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Michele Estrin Gilman

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THE RETURN OF THE WELFARE QUEEN

MICHELE ESTRIN GILMAN*

Introduction	247
I. Welfare in the 2012 Campaign.....	248
II. The History of the Welfare Queen.....	256
III. The Truth About TANF.....	266
IV. A New Vision for Welfare	274
Conclusion	279

INTRODUCTION

After welfare reform was passed in 1996, there was every reason to hope that the welfare queen was dead. The “welfare queen” was shorthand for a lazy woman of color, with numerous children she cannot support, who is cheating taxpayers by abusing the system to collect government assistance. For years, this long-standing racist and gendered stereotype was used to attack the poor and the cash assistance programs that support them. In 1996, Temporary Assistance for Needy Families (TANF) capped welfare receipt to five years and required work as a condition of eligibility, thus stripping the welfare queen of her throne of dependency. Nevertheless, during the 2012 presidential campaign, Republican candidate and former Massachusetts Governor Mitt Romney resurrected the welfare queen.

In a barrage of television campaign ads, Governor Romney accused President Obama of gutting TANF work requirements by allowing states to apply for waivers. Governor Romney kept the ads on the air even after they were disproved by independent fact-checkers who explained that state governors, including Republicans, asked the Obama Administration to consider waivers so that states could have greater flexibility in designing and reporting on effective work requirements. In the subsequent battle to prove which candidate was toughest on the poor, there was no mention that TANF is largely a failure. While TANF enrollment has plunged since

* Professor of Law, University of Baltimore School of Law; Director, Civil Advocacy Clinic; Co-Director, Center on Applied Feminism. B.A., Duke University, J.D., University of Michigan Law School.

1996, it has not reduced poverty. Instead, it pushed many poor mothers into the low-wage workforce, where they struggle to survive on meager wages. In addition, many families have slipped out of the safety net altogether, sanctioned by TANF caseworkers or discouraged by TANF's onerous application requirements, privacy-stripping processes, and stingy grants that total an average of \$429 per month for a family of three. As a result, only 4.5 million people receive cash assistance through TANF (amounting to 0.47% of the federal 2012 budget), as compared to 46 million people who receive food stamps.¹

In other words, the political salience of the welfare queen far outstrips her numbers. Thus, it is fair to argue that Governor Romney dredged up the welfare queen to appeal to white, working class voters, who dislike government assistance for the "undeserving" poor. The good news is that Governor Romney's dependency rhetoric did not work and may have backfired; minorities and women vastly preferred President Obama in the 2012 election. The bad news is that the welfare queen continues to lurk behind repeated calls to cut government benefits and to criminalize poverty. Can we bury the welfare queen forever, or will she always be part of attempts to demonize the poor while diverting attention away from governmental responsibility for poverty?

This Article identifies ways to strengthen TANF so that it reduces poverty, but also suggests that it may be time to deconstruct welfare entirely and to replace it with a more expansive social justice vision. Part I describes the dispute about whether President Obama was loosening TANF's work requirements and explains how Governor Romney misrepresented the changes proposed by the Obama Administration in the 2012 presidential campaign. Part II sets forth the history of the welfare queen, a damaging stereotype that sits at the crossroads of race, gender, and class and that has played a central role in the development of welfare policy. Part III assesses the impact and effectiveness of TANF, concluding that it has failed to lift low-income families out of poverty or move them to self-sufficiency. Part IV suggests an alternative approach designed to alleviate poverty and to put the welfare queen to rest once and for all.

I. WELFARE IN THE 2012 CAMPAIGN

In 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act promising to "end welfare as we have come to know it" and implementing TANF.² For sixty years prior to 1996,

1. See *infra* notes 122-23.

2. TANF was created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections at 42 U.S.C. § 604(a) (2000)).

Aid to Families with Dependent Children (AFDC) was an open-ended funding program that provided checks to welfare families based on objective eligibility criteria.³ However, AFDC was attacked from both the left and the right for encouraging dependency while discouraging work.⁴ Accordingly, TANF abolished the entitlement to welfare by providing states with fixed block grants and placing a five-year lifetime limit on the receipt of welfare benefits.⁵ Significantly, TANF requires that recipients work within two years of receiving benefits, although most states impose a shorter timeframe.⁶ Indeed, states do not have to provide cash assistance at all with their block grant funds; rather, they may use TANF funding in any manner “reasonably calculated to accomplish the purposes of TANF.”⁷ The stated purposes of the TANF program are to reduce welfare dependency and out of wedlock births, and to encourage the formation of two-parent families.⁸ To reach these goals, TANF permits states to impose certain behavioral modification requirements on recipients, such as reducing benefits for mothers who fail to establish the paternity of their children, denying benefits to children born while their family is receiving benefits,⁹ or cutting benefits to families with truant children.¹⁰

Upon signing TANF into law, President Clinton optimistically predicted, “After I sign my name to this bill, welfare will no longer be a political issue. The two parties cannot attack each other over it. Politicians cannot attack poor people over it. There are no encrusted habits, systems, and failures that can be laid at the foot of someone else.”¹¹ Sixteen years later, President Clinton was proved wrong. In August of the 2012 presidential

3. See generally JOEL F. HANDLER & YEHESEKEL HASENFELD, *BLAME WELFARE, IGNORE POVERTY AND INEQUALITY* 1-2 (2007).

4. See *id.* at 162-66.

5. 42 U.S.C. § 601(b) (2012) (abolishing entitlement); 42 U.S.C. § 603 (2012) (establishing block grant program); 42 U.S.C. § 608(a)(7) (lifetime limits).

6. 42 U.S.C. § 602(a)(1)(A)(ii).

7. 42 U.S.C. § 604(a).

8. 42 U.S.C. § 601.

9. Slightly less than half of the states have adopted a family cap. See Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 174 (2002).

10. States can also elect whether or not to adopt exemptions or extensions to the lifetime limits. See generally MARY FARRELL ET AL., *THE LEWIN GRP. AND MDRC, WELFARE TIME LIMITS, AN UPDATE ON STATE POLICIES, IMPLEMENTATION, AND EFFECTS ON FAMILIES* ES-2, 10-13 (2008), available at http://www.acf.hhs.gov/sites/default/files/opre/welfare_time_limits_an_update_on_state_policies_implementation_and.pdf.

11. See Glenn Kessler, *In Welfare War, Neither Side Fighting Fair*, WASH. POST, Aug. 12, 2012, at A7.

campaign, Mitt Romney began claiming that President Obama was loosening TANF's work requirements.¹² The first Romney campaign ad was called "Right Choice," (week of 8/7) and a narrator intoned over pictures of President Clinton and American workers:

In 1996, President Clinton and a bipartisan Congress helped end welfare as we know it by requiring work for welfare. But on July 12, President Obama quietly announced a plan to gut welfare reform by dropping work requirements. Under Obama's plan, you wouldn't have to work and wouldn't have to train for a job. They just send you your welfare check. And welfare-to-work goes back to being plain old welfare. Mitt Romney will restore the work requirement because it works.¹³

A week later (8/17), the Romney campaign ran another ad called "Long History," in which the announcer stated, "Do you support work for welfare? Barack Obama has a long history of opposing work for welfare."¹⁴ A week after that (8/20), a third television ad was unveiled with the same theme, calling the Obama plan "nuts."¹⁵ At campaign rallies, Governor Romney promised supporters that if elected he would "put work back in welfare,"¹⁶ and "end the culture of dependency and restore a culture of good, hard work."¹⁷ Then, a week prior to the election, he issued yet another ad, called "Can't Afford Another Term," which stated, among other things, "If you want to know President Obama's second term agenda, look at his first: gutted the work requirement for welfare . . ."¹⁸ Meanwhile, Republican Senator Orrin Hatch had issued a press release claiming that the changes would allow massage, journaling, and bed rest to

12. See Philip Rucker & Bill Turque, *Mitt Romney Attacks President Obama Over Welfare Reform*, WASH. POST (Aug. 7, 2012), http://articles.washingtonpost.com/2012-08-07/politics/35493441_1_welfare-reform-romney-campaign-romney-attacks-obama.

13. See *Mitt Romney: Right Choice*, USA TODAY, <http://usatoday30.usatoday.com/news/politics/political-ad-racker/video/822110/mitt-romney-right-choicetracker/video/822110/mitt-romney-right-choice>.

14. See Mark Halperin, *Script, Romney for President Ad, "Long History"*, TIME: THE PAGE (Aug. 13, 2012), <http://thepage.time.com/2012/08/13/script-romney-for-president-ad-long-history/>.

15. See Arthur Delaney, *Mitt Romney Welfare Ad Repeats False Claim*, HUFFINGTON POST (Aug. 20, 2012), http://www.huffingtonpost.com/2012/08/20/mitt-romney-welfare-ad_n_1810134.html.

16. See Trip Gabriel, *Romney Presses Obama on Work in Welfare Law*, N.Y. TIMES, Aug. 8, 2012, at A11.

17. See Rucker & Turque, *supra* note 12.

18. See Sam Stein, *Romney Revives Obama Welfare Reform Attack in Unannounced Ad*, HUFFINGTON POST (Oct. 30, 2012, 11:18 PM), http://www.huffingtonpost.com/2012/10/30/romney-obama-welfare-ad_n_2045877.html.

count as work activities.¹⁹

The Obama campaign fought back. A spokeswoman for President Obama immediately denounced the Romney campaign ads in a conference call with reporters as “untrue and hypocritical,” because Governor Romney had sought certain welfare reform waivers as Governor of Massachusetts.²⁰ President Obama’s Chief of Staff, John Podesta, called the ads “completely false,”²¹ while Press Secretary, Jay Carney remarked, “[h]ypocrisy knows no bounds.”²² The Obama campaign ran an ad entitled “Blatant” that stated,

See this? Mitt Romney claiming the president would end welfare’s work requirements? *The New York Times* calls it ‘blatantly false.’ *The Washington Post* says, ‘The Obama administration is not removing the bill’s work requirements at all.’ In fact Obama’s getting states to move 20% more people from welfare to work. And President Clinton’s reaction to the Romney ad? It’s just ‘not true.’ Get the facts.²³

At a press conference, President Obama reiterated that “what has happened was that my administration, responding to the requests of five governors, including two Republican governors, agreed to approve giving them, those states, some flexibility in how they manage the welfare rolls as long as it produced twenty percent increases in the number of people who

19. See Press Release, Sen. Orrin Hatch, U.S. Cong., *Welfare Under the Obama Administration: Bed Rest as Work: An Analysis of How The Obama Administration is Undermining Welfare Reform* (July 13, 2012) (on file with the U.S. Cong.). Conservative news networks picked up on the press release. See Chelsea Rudman & Remington Shepard, *Fox & Friends Echoes GOP Spin on Welfare Rule: Leaves Out the Facts*, MEDIA MATTERS FOR AMERICA BLOG (July 17, 2012, 5:34 PM), <http://mediamatters.org/mobile/blog/2012/07/17/fox-amp-friends-echoes-gop-spin-on-welfare-rule/187179>.

20. See Frank James, *Romney Attacks President on Welfare: Obama Team Alleges Hypocrisy*, NPR: IT’S ALL POLITICS (Aug. 7, 2012, 3:46 PM), <http://www.npr.org/blogs/itsallpolitics/2012/08/07/158352531/romney-attacks-president-on-welfare-obama-team-alleges-hypocrisy>.

