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## Shelter from the Storm: Human Rights Protections for Single-Mother Families in the Time of COVID-19

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SHELTER FROM THE STORM: HUMAN RIGHTS  
PROTECTIONS FOR SINGLE-MOTHER FAMILIES  
IN THE TIME OF COVID-19

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## INTRODUCTION

A public health and economic tsunami is devastating many families in the United States. This tsunami may be most destructive to single-parent families—most of which are headed by mothers.<sup>1</sup> The extraordinary devastation this tsunami inflicts on these families is not merely bad luck, but the result of decades of deliberate legal and policy choices that left single-mother families in the United States living at the wave's edge, exposed to the risks of unemployment, homelessness and food and healthcare insecurity from even the “normal,” lesser storms of average years.<sup>2</sup> Now, without a concerted government effort to honor the human rights of all families, single-mother families face a precarious future that may permanently harm all family members.

COVID-19's arrival, and the changes it has unleashed, reveal how longstanding legal and policy decisions produced structural inequalities that have left so many families, and especially single-parent families with children, all too insecure. The fragility of single-mother families is amplified by the multifaceted discrimination they face.<sup>3</sup> While all single parents, including single fathers and other single relatives who are raising children, share many of these burdens, this Article focuses on the challenges confronting single mothers.<sup>4</sup>

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1. See *America's Families and Living Arrangements: 2019*, U.S. Census Bureau, tbl.FG6, <https://www.census.gov/data/tables/2019/demo/families/cps-2019.html> [<https://perma.cc/MWZ2-MWK5>].

2. See, e.g., Randy Albeda & Chris Tilly, *Single, with Children: The Economic Plight of Single Mothers*, in *WOMEN AND THE ECONOMY: A READER*, 265, 271 (Ellen Mutari & Deborah M. Figart eds., 2015) (citing a number of policies, stigmas, and socioeconomic circumstances that have historically kept single mothers in economic instability).

3. Cf. Anna North, *Every Aspect of the Coronavirus Pandemic Exposes America's Devastating Inequalities*, VOX (Apr. 10, 2020, 12:10 PM), <https://www.vox.com/2020/4/10/21207520/coronavirus-deaths-economy-layoffs-inequality-covid-pandemic> (reviewing a number of health and socioeconomic inequities exposed by COVID-19 along racial, income-level, and gender divides).

4. See Yuan-Chiao Lu, Regine Walker, Patrick Richard & Mustafa Younis, *Inequalities in Poverty and Income Between Single Mothers and Fathers*, 17 INT'L J. ENVIRON. RESEARCH & PUB. HEALTH 135, fig.2 (2019); Rense Nieuwenhuis & Laurie C. Maldonado, *Single-Parent Families and In-Work Poverty*, in *HANDBOOK OF RESEARCH ON IN-WORK POVERTY* 1, 3 (Henning Lohmann & Ive Marx eds., 2019) (noting that single mothers face greater economic disadvantage than single fathers).

This vulnerability is structural and results from multiple and interrelated forms of disadvantage and discrimination. Single mothers are more likely to be essential workers who face the threat of contagion and lack of child care.<sup>5</sup> They are also more likely to be service sector workers who have lost their jobs or experienced reduced hours due to pandemic-related closures, restrictions, and customer reluctance to take health risks.<sup>6</sup> Employment law and policy choices led many single mothers to be underpaid for their work prior to COVID-19, and many entered this perilous time with few financial reserves and substantial debt.<sup>7</sup> Without continuing government assistance, they risk food insecurity and homelessness as rental and mortgage payments go unpaid. Their children may lack adequate access to schools or the child care that single mothers need to seek new employment opportunities. All of these socially constructed vulnerabilities and obstacles are heightened for mothers who are Black, Indigenous and People of Color (BIPOC).<sup>8</sup> These vulnerabilities will undermine the well-being and opportunities of many children for years to come if no assistance is provided.

These federal policy choices stand in sharp contrast to the political rhetoric of government support for families. Social and economic policy in the twentieth century developed to support white two-parent marital homes, with a working father and a stay-at-home mother as the ideal norm.<sup>9</sup> Much of the federal government's support for families is designed to aid this idealized family form. In contrast, single mothers, who deviate from this norm, have historically been subject to vilification. Their pervasive hardships have been justified by sexist stereotypes of single mothers—painting them as immoral, lazy and opportunistic—and policies reflect this deep suspicion.

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5. See LISA B. KAHN, FABIAN LANGE & DAVID WICZER, LABOR SUPPLY IN THE TIME OF COVID-19 3 (Mar. 2020), [http://fabianlange.ca/linked\\_files/papers/NOWcasting.pdf](http://fabianlange.ca/linked_files/papers/NOWcasting.pdf) [<https://perma.cc/66MU-67WK>] (finding that 6%—one percentage point higher than in the non-essential workforce—of essential, non-healthcare workers are single parents to young children, and that single mothers to young children make up 7.7% of the healthcare workforce, which is double their share of the overall workforce).

6. See Ga Eun Kim, Hee-Yeon Choi & Eui-Jung Kim, *Impact of Economic Problems on Depression in Single Mothers: A Comparative Study with Married Women*, 13 PLOS ONE 1, 5 (2018), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0203004&type=printable> [<https://perma.cc/WC4Z-A6KW>] (finding 63.6% of working single mothers were employed in service industries or held menial jobs).

7. See NAT'L ACADS. OF SCIS., ENG'G & MED., A ROADMAP TO REDUCING CHILD POVERTY 69 (Greg Duncan & Suzanne Le Menestrel eds., 2019).

8. See Chuck Collins, Dedrick Asante-Muhammad, Josh Hoxie & Emanuel Nieves, *The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America's Middle Class*, INST. FOR POL'Y STUD. 9, 13 (2017), [https://ips-dc.org/wp-content/uploads/2017/09/The-Road-to-Zero-Wealth\\_FINAL.pdf](https://ips-dc.org/wp-content/uploads/2017/09/The-Road-to-Zero-Wealth_FINAL.pdf) [<https://perma.cc/CYH3-K72K>].

9. *The Evolution of American Family Structure*, CSP (June 23, 2015), <https://online.csp.edu/blog/family-science/the-evolution-of-american-family-structure> [<https://perma.cc/S2NK-V8EL>].

The negative rhetoric surrounding single mothers also employs racist tropes to further justify their disparagement by policymakers and the public. Even as the percentage of children growing up in single-parent households has increased dramatically,<sup>10</sup> these stereotypes undermine their health and well-being. The limited assistance single mothers and their families receive is provided in intrusive and demeaning ways.<sup>11</sup> Children of single mothers were not, and are not, viewed as “all our children,” entitled to sustainable, enriching opportunities and lives. As COVID-19 slams the United States, these families face an inhospitable and dangerous world.

Part I of this Article focuses on single-mother families and their fragile circumstances prior to and during the current public health crisis and ensuing economic devastation, with a focus on the early months of the pandemic during the Spring and Summer of 2020. This Part also evaluates the federal programs intended to alleviate the economic effects of the pandemic. While some single mothers have benefited from pandemic-related emergency assistance programs, others have fallen through the cracks, received insufficient assistance, or faced loss of benefits as programs expired and no consensus for new programs emerged.

Part II steps back from the current crisis and identifies the damaging stereotypes that have been used to justify a wide range of laws and policies that have kept many single-mother families in or near poverty and bereft of a strong financial safety net. Single mothers face a Catch-22. Because government employment policies undervalue their labor, even their full-time work does not earn a “family wage” adequate to support their families.<sup>12</sup> This forces them into social welfare programs that are materially inadequate and purposefully humiliating.

