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THE SKINNY ON BMI-BASED HIRING: AN ASSESSMENT OF THE LEGALITY AND EFFECTIVENESS OF ISRAEL'S WEIGHT RESTRICTION LAW

INTRODUCTION

There is nothing novel about ultra-thin models succumbing to eating disorders in the fashion industry.¹ Legislative efforts to curb those disorders—and, by extension, to influence the body images of the general public—are, however, quite revolutionary.² The “Law for Restricting Weight in the Modeling Industry” (“Weight Restriction Law” or “Law”) passed in the Israeli Knesset (Parliament) on March 19, 2012 and is the first law of its kind.³ The ban represents Israel’s response to rising rates of eating disorders⁴ and the potential link between exposure to images of ultra thin models and poor body image of the consumer.⁵

This Note asserts that Israel’s Basic Law: Freedom of Occupation⁶ stands as an insurmountable hurdle to the future legality of the Weight Restriction Law. In light of recent decisions favoring the broad reach of the freedom of occupation,⁷ a potential legal challenge of the Law would ultimately end in its demise. Although the Israeli Knesset has carved out specific exceptions that allow for discriminatory hiring policies based on

1. See generally Cassandra A. Soltis, *Dying to be a Supermodel: Can Requiring a Healthy BMI Be Fashionable?*, 26 J. CONTEMP. HEALTH L. & POL’Y 49 (2009).

2. Sarah Budow, Note, *Role-Modeling: How the Americans with Disabilities Act Blocks BMI-Based Hiring Bans in the United States*, 20 CARDOZO J.L. & GEND. 139, 140 (2013).

3. Law for Restricting Weight in the Modeling Industry, 5772-2012 SH No. 2347 p. 230 (Isr.).

4. *Statistics about Women’s Health in Israel*, WOMEN AND THEIR BODIES (2013), <http://www.wtb.org.il/english/womens-health-information-center/data/>. While eating disorders are generally on the rise in most Western cultures, health experts say that eating disorders are a seriously underreported disease among Orthodox Jewish communities: “Israel has one of the highest rates of anorexia, bulimia and binge eating in the world.” *Eating Disorders Rising Problem among Orthodox Jews*, THE JERUSALEM POST (Dec. 15, 2010), <http://www.jpost.com/LifeStyle/Eating-disorders-rising-problem-among-Orthodox-Jews>. Mandated food rituals such as fasting and remaining kosher can also exacerbate the unhealthy relationship many Jewish individuals have with food and nutrition. *Id.*

5. Catherine Pearson, *Fashion and Eating Disorders: How much Responsibility Does the Industry Have?*, HUFFINGTON POST, Sept. 13, 2011, http://www.huffingtonpost.com/2011/09/13/fashion-eating-disorders-industry-responsibility_n_955497.html. Several recent studies, while admittedly inconclusive, seem to find some link between viewing images of thin models and decreased self-esteem among consumers. See discussion *infra* note 35.

6. *Basic Law: Freedom of Occupation*, THE KNESSET, Mar. 2002, available at https://www.knesset.gov.il/laws/special/eng/basic4_eng.htm.

7. See discussion *infra* note 130.

certain qualifications,⁸ the personalized assessments, the attenuated nature between the model's well-being and the consumer's safety, and the paternalistic nature of relieving models of responsibility for their own health would, if challenged, defeat the law as illegally discriminatory and restrictive of the freedom of occupation.

Part I will provide some background on eating disorders as to their manifestations, symptoms, and prevalence in the modeling industry and beyond. Part II will track the link between the modeling industry and the increase in eating disorders as motivations for and explanations of the Weight Restriction Law. Part III will describe the relevant purposes and provisions of Israel's Basic Laws that address whether or not a law such as the Weight Restriction Law will withstand a legal challenge. Part IV will demonstrate, by way of recent Basic Law: Freedom of Occupation litigation, how the Weight Restriction Law will be struck down as illegally restrictive of occupational freedom once challenged.

I. THE MODELING INDUSTRY AND EATING DISORDERS

A. Anorexia, Bulimia, and Other Eating Disorders

Fears that eating disorders are plaguing impressionable youths are not unfounded.⁹ Eating disorders are syndromes featuring disturbances in eating patterns involving serious concern about body image and weight.¹⁰ The most common manifestation, anorexia nervosa ("anorexia") features the refusal to maintain a normal body weight, a serious fear of putting on weight, and a distorted self-image causing the patient to skip meals or severely under-eat.¹¹ This intense calorie restriction has dire effects.¹²

8. See discussion *infra* Part II.C.

9. Eating disorders are most common among women ages 12–25 years old, with 95% of individuals with eating disorders falling within that age group. *Eating Disorder Statistics*, NAT'L ASS'N OF ANOREXIA NERVOSA AND ASSOCIATED DISORDERS, Oct. 11, 2013, <http://www.anad.org/get-information/about-eating-disorders/eating-disorders-statistics/>. Further, anorexia represents the third most common chronic illness among adolescents. *Id.*

10. See Budow, *supra* note 2, at 146. That "serious concern" can manifest itself in dieting, skipping meals, fasting, smoking, vomiting, taking laxatives, or in excessive workouts. *Eating Disorder Statistics*, *supra* note 9.

11. Melinda Smith and Jeanne Segal, *Anorexia Nervosa*, HELP GUIDE (Aug. 2015), <http://www.helpguide.org/articles/eating-disorders/anorexia-nervosa.htm>.

12. *Id.* When the body is deprived of the nutrients it needs to function, it transitions into starvation mode where the heart rate slows to conserve energy. The body begins to "consume itself" and symptoms such as depression, weakness, constipation, gum damage, dizziness and fainting start to take effect. Anorexia begins to take its toll on the brain and nerves, on hair, the heart, blood, muscles, joints, kidneys, intestines, hormones and on the skin as well. The most serious of symptoms stem from irregular heart palpitations, which may lead to death by heart failure. *Id.*

While eating disorders like anorexia can be linked to the modern culture's idealization of thinness, they are complex conditions that take root from numerous social, biological and emotional factors.¹³

Another common eating disorder is bulimia nervosa ("bulimia"), which, like anorexia, generally features low self-esteem and a distorted body image.¹⁴ Bulimia is characterized by constant, compulsive binge eating followed by various efforts to avoid gaining weight.¹⁵ Those suffering from anorexia, bulimia, and other eating disorders often have other non-treated health issues, the most common of which is depression.¹⁶ While mortality estimates among those with eating disorders vary, it is agreed that eating disorders represent the highest mortality rate of any other mental illness.¹⁷

Anorexia, bulimia, and other eating disorders are most prevalent among teenagers and young females.¹⁸ Over ninety-five percent of individuals afflicted with eating disorders are between the ages of 12 and 25 years old.¹⁹ Anorexia ranks as the third most common chronic illness among adolescents.²⁰ Further, the mortality rate associated with anorexia is over ten times higher than the mortality rate associated with all other causes of death for females aged 15–24 years old.²¹ Although eating disorders feature the highest mortality rates of all mental disorders, the statistics on how many individuals die annually from these disorders are not truly representative as often the medical complications of death—heart failure, suicide, organ failure—are reported in place of the eating disorder that led to those complications.²²

13. *Id.* Anorexic individuals are often overachievers who strive for perfection in all aspects of their lives. They may face family or social pressures to be thin including "participation in an activity that demands slenderness, such as ballet, gymnastics, or modeling." Further, genetic predispositions and brain chemistry may also play into the development of anorexia. *Id.*

14. Melinda Smith & Jeanne Segal, *Bulimia Nervosa*, HELP GUIDE (Sept. 2015), <http://www.helpguide.org/articles/eating-disorders/bulimia-nervosa.htm>.

