintain and administer the donor registry and to support public education about the lifesaving importance of organ, eye, and tissue donation and donor registration."²⁶⁰ When someone chooses to donate to the nonprofit organization running the organ donor registry, the donation amount is also

250. See *supra* Section III.B.

251. *Information about Organ, Eye, and Tissue Donation*, HEALTH RES. & SERV. ADMIN., <https://www.organdonor.gov> (last visited Nov. 5, 2020) [<https://perma.cc/YRK8-4ZYE>].

252. *U.S. and World Population Clock*, U. S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Nov. 5, 2020) [<http://perma.cc/TGQ3-WKMR>].

253. See *Information about Organ, Eye, and Tissue Donation*, *supra* note 251.

254. See *id.*

255. See Cobb, *supra* note 115.

256. See *supra* Section II.D.4; *infra* Section III.B.3.b.

257. See *supra* Section II.D.4; *infra* Section III.B.3.b.

258. See *supra* Section II.D.6.

259. See *infra* Section III.C.1.

260. *About Donate Life Texas*, *supra* note 161.

fully tax-deductible.²⁶¹ The estate planning prompt should be funded similarly to the organ donor registry—strictly through donations.²⁶² Donate Life America reported that 40,000 organ transplants were administered in 2019 by “educating the public on the importance of registering as a donor.”²⁶³ If the public were educated on estate planning, there would likely be a similar result—an increase in the number of people with estate plans.²⁶⁴

b. Why Estate Planning Should Create a 501(c)(3) Nonprofit Organization Like Organ Donation

501(c)(3) status allows all donations made to the organization to be tax-deductible.²⁶⁵ Organ donation has created a 501(c)(3) nonprofit organization to operate their registry which is funded solely by donations.²⁶⁶ Legislation created the organ donor registry to “allow[] individuals to record legal consent for organ, eye, and tissue recovery after death.”²⁶⁷ By creating Donate Life Texas, a 501(c)(3) nonprofit organization, the organ donor registry is able to operate exclusively by donations and use that money not only to run the registry, but to create and provide individuals with educational materials, like what many see at the DMV.²⁶⁸ Just like organ donation has Donate Life Texas, estate planning should have a 501(c)(3) organization funded by donations that is used to create educational materials about wills for distribution.²⁶⁹ To achieve 501(c)(3) status, legislation should appoint an estate planning nonprofit organization to be in charge of making the educational materials that will teach individuals what a will is, how to get one, and the effects of having a will.²⁷⁰ Once a nonprofit organization is created, it must send a Form 1023—essentially a 501(c)(3) application—to the IRS for approval.²⁷¹ Approval will likely happen with an organization such as this due to its educational purpose of teaching individuals the importance of wills.²⁷² By creating a nonprofit organization and obtaining 501(c)(3) status, individuals are more likely to donate to the organization due to the donations being tax-deductible; this will allow the educational

261. *Frequently Asked Questions*, DONATE LIFE FLA., <https://www.donatelifeflorida.org/categories/donation/> (last visited Nov. 6, 2020) [http://perma.cc/2ZHQ-CXTJ].

262. Author’s original thoughts.

263. *What do Financial Contributions make Possible?*, DONATE LIFE AM., <https://www.donatelife.net/financials/> (last visited Jan. 7, 2021) [http://perma.cc/AA6M-DFCR].

264. *See id.*

265. *What Is a 501(c)(3)?*, *supra* note 186.

266. TEX. HEALTH & SAFETY CODE ANN. § 692A.020.

267. *Privacy Policy*, DONATE LIFE TEX., <https://www.donatelifetexas.org/donate-life-texas/> (last visited Jan. 6, 2021) [http://perma.cc/YJ2P-QQYM].

268. HEALTH & SAFETY § 692A.020.

269. *See id.*

270. *See What Is a 501(c)(3)?*, *supra* note 186.