This Part examines the laws related to wages and work rules that have prevented many working single mothers from adequately supporting their families while meeting their family obligations. In addition, it explains that single mothers, and especially BIPOC single mothers, have not received adequate protections against employment discrimination. The same racist and sexist stereotypes of single

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10. Gretchen Livingston, *About One-Third of U.S. Children Are Living with an Unmarried Parent*, PEW RES. CTR. (Apr. 27, 2020), <https://www.pewresearch.org/fact-tank/2018/04/27/about-one-third-of-u-s-children-are-living-with-an-unmarried-parent> [https://perma.cc/NR5K-2N8J].

11. *E.g.*, Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L.F. 1, 3 (2008) (arguing that public benefits are administered in a way that both violates the privacy and dignity of women and further stigmatizes the poor).

12. See Nancy Fraser, *After the Family Wage: Gender Equity and the Welfare State*, 22 POL. THEORY 591, 591 (1994) (explaining that the “Family Wage” was designed for a male head of household to be able to support a wife and children, and that wage laws no longer aim for a wage that is adequate to support a family).

mothers also warped the design and funding of social welfare programs, resulting in a patchwork of programs that fail to meet a family's basic needs or aid all eligible families. They also impose onerous requirements and complex application and renewal procedures, forcing single mothers to navigate underfunded bureaucracies depleted of the staff needed to process these applications. These requirements impose significant barriers during the pandemic, especially given the dramatic rise in those applying for such assistance.<sup>13</sup>

Part III explores the judicial decisions that declined to subject social welfare programs to searching scrutiny under the Fourteenth Amendment. The Constitution has not been interpreted to require any government economic assistance to keep families intact, even if that assistance is needed to prevent removal of their children solely due to poverty.<sup>14</sup> Nor have courts interpreted the Equal Protection Clause to require heightened scrutiny of different and negative treatment of women based on their marital status or status as parents, or to protect single mothers from laws and policies that have a disproportionate and negative effect on them.<sup>15</sup>

Finally, Part IV outlines a strategy to begin to remedy these harms. Specifically, it urges advocates to address the plight of single-mother families through a human rights framework. International and regional human rights conventions include two key concepts. First, they recognize that the family is the building block of society. *All* parents and children are entitled to adequate support, including economic support, as an essential human right.<sup>16</sup> Second, they require that laws and policies be constructed and implemented to protect against multiple forms of discrimination, including those directed at single mothers.<sup>17</sup> Application of these two principles to employment laws and government assistance programs would profoundly benefit single-mother families.

The United States has rejected many of these agreements based on the fear that international norms would undermine U.S. sovereignty, the belief that the United States has little to learn from the rest of the world, and the antipathy of many U.S. administrations

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13. See, e.g., Lauren Sandler, *COVID-19's Body Count Will Go Beyond Those Who Die From the Disease. It Didn't Have to Be This Way*, TIME (Apr. 28, 2020, 3:53 PM), <https://time.com/5828700/coronavirus-safety-net-poverty> [<https://perma.cc/Z64T-W2MP>] (“[A] social services system that was overstretched in the best of times is set to unravel completely just when people need it most.”).

14. See *infra* notes 350–54, 507–09 and accompanying text.

15. See *infra* notes 362–76 and accompanying text.

16. Frances Nicholson (Independent Consultant), United Nations High Commissioner for Refugees, *Legal and Protection Policy Research Series: The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, 17–18, U.N. Doc. PPLA/2018/01 (Jan. 2018).

17. *Id.*

toward economic rights. Part IV argues that sovereignty fears are exaggerated, and that the committee review processes established under the key relevant human rights conventions would educate government officials and a public that knows little of human rights developments around the globe.

Other nations have applied human rights norms to reshape economic and social policies to benefit all families. The United States should not be left behind. U.S. government officials and the public should become knowledgeable about these human rights and accept these obligations as well. Educating ourselves about human rights norms and obligations, advocating for ratification of key human rights treaties, and learning from their implementation in other countries are crucial first steps to ensuring justice and protection for all families.<sup>18</sup>

#### I. AT THE WAVE'S EDGE: SINGLE-MOTHER FAMILIES BEFORE AND AFTER COVID-19

*"I'm a pretty positive person and I already knew how to shuffle my money around to make it all work—pay a little bit on my rent, my car note, try to catch up when I can," she said. "But my income is taking a hit and I'm worried about getting sick. This is a whole new level of stress."*<sup>19</sup>

##### A. Single Mothers and Their Early COVID-19 Experiences

Crystal, a single mother in Atlanta and a social media blogger, spends her days caring for her three-year-old son.<sup>20</sup> She also documents their time together through video, as Crystal has stage-five

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18. See Jonathan Todres, *The Trump Effect, Children, and the Value of Human Rights Education*, 56 FAM. CT. REV. 331–32 n.13, 334–35 (2018) (citing research supporting the efficacy of human rights education to strengthen belief in human rights, respect for the rights of others, ability to stand up for one's own rights, and reductions in peer aggression). The U.N. General Assembly has recognized the importance of human rights education. See, e.g., *United Nations Declaration on Human Rights Education and Training*, HUM. RTS. EDUC., <http://www.hre2020.org/UN-Declaration-on-Human-Rights-Education-and-Training> [<https://perma.cc/THB3-V2HW>].

19. Amelia Thomson-DeVeaux, *This Is Hard for Everyone. It's Even Harder for Parents Who Don't Make Much Money*, FIVETHIRTYEIGHT (Apr. 23, 2020), <https://fivethirtyeight.com/features/this-is-hard-for-everyone-its-even-harder-for-parents-who-don-t-make-much-money> [<https://perma.cc/3RLM-9AZA>] (quoting Chelsey, a single mother of a ten-year-old daughter who lives in Baton Rouge, Louisiana).

20. Kristen Rogers, *Frosted Flakes for Dinner. Hiding in the Laundry Room. This is Life for Single Moms Right Now.*, CNN (May 8, 2020) [hereinafter Rogers, *Life for Single Moms*], <https://www.cnn.com/2020/05/08/health/single-mom-challenges-mothers-day-coronavirus-wellness/index.html> [<https://perma.cc/9UAB-9PCJ>].

kidney disease, which creates a very real possibility that she may not be with her son much longer.<sup>21</sup> An already difficult situation was only made worse with the onset of the coronavirus pandemic. Not only does her immunocompromised condition lead to chronic exhaustion, but it also makes it risky to leave her house to perform necessary daily activities, like grocery shopping.<sup>22</sup> She is fortunate that her sister and mother help with some of these tasks.<sup>23</sup> Her son's father has visitation rights every other weekend, but since he works in a hospital, those visits have become risky.<sup>24</sup> To top it all off, Crystal barely has enough savings to make ends meet, and she will need to apply for disability soon.<sup>25</sup> She needs to keep her electricity on to keep her dialysis machine functioning.<sup>26</sup>

While Crystal's individual circumstances are unique, the challenges she faces as a single mother during the coronavirus pandemic are common. Mothers may be single when they give birth to, adopt, or become a guardian or informal parent to their child or children, or they may become single through many avenues: death, divorce, separation or the end of cohabitation.<sup>27</sup> They also come from all economic strata, races and ethnic groups, regions, and sexual preferences and gender identities, and they may face illness or other disabilities. They have varied educational backgrounds and relationships to organized religion. They may have been born in the United States or have immigrated here.