21. *Id.*

22. See Gabriel, *supra* note 16, at A11. The Washington Post Fact Checker report concluded that this accusation by the Obama campaign was not entirely accurate because the waivers that Romney sought as governor were not directed at work requirements. See Glenn Kessler, *Spin and Counterspin in the Welfare Debate*, WASH. POST (Aug. 8, 2012, 6:00 AM), http://www.washingtonpost.com/blogs/fact-checker/post/spin-and-counterspin-in-the-welfare-debate/2012/08/07/61bf03b6-e0e3-11e1-8fc5-a7dcf1fc161d_blog.html.

23. See Alicia M. Cohn, *New Obama TV Ad Calls Romney Welfare Attacks “Blatantly False,”* THE HILL GLOBAL AFF. BLOG (Aug. 10, 2012, 7:49 AM), <http://thehill.com/video/campaign/243049-new-obama-tv-ad-calls-romney-welfare-attacks-blatantly-false->.

are getting work.”²⁴ President Clinton also denounced Governor Romney’s ads, stating that the proposed HHS waivers were in keeping with the law’s mandate²⁵ and that the claims in the Romney campaign ads were “not true.”²⁶

Obviously, both Governor Romney and President Obama could not be right. What was the truth? Multiple independent fact checkers affirmed President Obama’s position that the Department of Health and Human Services (HHS) was not weakening TANF work requirements.²⁷ On February 28, 2011, President Obama issued a memorandum directing federal agencies to ask state and local governments to identify unnecessary red tape and regulatory barriers that they were dealing with in carrying out federal programs.²⁸ HHS thus sought feedback from states regarding the programs it manages, including TANF.²⁹ Five states, including two with Republican governors, responded.³⁰ For instance, Utah’s Republican administration wrote to HHS on August 1, 2011, requesting waiver authority in the TANF grant so that it could spend its TANF “dollars in the most efficient and effective manner,” while being “held accountable for the positive employment outcomes.”³¹ Utah stated that shifting TANF’s

24. See Justin Sink, *Romney Ad: Obama Welfare Change Leads to Cycle of Dependency*, THE HILL REG. BLOG (Aug. 21, 2012, 5:49 AM), <http://thehill.com/video/campaign/244467-romney-ad-says-obama-welfare-change-leads-to-cycle-of-dependency>; see Cohn, *supra* note 23.

25. See Rucker & Turque, *supra* note 12.

26. See Aaron Blake, *Bill Clinton Denounces Romney’s Welfare Ad*, WASH. POST (Aug. 7, 2012, 12:13 AM), http://www.washingtonpost.com/blogs/the-fix/post/bill-clinton-denounces-romneys-welfare-ad/2012/08/07/7a52283a-e102-11e1-8fc5-a7dcf1fc161d_blog.html.

27. *Id.*; see also Eugene Kiely with Rina Moss, *Does Obama’s Plan Gut Welfare Reform?*, FACTCHECK.ORG (Aug. 9, 2012), <http://www.factcheck.org/2012/08/does-obamas-plan-gut-welfare-reform/>; Ari Shapiro, *Despite Fact Checks, Romney Escalates Welfare Work Requirement Charge*, NPR: IT’S ALL POLITICS (Aug. 22, 2012, 5:17 PM), <http://www.npr.org/blogs/itsallpolitics/2012/08/22/159791065/despite-fact-checks-romney-escalates-welfare-work-requirement-charge>.

28. See Memorandum from President Barack Obama for the Heads of Exec. Dep’ts and Agencies, 2011 PUB. PAPERS 123 (Feb. 28, 2011) (on file with the White House).

29. See Rebecca Berg, *Shift in Welfare Policy Draws G.O.P. Protests*, N.Y. TIMES, July 18, 2012, at A17.

30. See Letter from Kay E. Brown, Dir., Educ., Workforce, and Income Sec. Issues, Gov’t Accountability Office to Sen. Orrin Hatch and Rep. Dave Camp, U.S. Cong. (Sept. 19, 2012) (on file with the Gov’t Accountability Office).

31. See Letter from Kristen Cox, Exec. Dir., Utah Dep’t of Workforce Servs. to George Sheldon, Acting Assistant Sec’y, U.S. Dept. of Health & Human Servs., (Aug. 1, 2011) (on file with Utah Dep’t of Workforce Servs.).

emphasis on the reporting process rather than outcomes would “relieve staff from the burden of collecting data that is not relevant to the outcome of work.”³² Similarly, Nevada, another state headed by a Republican governor, asked HHS to consider waivers that would link work requirements to the state’s unemployment rate rather than to benchmarks set in 2005, and to grant a six-month grace period to the hardest to employ in order to address barriers to employment.³³

On July 12, 2013, HHS issued an Information Memorandum stating that HHS would consider waivers that create “more effective mechanisms for helping families succeed in employment.”³⁴ In particular, HHS stated that it was “interested in more efficient or effective means to promote employment entry, retention, advancement, or access to jobs that offer opportunities for earnings and advancement that will allow participants to avoid dependence on government benefits.”³⁵ Subsequently, an Acting Assistant Secretary at HHS explained the rationale for the policy change, stating, “[m]any states report that their caseworkers are spending more time complying with federal-documentation requirements than helping parents find jobs.”³⁶ The Secretary of HHS, Kathleen Sebelius, responded to a critical letter from Senator Orrin Hatch of Utah and House Ways and Means Committee Chairman Dave Camp,³⁷ writing each of them, “The department is providing a very limited waiver opportunity for states that develop a plan to measurably increase the number of beneficiaries who find and hold down a job.”³⁸ She wrote that governors must commit to moving

32. *Id.*

33. See Meghan McCarthy, *How a Memo on Welfare Became a Campaign Target*, NAT. J. (Aug. 8, 2012, 5:55 PM), <http://www.nationaljournal.com/politics/how-a-memo-on-welfare-became-a-campaign-target-20120808?print=true>.

34. See *TANF-ACF-IM-2012-03*, OFFICE OF FAMILY ASSISTANCE, ADMIN. FOR CHILDREN & FAMILIES (July 12, 2012), <http://www.acf.hhs.gov/programs/ofa/resource/policy/imofa/2012/im201203/im201203> (providing guidance concerning waiver and expenditure authority under Section 1115).

35. *Id.*

36. See George Sheldon, *New Flexibility Will Strengthen Temporary Assistance to Needy Families Program*, ADMIN. FOR CHILDREN & FAM. (July 13, 2012), <http://www.acf.hhs.gov/blog/2012/07/new-flexibility-will-strengthen-temporary-assistance-to-needy-families>.

37. See Letter from Sen. Orrin Hatch & Rep. Dave Camp, Members, U.S. Cong., to Kathleen Sebelius, Sec’y, Dep’t of Health & Human Servs., (July 12, 2012) (on file with the U.S. Cong.). The July 12, 2012, letter stated, “if Congress intended to allow waivers of TANF work requirements, it would have said so in the statute.” *Id.*

38. See Elise Viebeck, *Sebelius Defends Welfare Changes*, THE HILL HEALTHCARE BLOG (July 19, 2012, 8:01 AM), <http://thehill.com/blogs/healthwatch/other/238883-sebelius-welfare-policy-change-strengthens-work-requirement>; Letter from Kathleen Sebelius, Sec’y, Dep’t of Health & Human Servs., to Sen. Orrin Hatch, U.S. Senate

“at least [twenty percent] more people from welfare for work compared to the state’s past performance” to receive a waiver, although this twenty percent benchmark was not set forth in the Information Memorandum.³⁹ Furthermore, “[n]o plan which undercuts [that goal] will be considered or approved.”⁴⁰ To date, no state has applied for a waiver, and none have been granted.⁴¹ In March of 2013, the House of Representatives passed a bill that would forbid the government from granting waivers, but the Senate has not taken up the legislation.⁴²

As for the precise terrain of this dispute, the TANF work requirements impose obligations on both TANF recipients and the states, and failure to comply with obligations results in sanctions (for individuals) or fiscal penalties (for states). The rules are complex. In brief, and with some exceptions, states must engage half of all single parent TANF families in work activities for at least thirty hours a week,⁴³ while placing ninety

(July 18, 2012) (on file with Dep’t of Health and Human Servs.).

39. *Id.* The impact of the changes would be small. “Looking at the states with Republican governors that the administration said requested waivers, the numbers needed to meet the 20[%] target do not appear to be large. In Nevada, the target for 20[%] would be an additional 46 families. In Utah, the number would be 147 families.” See Glenn Kessler, *A Too-Simple Defense of the New Welfare Rule*, WASH. POST, Sept. 16, 2012, at A7.

40. Letter from Kathleen Sebelius to Sen. Orrin Hatch, *supra* note 38.

41. See *id.*; see also GENE FALK, CONG. RESEARCH SERV., R 42627, TEMPORARY ASSISTANCE TO NEEDY FAMILIES: WELFARE WAIVERS 8 (2013). A dispute also arose over whether HHS had the administrative authority to grant the waiver without the approval of Congress. A Government Accountability Office letter said that the waiver policy constituted a rule under the Congressional Review Act, requiring that it be submitted to Congress. See Letter from Lynn H. Gibson, Gen. Counsel to Sen. Orrin Hatch and Rep. Dave Camp, (Sept. 4, 2012), available at <http://www.gao.gov/assets/650/647778.pdf>. The GAO did not address whether or not the new policy was a lawful exercise of the agency’s authority. On September 21, 2012, Republican Rep. Camp from the House Ways and Means Committee and Sen. Hatch demanded an explanation from HHS as to its legal authority to issue the policy, but HHS had not responded as of February 2013. See Press Release, Comm. on Ways and Means, Camp, Hatch Demand Answers from HHS on Welfare Waiver Scheme, (Feb. 4, 2013) (on file with the Comm. on Ways and Means). Meanwhile, the House passed a vote to block the change, but the Senate took no action on the measure. See Pete Kasperowicz, *House Votes to Block Obama’s Change to Welfare Requirement*, THE HILL FLOOR ACTION BLOG (Sept. 20, 2012, 5:00 PM), <http://thehill.com/blogs/floor-action/house/250821-house-votes-to-block-obamas-change-to-welfare-work-requirement#ixzz2Kbrc9AOD>.

42. H.R. 890, 113th Cong. (1st Sess. 2013). The status of the bill is discussed in FALK, *supra* note 4, at 13.

43. 42 U.S.C. § 607(a), (c) (2012). The requirement is twenty hours a week for a single parent with a child younger than six. § 607(c)(2)(B). These are minimum requirements; many states have stricter requirements. See HEATHER HAHN ET AL., THE

percent of two parent families in work activities for thirty-five hours a week.⁴⁴ At least twenty hours of the total requirement for single parents must be spent in a core work activity, which is defined as unsubsidized employment, subsidized employment in the public or private sector, work experience, on-the-job training, job search and job readiness assistance, community service programs, vocational education training for up to twelve months, and providing child care to an individual participating in a community service program. After meeting that twenty hour threshold, an individual can spend the remaining hours in a specified non-core activity, such as education or job skills training.⁴⁵ A family faces sanctions if a parent fails to meet these requirements; sanctions can include termination of benefits for the entire family.⁴⁶

In addition, various federal rules limit when certain activities can count toward the federal work rate. For instance, an individual can only spend the hourly equivalent of six weeks per year on job search and job readiness activities.⁴⁷ Likewise, only thirty percent of TANF families can meet the work requirement through vocational or educational training.⁴⁸ Changes to TANF in the Deficit Reduction Act of 2005 further tightened the definitions of allowable work activities, such as limiting the states' ability to count rehabilitation activities, i.e., mental health and substance abuse treatment, to the core activities of job search and job-readiness and by placing a twelve-month lifetime limit on vocational education.⁴⁹ These tougher 2005 requirements eliminated any slack in the definition of work activities, such as the "massage," "bed rest," and "journaling," that Senator Hatch accused some states of implementing.⁵⁰ In short, there is no

URBAN INST., TANF WORK REQUIREMENTS AND STATE STRATEGIES TO FULFILL THEM 5 (2012) [hereinafter TANF WORK REQUIREMENTS].