15. *Id.* Bulimia typically features vomiting or other methods of eliminating food from the body. Outside of just self-induced vomiting, it can involve using laxatives, enemas, diuretics, extreme crash diets, and severe over-exercising. *Id.*

16. *See* Budow, *supra* note 2, at 146. *See also* *Eating Disorder Statistics*, *supra* note 9. Almost half of all individuals with eating disorders meet the criteria for depression. *Id.*

17. *Id.* Outside of self-induced poor health leading to death, the second most deadly complication of eating disorders, such as anorexia, is suicide. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

B. *The Prevalence of Eating Disorders in the Modeling Industry*

Females in aesthetic careers, which depend on body-type, such as models, figure skaters, ballerinas, and gymnasts, represent the group with the highest risk for and prevalence of eating disorders.²³ Career pressure, perfectionism, competitiveness, repetitive routines, depression, body image distortion, and high self-expectations tend to be common personality traits, which often plague this group.²⁴ Further, professional models may evidence a significantly higher drive for thinness and dysfunctional investment in appearance than the rest of the population.²⁵ However, little research has actually assessed whether the pressures of the profession trigger eating disorders among models or if the modeling industry is preferable to girls with preexisting syndromes of eating disorders.²⁶ Critics, in light of inconclusive research, often find the latter argument compelling.²⁷

However, a recent study by the British Fashion Council aimed at uncovering how much pressure models face to stay thin and what effect those pressures might have upon them found startling correlations between modeling and the development of an eating disorder.²⁸ The study indicates that the fashion industry's obsession with size zero has translated to eating disorders among at least 40% of models.²⁹ This figure yields to a myriad of even more upsetting statistics, considering that today's catwalk models weigh at least 23% less than the average woman,³⁰ a female between the ages of 18–34 has a slim 7% chance of being as thin as a runway model,³¹

23. *Id.*

24. *Id.*

25. Viren Swami & Emilia Szmigielska, *Body Image Concerns in Professional Fashion Models: Are They Really an At-risk Group?*, PSYCHIATRY RESEARCH, May 15, 2013. This drive for thinness, some argue, may be more industry-imposed than self-imposed. *See, e.g.*, Christian Nordqvist, *Fashion Model Scouts Target Girls with Eating Disorders*, MEDICAL NEWS TODAY, Apr. 21, 2013, <http://www.medicalnewstoday.com/articles/259412.php>. This industry-wide demand for waif-like models climaxed when modeling agents, casting for Stockholm Fashion Week, were recruiting from outside of the Stockholm Center for Eating Disorders. *Id.*

26. Antonio Preti, Ambra Usai, Paola Miotto, Donatella Rita Petretto, & Carmela Masala, *Eating Disorders Among Professional Fashion Models*, PSYCHIATRY RESEARCH, Apr. 3, 2005. Because the results of the existing research are inconclusive, it is not known whether or not girls prone to eating disorders are more likely to maintain the ideal body weight required to model and to be successful in the competitive professional fashion industry.

27. *See* Budow, *supra* note 2, at nn.71–73.

28. Christian Nordqvist, *Eating Disorders Among Fashion Models Rising*, MEDICAL NEWS TODAY, July 7, 2008, <http://www.medicalnewstoday.com/articles/76241.php>.

29. *Id.*

30. *Eating Disorders: Body Image and Advertising*, HEALTHY PLACE, Jan. 14, 2014, <http://www.healthyplace.com/eating-disorders/articles/eating-disorders-body-image-and-advertising/>.

31. *Id.*

and only a 1% chance of being as thin as a supermodel.³² In the face of these alarming numbers, some researchers believe that these underweight and unhealthy models may be purposefully normalized unobtainable figures, necessarily skinny to create an unobtainable desire that drives product consumption.³³

II. THE “LAW FOR RESTRICTING WEIGHT IN THE MODELING INDUSTRY”

A. *Motivations Stemming from the Link Between Exposures to Thin Models and Developing an Eating Disorder*

Countless studies have alluded to the fact that images of waif-like females in the media adversely affect the psyche of young female consumers.³⁴ While certain studies have gleaned a positive correlation between repeated media exposure to thinness, disordered eating and body dissatisfaction,³⁵ most studies analyzing these variables face several drawbacks: representativeness of class and tempered effects of data studies³⁶ as well as denial being a symptom of eating disorders.³⁷ The correlation is strong enough, however, for some to deem the standard of thinness required in the fashion industry as a “public health threat” for the

32. *Id.*

33. *Id.* In recognition of this truth and in denial of any possibility of body-type demand change in the modeling industry, senior editor of Marie Claire, Antonio Mancinelli, remarked “designers sell dreams.” Elisabetta Povoledo, *Milan Wants to See More Meat on Models*, N.Y. TIMES, Sept. 15, 2006, http://www.nytimes.com/2006/09/15/world/europe/15iht-milan.2829566.html?_r=0.

34. See, e.g., Kimberly Bissell, *Skinny Like You: Visual Literacy, Digital Manipulation and Young Women's Drive to Be Thin*, 6 SIMILE 1 (2006); Kathy Wilcox & James Laird, *The Impact of Media Images of Super-Slender Women on Women's Self-Esteem: Identification, Social Comparison, and Self-Perception*, 34 J. RESEARCH IN PERSONALITY 278, 278 (2000); Eric Stice et al., *Relation of Media Exposure to Eating Disorder Symptomatology: An Examination of Mediating Mechanisms*, 103 J. ABNORMAL PSYCHOLOGY 836, 839 (1994).