The United States has the world's highest rate of children living in single-parent households, with 23% of children living with one parent and no other adults.<sup>28</sup> There are 13.6 million single parents and the majority of single-parent households are maintained by single mothers—80% of custodial parents are mothers.<sup>29</sup> In 2019, just over 21% of children were living with their mothers alone, while only

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21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Rogers, *Life for Single Moms*, *supra* note 20.

27. See Kristen Rogers, *Singles Awareness Day: The Benefits of Being Single*, CNN HEALTH (Feb. 15, 2020), <https://www.cnn.com/2020/02/15/health/single-awareness-day-loneliness-benefits-wellness/index.html> [<https://perma.cc/E7FM-RUXZ>].

28. Stephanie Kramer, *U.S. Has World's Highest Rate of Children Living in Single-Parent Households*, PEW RES. CTR. (Dec. 12, 2019), <https://www.pewresearch.org/fact-tank/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent> [<https://perma.cc/LU6A-P8ZY>] (stating that the worldwide average for children living in single-parent households is only 7%).

29. TIMOTHY GRALL, U.S. CENSUS BUREAU, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2015 3 (Jan. 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-262.pdf> [<https://perma.cc/QAE5-GG9Y>].



about 4% were living only with their fathers.<sup>30</sup> About 46% of Black children,<sup>31</sup> 24% of Hispanic children,<sup>32</sup> and 17% of white children were living in a household with only their mother.<sup>33</sup>

The marital history of single mothers has shifted drastically from 1960 to the present day. While the percentage of children living with widowed and separated mothers has fallen and the percentage of children living with divorced mothers has plateaued, the percentage of children living with mothers who never married has skyrocketed.<sup>34</sup> Children in Christian families were equally as likely to live in a single-parent household as children from nonreligious families.<sup>35</sup> Many single parents today “started out in committed relationships and never expected to be single parents:” 43% of single mothers who are custodial parents have never been married, while 41% are divorced or separated.<sup>36</sup>

Before the coronavirus pandemic began, single mothers struggled to balance their own jobs and self-care with the physical, emotional, and educational needs of their children.<sup>37</sup> Then, with the onset of school closures and the implementation of remote learning, the roles and responsibilities of these mothers grew even more taxing, as they are often the only adults available to meet their children’s increased needs.<sup>38</sup>

For instance, MaryAnn, a divorced single mother from McAllen, Texas, had to begin homeschooling her daughter in addition to taking care of her daughter’s other needs.<sup>39</sup> She was unable to work her job as a tattoo artist and only had a small amount of savings to support the two of them.<sup>40</sup> To preempt the judgments of others, she put a note on her daughter’s back to explain why her daughter had to accompany her to the supermarket.<sup>41</sup> Another divorced single mother

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30. *Historical Living Arrangements of Children*, U.S. CENSUS BUREAU fig.CH-1 (Feb. 2019), <https://www.census.gov/data/tables/time-series/demo/families/children.html>.

31. *Id.* at fig.CH-3.

32. *Id.* at fig.CH-4.

33. *Id.* at fig.CH-2.

34. *See id.* at fig.CH-5.

35. Kramer, *supra* note 28. This report categorized single-parent households as those with only a single adult in the home. The U.S. Census Bureau includes households that have other relatives or cohabiting partners present.

36. Jennifer Wolf, *Single Mothers Statistics Based on Census Data*, VERYWELL FAMILY (May 1, 2020), <https://www.verywellfamily.com/single-parent-census-data-2997668> [<https://perma.cc/K9R8-4VNV>].

37. Zoe E. Taylor & Rand D. Conger, *Promoting Strengths and Resilience in Single-Mother Families*, 88 CHILD DEVELOPMENT 350, 350 (2017).

38. *See, e.g.*, Rogers, *Life for Single Moms*, *supra* note 20.

39. *Id.*

40. *Id.*

41. *Id.*

and college professor in Texas, Sarah, experienced loneliness during the pandemic, partly the result of a divorce and a broken engagement.<sup>42</sup> Many other single mothers have felt this loneliness: depression, anxiety, and psychological distress are common conditions among this demographic. Although Sarah has her eight-year-old daughter to keep her busy, she, like others, has relied on social media to stay connected.<sup>43</sup>

One in three jobs classified as essential throughout the pandemic were traditionally held by women.<sup>44</sup> Continuing to work presents its own challenges, such as child care, whether the job must be performed on site or remotely.<sup>45</sup> For example, until the pandemic, divorced single mom Jessica relied on the school community for her children's education, meals, and after school activities.<sup>46</sup> A health communications specialist for the CDC, Jessica had to transition to fulfill those roles and balance her children's educational needs along with her already busy schedule of work and household chores.<sup>47</sup>

Despite their loneliness and new challenges, Sarah and Jessica are lucky to have kept their jobs and to be able to work remotely during the pandemic. Single mothers lost their jobs at a higher rate than other family units with children—in April 2020, the employment rate for single mothers was 22% lower than it was in 2019, whereas the rate was only 9% lower for other families with children.<sup>48</sup> By August 2020, 16% of single mothers had lost their jobs since February, and that loss was significantly greater than the 6% job loss for single fathers.<sup>49</sup>

Many single mothers are responsible not only for children, but also for their parents or other relatives. Christine is a single mother of two young children from Fort Lauderdale, Florida who lost her job

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42. Sarah Angle, *Loneliness in the Age of Coronavirus*, TEX. OBSERVER (Mar. 26, 2020, 11:13 AM), <https://www.texasobserver.org/loneliness-coronavirus-parenting> [https://perma.cc/REU8-8BRR].

43. *Id.*

44. Emily Bobrow, "Some Days I Feel Like I'm Melting:" How Single Mothers in New York City Are Coping With Quarantine, THE NEW YORKER (Apr. 21, 2020), <https://www.newyorker.com/news/news-desk/some-days-i-feel-like-im-melting-how-single-mothers-in-new-york-city-are-coping-with-quarantine> [https://perma.cc/T4P9-74R5].

45. See Tim Henderson, *Single Mothers Hit Hard by Job Losses*, PEW CHARITABLE TRUSTS (May 26, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/05/26/single-mothers-hit-hard-by-job-losses> [https://perma.cc/Y74C-WST2].

46. Rogers, *Life for Single Moms*, *supra* note 20.

47. *Id.*

48. Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45.

49. Tim Henderson, *Mothers Are 3 Times More Likely Than Fathers to Have Lost Jobs in Pandemic*, PEW CHARITABLE TRUSTS (Sept. 28, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/28/mothers-are-3-times-more-likely-than-fathers-to-have-lost-jobs-in-pandemic>.

during the pandemic.<sup>50</sup> In addition to caring for and homeschooling her children, Christine also takes care of her elderly mother, making the loss of her job even more devastating.<sup>51</sup> Despite her initial difficulty navigating Florida's unemployment website, Christine did receive unemployment benefits to support her family.<sup>52</sup>

Unemployment benefits are not available to all single mothers who lost their jobs. For Teana, a single mother in New York City, receiving unemployment benefits after losing her job was not an option; as an undocumented immigrant, she was previously working under the table at a small shop.<sup>53</sup> She could no longer afford the one-bedroom apartment that she shared with her three children, and she did not want to risk taking her kids to a shelter in light of the virus's spread in the city, so Teana was forced to move among the homes of her friends.<sup>54</sup> Other basic necessities were also difficult to obtain: Teana could not pay her phone bill, provisions at food pantries were often meager, and she could barely afford diapers for her children.<sup>55</sup>

Single mothers' challenges have varied by region and over time as the pandemic has hit different regions. For example, more than one-quarter of single mothers in New England and certain Southern and Western states lost their jobs quickly as a result of the pandemic, while some Midwestern states were less hard hit in the early months of the pandemic.<sup>56</sup> Those in urban areas, like New York City, with its high costs of living and crowded living spaces, may have different struggles than those in rural areas, where distance makes getting needed help even more daunting.