44. § 607(a), (c). The requirement is fifty-five hours a week for families receiving federally funded child care subsidies. § 607(c)(1)(B). Two parent families are only five percent of the TANF caseload. See GENE FALK, CONG. RESEARCH SERV., R. 42768, TEMPORARY ASSISTANCE TO NEEDY FAMILIES: WELFARE-TO-WORK REVISITED 15 (2012).

45. See FALK, *supra* note 41, at 27. For two-parent families, thirty of the thirty-five hours must be from core activities. *Id.*

46. See TANF WORK REQUIREMENTS, *supra* note 43, at 6.

47. *Id.*

48. See CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: AN INTRODUCTION TO TANF 5 (2012), available at <http://www.cbpp.org/files/7-22-10tanf2.pdf> [hereinafter POLICY BASICS].

49. See TANF WORK REQUIREMENTS, *supra* note 43, at 2.

50. *Id.* These activities were linked by some states to medical recovery or job readiness. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-821, HHS SHOULD EXERCISE OVERSIGHT TO HELP ENSURE TANF WORK PARTICIPATION IS MEASURED

indication in any of the HHS waiver announcements or letters that the agency will grant a waiver approving any work activity not directly linked to employment. The irony was that Republicans, who usually advocate for greater state control over social policy, were crying foul over a federal attempt to allow state experimentation.

In fighting about who was tougher on welfare recipients, both President Obama and Governor Romney continued the ongoing vilification of welfare mothers. In their dispute, welfare became a symbol of dependency disconnected from today's reality. As discussed below, Governor Romney, President Obama, and the media reporting on the dispute all failed to confront the failures of TANF to move families out of poverty, the paltry level of TANF benefits, and the lack of paying work for people who want it—all of which fall disproportionately on women of color.⁵¹

II. THE HISTORY OF THE WELFARE QUEEN

Although the Obama Administration sharply criticized the factual accuracy of the ads, it did not raise the lurking issue of race. However, many observers felt there was a racial subtext to Governor Romney's ads designed to appeal to white, working class voters,⁵² given that welfare is linked in the public's mind with African-Americans.⁵³ Indeed, the mere

CONSISTENTLY ACROSS STATES (2005).

51. See generally Sheila R. Zedlewski, *Welfare Reform: What Have We Learned in Fifteen Years?*, 24 THE URBAN INST. 2 (2012); Danilo Trisi & LaDonna Pavetti, *TANF Weakening as a Safety Net for Poor Families*, CTR. FOR BUDGET & POLICY PRIORITIES 2 (Mar. 13, 2012), <http://www.cbpp.org/files/3-13-12tanf.pdf>; POLICY BASICS, *supra* note 48, at 6.

52. See Dana Milbank, *Romney Plays the Race Card*, WASH. POST, Aug. 12, 2012, at A15 (calling the ad race-baiting and "a suspect move because welfare hadn't been on the radar screen"); Nate Cohn, *The Real Strategy Behind Romney's (Lying) Welfare Ads*, NEW REPUBLIC (Aug. 22, 2012), <http://www.newrepublic.com/blog/electionate/106402/the-strategy-behind-romneys-welfare-ad> (noting that Governor Romney was trying to appeal to white, working class voters); Alexander Burns, *Barrett: Romney Ads a "Racial Appeal,"* POLITICO (Aug. 29, 2012), <http://www.politico.com/blogs/burns-haberman/2012/08/barrett-romney-welfare-ads-a-racial-appeal-133736.html> (stating that Milwaukee Mayor Tom Barrett and Maryland Governor Martin O'Malley believed the ads had a racial subtext). See generally Christopher Rowland, *Mitt Romney Ad on Welfare "Handout" is Faulted*, BOSTON GLOBE (Sept. 12, 2012), <http://www.bostonglobe.com/news/politics/2012/09/11/mitt-romney-accuses-barack-obama-gutting-work-requirements-welfare-campaign-that-has-been-called-inaccurate/e0mti3JXMVlypXqeKIOVSP/story.html> (quoting the Rev. Jesse Jackson and a political consultant); Robert Schlesinger, *Labor Boss Sees Racism in Romney Welfare Attacks*, U.S. NEWS & WORLD REP. (Sept. 4, 2012), <http://www.usnews.com/opinion/blogs/robert-schlesinger/2012/09/04/labor-boss-sees-racism-in-romney-welfare-attacks> (quoting James Hoffa, the President of the Teamsters).

53. See PREMILLA NADASEN, *WELFARE WARRIORS: THE WELFARE RIGHTS*

mention of the word welfare evokes an emotional response that “exploit[s] racial animus”—and that’s exactly the point.⁵⁴ As Martin Gilens has explained, a majority of Americans oppose welfare spending because they hold stereotypes of blacks as lazy, and the media reinforces these racial attitudes.⁵⁵ Notably, the Romney campaign ads featured images of working whites juxtaposed against that of an African-American President. The message was clear, but it involved more than race. Governor Romney’s ads purposefully revived the old welfare queen stereotype of poor, women of color who cheat taxpayers while living supposedly extravagant lifestyles from the government dole.⁵⁶ This stereotype lies at the intersection of gender, race, and class, and has deep roots.

Historically, the poor in America have been categorized as either deserving—meaning they cannot be blamed for their poverty, such as children, widows, and the disabled, or undeserving—meaning they should be self-sufficient, such as able-bodied adults.⁵⁷ “Given the challenges husbandless mothers pose to the rules of both capitalism and patriarchy,”⁵⁸ single mothers of children have always occupied a shifting and uneasy space between these two poles. White widows have received the most sympathy, while unmarried women of color have been the targets of

MOVEMENT IN THE UNITED STATES xvi (2005); *see also* MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 5 (1999) (“Most white Americans believe that blacks are less committed to the work ethic than are whites, and this belief is strongly related to opposition to welfare.”).

54. *See* ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN 9 (2004); KENNETH J. NEUBECK & NOEL A. CAZENAVE, WELFARE RACISM: PLAYING THE WELFARE CARD AGAINST AMERICA’S POOR 3, 127 (2001).

55. *See* GILENS, *supra* note 53, at 3, 172-73, 205.

56. *See* HANDLER & HASENFELD, *supra* note 3, at 174-82; NADASEN, *supra* note 53, at 194-99, 239-40 (describing the roots of the stereotype); WALTER I. TRATTNER, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 362-85 (6th ed. 1999) (recounting political responses to the perceived welfare crisis).

57. *See generally* MICHAEL B. KATZ, THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE 8 (1989); Joel F. Handler, “*Constructing the Political Spectacle: The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*,” 56 BROOK. L. REV. 899, 906 (1990) (“The heart of poverty policy centers on the question of who is excused from work. Those who are excused are the ‘deserving poor’; those who must work are the ‘undeserving’ . Ultimately, this is a moral distinction.”); Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1505 (1991) (“[This] distinction created a line running through the poor, putting the aged, infant, and disabled on one side of the line, and the able-bodied on the other side.”).

58. *See* MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 313 (rev. ed. 1996).

approbation.⁵⁹ In the early twentieth century, progressive reformers convinced states to adopt mother's pensions programs, which provided aid to "suitable" single women, mostly white widows, so that they could raise their children at home.⁶⁰ These programs were federalized in the New Deal in the form of Aid to Dependent Children (ADC, later renamed AFDC). The program provided economic freedom to women, but also posited "domesticity as the only maternal virtue."⁶¹ Moreover, it was part of a New Deal dichotomy that reinforced the deserving/undeserving paradigm by treating relief for white men differently than relief for minorities and women.⁶² Social insurance programs designed for white working men, such as social security and unemployment insurance, have carried no stigma, provided generous benefits pursuant to objective criteria, and been federally administered.⁶³ By contrast, cash assistance programs for single mothers, primarily AFDC, became stingy, stigmatized, state-administered, and discretionary.⁶⁴

ADC was designed to provide economic support to deserving, mostly white, poor single widows.⁶⁵ It "subsidized mothers to reproduce the labor force and maintain the non-working members of the population, but made receipt of a grant highly conditional upon compliance with the family ethic."⁶⁶ Indeed, throughout the decades, states adopted a variety of discretionary and moralistic policies, including man-in-the-house rules, midnight raids, and suitable home requirements that often disqualified women of color from welfare.⁶⁷ Nevertheless, from the 1950s to the 1970s, AFDC rolls grew rapidly as women of color obtained rights to welfare, family structures changed across society, and economic dislocations

59. See HANDLER & HASENFELD, *supra* note 3, at 156-57.

60. See ABRAMOVITZ, *supra* note 58, at 199.

61. See LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 291 (1994).

62. See *id.* at 5-6, 145, 293-99.

63. *Id.*

64. *Id.*

65. See ABRAMOVITZ, *supra* note 58, at 315-18; HANDLER & HASENFELD, *supra* note 3, at 156.

66. ABRAMOVITZ, *supra* note 58, at 318.

67. See *id.* at 323; KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY 21 (2011) ("The unstated but underlying goals of the rules were to police and punish the sexuality of single mothers, to close off the indirect access to government support of able-bodied men, to winnow the welfare rolls, and to reinforce the idea that families receiving aid were entitled to no more than near-desperate living standards."); HANDLER & HASENFELD, *supra* note 3, at 164-66. States and welfare officials were trying to "distinguish between fit and unfit mothers." *Id.* at 157.

disproportionately impacted African-Americans.⁶⁸ These societal shifts made it harder for states to deny welfare to women of color.⁶⁹ In turn, this spurred a public backlash that blamed the behavior of poor, black women for the growing welfare rolls, rather than the structural changes in society and the economy.⁷⁰ The attacks against welfare reached a frenzy in the 1980s, particularly when President Reagan famously attacked welfare recipients as Cadillac driving “welfare queens.”⁷¹ He was certainly not the first to raise the specter of welfare cheats as a way of tapping into the economic insecurities of the white working class,⁷² but he was perhaps the most effective.