271. *Id.*

272. *See id.*

brochure about wills, which will be distributed at places such as the DMV, to be funded wholly by donations, just like the organ donor registry.²⁷³

i. Creating a Website

After a nonprofit organization is appointed to overlook the estate planning prompt and brochure, a website should be created under the nonprofit's name to reiterate what the brochure states and present additional information regarding wills.²⁷⁴ Just like Donate Life America has a website with additional information on organ donation, such as real-life stories, the nonprofit that is in charge of the wills prompt and brochure should also have a website expanding on how important it is to create a will.²⁷⁵ Mirroring the "Stories of Hope" section on the Donate Life America website, the estate planning website should include a similar segment that gives real-life scenarios and horror stories, such as *The Black Panther* and Prince stories that were previously mentioned; this would allow people to truly see the effects of not having a will in place.²⁷⁶ The website should include everything that the brochure stated, as well as direct links so that individuals can easily navigate to different websites in order to create a will and learn more about them.²⁷⁷ The website name should be on the brochure that is distributed at the DMV and also accompanied by a QR code that will take individuals straight to the website, which will take away the burden of having to keep up with a physical brochure.²⁷⁸

c. Who Will Govern the Estate Planning Prompt and Brochure?

Subchapter J of Chapter 522 of the Texas Transportation Code refers to Section 692A.020 of the Health and Safety Code.²⁷⁹ Section 692A.020 of the Health and Safety Code describes how the organ donor registry, known as the Glenda Dawson Donate Life-Texas Registry, is maintained by a nonprofit organization that the DPS chooses.²⁸⁰ Section 692A.020 of the Health and Safety Code appointed Donate Life Texas as the 501(c)(3) nonprofit organization to operate the donor registry.²⁸¹ Likewise, the Estates Code governs estate planning, and the DPS could appoint a nonprofit organization

273. *See id.*

274. *See Stories of Hope*, DONATE LIFE AM., <https://www.donatelife.net/stories> (last visited Jan. 7, 2021) [<http://perma.cc/UE98-JQ5A>].

275. *See id.*

276. *See supra* Part I.

277. Author's original thoughts.

278. Author's original thoughts.

279. *See* TEX. TRANSP. CODE ANN. §§ 522.151–154.

280. TEX. HEALTH & SAFETY CODE ANN. § 692A.020.

281. *See Privacy Policy*, *supra* note 267; HEALTH & SAFETY § 692A.020.

that deals with estate planning to maintain and govern the estate planning provision that will be included in the driver's license renewal process.²⁸²

d. Estate Planning Brochure

The DOT should provide people with a brochure of information on wills, similar to the one concerning anatomical gifts, to address the lack of knowledge on estate planning.²⁸³ Section 521.401(e) of the Texas Transportation Code reads, "[t]he department shall distribute at all field offices Donate Life brochures that provide basic donation information. . . ."²⁸⁴ Similarly, during the driver's license renewal process, the department should distribute estate planning brochures, which provide basic information such as what a will is, how to create one, and the effects of not having one.²⁸⁵ If individuals were educated on what a will is, why it is important to obtain one, and how to create one, the percentage of individuals without a will due to lack of education would diminish.²⁸⁶

i. Creating a Brochure

According to Section 522.153(c) of the Transportation Code, "[t]he donor registry or organ procurement organizations, tissue banks, or eye banks, as those terms are defined by Section 692A.002 of the Health and Safety Code, shall provide donor registry information to the department and the Texas DOT."²⁸⁷ Based on Section 522.153(c) of the Transportation Code, only organizations approved in the Estates Code should provide information about estate planning documents that will be included in brochures to the Texas DOT, just as organ donor information is provided to the department by organizations approved in the Health and Safety Code.²⁸⁸

Section 692A.020(k) of the Health and Safety Code reveals what should be included in the organ donation brochures: 1) the laws controlling anatomical gifts; "2) the procedures for becoming an organ, eye, or tissue donor or donee; and 3) the benefits of organ, eye, or tissue donation."²⁸⁹ The brochures for wills should be structured similar to Section 692A.020(k) of the Health and Safety Code and include the law governing wills, the steps to create a will, and the benefits of having a valid will.²⁹⁰