35. See, e.g., Megha Saatchi, *Eating Disorders: Body Image and Advertising*, HEALTHY PLACE MENTAL HEALTH CHANNEL, Apr. 25, 2000, <http://www.healthypace.com/eating-disorders/articles/eating-disorders-body-image-and-advertising/>. The study, which used a sample of female Stanford undergraduate and graduate students, found that 68% of participants felt worse about their personal appearance after looking through women's magazines. *Id.* Further, the group shown only images of extremely thin models expressed significantly lower self-evaluations than those who had seen average and plus-sized models. *Id.* Ultimately, the study concludes, women frequently compare their appearances to those around them and the comparison to idealized body images lowers their satisfaction with their own attractiveness. *Id.* Whether or not this decreased self-satisfaction leads women to pursue unhealthy weight-control habits has yet to be found. *Id.*

36. Stice et al., *supra* note 34, at 839.

37. Marianne Garvey, *10 Things I Learned at Fashion Week*, N.Y. POST, Sept. 13, 2007, <http://nypost.com/2007/09/13/10-things-i-learned-at-fashion-week/>. A look into New York fashion week exposes denial of super-thin models, who are allegedly given Kleenexes as sustenance “to fill up without calories.” *Id.*

girls proven to emulate the weights of the models they repeatedly see in the media.³⁸ The health concerns extending from eating disorders are thus not limited to models, but extend to the consumers of images featuring super-thin models.³⁹

Add the internalization of the thinness standard in the media industry to recent starvation-induced model deaths to truly understand the motivation behind the Weight Restriction Law.⁴⁰ Uruguayan model Luisel Ramos—who was rumored to have a significantly underweight body mass index (“BMI”) of 14.5—died of heart failure while descending from the catwalk during Uruguay’s Fashion Week in 2006.⁴¹ Later that year, the admittedly anorexic Brazilian fashion model Ana Carolina Reston passed away with a BMI of just 13.4.⁴²

In response to the deaths of models Ramos and Reston some fashion industries took steps toward incremental change.⁴³ Participation in Fashion Week in both Madrid and Milan now requires BMI’s of at least 18 to walk the runway.⁴⁴ Other fashion associations, such as the Council for the

38. Soltis, *supra* note 1, at 51.

39. *Id.* However, this research, as with most research in the realm of eating disorders, is inconclusive. See Ellie Krupnick, *Women’s Self-Esteem Affected by Idealized Female Images . . . But Not in the Way you Think*, THE HUFFINGTON POST, Feb. 27, 2013, available at http://www.huffingtonpost.com/2013/02/27/womens-self-esteem_n_2774083.html. A new report from professors at University of Michigan and University of Manitoba, theorizes that “the effect of idealized female images on regular women differs based on how blatantly or subtly the images are presented.” *Id.* The study’s interesting conclusion found that when idealized, typically photo-shopped women were blatantly presented, women actually felt better about themselves. *Id.* Further, in her study, “The Skinny Celebrities: Parasocial Relationships Moderate the Effects of Thin Media Figures on Women’s Body Image,” author Ariana Young argues that the one-sided, or parasocial, relationship individuals establish with slender celebrities they like or relate to protects them from low self-esteem. Ellie Krupnick, *Skinny Celebrities May Make Us Feel Better About Ourselves, New Study Shows*, THE HUFFINGTON POST, Jan. 22, 2012, available at http://www.huffingtonpost.com/2012/02/22/skinny-celebrities-self-esteem_n_1293552.html.

40. Soltis, *supra* note 1, at 49.

41. *Id.* 22-year-old model Luisel Ramos died of heart failure on her walk from the catwalk to the dressing room during Motevideo Fashion Week in Uruguay. *Fashion Exposed: Anorexic Models*, THE FRONT ROW VIEW, Dec. 8, 2011, <http://www.thefrontrowview.com/2010/12/fashion-exposed-anorexic-models.html>. Ramos weighed a scant 97 pounds despite her 5’9 frame, rumored to be the work of her Diet Coke and lettuce diet. *Id.* Four months following Luisel’s death, her 18-year-old sister, also a model, suffered from a heart attack stemming from malnutrition. *Id.*

42. *Id.* Reston died from kidney failure after supposedly taking on a diet of just apples and tomatoes. *Id.* Her autopsy revealed her struggle with both anorexia and bulimia. *Id.*

43. *Id.*

44. Tayla Minsberg, *What the U.S. Can—and Can’t—Learn from Israel’s Ban on Ultra-Thin Models*, THE ATLANTIC, May 9, 2012, available at <http://www.theatlantic.com/international/archive/2012/05/what-the-us-can-and-cant-learn-from-israels-ban-on-ultra-thin-models/256891/2/>. Milan now requires that runway models have a BMI within the optimal range of 18 to 22 as provided by the World Health Organization. See, e.g., Povoledo, *supra* note 33. Most remarkably, designers and agents “have little leverage to oppose the restriction because the Madrid government foots the bill for everything [fashion week related] except the clothes.” *Id.*

Fashion Designers of America (“CFDA”), took initiative to encourage healthier lifestyles among models but imposed no such BMI requirements.⁴⁵ Most notable among the CFDA’s initiatives is the mandate to review model identification and ban models from runway shows unless they are over the age of sixteen.⁴⁶

In Israel, the 2007 anorexia-induced death of model Hila Elmalich fueled the fire for fashion photographer and agent Adi Barkan to sponsor the Weight Restriction Law.⁴⁷ Barkan, who has already taken a stand against the industry’s ideal size, refuses to work with models that have BMI’s below 19.⁴⁸ But ultimately, Knesset members Rachel Adatto⁴⁹ and Danny Danon⁵⁰ drafted the law, admonishing that scary-skinny models can no longer be allowed to serve as the ideal standard for impressionable Israeli youths.⁵¹

45. See, e.g., Ellie Krupnick, *CFDA Health Guidelines For Models Released, Focus on Age & Eating Disorders*, THE HUFFINGTON POST, Jan. 27, 2012, available at http://www.huffingtonpost.com/2012/01/27/cfda-health-guidelines-for-models_n_1236213.html. In fact, the Council of Fashion Designers of America (“CFDA”) health guidelines focus on preventative education instead of restrictive standards. The standards include an education portion identifying early warning signs of eating disorder development, requirement that healthy snacks are available back stage during runway shows, and identification checking to ensure models are over the age of sixteen. *Id.* Many, including designer Diane Von Furstenberg, have publicly criticized the CFDA for their failure to assume responsibility for the weight-control methods wreaking havoc on waif-like models. Melissa Whitworth, *Model Health Guidelines for New York Fashion Week released by the CFDA*, TELEGRAPH, Jan. 27, 2012, <http://fashion.telegraph.co.uk/news-features/TMG9043070/Model-health-guidelines-for-New-York-Fashion-Week-released-by-the-CFDA.html>.

46. *Id.*

47. See Budow, *supra* note 2, at 154; See also Simon McGregor-Wood & Karen Mooney, *Did Model Die from Pressure to be Thin?*, ABC NEWS, Nov. 19, 2007, available at <http://abcnews.go.com/GMA/Health/story?id=3883944&page=1#.UKjtL-Oe-Nw>.