Shoshana and Simone are two single mothers who experienced firsthand the challenges of living in New York City during the pandemic.<sup>57</sup> Before the pandemic, Shoshana already faced difficult living circumstances after her husband passed away when her daughter was one year old.<sup>58</sup> Her doula work was inconsistent, so she relied on a restaurant job to support her daughter.<sup>59</sup> Her restaurant and her daughter's daycare closed during the quarantine.<sup>60</sup> As a result, she was forced to bring her daughter along for errands like grocery

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50. Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45.

51. *Id.*

52. *Id.*

53. Bobrow, *supra* note 44.

54. *Id.*

55. *See id.*

56. *See* Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45 (stating that the rates of infection were less severe in certain Midwestern states such as Iowa, Kansas, and Minnesota).

57. Bobrow, *supra* note 44.

58. *Id.*

59. *Id.*

60. *Id.*

shopping.<sup>61</sup> To cover rent and other expenses, she had to use the proceeds from her deceased husband's life insurance policy, and even so, she often ran out of food.<sup>62</sup>

In contrast, the pandemic forced Simone, a city employee and single mother of two boys ages five and ten, to remain indoors in their apartment.<sup>63</sup> Balancing chores, work, and teaching her children left her little time to herself.<sup>64</sup> Her young sons were restless from being stuck inside all day, but playing outside was not an option since one of her sons has asthma and they live right across the street from one of the hospitals treating COVID-19 patients.<sup>65</sup>

Single mothers in rural areas have faced different, but equally daunting, challenges. Many rural jobs do not transition easily into remote work; more often, they involve shift work in warehouses, health care, administration, and maintenance.<sup>66</sup> In many households multiple family members must share one computer, and internet access may be slow or unstable, making the transition to remote learning or home-based work even harder.<sup>67</sup> Rural areas are also home to older and unhealthier populations who have to travel farther to seek medical treatment.<sup>68</sup> Support networks are crucial in rural areas, especially because families are more geographically distant. Schools fostered community networks, and school closures amid the pandemic has made it difficult to sustain these networks.<sup>69</sup>

Alison, a single mom to a nine-year-old daughter in the central Appalachian region of Ohio, had grown accustomed to tending to her child's needs alone before the pandemic.<sup>70</sup> However, her unreliable internet connection makes combining her job as a freelance writer and her son's remote schooling almost impossible.<sup>71</sup> Alison's work slowed during the pandemic, and she lives below the poverty line.<sup>72</sup> Therefore, she is often unable to afford necessities like over-the-counter

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61. *Id.*

62. *Id.*

63. Bobrow, *supra* note 44.

64. *Id.*

65. *Id.*

66. Alison Stine, *What It's Like To Be a Single Parent in a Pandemic*, WASH. POST (Mar. 17, 2020, 9:00 AM), <https://www.washingtonpost.com/lifestyle/2020/03/17/single-parenting-pandemic>.

67. *Id.*; Bracey Harris, *Homework in a McDonald's Parking Lot: Inside One Mother's Fight to Help Her Kids Get an Education During Coronavirus*, THE HECHINGER REP. (June 27, 2020), <https://hechingerreport.org/homework-in-a-mcdonalds-parking-lot-inside-one-mothers-fight-to-help-her-kids-get-an-education-during-coronavirus> [<https://perma.cc/48UW-CVKB>] ("Widespread lack of broadband access complicates learning.").

68. *See* Harris, *supra* note 67.

69. *See id.*

70. Stine, *supra* note 66.

71. *Id.*

72. *Id.*

medicines and groceries, especially not the recommended two weeks' worth of groceries needed during quarantine.<sup>73</sup>

Some of these difficulties are exacerbated in the Deep South, where public services such as education, transportation and health care were already underfunded and less accessible, and internet connections may be unavailable or unreliable. The Deep South has high rates of food insecurity, and a lack of public transportation makes meal distribution sites hard to access for those without a car.<sup>74</sup> The situation deteriorated further when schools closed because many families depended on schools to provide free meals to their children.<sup>75</sup> In areas with extremely high rates of poverty, entire family systems have faced daily hardship and have few resources to help each other.<sup>76</sup>

The experiences of Melissa and Terri, who are each raising their children alone in rural Mississippi, illustrate some of the special challenges of rural single mothers during the pandemic.<sup>77</sup> When the virus began spreading rapidly, Melissa pulled her children out of daycare so that they would not get sick.<sup>78</sup> As a result, she was forced to quit her job at an insurance firm when her employer refused to let her work from home.<sup>79</sup> Although she received a stimulus check and unemployment benefits, Melissa has still struggled to make ends meet, having to choose which bills to pay and which to forego.<sup>80</sup>

Terri's employment as a gas station cashier had ended prior to the pandemic, due to a back injury that prevented her from working.<sup>81</sup> This made it difficult for her to provide educational resources to her children with the shift to online learning.<sup>82</sup> Her daughter's cell phone access to the internet was insufficient for schoolwork, so Terri had to bring her three children to a McDonald's parking lot for WiFi.<sup>83</sup> Often, Terri could not provide the extra educational guidance that her children needed, and they struggled without invaluable in-person instruction.<sup>84</sup>

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73. *Id.*

74. Harris, *supra* note 67 ("Nearly 78 percent of counties with the highest food insecurity rates for children are rural, with some of the most extreme outliers located in the Deep South.").

75. *Id.*

76. *See id.*

77. *See* Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45; Harris, *supra* note 67.

78. Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45.

79. *Id.*

80. *Id.*

81. *Id.*

82. Harris, *supra* note 67.

83. *Id.* In Washington County, where Terri lives, almost 40% of the homes do not have broadband internet. *Id.*

84. *Id.*

These stories shed light on some of the myriad ways that the COVID-19 pandemic has complicated the already difficult lives of single mothers across the country. In the words of Alison, the single mother in central Appalachia, “[t]he coronavirus pandemic, perhaps like no other emergency in recent times, has exposed the lack of infrastructure, support, resources, and care for the most vulnerable among us, including single mothers.”<sup>85</sup>

*B. When the Tidal Wave Rolls In: Exposing Disparities in Employment, Income and Wealth*

One way to evaluate the economic status of single mothers is through the lens of the official poverty level. In 2019, 28% of unmarried one-parent households lived below the poverty level, whereas 72% lived at or above the poverty level.<sup>86</sup> Although 72% of all mothers participate in the labor force,<sup>87</sup> 51% percent of family groups headed by an employed mother lived below the poverty line.<sup>88</sup> However, the poverty threshold falls below the amount needed to cover basic living needs and ignores the financial struggles faced by many families that live in the gap between the poverty level and the living wage level.