Throughout his campaigns and while in office, Reagan repeatedly talked about welfare fraud and specifically, the story of the “Chicago welfare queen”—a woman “who has eighty names, thirty addresses, twelve social security cards[,] and is collecting veterans’ benefits on four non-existing deceased husbands Her tax-free cash income alone is over \$150,000.”⁷³ The story supported Reagan’s philosophy of shrinking government in favor of trickle-down economics.⁷⁴ However, Reagan’s welfare queen was fictional; the woman on whom the story was apparently based, Linda Taylor, was convicted in 1977 of welfare fraud for using two aliases to collect \$8,000.⁷⁵ While there were some women who abused the welfare system—just as there are wealthy tax cheats⁷⁶—these women were isolated instances that came to exemplify the typical welfare recipient in

68. See ABRAMOVITZ, *supra* note 58, at 319-321, 334; HANDLER & HASENFELD, *supra* note 3, at 158; GUSTAFSON, *supra* note 67, at 21; MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 267 (1986).

69. See ABRAMOVITZ, *supra* note 58, at 352.

70. See *id.* at 321; HANDLER & HASENFELD, *supra* note 3, at 159.

71. See NADASEN, *supra* note 53, at 194-99, 239-40 (describing the roots of the backlash); TRATTNER, *supra* note 56, at 362-85 (recounting political responses to the perceived welfare crisis).

72. See NEUBECK & CAZENAIVE, *supra* note 54, at 127.

73. See LOU CANNON, PRESIDENT REAGAN: THE ROLE OF A LIFETIME 457 (2000).

74. See STEPHANIE D. SEARS, IMAGINING BLACK WOMANHOOD 38 (2010).

75. See CANNON, *supra* note 73, at 457; GUSTAFSON, *supra* note 67, at 36; Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 645 (2007).

76. For instance, the annual cost of tax fraud, including underreporting and offshore tax shelters, is immense, but nevertheless is not considered “morally indecent.” Donald Crump, *Criminals Don’t Pay: Using Tax Fraud to Prohibit Organized Crime*, 9 HOUS. BUS. & TAX L.J. 386, 397 (2009); see also Eric A. Posner, *Law and Social Norms: The Case of Tax Compliance*, 86 VA. L. REV. 1781, 1783-84 (2000) (stating that “the audit rate is currently under 2%, and of those audited only a small fraction (4.1% in 1995) are penalized.”).

the minds of politicians, the media, and the public.⁷⁷ The welfare queen embodies two stereotypes. On the one hand, she is a cunning, rational actor seeking to maximize government largesse for her benefit by having multiple children and refusing to work.⁷⁸ On the other hand, she is a lazy, promiscuous woman “robb[ing] the country of its moral and economic resources.”⁷⁹ She challenges gender norms by failing to conform to patriarchal notions of a proper family; she ignites racist stereotypes about minorities; and her failure to succeed in a capitalist society makes her a subject of derision.

The welfare queen also plays a featured role in judicial opinions. She is most vividly described in the 1971 case of *Wyman v. James*, in which the Supreme Court upheld home visits by government agents for welfare applicants. The Court reasoned that the visits were not searches covered by the Fourth Amendment because they were consensual.⁸⁰ Moreover, even if the home visits constituted searches, they were reasonable given the state’s interest in deterring fraud, the need to protect the children of welfare mothers, the rehabilitative purpose of the searches, and the lack of criminal consequences.⁸¹ In addition to its legal analysis, the Court expressed its distaste for Ms. James, the plaintiff, and how she ran her household. The Court remarked on her “attitude,” “evasiveness,” and “belligerency”—all of which arose from her resistance to the state and her entirely reasonable belief that the state could verify her eligibility through personal interviews and documents.⁸² Her request was simply to be treated the same as other beneficiaries of governmental largesse.⁸³ The Court in *Wyman* also intimated, based on Ms. James’ social services case file and not evidence adduced at trial, that Ms. James’ son had been physically abused and bitten by rats and concluded that “[t]he picture is a sad and unhappy one.”⁸⁴ The Court’s clear assumption was that Ms. James was a welfare queen warranting suspicion and distrust.

77. See GUSTAFSON, *supra* note 67, at 36; NEUBECK & CAZENAVE, *supra* note 54, at 127.

78. See GUSTAFSON, *supra* note 67, at 36.

79. See SEARS, *supra* note 74, at 39; GUSTAFSON, *supra* note 67, at 36.

80. See *Wyman v. James*, 400 U.S. 309, 317-18 (1971). For an in-depth analysis of the privacy rights of welfare recipients, see Michele Estrin Gilman, *Privacy, Feminism, and Welfare*, 39 U. BALT. L.F. 1 (2009) and Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 BROOK. L. REV. 1389 (2012).

81. See *Wyman*, 400 U.S. at 318-24.

82. *Id.* at 322 n.9.

83. As Justice Douglas bitterly remarked in his dissent, “No such sums are spent policing the government subsidies granted to farmers, airlines, steamship companies, and junk mail dealers, to name but a few.” *Id.* at 332 (Douglas, J., dissenting).

84. *Id.* at 322 n.9.

This distrust persists post-TANF, even though welfare mothers have joined the working poor. In 2007, the Ninth Circuit upheld *Wyman*, refusing to recognize differences between AFDC and TANF or to apply post-*Wyman* jurisprudence that would significantly limit suspicionless searches.⁸⁵ Instead, the court in *Sanchez v. San Diego* expressly lumped welfare mothers with criminals on probation and concluded that neither group had a reasonable expectation of privacy.⁸⁶ In turn, this prompted a bitter dissent from a denial of a petition for rehearing en banc, in which seven Ninth Circuit judges called the case “nothing less than an attack on the poor,”⁸⁷ who are required “to sacrifice their dignity and their right to privacy.”⁸⁸ By contrast, “[T]he government does not search through the closets and medicine cabinets of farmers receiving subsidies. They do not dig through the laundry baskets and garbage pails of real estate developers or radio broadcasters.”⁸⁹ The dissenters concluded, “[T]his situation is shameful.”⁹⁰

The welfare queen also played a starring role in the pre-1996 welfare reform debates. The welfare reform movement brought the left and the right together, although they loathed AFDC for different reasons. On the right, conservatives charged that welfare sustained poverty by encouraging dependency, weakening the work ethic, and breaking down the nuclear family.⁹¹ On the left, some liberals believed that work would reduce the stigma of cash support. For example, David Ellwood, an Assistant Secretary of Health and Human Services under President Clinton, argued that welfare was a failure and that the American ideal was “a guarantee that people who strive and who meet reasonable social responsibilities will be able to achieve at least a modest level of dignity and security.”⁹²

85. *Sanchez v. San Diego*, 464 F.3d 916 (9th Cir. 2006), *r’hrq en banc den.*, 483 F.3d 965 (2007).

86. *Id.* at 927.

87. *Sanchez v. San Diego*, 483 F.3d 965, 969 (9th Cir. 2007), *r’hrq en banc den.*, (Pregerson, J., dissenting).

88. *Id.*

89. *Id.*

90. *Id.*

91. The conservative attack on welfare was largely set forth in LAWRENCE MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* (1986) (asserting that work should be a condition of welfare) and CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980* (1984) (advocating that welfare should be abolished).

92. See DAVID ELLWOOD, *POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY* 44 (1988); see also Judith M. Gueron, *Welfare and Poverty: The Elements of Reform*, 11 *YALE L. & POL’Y REV.* 113 (1993) (“For the last thirty years, there has been widespread agreement that the nation’s welfare system should be reformed to make it more

Ultimately, both Republicans and Democrats seized upon the notion of work as a basic American value and as being necessary to social citizenship.⁹³ TANF embodies these notions, although it takes the work requirements to a punitive level that was not endorsed by Ellwood and many other Democrats.⁹⁴

During the debates that preceded welfare reform, welfare recipients were viciously attacked. Members of Congress compared them to “alligators,” “mules,” and “wolves.”⁹⁵ For example, John Mica, a Republican congressman, infamously held up a sign on the House floor that read, “Don’t feed the alligators.”⁹⁶ Meanwhile, several congresswomen, and particularly black congresswomen, rallied against the bill, but they were largely ignored even as they sought to correct welfare myths through social science and empirical evidence.⁹⁷

The racialization of the poor had conflated welfare recipient[s] and black women so powerfully in the minds of some members of the House that they refused to accept that the typical welfare recipient is a white woman who resorts to welfare for a short time after a divorce in order to support her kids while she gets back on her feet.⁹⁸

consistent with the basic public values endorsing the primacy of family and the importance of work.”).

93. See Kathleen A. Kost & Frank W. Munger, *Fooling All of the People Some of the Time: 1990s Welfare Reform and the Exploitation of American Values*, 4 VA. J. SOC. POL’Y & L. 3, 25-33 (1996).

94. See Jason DeParle, *The Ellwoods: Mugged by Reality*, N.Y. TIMES MAGAZINE, Dec. 8, 1996, at 64 (describing welfare reform as a “corruption” of Ellwood’s ideas and explaining that Ellwood proposed accompanying welfare time limits with “universal health care, expanded training programs, wage supplements, guaranteed child support, and last-resort Government jobs”).

95. See Beverly Horsburgh, *Schrödinger’s Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 565-66 (1996); Eric McBurney, Note, *So Long As Lawmakers Do Not Use the N-Word: The Maximum Family Grant Example of How the Equal Protection Clause Protects Racially Discriminatory Laws*, 14 J. GENDER RACE & JUST. 497, 507-08 (2011).

96. See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 660 (2009).

97. See Mary Hawkesworth, *Congressional Enactments of Race-Gender: Toward a Theory of Raced-Gendered Institutions*, 97 AM. POL. SCI. REV. 529, 541-43 (2003). As Representative Barbara Collins (D-MI) later explained, “[t]he Congress unfortunately had the image of a welfare recipient as an urban black woman, who irresponsibly had children, was lazy, refused to work, was uneducated. Whereas the truth of the matter was that the majority of welfare recipients were white, white women and white families.” *Id.* at 542.

98. *Id.*

Instead, legislators “portrayed parenting, family, and children as conditions legitimately experienced only by the middle class.”⁹⁹ Further, while the welfare reform hearings featured 1,099 witnesses, only forty-two were actual AFDC recipients or affiliated with recipient organizations.¹⁰⁰ In short, the voices of welfare mothers were not part of the debates, and feminists failed to organize effectively against the bill.¹⁰¹

While the image of the welfare queen spurred the changes enacted in TANF, the welfare queen was and is a myth.¹⁰² For instance, while TANF was a response to perceived welfare dependency, only a small minority of AFDC recipients stayed on welfare for more than six years.¹⁰³ Most welfare recipients use welfare for a short-term spell, or they cycle on and off for short periods as economic circumstances dictate.¹⁰⁴ TANF assumes a culture of poverty that is passed from generation to generation that is marked by promiscuity and large families; these claims are likewise false.¹⁰⁵ Former TANF recipients marry at the same rates as other women, thus debunking “culture of poverty” theories that welfare destroys morals.¹⁰⁶ Moreover, while there was hysteria about “children having

99. See Jessica Toft, *The Political Act of Public Talk: How Legislators Justified Welfare Reform*, 84 SOC. SERV. REV. 563, 587 (2010).

100. *Id.* at 571.

101. See Gwendolyn Mink, *The Lady and the Tramp (II): Feminist Welfare Politics, Poor Single Mothers, and the Challenge of Welfare Justice*, 24 FEMINIST STUDIES 55 (1988). Professor Mink asks: “Why were so many feminists unconcerned that welfare reform not only repealed poor single mothers’ entitlement to cash assistance but encroached on their basic civil rights as well?”