282. See HEALTH & SAFETY § 692A.020.

283. See *supra* Section III.B.

284. TRANSP. § 521.401(e).

285. See *id.*

286. See *supra* Section II.B.

287. TRANSP. § 522.153(c).

288. See *id.* § 522.153(c); TEX. HEALTH & SAFETY CODE ANN. § 692A.020.

289. HEALTH & SAFETY § 692A.020(k).

290. See *id.*

Section 692A.020(h) reveals “[i]n each office authorized to issue driver’s licenses . . . the Department of Public Safety shall make available educational materials developed by the nonprofit organization administering the registry.”²⁹¹ By using the language from Section 692A.020(h) of the Health and Safety Code and language from Section 521.401(e) of the Transportation Code, the legislature could create a similar provision for the distribution of estate planning brochures.²⁹²

The educational brochure on wills should mirror the organ donation brochure and include the law behind wills, how to create a will, and the benefits of having a will.²⁹³ The organ donation brochure, distributed at the DMV, includes the laws behind organ donation, including who is allowed to register as an organ donor.²⁹⁴ Likewise, the brochure on wills should include the law behind who can create a will, which according to Section 251.001 of the Texas Estates Code, is anyone eighteen years of age or older, married, or in the military.²⁹⁵

The organ donation brochure then explains how to register as an organ donor by including the online registry site and the steps to register online, as well as how to register in person at the DMV and how to register by mail or fax.²⁹⁶ Whereas there is no online registry for wills yet, the brochure should inform the public on the steps to create a will and the options that individuals have when creating one.²⁹⁷ Individuals may create a simple will either by hiring an attorney to draft their will or by going to the Texas Supreme Court website—or other helpful and reliable websites—and downloading the necessary forms to create their will themselves without needing an attorney.²⁹⁸

After the organ donation brochure describes how to register, it then reveals, in brief, how organ donation works: (1) organ donation sign-up, (2) critical care and determination of death, (3) donor identification and consent, (4) organ transport, (5) organ transplant, and (6) recovery.²⁹⁹ Similarly, the wills brochure should explain how wills work: (1) an individual creates a will, which reveals information such as how the deceased’s assets will be distributed, names a representative to “administer the estate and be responsible for distributing the assets to the beneficiaries,” and designates a guardian for children, (2) the individual dies, and (3) the deceased’s will is

291. *Id.* § 692A.020(h).

292. *See id.*; TRANSP. § 521.401(e).

293. *See* HEALTH & SAFETY § 692A.020(k).

294. *See Organ Donation in Texas*, DMV.ORG, <https://www.dmv.org/tx-texas/organ-donor.php> (last visited Jan. 7, 2021) [<https://perma.cc/U4H2-FM87>].

295. *See* TEX. EST. CODE ANN. § 251.001.

296. *Organ Donation in Texas*, *supra* note 294.

297. *See Wills & Estate Planning*, TEX. L. HELP, <https://texaslawhelp.org/money-debt/wills-estate-planning> (last visited Jan. 7, 2021) [<https://perma.cc/X42S-7NWA>].

298. *Id.*

299. *Organ Donation in Texas*, *supra* note 294.

entered into probate court after which it is distributed according to the language of the deceased's will.³⁰⁰

The organ donation brochure then tells the public the benefits of organ donation: "By signing up to be an organ donor, you actually save a life."³⁰¹ The wills brochure should mirror this strategy and include all of the benefits of wills and what happens, legally, without a will.³⁰² As an example, with a will in place, individuals get to determine how their assets are distributed, who is going to take care of their minor children in the case of death, who is going to be the administrator of the estate, and more.³⁰³ Whereas without a will in place, the courts will determine how the deceased's estate is distributed based on the state's intestacy laws, who will be named administrator of the estate, and who will care for any minor children.³⁰⁴ The wills brochure should also include website names that people can go to in order to learn more about wills.³⁰⁵ Individuals will be able to use the trusted URLs included in the wills brochure to create their own will.³⁰⁶