A living wage exceeds the official poverty threshold across all family sizes and is calculated to provide the “annual total income needed to cover basic costs.”<sup>89</sup> Under a living wage analysis, the cited figures become even more troubling. The minimum wage has consistently failed to adequately cover the basic living needs of many Americans.<sup>90</sup> To illustrate the disparity between the minimum wage and living wage analyses, a single parent with two children would need to work the equivalent of three and a half minimum wage full-time jobs—or roughly 139 hours per week—in order to earn a living wage.<sup>91</sup> Child care and housing are among the largest expenses for

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85. Stine, *supra* note 66.

86. *America’s Families and Living Arrangements: 2019*, *supra* note 1, at tbl.FG5.

87. BUREAU OF LAB. STAT., U.S. DEPT OF LAB., EMPLOYMENT CHARACTERISTICS OF FAMILIES—2019 1–2 (2020), <https://www.bls.gov/news.release/famee.nr0.htm> [<https://perma.cc/DV5W-D5DQ>].

88. *America’s Families and Living Arrangements: 2019*, *supra* note 1. Mothers who were not in the labor force headed 39.9% of these families. *Id.*

89. Stephanie Luce, *Living Wage Policies and Campaigns: Lessons from the United States*, 4 INT’L J. LAB. RSCH. 12, 12 (2012).

90. See, e.g., Carey Nadeau & Amy K. Glasmeier, *Minimum Wage: Can an Individual or a Family Live on It?*, LIVING WAGE CALCULATOR (Jan. 16, 2016), <https://livingwage.mit.edu/articles/15-minimum-wage-can-an-individual-or-a-family-live-on-it> [<https://perma.cc/A8VV-48JC>].

91. *Id.*

families in living wage analysis.<sup>92</sup> High childcare costs also significantly deter full-time employment.<sup>93</sup>

The fragile economic circumstances of single-mother families, even those who were employed, have been upended by COVID-19. The coronavirus pandemic and related restrictions took a particularly large toll on jobs traditionally held by single mothers. Industries that typically employ single mothers—including child care, hospitality, retail, service and travel—have been hit hard by the pandemic, and these jobs rarely offer important protections like severance pay.<sup>94</sup> Moreover, single mothers often “have gaps in [their] employment, credit, and educational history due to having to take time out to be primary caregivers,” making the search for stable employment even more difficult.<sup>95</sup> About 5.7 million women with jobs involving the food and travel industries lost their jobs.<sup>96</sup> As a more specific picture of how the pandemic affected low-wage single mothers, by mid-April 2020, 83% of single mothers working as waitresses, 72% of single mothers working as cleaners, 58% of single mothers working as cooks, 33% of single mothers working as personal care aides, and 14% of single mothers working as customer service representatives lost their jobs.<sup>97</sup>

These figures demonstrate just how precarious the economic condition and general state of well-being may be for so many single-parent families. Given the economic fragility that characterizes the lives of many single-mother families even in times of normalcy, it is no surprise that the COVID-19 pandemic and the ensuing economic fallout have exposed and exacerbated their plight.

### *1. COVID-19 Unemployment and Financial Insecurity*

As just one measure of impending economic crisis, the spikes in unemployment following the pandemic-related shutdown of much of the American economy were foreboding. Following the mid-March onset of stay-at-home orders for nonessential businesses, the Department of Labor reported that the unemployment rate jumped more than 10 full percentage points in one month to reach 14.7% by the end of April 2020.<sup>98</sup> Payroll cuts have not been distributed equitably

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92. *Id.*

93. See Erdal Tekin, *Childcare Subsidies, Wages, and Employment of Single Mothers*, 42 J. HUM. RSCH. 453, 454, 466 (2007).

94. See Bobrow, *supra* note 44.

95. Stine, *supra* note 66.

96. Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45.

97. *Id.*

98. This is the largest over-the-month increase in the history of the report series, which dates back to 1948. U.S. DEP'T OF LAB., APRIL 2020 EMPLOYMENT SITUATION NEWS

across demographic groups. Rising unemployment rates have had a disproportionate effect on the female, low-income and racial minority subsets of the labor force.<sup>99</sup> The COVID-19 recession most impacts industries for which social distancing is difficult, such as retail, leisure and hospitality and health services. These three sectors alone accounted for 59% of all job losses from February to May.<sup>100</sup> The service industries are dominated by women—particularly Black and Hispanic women—which helps explain why the COVID-19 recession is the first of eight downturns in the last half-century in which more women lost their jobs than men.<sup>101</sup> For single mothers specifically, the unemployment rate more than tripled between February and May alone; more than 1 million single mothers lost their jobs in the early stages of the pandemic.<sup>102</sup>

Many single mothers have also been pushed out of the workforce by the mass transition to telework. In the early stages of the outbreak, 90% of the decrease in employment arose from positions that could not be done remotely. Jobs that could be done remotely favor highly educated workers.<sup>103</sup> Moreover, even some individuals with jobs that *could* be done remotely became unemployed because they lacked the requisite digital resources or broadband access.<sup>104</sup> Low-income and Black and Hispanic workers are less likely to have the higher education levels and internet access that make telework viable. These factors turned the transition to telework into yet another threat to the financial security of these groups during the COVID-19 crisis.<sup>105</sup>

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RELEASE 2 (2020), [https://www.bls.gov/news.release/archives/empsit\\_05082020.pdf](https://www.bls.gov/news.release/archives/empsit_05082020.pdf) [<https://perma.cc/GFY3-2FQ2>].

99. The Bureau of Labor Statistics reported that in April 2020 unemployment rates were 14.2% for white workers, 16.7% for Black workers, 14.5% for Asian workers, and 18.9% for Hispanic workers. *Id.* at 2, 7, tbl.A.

100. Rakesh Kochhar, *Hispanic Women, Immigrants, Young Adults, Those with Less Education Hit Hardest by COVID-19 Job Losses*, PEW RSCH. CTR. (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses> [<https://perma.cc/Q58V-CLCJ>].

101. *Id.*

102. *Dramatic Decline in Employment Hits Women Even More Severely than Men*, INST. FOR WOMEN'S POL'Y RSCH. 3 (May 8, 2020), <https://iwpr.org/wp-content/uploads/2020/05/QF-Breadwinner-Mothers-by-Race-FINAL.pdf> [<https://perma.cc/G4US-5NY3>].

103. Rakesh Kochhar & Jeffrey S. Passel, *Telework May Save U.S. Jobs in COVID-19 Downturn, Especially Among College Graduates*, PEW RSCH. CTR. (May 6, 2020), <https://www.pewresearch.org/fact-tank/2020/05/06/telework-may-save-u-s-jobs-in-covid-19-downturn-especially-among-college-graduates> [<https://perma.cc/2S7B-YPPK>] (finding that while 62% of workers with a college degree could work remotely, only 22% of those with only a high school diploma and 9% of those without a high school diploma could work remotely).

104. *See id.*

105. *See* Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RSCH. CTR. (June 13, 2019), <https://www.pewresearch.org/internet/2019/06/13/mobile-technol>



By July 2020, the unemployment rate had fallen to roughly 10%, reflecting partial rebounds in retail, hospitality, personal services and health care made possible by the lifting of restrictions and the reopening of much of the economy.<sup>106</sup> Nevertheless, the female unemployment rate remained higher than the male unemployment rate in July 2020 (10.6% compared with 9.8%).<sup>107</sup> In October 2020, women who maintain families suffered significantly higher rates of unemployment (8.6%) than all civilian workers (6.9%) and all women workers (6.8%).<sup>108</sup> Both rates for women's unemployment are most likely higher than statistics reveal due to the higher rate at which women have been forced out of the labor market for pandemic-related reasons, including their caregiving responsibilities.<sup>109</sup> Research suggests that much of the recovery is flowing back to higher-income earners, leaving low-income workers in an indefinite recession.<sup>110</sup> These numbers come at a time when infection rates remain high<sup>111</sup> and experts predict this "second wave" of coronavirus outbreaks will continue at a high level.<sup>112</sup>

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ogy-and-home-broadband-2019 [https://perma.cc/MPP7-KX46] (finding that severe "digital gaps" in broadband access at home exist among racial groups, income and education levels, and geographic urban/rural divides); see also Kochhar & Passel, *supra* note 103 (noting that racial minorities and low-income groups are less likely to have advanced education degrees).