102. See Michele Estrin Gilman, *Poverty and Communitarianism: Toward a Community-Based Welfare System*, 66 U. PITT. L. REV. 721, 746-47 (2005) (explaining the false premises of welfare reform).

103. See Sylvia A. Law, ENDING WELFARE AS WE KNOW IT, 49 STAN. L. REV. 471, 476-79 (1997) (summarizing research from five different books that studied welfare populations).

104. See HANDLER & HASENFELD, *supra* note 3, at 53-54.

105. *Id.* at 57-58. Welfare families are no larger than non-welfare families, and the growth in single-parent families has occurred across class lines. In addition, most daughters (64%) who grew up in AFDC dependent households did not become welfare dependent themselves, although “there is a higher likelihood of welfare receipt among women with welfare backgrounds” due to the effects of poverty and single parenthood. *Id.* at 14-15.

106. “Not only can we rule out the proposition that welfare participation, at least in the post-welfare reform era, has toxic effects on morality and values that discourage marriage, we can also rule out the classic culture of poverty argument that reliance on government assistance and rejection of the institution of marriage are two aspects of a culturally embedded set of poverty norms that is transmitted across generations or communities.” Julien O. Teitler, et al., *Effects of Welfare Participation on Marriage*, 71 J. MARRIAGE & FAM. 878, 888 (2009). However, TANF recipients are more likely

children,” teenage mothers were a small percentage of AFDC recipients.¹⁰⁷ In sum, TANF is founded on the simplistic notion that failure to work is the reason for poverty; however, in actuality, poverty is caused by complex structural and economic forces.¹⁰⁸ As Handler and Hasenfeld have stated: “[d]emonizing welfare allows the country to ignore the economic and social conditions that produce poverty and inequality—class, race, gender, the economy, and inadequacies of the low-wage labor market.”¹⁰⁹ As opposed to the stereotype of the welfare queen, most welfare recipients show adherence to a work ethic; indeed, they have long worked part-time and/or earned unreported income in order to meet basic expenses.¹¹⁰ They also share the same attitudes and values about work as the rest of the population.¹¹¹ Unfortunately, the “welfare queen” is remarkably resistant to facts.

Governor Romney was able to trigger the stereotypes underlying the welfare queen, through his welfare attack ads in order to seek an advantage among white voters. Governor Romney’s tactics may have worked, as white voters overwhelmingly voted for him.¹¹² The welfare queen also fit within Governor Romney’s theories of dependency and personal

than the general population to have suffered personal violence “including sexual abuse as a child (42%) and severe domestic violence ever in a romantic relationship (70%).” Mary Jane Taylor & Mary Beth Vogel-Ferguson, *Attitudes Toward Traditional Marriage: A Comparison of TANF Recipients and a General Population of Adults*, 92 *FAM. SOC’Y* 225, 228 (2011).

107. See NEUBECK & CAZENAVE, *supra* note 54, at 5. Currently, “only 12 percent of teen recipients have children of their own.” HANDLER & HASENFELD, *supra* note 3, at 307-08.

108. See Michele Estrin Gilman, *The Poverty Defense*, 47 *U. RICH. L. REV.* 495, 540-42 (2013).

109. See HANDLER & HASENFELD, *supra* note 3, at 3.

110. See HANCOCK, *supra* note 54, at 10; Valerie Polakow, *Savage Distributions: Welfare Myths and Daily Lives*, in *AN INTRODUCTION TO POVERTY: THE ROLE OF RACE, POWER, AND POLITICS* 241, 247 (Louis Kushnik and James Jennings eds., 1999) (“The reality is that most women on welfare have worked part time, and many are cyclical part-time workers forced out of the labor market by lack of jobs, layoffs, and/or ever-pressing needs for health care and child care.”).

111. See M.A. Lee, Joachim Singelmann & Anat Yom-Tov, *Welfare Myths: The Transmission of Values and Work Among TANF Families*, 37 *SOC. SCI. RSCH.* 516, 525-26 (2008) (concluding that there is no support for the existence of a “welfare culture,” although “[p]arental background affects socioeconomic characteristics of adult children which, in turn, determines welfare use and work behavior”).

112. See Tom Scocca, *Eighty-eight Percent of Romney Voters Were White*, *SLATE* (Nov. 7, 2012), http://www.slate.com/articles/news_and_politics/scocca/2012/11/mitt_romney_white_voters_the_gop_candidate_s_race_based_monochromatic_campaign.html (finding that Governor Romney won 59% of the white vote).

responsibility. He was secretly taped at a fundraiser maligning the “47 percent” of Americans who “[would] vote for the president no matter what . . . who [were] dependent upon government, who believe[d] that they [were] victims . . . [the] people who [paid] no income tax”¹¹³ He believed that his job was “not to worry about those people” because he would “never convince them that they should take personal responsibility and care for their lives.”¹¹⁴ Here too, Governor Romney may have garnered votes, but he was simply wrong.

Over ninety percent of public assistance and entitlement dollars go to the elderly, the severely disabled, and family members of working individuals; they do not flow to “able bodied, working-age Americans who choose not to work.”¹¹⁵ Meanwhile, the top twenty percent of the population, including Governor Romney, receives sixty-six percent of tax benefits, which include deductions, credits, and other federal tax write-offs.¹¹⁶ As for the middle-class, they are not being squeezed to support the poor. Rather, they receive their proportionate share of government entitlements,¹¹⁷ such as tax deductions for mortgages and retirement plans, and child care tax credits—none of which are stigmatized like welfare.¹¹⁸ American businesses receive about 100 billion dollars a year in subsidies,¹¹⁹ and the recent government bailouts of the auto industry and

113. See Philip Rucker, *The Staying Power of 47 Percent*, WASH. POST, Oct. 2, 2012, at A4.

114. See Jim Rutenberg & Ashley Parker, *Romney Says Remarks on Voters Help Clarify Position*, N.Y. TIMES, Sept. 18, 2012, at A1.

115. See ARLOC SHERMAN ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, CONTRARY TO “ENTITLEMENT SOCIETY” RHETORIC, OVER NINE-TENTHS OF ENTITLEMENT BENEFITS GO TO ELDERLY, DISABLED, OR WORKING HOUSEHOLDS 1-2 (2012) available at <http://www.cbpp.org/files/2-10-12pov.pdf> (discussing that able-bodied, working age adults receive only 9% of the benefits, and the majority of those benefits are in the form of medical care, unemployment insurance benefits, Social Security survivor benefits for children and spouses of deceased workers, and Social Security benefits for retirees between ages sixty-two and sixty-four).

116. *Id.* at 3-4 (finding that the top 1% receives 23.9% of these benefits.).

117. *Id.* at 3 (“In 2010, the middle 60% of the population received 58% of the entitlement benefits.”).

118. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 191 (1995) (“[Middle-class families] benefit from extensive entitlement programs, be they FHA or VA loans at below mortgage market rates or employer health and life insurance. These families receive untaxed benefits as direct subsidies.”).

119. See TAD DEHAVEN, *CORPORATE WELFARE IN THE FEDERAL BUDGET*, CATO INSTITUTE POLICY ANALYSIS 2 (2012), available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/PA703.pdf>; see also Kent Greenfield, *Corporate Social Responsibility: There’s a Forest in Those Trees: Teaching About the*

Wall Street banks added hundreds of billions more to the taxpayers tab when those entities failed.¹²⁰ Wal-Mart may be the true welfare queen, as it receives billions of dollars in state and local subsidies.¹²¹ At the same time, Wal-Mart pays poverty-level wages to its employees, thereby putting the costs of those employees' food stamps and health care costs on taxpayers.¹²² Nevertheless, these companies avoid public disapproval.

To the contrary, the welfare queen fit comfortably within Governor Romney's dependency rhetoric. She was also a counterpoint to Ann Romney, the candidate's wife and a stay-at home mother of five, who the campaign positioned as the exemplar of decent, proper American motherhood. The campaign and talking heads trumpeted Mrs. Romney's devotion to family while implicitly demeaning similar choices of poor mothers. This is consistent with federal policy that expects affluent, married mothers to stay home with their children, while pushing poor single mothers into the workplace and marriage.¹²³

III. THE TRUTH ABOUT TANF

In posturing over who was tougher on welfare recipients, both Governor Romney and President Obama seemed to share similar misconceptions about TANF's cost, benefits, reach, and effectiveness. To start, both candidates implicitly assumed that welfare spending was a big part of the federal budget that warranted special scrutiny. In fact, in 2012, TANF's budget was only 0.47% of annual federal expenditures; thus, compared to other safety net programs, TANF was an extremely small program. For example, in 2012, 4.2 million recipients—or 1.8 million families—received TANF,¹²⁴ whereas about 45 million people received food stamps in 2012.¹²⁵

Role of Corporations in Society, 34 GA. L. REV. 1011, 1017-18 (2000) ("One cannot reasonably suggest that the major work of redistribution be done through progressive taxes and redistributive government programs without noting that much of what government now does is regressive—billions of dollars a year go into export subsidies, price supports, tax concessions, and other examples of 'corporate welfare,' which in effect redistribute wealth from the working and middle classes to the wealthy.").

120. See Ilya Shapiro & Carl G. DeNigris, *Occupy Pennsylvania Avenue: How the Government's Unconstitutional Actions Hurt the 99%*, 60 DRAKE L. REV. 1085, 1103-04 (2012).

121. See Benedict Sheey, *Corporations and Social Costs: The Wal-Mart Case Study*, 24 J.L. & COM. 1, 41 (2004).

122. See Julia Contreras & Orly Lobel, *Wal-Martization and the Fair Share Health Care Acts*, 19 ST. THOMAS L. REV. 105, 114-15 (2006).

123. See Dorothy E. Roberts, *Welfare Reform and Economic Freedom: Low-Income Mothers' Decisions About Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029, 1034 (2004).

124. See GENE FALK, CONG. RESEARCH SERV., RL 32760, THE TEMPORARY

Furthermore, the program that does the most to lift the working poor out of poverty is the Earned Income Tax Credit (EITC). The EITC provides an annual tax refund to low-income workers based on their family size and income and carries far less of a stigma than welfare.¹²⁶ Not only is the program administered by the IRS, an agency that serves all Americans, but it is also largely delivered through for-profit tax providers where claimants are treated as customers rather than social service recipients.¹²⁷ In 2010, the EITC lifted approximately 6.3 million people out of poverty.¹²⁸ In 2011, the EITC served 26.2 million families; they received about 58.6 billion dollars.¹²⁹ By contrast, annual TANF spending is capped at 16.5 billion dollars.¹³⁰

TANF is not only a relatively small program, but it also has a limited impact in assisting poor families. The average monthly benefit is \$427 for a family of three,¹³¹ while in fourteen states the benefit levels for a family of this size are less than \$300.¹³² This means that in all states, benefits are

ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT: ANSWERS TO FREQUENTLY ASKED QUESTIONS 7 (2013) [hereinafter FREQUENTLY ASKED QUESTIONS].

125. See POLICY BASICS: INTRODUCTION TO SNAP, CTR. ON BUDGET & POL'Y PRIORITIES 1 (2013), available at <http://www.cbpp.org/files/policybasics-foodstamps.pdf>.