C. Counterarguments

Despite the valid arguments made for normalizing wills, counterarguments exist for almost every new proposal.³⁰⁷ Some critics may believe the prompting system will be too costly or be given at too early of an age.³⁰⁸ Other critics may claim that the brochure should be given electronically and question why wills should have a place in the DMV at all.³⁰⁹

1. Cost

The cost of implementing an estate planning prompt in the driver's license renewal process is comparable to the cost of the organ donor registry, which is included in the driver's license renewal process.³¹⁰ A statute funding an estate planning prompt in the driver's license renewal process could be created similar to the prompt in place for organ donation.³¹¹

Just like Section 522.152 of the Transportation Code provides that individuals are given a space to choose to donate \$1 or more to the donor

300. See *Glossary of Estate Planning Terms*, *supra* note 59; EST. §§ 256.001–002.

301. *Organ Donation in Texas*, *supra* note 294.

302. See *supra* Sections II.A.2–3.

303. See *supra* Sections II.A.2–3.

304. See *supra* Sections II.A.2–3.

305. Author's original thoughts.

306. Author's original thoughts.

307. Author's original thoughts.

308. See *infra* Sections III.C.1–4.

309. Author's original thoughts.

310. See TEX. HEALTH & SAFETY CODE ANN. § 692A.020.

311. See *id.* §§ 692A.020(i)(1)–(3).

registry fund, there could be a similar provision regarding estate planning documents that provides a space to indicate whether an individual wants to donate \$1 or more to the nonprofit organization that is responsible for creating the estate planning brochures.³¹² There is no registry involved in the estate planning documents prompt, just a simple box that reminds individuals that wills exist, as well as an informational brochure given to individuals to describe the importance of wills; therefore, funds will not be used to cover registry costs like the organ donor fund.³¹³ Funds raised for the estate planning nonprofit organization would only need to be used to cover costs associated with the “designing and distributing [of] educational materials for prospective donors,” “providing education,” and “reasonable expenses incurred by the department in administering this section.”³¹⁴

The nonprofit organization that operates the organ donor registry is considered a 501(c)(3) organization, which means every donation is entirely tax-deductible, making donations more attractive to individuals.³¹⁵ If the nonprofit organization appointed to create and distribute the educational brochure obtains 501(c)(3) status, like organ donation, donations will fully fund the organization and be completely tax-deductible, which goes against the possible counterargument that the prompt and brochure will cost too much.³¹⁶

The cost of the estate planning prompt and brochure should not be an argument against its creation because it would not cost an individual any money, unless they chose to donate \$1 or more to the nonprofit organization responsible for maintaining the educational information that each individual will receive; and even then, the donation will be fully tax-deductible.³¹⁷

2. Will the Estate Planning Prompt and Informational Brochure Be Effective When Given at an Early Age?

The main reasons for incorporating an estate planning prompt and informational brochure in the license renewal process, which occurs when an individual turns eighteen, include changing the negative connotation of estate planning and normalizing the forms.³¹⁸ There are many reasons why young adults should create an estate plan: it creates fewer burdens for the family if an individual passes away; it allows individuals to give their belongings to siblings, nieces, nephews, or friends, rather than parents, per Texas intestate laws; it helps individuals entering the military; and it simplifies the transfer

312. See TEX. TRANSP. CODE ANN. § 522.152.

313. See HEALTH & SAFETY § 692A.020(i)(1).

314. See *id.* §§ 692A.020(i)(2)–(3); TRANSP. § 522.152(c).

315. See *Privacy Policy*, *supra* note 267; HEALTH & SAFETY § 692A.020.

316. See *supra* Section III.B.3.b.

317. See HEALTH & SAFETY § 692A.020(q).

318. See *supra* Sections III.B.2–3.

of an inheritance.³¹⁹ Individuals claim they do not have estate plans for a variety of reasons, including lack of knowledge and wanting to avoid the subject of death; consequently, if estate planning is introduced to individuals starting at eighteen years old, the reasons for not having an estate plan would diminish.³²⁰ At eighteen years old, death is likely the last thing on one's mind; therefore, a will would seem like just another form.³²¹ On the other hand, middle-aged individuals likely think of death when they are faced with questions about how they want their estate to be distributed, which is exactly what introducing the prompt and brochure at an early age would work to change.³²²