106. U.S. DEP'T OF LAB., JULY 2020 EMPLOYMENT SITUATION NEWS RELEASE 1 (2020) [hereinafter JULY 2020 EMPLOYMENT SITUATION], [https://www.bls.gov/news.release/archives/empisit\\_08072020.pdf](https://www.bls.gov/news.release/archives/empisit_08072020.pdf) [https://perma.cc/RG7W-PZB8]. The leisure and hospitalities saw the biggest recovery in the month of July, adding 592,000 jobs and constituting one-third of the month's total employment gains. Despite these gains, employment in this industry was still down 2.6 million jobs since February. *Id.* at 3.

107. *Id.* at 14, tbl.A-1.

108. *Selected Unemployment Indicators, Seasonally Adjusted: Monthly, Unemployment Rates*, FED. RSRV. BANK OF ST. LOUIS ECON. RSCH., tbl.A-10 (Oct. 2020), <https://fred.stlouisfed.org/release/tables?rid=50&eid=3029&od=#> [https://perma.cc/D28A-UWNL].

109. See Julie Kashen, Sarah Jane Glynn & Amanda Novello, *How COVID-19 Sent Women's Workforce Progress Backward: Congress' \$64.5 Billion Mistake*, CTR. FOR AM. PROGRESS (Oct. 30, 2020), <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward> [https://perma.cc/EP28-YLEN] (identifying lack of child care as a major issue preventing women from work).

110. See, e.g., Megan Cassella, *'A Tale of 2 Recessions': As Rich Americans Get Richer, the Bottom Half Struggles*, POLITICO: ECON. (Sept. 7, 2020, 7:00 AM), <https://www.politico.com/news/2020/09/07/income-inequality-wealth-gap-409234> [https://perma.cc/GTC2-W47K] (citing *Recession Has Nearly Ended for High-Wage Workers, But Job Losses Persist for Low-Wage Workers*, OPPORTUNITY INSIGHTS: ECON. TRACKER, <https://tracktherecovery.org> [https://perma.cc/BR98-3EEZ]).

111. New daily cases reached a nationwide seven-day rolling average of over 150,000 cases per day in mid-November 2020. *CDC COVID Data Tracker*, CDC (Nov. 16, 2020, 12:16 PM), [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends\\_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases) [https://perma.cc/T6XV-S9JE].

112. See *Previous Forecasts: Cases*, CDC (Nov. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us-cases-previous.html> [https://perma.cc/7QAL-EQYV].

Further rounds of heightened infection and partial shutdowns may devastate the labor market all over again before a vaccine becomes widely available to bring more lasting stability to the economy.<sup>113</sup>

Mass employment loss has exposed the incredibly precarious financial situation that existed for so many single-mother families even before the crisis. Wealth and savings are key to weathering economic storms like those brought on by COVID-19.<sup>114</sup> However, single-mother families are especially unlikely to have the protection of this wealth safety net.<sup>115</sup> Because so many single mothers entered the pandemic without savings or assets to cushion financial blows, they now face increased risks of poverty, food insecurity and housing instability.<sup>116</sup>

Congress responded to this sudden economic instability with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed into law on March 27, 2020.<sup>117</sup> The law's most direct relief comes in the form of the "recovery rebates," which amount to roughly \$1,200 per eligible individual and \$500 per eligible child.<sup>118</sup> The CARES Act made nonresident individuals and mixed-immigration-status couples ineligible to receive the rebates, as did for children over sixteen and adult dependents.<sup>119</sup> Initial administrative requirements<sup>120</sup> and various glitches kept some eligible residents from

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113. See, e.g., Todd Richman and Frank Jordans, *Europe and the U.S. are Facing a New Round of Shutdowns Amid Virus Surge*, AP NEWS (Oct. 28, 2020), <https://apnews.com/article/europe-us-shutdowns-virus-surge-covid-19-a8b0d7b63fde5b9d289cabf06ae367bf> [https://perma.cc/RZ6L-2JMD].

114. See Matthew Mizota, *Coronavirus and Racial Wealth Inequality: How Will the COVID-19 Pandemic and Recession Affect the Racial Wealth Gap in the United States*, DUKE IMMERSIVE FINAL PROJECTS (May 1, 2020), <https://socialequity.duke.edu/wp-content/uploads/2020/05/Mizota.pdf> [https://perma.cc/MMX5-BXPX] ("[T]he importance of wealth in a recession is clear. When people lose jobs, wealth is the security blanket that allows a family to survive until the tide turns.")

115. See Dalton Conley & Miriam Ryvicker, *The Price of Female Headship: Gender, Inheritance, and Wealth Accumulation in the United States*, 13 J. INCOME DISTRIB. 41, 41 (2004) (exploring the "savings rate differential" between male- and female-headed households).

116. See, e.g., Stine, *supra* note 66.

117. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

118. These amounts phase down at higher levels of recipient income. MARGOT L. CRANDALL-HOLLICK, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act*, CONG. RSCH. SERV. (Apr. 17, 2020), <https://crsreports.congress.gov/product/pdf/IN/IN11282> [https://perma.cc/4AY3-P7C9].

119. *Id.*

120. See, e.g., Paul Kiel, Justin Elliott & Will Young, *Millions of People Face Stimulus Check Delays for a Strange Reason: They Are Poor*, PROPUBLICA (Apr. 24, 2020), <https://www.propublica.org/article/millions-of-people-face-stimulus-check-delays-for-a-strange-reason-they-are-poor> [https://perma.cc/J3SJ-WZ5E] (identifying filing requirements as just one barrier to receiving the rebate).

receiving their checks until as late as August 2020.<sup>121</sup> Altogether, researchers estimate that these restrictions excluded 30 million income-eligible individuals from receiving a stimulus check.<sup>122</sup> In addition, the CARES Act provided only a one-time disbursement, which did not sufficiently prepare many families for months of social distancing requirements and economic hardships.<sup>123</sup>

In addition to stimulus checks, the CARES Act expanded Unemployment Insurance (UI). The Pandemic Unemployment Assistance (PUA) program filled eligibility gaps in state unemployment schemes through the end of 2020, provided an additional \$600 per week through July 31st for all recipients of PUA or standard unemployment insurance, and extended the maximum time one could receive unemployment insurance by 13 additional weeks.<sup>124</sup> The expansions in UI were certainly a welcome lifeline. Importantly, the PUA program provided for the millions of gig economy,<sup>125</sup> self-employed and temporary workers who lost work but otherwise may have been ineligible for unemployment benefits.<sup>126</sup> The \$600 increase was substantial. But most of the additional relief benefits ended in August, when 16.3 million Americans were still out of work.<sup>127</sup> Some received a more limited addition to state unemployment benefits for another six-week period

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121. Susan Tompor, *Some People Are Still Waiting for a Stimulus Check to Arrive. What's the Holdup?*, DETROIT FREE PRESS (Aug. 13, 2020), <https://www.freep.com/story/money/personal-finance/susan-tompor/2020/08/13/first-stimulus-check-never-arrived/3318009001> [<https://perma.cc/GJ49-VHHW>].