126. See CHUCK MARR ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, EARNED INCOME TAX CREDIT PROMOTES WORK, ENCOURAGES CHILDREN'S SUCCESS AT SCHOOL, RESEARCH FINDS 4, 9 (2013), available at <http://www.cbpp.org/files/6-26-12tax.pdf> (providing research that shows that the EITC has done more to help low-income mothers transition to work than TANF); Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103, 1104 (2006). Along with the Child Care Tax Credit, the EITC lifted 9.4 million people above the poverty threshold in 2011. *Id.*

127. See Ruby Mendenhall et al., *The Role of Earned Income Tax Credit in the Budgets of Low-Income Households*, 86 SOC. SERV. REV. 367, 371 (2012). "Clients perceive real advantages as well. At H&R Block and its competitors, an EITC claimant is no longer a recipient but a customer. The facilities are pleasant, well lit, and clean. This environment stands in stark contrast to the often rundown welfare office, the long wait to be seen, and the caseworker who may be more concerned with detecting misuse of funds than with client service." *Id.*

128. *Id.* at 369.

129. *Id.* at 368.

130. *Id.*

131. See FREQUENTLY ASKED QUESTIONS, *supra* note 124, at 10-12 (finding that the range is from \$923 per month in Alaska to \$170 per month in Mississippi).

132. *Id.* at 4; see also IFE FINCH & LIZ SCHOTT, CTR. ON BUDGET & POL'Y PRIORITIES, TANF BENEFITS FELL FURTHER IN 2011 AND ARE WORTH MUCH LESS THAN IN 1996 IN MOST STATES 1, 3 (2011), available at <http://www.cbpp.org/files/11-21-11pov.pdf> (elaborating further that the dollar value of TANF benefits have fallen below 1996 levels after adjusting for inflation and that the block grant has lost 30% of

below fifty percent of the poverty line, and in the majority of states they are below thirty percent of the poverty line.¹³³ Moreover, there is no state in which benefit levels for a family of three would be enough to pay fair market rent for a two-bedroom apartment.¹³⁴ Housing subsidies do not compensate for the difference because only one in four eligible households receives subsidized housing benefits due to shortages in funding.¹³⁵ Even when TANF is combined with SNAP benefits—formerly known as food stamps—most recipients remain below the poverty line.¹³⁶ Indeed, half of TANF recipients have incomes below the poverty line.¹³⁷ Thus, the claim that welfare recipients are taking advantage of the system while leading lives of luxury is spurious.

Furthermore, for all the presidential candidates' emphasis on work, the reality is that half of TANF recipients are not adults—making the work requirement irrelevant. Half of the TANF caseload consists of child-only cases; that is, cases in which neither parent is eligible for benefits.¹³⁸ Forty percent of these children are living with grandparents or other non-parent caregivers.¹³⁹ Thus, TANF interacts with the child welfare system, and the rules of each system determine whether a caregiver will seek or be eligible for TANF.¹⁴⁰ These families tend to be better off economically than parent-headed households, but the children are doing worse with respect to

its real value since 1996 due to inflation).

133. See Finch & Schott, *supra* note 132, at 1.

134. See *id.* at 2.

135. *Id.* at 6-7.

136. See HEATHER HAHN ET AL., *Strengthening TANF for States and Needy Families*, THE URBAN INST., 10 (Aug. 22, 2012), available at <http://www.urban.org/UploadedPDF/412636-Strengthening-TANF-for-States-and-Needy-Families.pdf> [hereinafter STRENGTHENING TANF] (finding that the maximum SNAP benefit is \$526).

137. See Robert G. Wood, Quinn Moore & Anu Rangarajan, *Two Steps Forward, One Step Back: The Uneven Economic Progress of TANF Recipients*, 82 SOC. SERV. REV. 3, 24 (2008).

138. See ZEDLEWSKI, *supra* note 51, at 4 (discussing that under AFDC, child-only cases were one in five of the caseload).

139. See OLIVIA GOLDEN & AMELIA HAWKINS, TANF CHILD-ONLY CASES, THE URBAN INST., 4 (Nov. 2011), available at <http://www.urban.org/UploadedPDF/412573-TANF-Child-Only-Cases.pdf>; see also STRENGTHENING TANF, *supra* note 136, at 8.

140. See GOLDEN & HAWKINS, *supra* note 139, at 3; STRENGTHENING TANF, *supra* note 136, at 9 (TANF might keep states from providing these children with services available in the foster care system because “limited resources in both TANF and child welfare services, including the foster care system, can create incentives for states to provide caretaker relatives with minimal supports through TANF rather than making more expensive investments through child protective services”).

mental health and educational measures.¹⁴¹ Of those children who are residing with parents, the parents are typically ineligible for TANF due to citizenship status, receipt of SSI (disability) benefits, or sanctions.¹⁴²

In addition, contrary to assumptions, most TANF funds are not spent on cash assistance. Rather, states spend about seventy-three percent of their funds on other TANF-related purposes.¹⁴³ States can spend federal TANF funds for any of the four purposes listed in the statute: (1) assisting needy families so children can be cared for in their own homes; (2) reducing the dependency of needy parents by promoting job preparation, work, and marriage; (3) preventing out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families. Accordingly, states provide a variety of social services to low-income families (a group broader than cash assistance recipients), including job training, child care, and transportation, as well as services related to mental health and substance abuse, family planning, parenting education, and the child welfare system.¹⁴⁴ While these services are valuable, they decrease the slice of the pie available for cash assistance. Moreover, “[t]his flexibility creates incentives for states to provide cash assistance to fewer families and not to create employment programs that, especially for hard-to-serve families, can be very expensive.”¹⁴⁵

The candidates assumed, even boasted, that TANF is effective. To be sure, the welfare rolls have plunged almost sixty percent since 1996,¹⁴⁶ and shortly after 1996, many welfare mothers joined the workforce due to a strong economy as well as expansion of the Earned Income Tax Credit and increased child care funding.¹⁴⁷ However, since the recession, poverty and unemployment rates have increased while TANF participation has decreased, revealing that many needy people are not getting the help they

141. See GOLDEN & HAWKINS, *supra* note 139, at 5.

142. *Id.*, at 4 (examining how state policies regarding child-only cases vary widely); see also ZEDLEWSKI, *supra* note 51, at 4 (finding that 20% of these parents are on SSI, 25% are disqualified for immigration status, 6% are sanctioned, and 8% have lost benefits for other reasons).

143. See FREQUENTLY ASKED QUESTIONS, *supra* note 124, at 5; see also ZEDLEWSKI, *supra* note 51, at 7.

144. See Rutledge Q. Hutson, *Red Flags: Research Raises Concerns About the Impact of “Welfare Reform” on Child Maltreatment*, CTR. FOR LAW & SOC. POL’Y, 2-3 (Oct. 2001).

145. See STRENGTHENING TANF, *supra* note 136, at 3-4.

146. See Policy Basics, *supra* note 48, at 5-6; ZEDLEWSKI, *supra* note 51, at 2 (providing further that state rates vary from an 80% decline to less than 25%).

147. See Sunshine Rote & Jill Quadagno, *Depression and Alcohol Dependence Among Poor Women: Before and After Welfare Reform*, 85 SOC. SERV. REV. 229, 231 (2011); ZEDLEWSKI, *supra* note 51, at 2.

need.¹⁴⁸ TANF's role in our social safety net has shrunk. In 1996, TANF served 68 out of 100 families with children living in poverty; yet by 2010, that ratio was down to 27 out of 100 poor families.¹⁴⁹ The drop is not due to increased work rates; rather, employment rates among single mothers are low. Single mothers with a high school education or less were employed at a rate of fifty-one percent in 1992, this rose to a high of seventy-six percent in 2000, but fell to fifty-four percent by 2011.¹⁵⁰

States struggle to put TANF adults in work activities given that most adults receiving TANF have at least one barrier to work, while about four in ten TANF eligible adults face multiple barriers. These barriers to work include lack of education, mental or physical disabilities, substance abuse or alcoholism, limited work experience, and caregiving responsibilities for disabled children.¹⁵¹ For those who are working, income gains from employment are often reduced by the loss of public benefits and are eaten up by the very costs of working – child care, transportation, uniforms, and other expenses. Thus, “even among the least disadvantaged sample members, those with more than a high school education, substantial recent work histories, and consistently good health, steady economic progress is far from certain.”¹⁵²

Moreover, as a result of sanctions, time limits, diversion tactics, and other discouraging practices in social service offices, at least one in five families that leave TANF are disconnected from the social safety net, and these families tend to be poorer than other single-parent families.¹⁵³

148. See STRENGTHENING TANF, *supra* note 136, at 5 (finding that likewise, between 2008 and 2010 the TANF caseload only rose 13%, while the unemployment rate rose 66%).

149. See Policy Basics, *supra* note 48, at 6.

150. *Id.* at 6; see also Glenn Kessler, *A Too-Simple Defense of the New Welfare Rule*, WASH. POST, Sept. 16, 2012, at A7 (explaining that in 2010, 16.6% of welfare families, about 300,000, left welfare due to work).

151. See Rote & Quadagno, *supra* note 147, at 241 (“[W]elfare reform appears to leave the neediest women (in this case, those with the most depressive symptoms) on the welfare rolls.”); ZEDLEWSKI, *supra* note 51, at 5.

152. See Wood, Moore, & Rangarajan, *supra* note 137, at 24; see also Steven G. Anderson, Anthony P. Halter & Brian M. Gryzlak, *Difficulties After Leaving TANF: Inner-City Women Talk about Reasons for Returning to Welfare*, 49 SOC. WORK 185, 186-89 (2004) (discussing how TANF returners were unable to maintain work paying a living wage, faced job instability, job shortages in poor neighborhoods, lack of child care, and demeaning interactions with caseworkers).

153. See Lisa Gonzales, Kenneth Hudson & Joan Acker, *Diverting Dependency: The Effects of Diversion on the Short Term Outcomes of TANF Applicants*, 11 J. OF POVERTY. 83, 85, 101 (2007) (discussing how given the pressure to keep caseloads low, many states use diversion strategies to keep women off of TANF; they include short-term cash grants or housing assistance and how most of these diverted women

Ironically, sanctions do not incentivize finding work. To the contrary, as they increase in severity and duration, welfare leavers are more likely to end up jobless and with lower earnings.¹⁵⁴ In short, the employment rate of welfare parents has decreased, TANF caseloads remain low despite increasing need caused by the recession, and current and former welfare recipients remain mired in poverty.¹⁵⁵

While the presidential candidates judged TANF's effectiveness based on its shrinking numbers, it is just as important to consider the non-economic aspects of family well-being. After all, TANF's express purposes are to foster family formation by increasing marriage in order to improve the well-being of children, who constitute the majority of welfare recipients. Research concerning the impact of TANF on child welfare is limited and inconclusive because of the complexity of isolating causality.¹⁵⁶ Overall, studies reveal that TANF has not had a significant influence on children in families that receive welfare,¹⁵⁷ although there are some troubling indicators for teenagers.¹⁵⁸ Children in families that receive welfare and in

remained in poverty due to low-wage jobs or unemployment); ZEDLEWSKI, *supra* note 51, at 3, 9 (explaining that, "TANF take up rates, defined as the share of eligible families that enroll, have declined from 79 percent in 1996 to 36 percent in 2007," and that disconnected families are poorer than other families); *see also* Rebecca M. Blank, *Improving the Safety Net for Single Mothers Who Face Serious Barriers to Work*, 17 THE FUTURE OF CHILD. 183, 186 (2007) (finding that "as many as 18 percent" of single parent families are disconnected); Pamela C. Ovwigho, et al., *Lost Leavers: Uncovering the Circumstances of Those Without Welfare and Without Work*, 92 FAMILIES IN SOC'Y 397, 397 (2011) ("Despite these differences, the estimates consistently indicate that one tenth to one fourth of former welfare recipients were without work and without cash assistance at a particular point.").