48. Budow, *supra* note 2, at 154.

49. Adatto is an Israeli gynecologist, lawyer and politician who served as a member of the Knesset for the Kadima and Hanuah parties between 2009 and 2013. *Knesset Members*, THE KNESSET, available at http://www.knesset.gov.il/mk/eng/mk_eng.asp?mk_individual_id_t=820.

50. Danon serves in the Knesset under the Likud National Liberal Movement party. *Danny Danon*, THE KNESSET, available at http://www.knesset.gov.il/mk/eng/mk_eng.asp?mk_individual_id_t=828. Danon calls the Law a “knockout in the war against anorexia,” which sends a message to the modeling industry that “life is more important than money.” Chana Ya’ar, *Knesset Passes New Anorexia Law*, ISRAEL NAT’L NEWS, Mar. 20, 2012, available at <http://www.israelnationalnews.com/News/News.aspx/153937#.VlleXeDApUQ>.

51. Sam Ser & Hilary Zaken, *Knesset Passes ‘Skinny Models Law’*, THE TIMES OF ISRAEL, Mar. 19, 2012, <http://www.timesofisrael.com/knesset-passes-skinny-models-law/>. In her discussions on the Knesset floor, MK Rachel Adatto argued: “1,500 of our youth join this incurable cycle [disordered eating] every year . . . Teenagers see celebrities and associate success and fame with thinness. This law must go into the law books of the State of Israel.” *The ‘Photoshop Law’*, SIMPLY YOU, Dec. 14, 2014, <http://simply-you.org/activities/pslaw/>.

B. Purposes and Goals

Israel's Weight Restriction Law gained numerous supporters and sponsors following the anorexia-related death of famous Israeli fashion model Hila Elmalich.⁵² The country was both saddened and shocked by the sudden death of young Elmalich.⁵³ Couple Elmalich's starvation-induced death with Israel's progressive two-size drop in sample sizes and the country's concerns are warranted.⁵⁴ Ten percent of young women and an estimated 125,000 to 500,000 Israeli women suffer from eating disorders,⁵⁵ with anorexia representing the leading cause of death for 15 to 24 year old Israeli females.⁵⁶ From the catwalk to commercials to print campaigns,⁵⁷ the Weight Restriction Law is Israel's attempt to eliminate this epidemic of eating disorders among young Israeli women.⁵⁸

The Weight Restriction Law can be divided into two portions: the BMI-based hiring requirement and the advertisement-labeling requirement.⁵⁹ Under the BMI requirement, models⁶⁰ are required to show employers a medical authorization obtained three months prior to the performance date, detailing an appropriate BMI classification.⁶¹ The ban requires a BMI—calculated by the division of an individual's body weight

52. Budow, *supra* note 2, at 153.

53. *Id.* Hila Elmalich died at age 33 with a weight of 22 kilograms, or 49 pounds, the average weight of a seven-year old child. *Another Fashion Model Dies of Anorexia—The World Yawns*, THE F WORD FOUND, Nov. 23, 2007, available at <http://the-f-word.org/blog/index.php/2007/11/23/another-fashion-model-dies-of-anorexia-the-world-yawns/>. Elmalich, arguably one of Israel's most famous fashion models, had been hospitalized several times over the years for her struggle with anorexia, which began when she was just 13 years old. *Id.* In 2007, Elmalich succumbed to anorexia, collapsing and dying in her home as a result of heart failure. *Id.* Longtime friend and fashion photographer, Adi Barkan, responded to Hila's death by initiating a campaign to "change the definition of beauty by encouraging models not to be skinny." Benji Lovitt, *A Healthy Guide to Modeling*, THE JERUSALEM POST, Nov. 28, 2007, available at <http://www.jpost.com/Arts-and-Culture/Music/A-healthy-guide-to-modeling>.

54. Jewish News One, 'Skinny Law' Bans Underweight Models to Fight Anorexia and Bulimia, YOUTUBE, May 7, 2012, <https://www.youtube.com/watch?v=ioNCJFUVAM>.

55. *Id.*

56. *Id.*

57. Weight Restriction Law, *supra* note 3.

58. See Ruth Levush, *A Matter of Size: Israel's New Legislation Against Too-Skinny Models*, LIBRARY OF CONG., Apr. 11, 2012, available at <http://blogs.loc.gov/law/2012/04/a-matter-of-size-israels-new-legislation-against-too-skinny-models/>.

59. *Id.* See also Budow, *supra* note 2, at 154.

60. The Law defines a model as "a person who is photographed for the purpose of the use of his or her body image for advertisement, promotion, or presentation of a product, a service, or a brand." Ruth Levush, *Israel: Restrictions on Depiction of Underweight Models in Commercials*, LIBRARY OF CONG., Mar. 26, 2012, available at <http://www.loc.gov/law/foreign-news/article/israel-restrictions-on-depiction-of-underweight-models-in-commercials/>.

61. *Id.*

from the square of his or her height⁶²—of at least 18.5 for adults, setting separate gender specific guidelines for adolescents.⁶³ A BMI lower than 18.5 is deemed underweight⁶⁴ and will disqualify the model from current work and the advertisement from reaching publication.⁶⁵

Requiring the medical authorization to be reviewed at the time of performance, whether on the catwalk or on the scene of the shoot, presumably forces the hiring agencies to change their practices.⁶⁶ The individual who reviewed and accepted the authorization is lawfully required to keep a copy of it for the statute of limitations period.⁶⁷ Because the individual companies printing the advertisements will not be held liable, the theory prays that noncompliant modeling agencies will lose business from a photographer or fashion house's unwillingness to work with underweight models.⁶⁸

The second portion of the Weight Restriction Law focuses on digitally enhanced images.⁶⁹ Any advertisements that have been Photoshop-edited or otherwise digitally enhanced to make a model appear thinner have to feature a clear label.⁷⁰ The label must be prominent—covering at least seven percent of the ad space—and feature a warning that the image has been digitally distorted.⁷¹ The goal behind this second portion is to discourage the digital alteration of photographs to trim away unwanted weight from models, or to at least warn the general public that such appearances are not realistic.⁷²

62. See Judy Siegel-Itzkovich, *Law Against Anorexic Models Goes Into Effect*, JERUSALEM POST, Jan. 1, 2013, <http://www.jpost.com/Health/Article.aspx?id=297980>.

63. *Id.*

64. *About BMI for Adults*, CDC, July 11, 2014, available at http://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/index.html.