122. Zachary Parolin, Megan A. Curran & Christopher Wimer, *The CARES Act and Poverty in the COVID-19 Crisis*, CTR. ON POVERTY & SOC. POL'Y AT COLUM. UNIV.: POVERTY & SOC. POL'Y BRIEF (June 21, 2020), <https://static1.squarespace.com/static/Forecasting-Poverty-Estimates-COVID19-CARES-Act-CPSP-2020.pdf> [<https://perma.cc/6E8D-8T93>].

123. See Richard Rubin, *When the Stimulus Check in Your Bank Account Isn't What You Expected*, WALL ST. J. (Apr. 16, 2020), <https://www.wsj.com/articles/when-the-stimulus-check-in-your-bank-account-isnt-what-you-expected-11587054049> [<https://perma.cc/2EGL-VR2U>] (telling the story of Kristian, a single mother of three and home healthcare worker who needed to spend her stimulus check on accumulated bills immediately after she received it).

124. Sharon Parrott, Chad Stone, Chye-Ching Huang, Michael Leachman, Peggy Bailey, Aviva Aron-Dine, Stacy Dean & LaDonna Pavetti, *CARES Act Includes Essential Measures to Respond to Public Health, Economic Crises, But More Will Be Needed*, CTR. ON BUDGET AND POL'Y PRIORITIES (Mar. 27, 2020), <https://www.jstor.org/stable/pdf/resrep23736.pdf> [<https://perma.cc/K3AL-7Q7L>].

125. Recent estimates put the number of "gig economy workers" (including ride-share app drivers, freelancers, and independent contractors) at 57 million, or 36% of the American workforce. See Tyra Jean, *The Gig is Up: Supporting Non-Standard Workers Now and After Coronavirus*, SYRACUSE UNIV. LERNER CENTER FOR PUBLIC HEALTH PROMOTION, 1 (Apr. 8, 2020), <https://lernercenter.syr.edu/wp-content/uploads/2020/04/Jean.pdf> [<https://perma.cc/3D6J-AVMT>].

126. See Press Release, Ctr. on Budget and Pol'y Priorities, Greenstein: Relief Package Includes Important Aid, But More Needed to Meet Urgent Needs (Mar. 26, 2020).

127. JULY 2020 EMPLOYMENT SITUATION, *supra* note 106, at 2.

under an Executive Order in August 2020.<sup>128</sup> Effective unemployment relief would tie benefit timelines to economic recovery, not arbitrary timelines.<sup>129</sup>

## 2. *Unemployment Due to Limited Child Care*

The service industry's particular vulnerability in a socially distant economy is not the only reason the COVID-19 downturn is a "woman's recession." The severe restriction of childcare resources is a second leading factor forcing women out of the workforce at higher rates than men.<sup>130</sup> Many jurisdictions closed school and daycare facilities, and during the fall of 2020, the picture was mixed and constantly changing.<sup>131</sup> As early as March 25th, more than 1.5 billion children were out of school.<sup>132</sup> In mid-April, 50% of childcare centers were completely closed and those that remained open mostly operated at less than half of their enrollment capacity.<sup>133</sup> Shortages of child care pose particular difficulties for low-income parents, who are more likely to work outside the home in essential jobs, work without paid leave, and have no available family caregiver.<sup>134</sup> Even after COVID-19 restrictions are lifted, inadequate availability of child care is likely to persist as economic hardships force facilities to close their doors.<sup>135</sup>

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128. Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019, 2020 Daily Comp. Pres. Doc. 593 (Aug. 8, 2020); Geoff Mulvihill, *Money for \$300 Unemployment Boost to Run Out After 6 Weeks*, AP NEWS (Sept. 10, 2020), <https://apnews.com/article/emergency-unemployment-insurance-us-news-unemployment-insurance-virus-outbreak-donald-trump-783b8eabe7804e43c459dd047ab95b00> [<https://perma.cc/FNY4-PYJ7>].

129. See Parrott et al., *supra* note 124.

130. Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey & Michéle Tertilt, *The Impact of Covid-19 on Gender Equality* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 2694, 2020).

131. See, e.g., Kate King & Charles Passy, *New York's School Closure Sends Parents Scrambling for Backup*, WALL ST. J. (Nov. 19, 2020), <https://www.wsj.com/articles/new-yorks-school-closure-sends-parents-scrambling-for-backup-11605820847> [<https://perma.cc/W8WX-WP3D>].

132. Alon et al., *supra* note 130.

133. NAT'L ASS'N FOR THE EDUC. OF YOUNG CHILDREN, FROM THE FRONT LINES: THE ONGOING EFFECT OF THE PANDEMIC ON CHILDCARE 1 (2020), [https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/topics/naeyc\\_coronavirus\\_ongoingeffectsonchildcare.pdf](https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/topics/naeyc_coronavirus_ongoingeffectsonchildcare.pdf) [<https://perma.cc/8M9W-EC2Q>].

134. Just 22% of essential workers were able to maintain their pre-pandemic childcare arrangements. Andrew Hashikawa, Jill M. Sells, Peter M. DeJonge, Abbey Alkon, Emily T. Martin & Timothy R. Shope, *Child Care in the Time of Coronavirus Disease-19: A Period of Challenge and Opportunity*, 225 J. OF PEDIATRICS 239, 240 (2020), [https://www.jpeds.com/article/S0022-3476\(20\)30898-2/pdf](https://www.jpeds.com/article/S0022-3476(20)30898-2/pdf) [<https://perma.cc/5FTL-4FQU>].

135. Two in five childcare operators interviewed reported that they were certain they would have to close permanently if they did not receive additional assistance. NAT'L ASS'N FOR THE EDUC. OF YOUNG CHILDREN, *supra* note 133, at 1.

Childcare shortages have forced many parents to leave the workforce or limit their working hours.<sup>136</sup> Women generally leave the workforce to care for children at much higher rates than men.<sup>137</sup> The problem is compounded for single mothers. In normal times, these mothers may rely on friends, elder parents, or other relatives to step in when formal child care becomes unavailable. But the need to socially distance, especially from elderly grandparents who are at heightened risk of COVID-19 infection and complications, has eliminated this option for many single-working mothers.<sup>138</sup> The care shortage forcing single mothers out of the workforce exacerbates the gender disparity in unemployment rates in the short-term, threatens career advancement penalties, and stunts lifetime wealth accumulation in the long run.<sup>139</sup>

Women also disproportionately provide unpaid care for elderly parents and family members. Two-thirds of unpaid caregivers are female “sandwich caregivers,” simultaneously responsible for both elder and child care.<sup>140</sup> Approximately 20% of these unpaid dual-generation caregivers are unmarried women.<sup>141</sup> Paid child/elder care leave is afforded to few workers in the United States.<sup>142</sup> The COVID-19 crisis has forced many of these women to leave the workforce or

136. Heather Long, *The Big Factor Holding Back the U.S. Economic Recovery: Child Care*, WASH. POST (July 5, 2020), <https://www.washingtonpost.com/business/2020/07/03/big-factor-holding-back-us-economic-recovery-child-care/> [<https://perma.cc/ZDF9-9KBG>] (“Thirteen percent of U.S. parents had to quit a job or reduce their working hours due to a lack of child care.”); Amanda Taub, *Pandemic Will ‘Take Our Women 10 Years Back’ in the Workplace*, N.Y. TIMES (Sept. 26, 2020), <https://www.nytimes.com/2020/09/26/world/covid-women-childcare-equality.html> [<https://perma.cc/T8XY-XKH9>].