The driver's license form includes the organ donor registry process and can be completed by individuals as young as sixteen years old.³²³ Similar to wills, organ donation refers to post-death procedures, and the number of registrants has drastically increased after introducing the organ donor registration to young adults.³²⁴ By giving informational brochures about estate planning to individuals starting at the age of eighteen, estate planning will become more commonplace.³²⁵

3. *Can the Estate Planning Prompt and Informational Brochure Be Distributed in an Online Platform?*

Due to the COVID-19 pandemic, many practices have moved to an online platform, such as driver's license renewal appointments at the DMV.³²⁶ Because the COVID-19 pandemic is ongoing as of the publication of this Comment, there is no set date as to when appointments will return to in person.³²⁷ Many businesses that have switched to online platforms have mentioned the possibility of remaining online indefinitely.³²⁸ Luckily, there

319. See Maureen Berry, *Why Should Young People Have a Will?*, ALL ABOUT ESTS. (June 22, 2018), <https://www.allaboutestates.ca/why-should-young-people-have-a-will-1/> [http://perma.cc/R676-G6VL]; 8 *Reasons Young People Should Write a Last Will and Testament*, UNIQUE EST. L. (June 24, 2013), <https://uniqueestatelaw.com/2013/06/24/8-reasons-young-people-should-write-a-last-will-and-testament/> [http://perma.cc/R4W4-M3JL].

320. See Berry, *supra* note 319.

321. Author's original thoughts.

322. Author's original thoughts.

323. *How to Apply for a Texas Driver License as a Teen*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/how-apply-texas-driver-license-teen#:~:text=Phase%20II%20%E2%80%93%20Provisional%20Driver%20License%20You%20must,completed%20behind-the-wheel%20portion%20of%20driver%20education%2C%20which%20includes> (last visited Nov. 11, 2020) [http://perma.cc/2NPB-SU7H].

324. See *About Donate Life Texas*, *supra* note 161.

325. See *supra* Section III.B.3.b.

326. See *Driver's License Services, Extensions, Waivers, and COVID-19 Information*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/DriverLicense/covid-19.htm> (last visited Nov. 6, 2020) [https://perma.cc/4R6R-5K6Z].

327. Author's original thoughts.

328. See Ari Levy, *The Next Normal: Working from Home Is Here to Stay, Even When the Economy Reopens*, CNBC (May 11, 2020, 9:00 AM), <https://www.cnbc.com/2020/05/11/work-from-home-is-here>

is no reason why the estate planning prompt and informational brochure cannot be distributed online.³²⁹ The prompt would simply consist of a box located on the driver's license renewal form, which is already distributed online.³³⁰ In addition, organ donation is also offered online and is what the estate planning prompt and brochure should work to mirror.³³¹ Under normal circumstances, the informational brochure will be created online and printed in order to distribute at the DMV; however, without in-person appointments, the distribution of these brochures will be more efficient by simply attaching the brochure as a PDF to the driver's license renewal form.³³² In addition, a link will take individuals directly to the website, where more information will be provided.³³³ All organ donor information distributed in-person is also included on the DMV's website in a separate section.³³⁴ It would be simple to add a section on wills to the DMV website that includes information on wills and how to make one.³³⁵

4. *Is This Essential Enough to Be Adopted by the DMV?*

The organ donation process was incorporated into the DMV under a broad interpretation of Section 522.053(a) of the Transportation Code.³³⁶ The wide-ranging language is also the reason that the estate planning prompt could be adopted by the DMV.³³⁷ One possible counterargument questions whether the estate planning prompt and informational brochure is essential enough to be included in the Code.³³⁸ Comparing the real-life effects of the prompting system to the organ donor registry will reveal whether it is significant enough to include.³³⁹ Some may question why this prompting system should be included in the driver's license renewal process over other life-impacting forms not already provided at the DMV.³⁴⁰ Wills are extremely important because they determine how your estate is to be distributed upon death.³⁴¹ Prompts and informational brochures concerning wills have a place

-to-stay-after-coronavirus.html [http://perma.cc/H524-EEG8].