65. *Id.*

66. See Budow, *supra* note 2, at 154.

67. *Id.*

68. *Id.*

69. *Id.* Israel is not the first country to consider intervening in digitally retouched or Photoshop-edited pictures. In fact, in 2011, the U.S. National Division of the Council of Better Business Bureaus discontinued a Cover Girl advertisement, which featured singer Taylor Swift, because it was deceptive and misleading. Cavan Sieczkowski, *Supermodels Without Photoshop*, INT'L BUS. TIMES, Apr. 11, 2012, available at <http://www.ibtimes.com/supermodels-without-photoshop-israels-photoshop-law-puts-focus-digitially-altered-images-photos>. Similarly, the U.K.'s Advertising Standards Authority banned several L'Oréal magazine ads featuring supermodel Christy Turlington because they were overly airbrushed. *Id.*

70. *Id.* The law itself does not comment on how one might know whether or not an ad has been edited or constricted, it simply gives the right to challenge a perceived violation to 'interested citizens.' Judy Siegel-Itzkovich, *Photoshop Law Gets Scientific Backing*, THE JERUSALEM POST, Dec. 9, 2013, available at <http://www.jpost.com/Health-and-Science/Photoshop-law-gets-scientific-backing-334392>.

71. *Id.*

72. Emma Reynolds, *Underweight Models BANNED in Israel to Fight Anorexia: New Law*

Exceptions to the BMI requirements include imported advertisements that are not specifically intended to reach the Israeli public and advertisements that fall outside of the commercial use category.⁷³ However, legitimate proof of public concern can be used to rebut the presumption of the latter exception.⁷⁴ The Israeli Minister of Industry, Trade and Labor works to continue implementing and overseeing the law via regulatory measures.⁷⁵ Violations of the Weight Restriction Law are civil offenses met with a fine.⁷⁶ Lawsuits alleging a violation of the law can be brought by interested citizens, such as relatives of individuals who have passed away from or have struggled with an eating disorder fueled by exposure to ultra-thin models.⁷⁷

C. Legality

A bill similar to the Weight Restriction Law was previously proposed in Israel's Knesset, but was rejected due to unfair discrimination⁷⁸ and the

Forces Women in Ads to Stay Healthy (and Faked Images have to be Identified too), MAIL ONLINE, Jan. 2, 2013, <http://www.dailymail.co.uk/news/article-2256025/Underweight-models-BANNED-Israel-fight-anorexia-New-law-forces-women-ads-stay-healthy-faked-images-identified-too.html>. Further, the ideal body type featured in advertisements is naturally possessed by less than 5% of the population. See *Eating Disorder Statistics*, ANAD, <http://www.anad.org/get-information/about-eating-disorders/eating-disorders-statistics/> (last visited Apr. 4, 2016). Instead of banning the use of Photoshop editing all together, the Law proposes a middle ground which allows designers and photographers artistic freedom while warning the public of the retouching. See Sieczkowski, *supra* note 69. One of the sources the Knesset relied on in making the decision to add warning labels to the advertisements was a study by Amy Slater, Marika Tiggemann, Bonny Firth, and Kimberley Hawkins, which found that the addition of warning labels to retouched magazine images reduced levels of body dissatisfaction among consumers. *Id.*

73. See Budow, *supra* note 2, at 154.

74. *Id.*

75. *Id.* Involved, interested citizens, such as sponsor Adi Barkan also work to uphold the law: "We have gathered all the evidence to sue the companies that did not meet the criteria dictated by the 'Photoshop Law' and continue the horror of eating disorders . . . We are working together with attorney[s] . . . and the Social Litigation Clinic . . . to create a coalition that will assist in the enforcement of the law and promote further litigation." *The 'Photoshop Law,' supra* note 51.

76. Law for Restricting Weight, *supra* note 3; see Siegel-Itzkovitch, *supra* note 62, for more detail.

77. *Id.* The interested citizen category, while inclusive of those personally affected by eating disorders, generally includes all Israeli citizens as those who "could be" affected. *Id.* In reference to the Law's enforcement, sponsor Adi Barkan has said, "the law does not dictate punishment and is therefore not enough . . . we will continue to act to tighten legislation and enforcement. *The 'Photoshop Law,' supra* note 51.

78. Under Israel's Employment (Equal Opportunities) Law 5748-1988, an employer cannot discriminate among his employees or among those seeking employ based on their "age, race, religion, nationality, country of origin, views, party or duration of reserve service." Employment (Equal Opportunities) Law 5748-1988, available at <http://www.tamas.gov.il/NR/rdonlyres/2654DA40-7F3A-44DE-AC90-813996BD7570/0/25.pdf>. Although weight is not yet a protected class under Israel's Employment Law, it was among the considerations leading the Knesset to defeat the initial version of

bill's alleged criminal nature.⁷⁹ The struggle between this type of weight discrimination and the desire to ameliorate public health still underlies the current Weight Restriction Law.⁸⁰ Israeli model Adi Neumann, who has an “underweight” BMI of 18.3, expressed resentment against the Law as it excludes healthy naturally thin individuals from their profession.⁸¹

Israel's constitutional “Basic Laws” feature the “Freedom of Occupation Law,” which guarantees the rights of Israelis to work in the profession of their choosing pending only their qualifications.⁸² This law forms the general understanding of Israel's antidiscrimination in employment laws.⁸³ The right to occupational freedom, however, can be limited if the government finds a compelling reason⁸⁴ and limits the law in a proportionate way.⁸⁵ The interest in public health and safety is, in the Knesset's eyes, worthy of overcoming the “Freedom of Occupation Law,” which could justify the Weight Restriction Law's legality.⁸⁶ Similarly, it seems unlikely the Knesset would pass this legislation if it did not think it could withstand the Israeli court system.⁸⁷ However, whether the Weight Restriction Law is an appropriate—or legal—way⁸⁸ to achieve the goal of public health and safety remains to be seen.

the Weight Restriction Law. *See* Levush, *supra* note 58. Ultimately, however, when the new version was proposed, following an election and Knesset reorganization, the issue did not carry much weight and did not stop or delay the bills passage. *Id.*

79. Alexandra Simmeron, *Israeli Law Bans Use of Underweight Models*, FASHION LAW CTR., May 19, 2012, <http://fashionlawcenter.com/?p=1107>. The first, defeated, draft of the bill was a criminal law, criminalizing both models and those employing them for their underweight status. Siegel-Itzkovich, *supra* note 70. According to Kadima MK and bill sponsor, Rachel Adatto, “the law is not perfect because it is civil rather than criminal in nature . . . this was forced on us as a compromise to advance the legislation . . . thus, one can only file a civil suit for damages.” *Id.* Adatto does not seem deterred by the civil distinction: “We are now preparing a lawsuit against one of the companies that bluntly violates the law.” *Id.*

80. *See* Budow, *supra* note 2, at 155.

81. *Id.*

82. Basic Law: Freedom of Occupation, 5754-1994, SH No. 1454 P. 90 (Isr.).

83. *See* Budow, *supra* note 2, at 155.

84. An “ordinary law can restrict the freedom to engage in an occupation only if it is enacted for a worthy purpose and for reasons of the public good.” Aharon Barak, *A Constitutional Revolution: Israel's Basic Laws*, YALE FACULTY SCHOLARSHIP SERIES, Jan. 1, 1993, available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4700&context=fss_papers&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Fsearch%3Fclient%3Dsafari%26rls%3Den%26q%3Disrael%27s%2Bbasic%2Blaws%26ie%3DUTF-8%26oe%3DUTF-8#search=%22israels%20basic%20laws%22.