154. *See* Chi-Fang Wu, *Severity, Timing, and Duration of Welfare Sanctions and the Economic Well-Being of TANF Families With Children*, 30 CHILD. & YOUTH SERVS. REV. 26, 42 (2008) (providing further that "substantial numbers of sanctioned participants are leaving welfare with no job or with a low-wage job that barely covers their living expenses").

155. *See* POLICY BASICS, *supra* note 48, at 5.

156. *See* Anita M. Larson, Shweta Singh & Crystal Lewis, *Sanctions and Education Outcomes for Children in TANF Families*, 32 CHILD. & YOUTH SERVS. REV. 180, 194 (2011) (finding, however, that children in families that have been sanctioned have greater educational disruptions).

157. *See* Rachel Dunifon, Kathryn Hynes & H. Elizabeth Peters, *Welfare Reform and Child Well-Being*, 28 CHILD. & YOUTH SERVS. REV. 1273, 1289-90 (2006) (finding no significant impact on child well-being or parenting behavior); ZEDLEWSKI, *supra* note 51, at 8.

158. *See* NGA CTR. FOR BEST PRACTICES, CHILD AND YOUTH WELL-BEING UNDER WELFARE REFORM: RECENT RESEARCH 2-3 (2004) (discussing that elementary age children appear to be achieving some gains in school achievement and behavior, while teenage children are showing some negative impacts, through poor school achievement,

families that have left welfare are both at risk for poor development outcomes, “and there have been no major shifts in well-being for either group.”¹⁵⁹

Although there is little research on the impact of TANF on child maltreatment, there is substantial research showing an “inverse relationship between earned income from employment and subsequent child maltreatment.”¹⁶⁰ Consistent with this finding, some studies have suggested that reductions in welfare benefits are linked to increased entry into the child welfare system, particularly if the mother does not obtain subsequent employment.¹⁶¹ Studies have also shown that rates of neglect rise as the share of single working mothers increases, and, conversely, that states with more generous welfare benefits have lower numbers of neglect cases.¹⁶² Involuntary exits from TANF are associated with increased maltreatment.¹⁶³ Not surprisingly, poor families do better in jurisdictions with more work support services, such as job training, health insurance, income supplements, and subsidized child care.¹⁶⁴ Thus, researchers have concluded that job quality should be emphasized over caseload reductions.¹⁶⁵

TANF also has not achieved significant progress in increasing marriage rates or reducing single-parent families, the express purposes of the Act.¹⁶⁶ Millions of dollars of TANF funds have been poured into various marriage

increases in drinking and smoking, and problem behavior); Greg J. Duncan & P. Lindsay Chase-Lansdale, *Welfare Reform and Children's Well-Being*, in *THE NEW WORLD OF WELFARE*, 391, 402-03 (Rebecca M. Blank & Ron Haskins eds., 2001); Martha Zaslow, et. al, *How Are Children Faring Under Welfare Reform?*, in *WELFARE REFORM: THE NEXT ACT 82* (Alan Weil and Kenneth Feingold, eds. 2002) (finding that this may be due to decreased parental supervision and/or increased child care responsibilities for teenagers who must care for their younger siblings).

159. See Zaslow, *supra* note 158, at xxii.

160. See David Beimers & Claudia J. Coulton, *Do Employment and Type of Exit Influence Child Maltreatment Among Families Leaving Temporary Assistance for Needy Families*, 33 *CHILD. & YOUTH SERVS. REV.* 1112, 1117 (2011).

161. See Hutson, *supra* note 144, at 14-15.

162. *Id.* at 17 (clarifying that the share of a state's single mothers did not correlate with child maltreatment rates).

163. See Beimers & Coulton, *supra* note 160, at 1118.

164. See Duncan & Chase-Lansdale, *supra* note 158, at 393, 404; see also NAT'L CTR. FOR CHILDREN IN POVERTY, *Children in Low Income Families Fare Better with Work Supports* (2003).

165. See Beimers & Coulton, *supra* note 160, at 1118.

166. See Zedlewski, *supra* note 51, at 8; see also Teresa Kominos, *What Do Marriage and Welfare Reform Really Have in Common?: A Look Into TANF Marriage Promotion Programs*, 21 *J. CIV. RIGHTS AND ECON. DEV.* 915, 927-28 (2007).

promotion programs that engage in activities such as advertising, counseling, and education.¹⁶⁷ The major study of marriage promotion programs directed at unwed parents found no effect on relationship quality or whether the parents stayed together or got married.¹⁶⁸ The economic well-being of children was also unchanged, although there were some improvements in their behavior.¹⁶⁹ While poor women share the same values regarding marriage as more affluent women, external forces make it harder and riskier for them to marry.¹⁷⁰ Marriage promotion programs do not address the primary reasons why some poor women do not get married, such as the lack of marriageable men due to high unemployment and incarceration.¹⁷¹ Thus far, there is no statistically significant link between TANF receipt and the reduction in teenage parenthood. Although teenage birth rates are falling, they began decreasing before TANF, and seem to be unaffected by welfare reform.¹⁷² In contrast to the positive decrease in teenage birth rates, post-TANF birthrates among single women between the

167. See FALK, *supra* note 44, at 19-20; Kominos, *supra* note 166, at 927-28; Julie Nice, *Promoting Marriage Experimentation: A Class Act?*, 24 WASH. U. J.L. & POL'Y 31, 34 (2007). In addition, while TANF makes two-parent families eligible for benefits, it imposes a 90% work participation rate, which essentially restores the old marriage penalty under AFDC. *Id.* at 36.

168. See Robert G. Wood, et al., OPRE, *The Long-Term Effects of Building Strong Families: A Relationship Skills Education Program for Unmarried Parents* (Nov. 2012), at xiii, http://www.acf.hhs.gov/sites/default/files/opre/bsf_36_mo_impact_report.pdf.

169. *Id.* at xvi. A study of a similar program aimed at low-income married couples showed some short-term psychological benefits, although after twelve months, there was no impact on "the likelihood that parents were still together or spouses' reports of infidelity or the quality of their coparenting relationships." Anne Hsueh, et al., *The Supporting Healthy Marriage Evaluation: Early Impacts on Low-Income Families* (Feb. 2012), at ES-9 http://www.ncdsv.org/images/HHS_SupportHealthyMarriageEvalEarlyImpactsOnLow-IncomeFamilies_2-2012.pdf.

170. See Daniel T. Lichter, et al., *Welfare Reform and Marriage Promotion: The Marital Expectations and Desires of Single and Cohabiting Mothers*, 78 SOC. SERV. REV. 2, 20 (2004) (enumerating factors including "[l]ow education, limited economic resources, the presence of coresidential children from previous relationships, and shortages of potential marriage partners (i.e., men who are employed, drug and crime free, and faithful)"); see also Kominos, *supra* note 166, at 933, 945; Nice, *supra* note 167, at 37-38.

171. See Kominos, *supra* note 166, at 921; Sandra D. Lane, et al., *Marriage Promotion and Missing Men: African American Women in a Demographic Double Bind*, 18 MED. ANTHROPOLOGY QUART. 405, 407, 423 (2004).

172. See GREGORY ACS & HEATHER KOBALL, THE URBAN INST., *TANF AND THE STATUS OF TEEN MOTHERS UNDER AGE 18*, at 6 (2003). The decrease in teen mothers predates TANF. See Robert I. Lerman, *supra* note 130, at 42-43.

ages of eighteen and twenty-nine have actually risen.¹⁷³ Marriage rates are up for some low-income groups and down for others, but the proportion of married women overall continues to decline.¹⁷⁴ Thus, researchers have concluded that TANF has achieved “mixed progress on family structure objectives.”¹⁷⁵ Moreover, it is clear that the work objectives and the family objectives of TANF often conflict, making it difficult for states or families to achieve significant improvements in both areas simultaneously.

IV. A NEW VISION FOR WELFARE

TANF is a failure. TANF is neither alleviating poverty nor transitioning families to self-sufficiency. “This program is miserly, discriminatory, degrading, and expensive to administer.”¹⁷⁶ At best, it is providing desperately needed income support to a small number of poor families for a short period of time. This is not insignificant, but it is not enough, especially since TANF is perpetuating the myth of the welfare queen and the stigma that attaches to her. In turn, this harms all poor people, not simply TANF recipients, by reducing public support for poor relief programs and increasing distrust of the poor. Further, all Americans suffer when the causes of inequality are masked by rhetoric and are allowed to perpetuate.

When welfare reform was passed, some liberal observers were cautiously optimistic that the welfare queen would be replaced by the new reality of the working poor.¹⁷⁷ Nevertheless, the reappearance of the welfare queen in the 2012 presidential campaign has dashed these hopes.¹⁷⁸ Due to this state of affairs, now is the time to consider new strategies for helping poor families and putting the welfare queen to rest. The goal should not be to reduce welfare rolls; rather, it should be to reduce poverty. The discussion should not be about poor people refusing to work, but about supporting the low-wage worker. How can we revise TANF to create viable opportunities for poor families?

173. See Lerman, *supra* note 130, at 43.

174. *Id.* at 45.

175. *Id.* at 46.

176. See HANDLER & HASENFELD, *supra* note 3, at 317.

177. See Juliet Brodie, *Post-Welfare Lawyering: Clinical Legal Education and New Poverty Law Agenda*, 20 WASH. U. J.L. & POL’Y 201, 203, 219-20 (2006).

178. The dire predictions made immediately after passage have proved more accurate. Peter Edelman resigned as the assistant secretary for planning and evaluation at the Department of Health and Human Services at the passage of TANF, due to his profound disagreement with the welfare bill. See Peter Edelman, *The Worst Thing Bill Clinton Has Done*, THE ATLANTIC, 1, 3 (Mar. 1997), available at <http://www.theatlantic.com/past/docs/issues/97mar/edelman/edelman.htm>.

There is near unanimity among experts that states should be allowed under TANF to focus on outcomes such as employment entry, job retention, and poverty reduction rather than the bean-counting task of calculating work participation rates.¹⁷⁹ An outcomes-based focus would require states to locate or create job opportunities for welfare recipients in today's tight economic market and would also eliminate TANF's arbitrary time limits in favor of supporting education and training programs that can lead to jobs that pay a living wage. Further, the work-first approach would be transformed into a work-support approach, in which welfare mothers receive all the supports that make work possible, such as child care, transportation, uniforms, health insurance, and the like. Reforming TANF to boost employment will cost money, and thus, almost all welfare experts agree that TANF needs increased funding. There should be a federal benefit floor and less variation among states in eligibility criteria.¹⁸⁰ All of these suggestions would go far to improve support for low-income families.