329. *See id.*

330. *See supra* Section III.B.3.

331. *See Organ Donation FAQs*, HEALTH RES. & SERV. ADMIN., <https://www.organdonor.gov/about/facts-terms/donation-faqs.html> (last visited Dec. 5, 2020) [https://perma.cc/5HBC-9CDP].

332. Author's original thoughts.

333. Author's original thoughts.

334. *Texas Organ, Tissue Donor Program Tops Eight Million Registrants*, TEX. DEP'T PUB. SAFETY (Mar. 9, 2016), <https://www.dps.texas.gov/news/texas-organ-tissue-donor-program-tops-eight-million-registrants> [http://perma.cc/7H6U-FAPF].

335. Author's original thoughts.

336. *See* TEX. TRANSP. CODE ANN. §§ 522.053(a), 522.151–154.

337. *See id.*

338. Author's original thoughts.

339. Author's original thoughts.

340. Author's original thoughts.

341. *See supra* Section II.A.

in the DMV because of the close relationship between vehicles and death.³⁴² Crashes are a leading cause of death in the United States.³⁴³ In 2018, 36,835 Americans died in automobile crashes.³⁴⁴ Due to the close nexus between vehicles and death, wills have a place in the DMV because they help people think about how they want to distribute their estate in the case of death, just as they do when they think about if they want to donate their organs through the organ donation process.³⁴⁵

D. Practical and Policy Considerations

Questions of practicality and policy are also important to consider when proposing a new idea; however, the estate planning prompt and informational brochure is a practical solution because the state legislature could easily mirror the organ donation process.³⁴⁶ In addition, the program could be easily expanded to many other places, not just the DMV.³⁴⁷ The prompt and brochure could also be adopted by all states in their respective DMV's, which would positively impact public policy.³⁴⁸

1. All State Incorporation

Estate planning is important everywhere, not just in Texas; therefore, all states should focus on mitigating the issue of people dying intestate and with outdated wills.³⁴⁹ Each state could benefit from adopting the estate planning prompt and informational brochure and incorporating it into the driver's license renewal process due to the prompt's ability to reach thousands of drivers with licenses.³⁵⁰ The distribution of the prompt and brochure during the driver's license renewal process can easily expand to all states because each state has a DMV.³⁵¹ The organ donation process has taken advantage of this broad platform by partnering with the DMV in each state.³⁵² Since partnering with the DMV, the number of organ donor registrants in Texas has

342. Author's original thoughts.

343. See *Global Road Safety*, CTDS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/injury/features/global-road-safety/index.html> (last visited Jan. 6, 2021) [<http://perma.cc/J8EU-42XK>].

344. *Fatality Facts 2019 Yearly Snapshot*, INS. INST. HIGHWAY SAFETY (Mar. 2021), <https://www.iihs.org/topics/fatality-statistics/detail/yearly-snapshot> [<http://perma.cc/NJM5-5JJG>].

345. Author's original thoughts.

346. Author's original thoughts.

347. See *supra* Section III.B; *infra* Section III.D.2.

348. See *infra* Section III.D.1.

349. See *supra* Section II.C.

350. See *Highway Statistics, Licensed Drivers, By State 1949-2014*, U.S. DEP'T TRANSP. FED. HIGHWAY ADMIN., <https://www.fhwa.dot.gov/policyinformation/statistics/2014/dl201.cfm> (Nov. 17, 2016) [<http://perma.cc/9TCF-YQ3U>].

351. See *50 State DMV Links*, NEV. DEP'T MOTOR VEHICLES, https://dmvnev.com/50_state_dmv_list.html (last visited Jan. 7, 2021) [<http://perma.cc/G4F7-K6EU>].