85. *See, e.g.*, CA 6821/93 United Bank Mizrahi v. Migdal Coop. Vill. 49(4) PD 221 (1995) (Isr.).

86. *Id.*; *See* Levush, *supra* note 58, at 1. Note that the explanatory notes attached to the bill revealed findings that the media disseminates weight norms and conveys “hidden” messages “to resort to procedures of body change and weight reduction.” *Id.*

87. *See* Budow, *supra* note 2, at 155.

88. *See* discussion *infra* Part I.D.

D. Criticisms

While world eating disorder specialists have openly applauded the new laws for reducing pressure on young girls and removing the veil of unreality from digitally enhanced images,⁸⁹ the law has not been met with applause by all.⁹⁰ Critics focus on the legislation's perceived failure to address health concerns beyond weight itself.⁹¹ Top Israeli model Adi Neuman, for example, proposes a system to evaluate overall health because weight can change rapidly.⁹² In that same light, others attack the accuracy of the BMI test and doubt its overly simplistic equation in determining healthy weight ranges.⁹³

While the BMI is a cheap, easy and consistent measure of mass, many question its overall accuracy.⁹⁴ The BMI measures an individual's body fat and designates underweight, healthy, and overweight categories based on size appropriations.⁹⁵ Recent research shows that the BMI cannot distinguish between fat and muscle, nor does it differentiate between types and locations of fat.⁹⁶ Therefore, a naturally thin individual with a muscular build may pass muster under the Weight Restriction Law, but a naturally thin individual with low muscle density may be deemed unhealthy for no reason other than her genetic makeup.⁹⁷

Another common criticism is that in adopting the Weight Restriction Law, the Knesset limits the freedom of expression in the modeling industry in the name of protecting the Israeli public from eating

89. See Levush, *supra* note 58.

90. *Id.*

91. See Simmerson, *supra* note 79.

92. *Id.* According to Israeli news source, Deseret News, eating disorder expert David Herzong agrees with Neumann: “[o]ur weight can change hour to hour.” *Id.* at 2.

93. *Id.*

94. Alexandra Sifferlin, *Why BMI Isn't the Best Measure for Weight (or Health)*, TIME, Aug. 26, 2013, <http://healthland.time.com/2013/08/26/why-bmi-isnt-the-best-measure-for-weight-or-health/>.

95. *Id.*

96. *Id.* Stomach fat, for example, is often visceral fat and is far more harmful than fat sitting beneath the skin in other areas. However, the BMI could provide a healthy number for a naturally thin person with a concerning amount of visceral fat. *Id.*

97. Mail Foreign Service, *Israel Bans Advert Featuring Super Skinny Models in Bid to Crack Down on Eating Disorders (so Kate Moss and Naomi Campbell Are Out)*, MAIL ONLINE, Mar. 20, 2012, <http://www.dailymail.co.uk/news/article-2117725/Israel-bans-use-ultra-skinny-models-Kate-Moss-Naomi-Campbell-out.html>. For example, popular English supermodels Kate Moss and Naomi Campbell—who allegedly have BMIs of 17 and 16.5 respectively—would be out of a job in Israel. *Id.* Critics argue BMI standards, especially in an industry that attracts naturally thin individuals, unfairly target healthy, thin models. *Id.* See also Jonathan Lis & Sahar Shalev, *Knesset Passes Bill Banning Use of Underweight Models in Advertising*, HAARETZ, Mar. 20, 2012, <http://www.haaretz.com/print-edition/news/knesset-passes-bill-banning-use-of-underweight-models-in-advertising-1.419616>.

disorders.⁹⁸ American Constitutional Law professor Johnathan Turley finds the Law as a limitation on free expression and artistic freedom, which gives rise to legitimate speech⁹⁹ concerns.¹⁰⁰ Although Turley sympathizes with the law's motives, he disagrees with its "eat or starve" means.¹⁰¹ Further, the Law's opponents admonish that fashion designers are merely artists deserving of free speech.¹⁰²

III. BASIC LAWS IN ISRAEL

A. *Basic Law: Human Dignity and Liberty*

Like most countries following the common law tradition, Israel does not have a written constitution.¹⁰³ The country relies on its Basic Laws on human rights and civil liberties in making policy or in adjudicating disputes.¹⁰⁴ These laws set out constitutional rights and also include entrenchment clauses that make it difficult for the Knesset to abolish rights and for the courts to declare statutes unconstitutional.¹⁰⁵

98. See Simmerson, *supra* note 79, at 2.

99. When asked about free speech concerns, Knesset member Danny Danon acknowledged the inevitable conflict the Law creates between public health and freedom of speech, but reiterated strongly the state's right to decide "the content of magazines that [Israeli] children read." Yori Yanover, *'Anorexic Model' Bill to Ban Images of Dangerously Underweight People in Public Media*, THE JEWISH PRESS, Mar. 5, 2012, available at <http://www.jewishpress.com/news/israel/anorexic-model-bill-to-ban-images-of-dangerously-underweight-people-in-public-media/2012/03/04/0/?print>.

100. Johnathan Turley, *The Rubens Regulation: Knesset Tells Skinny Models to Eat or Starve*, JOHNATHAN TURLEY BLOG, Mar. 21, 2012, <http://jonathanturley.org/2012/03/21/the-rubens-regulation-knesset-tells-model-to-eat-or-starve/>. Turley further finds problematic the BMI test, the naïve view that the perception of beauty will change in response to legislation, and the irony that the skinny models and celebrities will stay skinny. *Id.*

101. *Id.*

102. Britney Free, *Too-Skinny Model Ban Takes Effect in Israel, Sparks Controversy*, THE HOLLYWOOD GOSSIP, Jan. 4, 2013, <http://www.thehollywoodgossip.com/2013/01/too-skinny-model-ban-takes-effect-in-israel-sparks-controversy/>. While sympathetic to the cause, eating disorder specialist Susan Ice criticizes the means used to achieve tackling the eating disorder issue in Israel. *Id.* She further critiques the correlation between images of overly-thin models and eating disorders: "Certainly I don't believe the modeling industry has caused the rise in eating disorders, but it makes it harder . . . it's a difficult recovery environment worshipping thinness as the beauty ideal." *Id.*

103. Daniel Elazar, *The Constitution of the State of Israel*, JERUSALEM CTR. FOR PUB. AFFAIRS (Aug. 2014), <http://www.jcpa.org/dje/articles/const-intro-93.htm>.

104. Basic law is typically translated into English as the Basic Law: Human Dignity and Freedom. See, e.g., Baruch Bracha, *Constitutional Upgrading of Human Rights in Israel: The Impact of Administrative Law*, 3 U. PA. J. CONST. L. 581 (2001).