In 2011, and again in 2013, Representative Gwen Moore, a Democrat from Wisconsin and former welfare recipient, introduced legislation to amend TANF that encompasses these, and other, recommendations.¹⁸¹ The RISE Act (Rewriting to Improve and Secure an Exit Out of Poverty Act), would provide permanent funding to TANF that is adjusted for inflation and child population growth, as well as establish a contingency fund for states to access during economic downturns.¹⁸² The Act would help welfare mothers who want to work find and maintain jobs by providing federal reimbursement to states for creating subsidized employment.¹⁸³ The RISE Act would also revise the work participation requirements to permit education and training so that women can obtain stable jobs with the potential for advancement.¹⁸⁴ Child care subsidies would be guaranteed and child support payments would flow directly to families rather than be captured by the states.¹⁸⁵ Caring for disabled family members would count

179. See generally ELIZABETH LOWER-BASCH, CTR. FOR LAW & SOC. POL'Y, GOALS FOR TANF REAUTHORIZATION 2-3 (2013); see also TANF WORK REQUIREMENTS, *supra* note 43, at 4.

180. See TANF WORK REQUIREMENTS, *supra* note 43, at 4.

181. H.R. 3573, 112th Cong. (1st Sess. 2011).

182. *Id.* A summary of the bill is available at Memorandum to Rep. Gwen Moore from Gene Falk, Congressional Research Service, Dec. 1, 2011, available at http://www.ncdsv.org/images/CongResServ_SummaryOfTheRISEOutOfPovertyAct_12-1-2011.pdf.

183. *Id.* § 5.

184. *Id.* § 6.

185. *Id.* § 15.

as work.¹⁸⁶ Full family and lifetime sanctions would be eliminated, as would exclusions for ex-prisoners with drug convictions.¹⁸⁷ The RISE Act would require states to provide assistance sufficient to meet the basic needs of recipients, such as food, clothing, shelter, utilities, household goods, and personal care items.¹⁸⁸ In short, the RISE Act would be a dramatic improvement over TANF.

An alternative approach, also designed to support low-income mothers, was introduced in April 2012 by Representative Pete Stark as the Women's Option to Raise Kids (WORK) Act.¹⁸⁹ The WORK Act would provide cash assistance to mothers with children ages three and under who choose to stay at home with their children.¹⁹⁰ The WORK Act was a direct response to Governor Romney's defense of his wife after a Democratic strategist said on TV that Ann Romney "had not worked a day in her life."¹⁹¹ Governor Romney countered, "All moms are working moms."¹⁹² Of course, this contradicted his own prior statements that poor women should work outside the home in order to enhance their own dignity.¹⁹³ In sponsoring the WORK Act, Pete Stark, a California Democrat and sponsor of the WORK Act, stated that "I think we should take Mr. Romney at his most recent word and change our federal laws to recognize the importance and legitimacy of raising young children. That's why I'm introducing the WORK Act to provide low-income parents the option of staying home to raise young children without fear of being pushed into poverty."¹⁹⁴ The bill died, but the point was made.¹⁹⁵

186. *Id.* § 6.

187. *Id.* § 7.

188. *Id.* § 12.

189. Women's Option to Raise Kids Act, H.R. 4379, 112th Cong. (2nd Sess. 2012).

190. *Id.*

191. See Ezra Klein, *Mitt Romney Flashback, Stay-at-Home Moms Need to Learn "Dignity of Work,"* WASH. POST, WONKBLOG (Apr. 15, 2012), http://www.washingtonpost.com/blogs/wonkblog/post/mitt-romney-flashback-stay-at-home-moms-need-to-learn-dignity-of-work/2012/04/15/gIAhmbZJT_blog.html; see also Nancy Folbre, *Valuing Family Work*, N.Y. TIMES, ECONOMIX (Apr. 23, 2012), available at <http://economix.blogs.nytimes.com/2012/04/23/valuing-family-work>.

192. See Klein, *supra* note 191, at 2.

193. *Id.*

194. See Ryan Grim, *Work Act Would Give Low-Income Moms the Same Options as Ann Romney (For 3 Years)*, HUFFINGTON POST, Apr. 18, 2012, http://www.huffingtonpost.com/2012/04/18/work-act-low-income-moms-ann-romney_n_1434384.html. Democratic Reps. John Lewis (Ga.), Gwen Moore (Wis.), Barbara Lee (Cal.), Jim McDermott (Wash.), Lynn Woolsey (Cal.), Jan Schakowsky (Ill.) and Rosa DeLauro (Conn.) were co-sponsors of the WORK Act.

195. See GOVTRACK, <http://www.govtrack.us/congress/bills/112/hr4379> (last visited

The RISE Act and the WORK Act reflect competing views among feminists on how best to support single mothers. Within feminism, there is a tension over whether gender equality is best served if the state supports single mothers in the workplace or compensates them for the caregiving work they perform in the home.¹⁹⁶ In the former view, work is the most emancipating option for women, although as Dorothy Roberts points out, for women of color, the workplace has long been a source of oppression.¹⁹⁷ By contrast, in the latter view, the state has a responsibility to support caregiving because dependency is both universal and inevitable.¹⁹⁸ Yet this approach may reinforce gendered notions of a woman's role while subjecting poor families to increased state regulation.¹⁹⁹ To break this dichotomy, Roberts argues that "feminists can do both,"²⁰⁰ and that poor women of color should have the same choices to work or stay home that middle-class women have.²⁰¹ The problem with this suggestion is that today, many middle-class women feel they do not have a choice to work. They must do so given the declining value of wages, rising costs, and dropping employment rates among middle-class men. In turn, this makes the notion of "choice" for poor women politically unpalatable to the middle-class.

Thus, a realistic but transformative ideal would be to eliminate TANF and replace it with a system that supports low-income families while comporting with the American work ethic.²⁰² This ideal would be based on remedying the structural determinants of poverty, rather than blaming welfare recipients for poverty.²⁰³ TANF has proven that a one-size-fits-all program does not work given the range of families that need economic support.²⁰⁴ There are roughly three groups that a new family support policy

Oct. 30, 2013).

196. See Roberts, *supra* note 123, at 1035.

197. *Id.* at 1037.

198. See generally MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH* (2005). See also Maxine Eichner, *Dependency and the Liberal Polity: On Martha Fineman's The Autonomy Myth*, 93 CALIF. L. REV. 1285, 1286-87 (2005) (arguing that Fineman's view of state responsibility is better stated as society's obligation to protect its citizens and develop their capabilities).

199. See Roberts, *supra* note 123, at 1039-40.

200. *Id.* at 1040.

201. *Id.* at 1041.

202. See HANDLER & HASENFELD, *supra* note 3, at 317-18.

203. On the competing theories of poverty, see Gilman, *The Poverty Defense*, *supra* note 108, at 540-42.

204. See *supra* Part III.

would need to accommodate.²⁰⁵ First, there are single parents ready and willing to work who may need assistance in obtaining and keeping a job. States need to train and match these workers with jobs that are available and needed in their local economies, and create community-based jobs where there are none. For this group—as with other working poor families—improvements to the low-wage job market are essential. First and foremost, low-wage workers should earn a living wage that is sufficient to lift the family out of poverty.²⁰⁶ Currently, a minimum wage worker who is employed full-time for fifty-two weeks (meaning no sick leave or vacation) earns \$15,080 annually.²⁰⁷ If that worker were the sole earner for a four person family, her income would only be sixty-six percent of the poverty threshold.²⁰⁸ Raising the minimum wage is one way to move towards a living wage. Additionally, the EITC, the Child Tax Credit (CTC), and unemployment assistance are existing programs tied to employment whose benefits could be increased, as well as expanded, to cover more low-wage workers.²⁰⁹ At the same time, we need to expand existing in-kind programs such as housing subsidies and Medicaid to ensure that low-wage workers can maintain the stability necessary to participate in the workplace.²¹⁰ In addition, to support parents and ensure the success of their children, we need mandated and paid parental leave, including paid leave to care for sick dependents, in addition to quality child care, and universal pre-kindergarten. Currently, only one in six eligible families receive child care subsidies due to a lack of funding, which is hampering the ability of parents to work.²¹¹

205. See Blank, *supra* note 153, at 185.

206. See William Quigley, *Full-Time Workers Should Not be Poor: The Living Wage Movement*, 70 MISS. L.J. 889 (2001); see also Maria Cancian & Sheldon Danziger, UNI. WIS.-MADISON INST. FOR RESEARCH ON POVERTY, *Changing Poverty and Changing Antipoverty Policies*, 26 FOCUS 2, at 1-2 (2009).

207. This number is computed by taking the minimum wage of \$7.25 and multiplying it by an eight hour day for fifty-two weeks.

208. U.S. CENSUS BUREAU, POVERTY THRESHOLDS FOR 2011 BY SIZE OF FAMILY AND NUMBER OF RELATED CHILDREN UNDER 18 YEARS (2011) *available at* <https://www.census.gov/hhes/www/poverty/data/threshld/index.html>.

209. For instance, policy analysts suggest that the CTC minimum income threshold should be lowered to zero so that extremely poor families can participate (you currently need to earn at least \$3,000 in a year to qualify); the CTC should be fully refundable to give the full benefit of the credit to the lowest-income families, and the CTC provisions should be adopted permanently. See Results: The Power to End Poverty, *Child Tax Credit!!!*, https://www.results.org/issues/us_poverty_campaigns/economic_opportunity_for_all/child_tax_credit/ at 3.

210. In kind programs are generally more popular with the public than cash assistance. See HANDLER & HASENFELD, *supra* note 3, at 72.

211. See TANF WORK REQUIREMENTS, *supra* note 43, at 10.

Second, there are parents who face significant barriers to work; this group constitutes forty to forty-five percent of the welfare caseload.²¹² Some of these women may be able to transition into work with adequate support, such as alcohol and drug treatment programs, mental health counseling, and vocational training and education. In addition, an expansion of existing disability programs can cover some of this population. In particular, SSI could be reformed to allow some forms of temporary or part-time work, rather than discouraging any work among the disabled. “The current public U.S. disability system for low-income people does not recognize that ‘disability’ is a dynamic process rather than a static classification.”²¹³ Thus, experts advocate for partial disability support for people with disabilities that limit work but do not preclude it and temporary support for people with short-term disabilities.²¹⁴ Third, there are some parents who may never be able to work at all due to the severity of the barriers they face. This cohort should be able to receive cash assistance for their children in an amount equal to a minimum wage earner’s EITC and CTC benefits. In short, our anti-poverty policy should tailor assistance to the work prospects of parents, make work possible, make work pay, and support those who cannot work.

CONCLUSION

The welfare queen has starred in poverty discourse since the 1970s. Her tattered throne sits at the intersection of class, race, and gender, and she is used as a rhetorical tool to blame individuals for poverty rather than to examine and reform structural aspects of our society and economy. When welfare was reformed in 1996, welfare recipients were required to work, raising the hope that the stereotype of the welfare queen would be put to rest. Yet in the 2012 presidential campaign, Governor Mitt Romney resurrected the welfare queen and accused President Obama of weakening TANF work requirements. In their battle to prove who was tougher on the poor, neither candidate confronted the truth about TANF. In reality, it is a small program that provides meager benefits to a shrinking pool of applicants. It does little to lift families out of poverty. It does a lot to stigmatize the poor. Instead of the work-first tactic of TANF, we need work-support strategies that will support low-income families and recognize our interdependence. America succeeds when we all succeed.

212. See Blank, *supra* note 153, at 185.

213. *Id.* at 190.

214. *Id.*