352. See *Sign Up to be an Organ Donor*, HEALTH RES. & SERV. ADMIN., <https://www.organdonor.gov/sign-up> (last visited Jan. 7, 2021) [<http://perma.cc/55D4-TKA7>].

increased by about 11 million people.³⁵³ By implementing this prompt and brochure in the DMV, there will likely be a similar increase in the number of people with a will, which may be further multiplied if each state's DMV is involved.³⁵⁴

2. *Expanding the Distribution of the Informational Brochure*

In the future, the informational brochure could be distributed in a variety of places in addition to the DMV.³⁵⁵ For example, this brochure could be given to students when they graduate high school and to individuals when they apply for a concealed handgun license, fishing license, boating license, or hunting license.³⁵⁶ The informational brochure could also be sitting out in attorneys' offices and doctors' offices ready for clients and patients to take.³⁵⁷ By expanding the availability of the estate planning brochure, more of the population will gain the knowledge needed to create a will, which will eventually increase the number of Americans with one.³⁵⁸ By distributing the brochure at additional places, individuals will be constantly reminded to update their will.³⁵⁹ By receiving information about wills roughly once every eight years through the driver's license renewal process, more people are likely to update their wills.³⁶⁰ Additionally, if the distribution of informational brochures were expanded to include places like doctors' offices and attorneys' offices, or if the brochures were provided to people when they are getting their boating, hunting, fishing, or concealed handgun licenses, individuals would be prompted even more often to update their wills.³⁶¹ The options are endless with something as simple as a brochure, as seen through the expansion of the organ donation brochure.³⁶²

IV. CONCLUSION

A majority of Americans die without a will, which causes the courts to be flooded with cases concerning the disbursement of their estate.³⁶³ Cases

353. See *supra* Section II.D.4.

354. See *supra* Section II.D.4.

355. See *infra* notes 356–64 and accompanying text.

356. See also *Increasing Registrations in Texas*, DONATE LIFE TEX. (Nov. 6, 2020), <https://capitol.texas.gov/tlodocs/85R/handouts/C4102018041910001/f3a49198-2a92-4061-a6e4-9a682c59ac8e.PDF> [<https://perma.cc/XD3G-6PUK>] (discussing the dramatic increase in donor registrants as a result of the registry partnering with the Texas Department of Public Safety and the Texas Department of Motor Vehicles).

357. Author's original thoughts.

358. Author's original thoughts.

359. Author's original thoughts.

360. See *supra* Section III.B.1.

361. See, e.g., *Increasing Registrations in Texas*, *supra* note 356.

362. See *supra* Section II.D.6.

363. See Cobb, *supra* note 115.

are also regularly brought concerning outdated wills.³⁶⁴ A leading reason behind the lack of wills in America is the absence of knowledge on the subject.³⁶⁵ The estate planning prompt and informational brochure will work to mitigate these issues by changing the negative stigma surrounding the estate planning document, by increasing the number of people who have the knowledge needed to create a will, and by normalizing the form.³⁶⁶ The prompt and brochure will change the negative connotation of a will by reaching young people at the age of eighteen, when death is likely the last thing on their minds.³⁶⁷ The prompt will also work as a mandatory reminder for individuals to update their wills throughout their lives, which will help to mitigate the amount of cases brought over outdated wills.³⁶⁸ The lack of knowledge on the subject will deplete because this prompt and brochure will effectively reach over 85% of the total U.S. population by being adopted by the DMV.³⁶⁹ Lastly, the estate planning form will eventually become standard in society due to it reaching so many Americans at such a young age.³⁷⁰ Hopefully, like the organ donation process, a partnership between estate planning and the DMV will drastically raise the number of individuals with a will, while actively decreasing the number with an outdated will.³⁷¹ This partnership, along with the future expansion of the brochure's availability, will likely substantially diminish the amount of litigation brought each year over an individual dying intestate, or with an outdated will.³⁷²

364. See *supra* Section III.B.1.a.

365. See *id.*

366. See *supra* Sections III.C.2, III.B.3.b, III.B.2.

367. See *supra* Section III.C.2.

368. See *supra* Section III.B.1.a.

369. See *supra* Section III.B.3.b.

370. See *supra* Section III.B.2.

371. Author's original thoughts.

372. Author's original thoughts.