105. Stephen Adler, *National Labor Law Profile: The State of Israel*, INT'L LABOUR ORG., June 17, 2011, http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158902/lang-en/index.htm. The entrenchment clause states that the Basic Law: Freedom of Occupation shall not be overridden by another law except passed by a majority of the members of the Knesset, subject to the court's potential approval: "the powers of the legislative branch are limited; and laws are subject to judicial review." Suzie Navot, *Constitutional Law of Israel*, DUNCAN KENNEDY DOCUMENTS, Apr.

The Basic Laws lay the framework for Israeli rights, all subject to rights being denied by “a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.”¹⁰⁶ Until 1992, Israel was without laws declaring enumerated human rights or civil liberties.¹⁰⁷ Now, The Basic Law: Human Dignity and Liberty is viewed as supreme law almost as if it had “constitutional force.”¹⁰⁸

B. Basic Law: Freedom of Occupation

The Basic Law: Freedom of Occupation was enacted in 1994.¹⁰⁹ The law’s purported purpose is to protect the freedom of occupation, granting each resident the right to engage in the occupation, profession, and or trade of his or her choice.¹¹⁰ However, this law, like The Basic Law: Human Dignity and Liberty, is subject to the Knesset’s passage of laws befitting the values of Israel enacted for a worthy purpose for reasons of public good.¹¹¹ The Knesset has entrenched Basic Law: Freedom of Occupation by stating that it cannot be changed except by a Basic Law passed by an absolute majority of all Knesset members.¹¹²

Similarly, the Basic Law: Freedom of Occupation has made Israeli freedom of occupation a basic right, which has been held by the Israeli Supreme Court to restrict unreasonable legislation, which limits people from doing certain types of work.¹¹³ Further, the Israeli Supreme Court has

12, 2007, http://duncankennedy.net/documents/Is-Pal/First-Syllabus/Suzie-Navot_Constitutional-Law-of-Israel.pdf.

106. *Basic Laws*, THE KNESSET (Mar. 2002), available at https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

107. Ran Hirschl, *Israel’s “Constitutional Revolution”: The Legal Interpretation of Entrenched Civil Liberties in an Emerging Neo-Liberal Economic Order*, 46 AM. J. COMP. L. 427, 429 (1998).

108. Frances Raday, *Self-Determination and Minority Rights*, 26 FORDHAM INT’L L.J. 453, 470 (2003).

109. *Basic Law: Freedom of Occupation*, THE KNESSET (Mar. 2002), available at https://www.knesset.gov.il/laws/special/eng/basic4_eng.htm.

110. *Id.* The Basic Law: Freedom of Occupation further binds all Israeli authorities to respect the freedom of occupation of all Israelis: “This basic law shall not be varied, suspended, or made subject to conditions by emergency regulations.” *Id.*

111. *Id.* See also Aharon Barak, *A Constitutional Revolution: Israel’s Basic Laws*, YALE L. SCH. FACULTY SCHOLARSHIP SERIES, Jan. 1, 1993, available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4700&context=fss_papers&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Fsearch%3Fclient%3Dsafari%26rls%3Den%26q%3Dbasic%2Blaw%3A%2Bfreedom%2Bof%2Boccupation%2Bhow%2Binterpreted%26ie%3DUTF-8%26oe%3DUTF-8#search=%22basic%20law%3A%20freedom%20occupation%20how%20interpreted%22.

112. *Basic Law: Freedom of Occupation*, *supra* note 109.

113. Adler, *supra* note 105. The Basic Law: Freedom of Occupation similarly restricts non-proportionate legislation, which restricts people from taking up certain occupations. *Id.*

taken the view that Knesset statutes at odds with the Basic Laws should be reviewed in complete subservience to the words of the Basic Laws, only allowed to stand when furthering public good and human rights.¹¹⁴

IV. CASE LAW INTERPRETING THE BASIC LAW: FREEDOM OF OCCUPATION

A. Dan Frumer and CheckPoint Software Technologies Ltd. v. Radguard Ltd.

The *Check Point*¹¹⁵ case establishes the court's view that limitations on one's freedom of occupation will be enforceable only if special circumstances are present.¹¹⁶ In that case, Judge Adler, former president of the National Labor Tribunal, held that the existence of contractual undertakings are not the only considerations to be taken by Israeli courts in determining whether or not to enforce a non-compete clause.¹¹⁷ Adler further specified that at least one of a series of conditions must exist in order to consider enforcing a non-compete contract.¹¹⁸ Those circumstances are: the existence of a trade secret,¹¹⁹ special qualifications,¹²⁰ special compensation,¹²¹ or special justifications.¹²²

114. Barak, *supra* note 111. Admittedly, thus far there is scant to no case law on the topic of whether or not an act was passed within the umbrella of worthy purpose and public good. *Id.*

115. See Heather Stone, Yael Dolev, & Yael Ben Naim Gross, *In the Start-Up Nation Where Know-How is Everywhere—Is it Protected?* 17, Apr. 16, 2014 (unpublished conference paper), available at <http://www.gkh-law.com/wp-content/uploads/2014/09/In-the-Start-Up-Nation-Where-Know.pdf>.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* The trade secret of the former employer must bear a substantial risk of exposure, and meet the criteria of a trade secret under the Israeli Commercial Torts Law. The Commercial Torts Law disallows the use of trade secrets without the consent of the owner, subject to a few enumerated exceptions. The first exception is the right to use knowledge that constitutes trade secrets to the extent that knowledge was made available to an employee if it became a part of the employee's professional qualifications. In 2011, the Tel Aviv Labor Tribunal held that trade secret exposure is not enough to restrict an employee's new occupation. *Id.* at 17–18. Further, the court stated that in order to restrict the employee from new employment the employer must: demonstrate a reasonable probability that the employee will use said trade secret and show that the employee's use of the trade secret would cause serious damage to the employer. *Id.* at 18.

120. Basic familiarity with the employee's new condition does not count as a special qualification. The previous employer must show that it has invested significant resources in the employee. The employer must show considerable investment in the education, training, or qualifications of an employee. *Id.* at 18.

121. The burden is on the former employer to show that the employee received special compensation in exchange for the employee's non-compete undertaking. The employer must show further that the compensation is reasonable in respect to the limitations sought on said employee's occupational freedom. *Id.*

The *Check Point* decision demonstrated that the potential damage to the previous employer, if the court decides not to enforce the non-compete agreement and the employee is allowed to be employed by a competitor, must be material and must threaten the well-being of the previous employer.¹²³ This landmark judgment goes beyond holding that non-compete covenants are not enforceable unless the worker reveals trade secrets to his new employer.¹²⁴ This decision emphasized and strengthened the Israeli constitutional right of freedom of occupation and freedom of workers to choose their profession and workplace.¹²⁵

B. *Meatreal v. Prime Minister and Meatreal v. Knesset*

The Court's ruling in *Meatreal v. Prime Minister*¹²⁶ further strengthened Israeli freedom of occupation. The decision declared that the refusal to allow private companies to import frozen non-Kosher meats violated the Basic Law: Freedom of Occupation.¹²⁷ Following this decision, Knesset religious factions urged for changes to the Basic Law in order to bypass the court's decision.¹²⁸ In response to political pressure, the Knesset eventually added a clause to the Basic Law: Freedom of Occupation in 1994¹²⁹: the law now features a disclaimer that statutory provisions limiting the freedom of occupation will be valid as long as they are passed by the majority of the Knesset and are expressly declared valid in the face of the Basic Law.¹³⁰

Not surprisingly, immediately following the amendment of the Basic Law: Freedom of Occupation, the Knesset passed the Import of Frozen

122. The special justification refers to the examination of each party's good faith. If the courts find one party to be acting in bad faith—behavior that is likely to cause damage to the other party—this may be special justification to enforce or not enforce a non-competition undertaking. *Id.*

123. *Id.*

124. Stone et al., *supra* note 115.

125. *Id.*

126. Nicholas Stephanopoulos, *The Case for the Legislative Override*, YALE L. SCH. STUDENT SCHOLARSHIP PAPERS, Mar. 6, 2005, available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1003&context=student_papers&sei-redir=1&referer=htt.

127. *Id.*

128. *Id.* at 12.

129. *Id.*

130. *Basic Law: Freedom of Occupation*, *supra* note 109. This update states that “a statutory provision which impinges on the freedom of occupation will be valid . . . if it is included in a statute enacted by a majority of the Knesset members and expressly declares that is valid despite Basic Law.” *Id.* Further, statutes passed under this clause have a four-year expiration period unless reauthorized by the Knesset. *Id.*

Meat Law,¹³¹ banning the importation of frozen non-Kosher meat into Israel.¹³² The *Meatreal* plaintiff brought suit again challenging the Knesset's Import of Frozen Meat Law.¹³³ In *Metreal v. Knesset*,¹³⁴ the Israeli Supreme Court announced that the use of the Knesset's amended Basic Law: Freedom of Occupation clause¹³⁵ unfairly immunizes Knesset statutes from scrutiny. These harsh rulings in favor of Israeli freedom of occupation seem to weaken the legality of the Weight Restriction Law—or at least seem to lessen the likelihood that the Weight Restriction Law will pass muster if challenged in the Israeli courts.¹³⁶

CONCLUSION

Ultimately, Israel's Weight Restriction Law is a paternalistic measure, which attempts, via attenuated means, to regulate the health of the general public by supplanting the modeling industry's judgment for its own. Although its sponsors and drafters undoubtedly had the best intentions in mind,¹³⁷ the Law is at odds with the Supreme Court's interpretations of legislation circumscribing the Basic Laws.¹³⁸ The Israeli Supreme Court has taken an extremely literal reading of the Basic Law: Freedom of Occupation,¹³⁹ even striking down a Knesset law that upheld Jewish

131. See Stephanopoulos, *supra* note 126, at 13. This law stipulates that despite the Court's contrary stance in *Meatreal v. Prime Minister*, non-Kosher meat cannot legally be imported into Israel. *Id.*

132. Since this ruling, the Knesset has made no further attempts at using its override power, even faced with opportunities to do so. See generally Stephanopoulos, *supra* note 126.

133. See *id.*

134. *Id.* at 12.

135. See discussion *supra* note 110.

136. Recent legislation has shown that the Knesset has effectively conceded to the Supreme Court the power to nullify statutes inconsistent with the Basic Laws. In addition to the *Checkpoint* and *Meatreal* cases, the Israeli Supreme Court also invalidated Knesset laws it saw at odds with freedom of occupation in H.C. 98/69, *Bergman v. Minister of Finance and Others*, 23(1) P.D. 693, and in H.C. 246,260/81 *Agudat Derkh Eretz v. Broadcasting Authority* 35(4) P.D. 1. See Stephanopoulos, *supra* note 126.

137. Weight Restriction Law sponsor Adi Barkan urged the well intentioned motivations behind the Law on the Knesset floor: "We want to punish companies that do not respect our lives and our children's lives, even though they know the law and their destructive effects on body image issues." *The 'Photoshop Law,' supra* note 51.

138. See discussion *supra* note 130.

139. In a remark about the importance of not circumscribing the Basic Laws, President Barak noted the importance of analyzing regular laws under strict scrutiny: "[Basic Laws] became constitutional rights . . . a 'regular' law of the Knesset cannot alter them . . . a 'regular' law cannot infringe on them unless it satisfies the strict standards established in the Basic Laws . . . failure to fulfill these constitutional requirements transforms a regular into an unconstitutional law. It is a law flawed by a constitutional defect, and the court is liable to declare it invalid." Navot, *supra* note 105.

religious principles.¹⁴⁰ The Basic Law: Freedom of Occupation was designed specifically to block practices like the BMI-based hiring ban, which automatically excludes applicants from pursuing the occupation of their choice.

Because it seems undoubtedly certain that when challenged this law will not pass muster, the best framework for addressing the issues of disordered eating and media exposure to thinness at this time appears to be private education or regulations. The CFDA's recommendations and private attempts at regulation provide guidance for achieving Israel's goals without the drastic means of employing weight discrimination.¹⁴¹ Further, the CFDA's regulatory steps towards protecting underage models¹⁴² are also promising: underage models, or adolescents in general, are most at-risk for developing eating disorders,¹⁴³ so if they are banned from fashion participation, designers may be forced to seek body types that are not waif-like and prepubescent.¹⁴⁴ Ultimately, the undeniably lawful route, seemingly most likely to be blessed by the court, would be for Israel to focus on private institutional education reform and regulation that does not circumscribe its Basic Laws as the Weight Restriction Law currently does.

*Julie Gladstone**

140. See discussion *supra* notes 123 and 126.

141. See discussion *supra* note 41.

142. *Id.* See also Povoledo, *supra* note 33.

143. See, e.g., Prevalence and Correlates of Eating Disorders in Adolescents, NAT'L EATING DISORDERS ASS'N, Nov. 21, 2011, <https://www.nationaleatingdisorders.org/prevalence-and-correlates-eating-disorders-adolescents>.

144. Following in the CFDA's footsteps in this regard also seems promising inasmuch as Israeli Youth Labour Law 5713-1953 deems a child, excluded from work, as one "has not yet attained the age of 16 years." Youth Labour Law 5713-1953, available at <http://www.tamas.gov.il/NR/rdonlyres/0172DC1F-07C8-4192-A56B-FC38B29CED16/0/17.pdf>. Further, the Law states "a child that has not yet reached the age of 15 shall not be employed in public or artistic appearances or for the purpose of advertising, or in photographs for the purpose of advertising." *Id.*

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