137. Pre-pandemic research shows that when child care is scarce, mothers are less likely to be employed, while employment of fathers remains unchanged. Diana Boesch & Katie Hamm, *Valuing Women’s Caregiving During and After the Coronavirus Crisis*, PEW RSCH. CTR. (June 3, 2020), <https://www.americanprogress.org/issues/women/reports/2020/06/03/485855/valuing-womens-caregiving-Coronavirus-crisis> [<https://perma.cc/DQ4D-H3Y9>].

138. See Alon et al., *supra* note 130, at 1.

139. Boesch & Hamm, *supra* note 137; see also Mizota, *supra* note 114 (explaining the importance of wealth accumulation to long-term success and how COVID-19 is undermining many families’ ability to preserve or accumulate wealth).

140. EMBRACING CARERS INITIATIVE, 2017 CARERS REPORT: EMBRACING THE CRITICAL ROLE OF CAREGIVERS AROUND THE WORLD 5, 11 (2017), [https://www.embracingcarers.com/content/dam/web/healthcare/corporate/embracing-carers/media/infographics/us/Merck%20KGaA%20Embracing%20Carers\\_White%20Paper%20Flattened.pdf](https://www.embracingcarers.com/content/dam/web/healthcare/corporate/embracing-carers/media/infographics/us/Merck%20KGaA%20Embracing%20Carers_White%20Paper%20Flattened.pdf) [<https://perma.cc/Q79Y-73ZJ>].

141. U.S. DEP’T OF LAB., UNPAID ELDERCARE IN THE UNITED STATES: 2017–2018 DATA FROM THE AMERICAN TIME USE SURVEY (2020), <https://www.bls.gov/news.release/pdf/elcare.pdf> [<https://perma.cc/VBE3-NPFM>].

142. About 32% of white workers have access to paid leave for child or elder care; 30% of Black workers and 17% of Hispanic workers have paid childcare leave; and 25% of Black workers and 13% of Hispanic workers have access to paid eldercare leave. Mizota, *supra* note 114, at 10, tbl.3.

cut back their hours, either as a response to restricted support from formal care facilities or as a precautionary health measure in light of the increased risks for elderly individuals.<sup>143</sup>

The CARES Act assisted many single-mother and low-income families by providing an additional \$750 million for Head Start, a free preschool program for low-income families,<sup>144</sup> and an additional \$3.5 billion for the Child Care and Development Block Grant (CCDBG), which subsidizes childcare programs for low-income families.<sup>145</sup> This aid, while commendable, failed to meet the needs of many families, given the scope of the child care shortage during the COVID-19 crisis. Even before the virus outbreak, demand for child care exceeded the supply afforded by federal aid: only one quarter of eligible families received CCDBG subsidies, and less than half of eligible children were enrolled in Head Start.<sup>146</sup>

Congress also passed the Families First Coronavirus Response Act (FFCRA) to assist parents who had to leave jobs to care for their children.<sup>147</sup> The FFCRA empowered the Department of Labor to use its authority under the Family and Medical Leave Act (FMLA) to require certain employers to pay for up to ten weeks of emergency family leave to employees who leave work to care for children whose primary place of care had closed for COVID-19-related reasons.<sup>148</sup> The CARES Act also made PUA available to those unable to work due to “primary caregiving responsibility” for a child who is unable to attend their normal care facility.<sup>149</sup> But this aid generally does not cover older children and the children must be barred from their normal care facility as a “direct result” of the COVID-19 crisis, meaning many will only be eligible for PUA during times in which schools

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143. See Belen Garijo, *COVID-19 Highlights How Caregiving Fuels Gender Inequality*, WORLD ECON. FORUM (Apr. 24, 2020), <https://www.weforum.org/agenda/2020/04/covid-19-highlights-how-caregiving-fuels-gender-inequality> [<https://perma.cc/L7A4-A97V>].

144. William J. Scarborough, Caitlyn Collins, Leah Ruppanner & Liana Christin Landivar, *COVID-19 and the Care Crisis: An Evidence-Based Policy Recommendation for Supporting Families*, 70 FAM. REL.: INTERDISC. J. OF APPLIED FAM. SCI. 26, 39 (2020).

145. Admin. for Children & Families, *HHS' Administration for Children and Families to Release Funding to Support the Child Care and Development Block Grant*, U.S. DEPT HEALTH & HUM. SERVS. (Apr. 14, 2020), <https://www.acf.hhs.gov/media/press/2020/hhs-administration-for-children-and-families-to-release-funding-to-support-the-child-care-and-development-block-grant> [<https://perma.cc/DPA5-5MYA>].

146. Scarborough et al., *supra* note 144, at 25.

147. Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, 178 Stat. 134 (2020).

148. The FFCRA expanded paid leave until December 2020. Paid Leave Under the Families First Coronavirus Response Act, 85 Fed. Reg. 19,326 (Apr. 2, 2020); Wage and Hour Division, *Temporary Rule: Paid Leave Under the Families First Coronavirus Response Act*, U.S. DEPT LAB., <https://www.dol.gov/agencies/whd/ffcra> [<https://perma.cc/67PG-7QUS>].

149. See Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281, § 2102(a)(3)(A)(ii)(I)(dd) (2020).

would otherwise be open, and not during scheduled summer vacations.<sup>150</sup> The childcare relief provisions in the FFCRA and CARES Act have provided short-term relief to some families, but they are insufficient to help working families, especially single-mother families, weather the full duration of the pandemic-related restrictions and economic recession.<sup>151</sup>

### 3. Unpredictable Government Income Assistance

Access to other public assistance programs for single mothers is also complex. Mothers who depend on welfare and other public services are more likely to continue to experience financial strain even as they reenter the workforce.<sup>152</sup> For single-BIPOC mothers, the effects of welfare dependency are heightened, as they “are disproportionately represented among the very poor and welfare-dependent.”<sup>153</sup> Additionally, Temporary Assistance for Needy Families (TANF) requires the applicant to meet citizenship or specified legal immigration status requirements, which excludes the many single mothers and children who do not have an eligible immigration status.<sup>154</sup> In Pennsylvania, recipients usually must also either be in the process of finding a job or be enrolled in an employment training program.<sup>155</sup> Many higher education programs are not included, and many single mothers who pursue higher education risk losing their public assistance benefits, leaving single mothers trapped in poverty.<sup>156</sup>

The Earned Income Tax Credit (EITC) is a crucial form of relief for many single mothers, who represent about one-third of EITC

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150. See *Unemployment Insurance Relief During COVID-19 Outbreak*, U.S. DEP'T OF LAB., <https://www.dol.gov/coronavirus/unemployment-insurance> [<https://perma.cc/4EB8-8YMP>].

151. See, e.g., Parrott et al., *supra* note 124.

152. Aurora P. Jackson, Jeanne Brooks-Gunn, Chien-Chung Huang & Marc Glassman, *Single Mothers in Low-Wage Jobs: Financial Strain, Parenting, and Preschoolers' Outcomes*, 71 CHILD DEV. 1409, 1420 (2000).

153. *Id.* at 1410.

154. See *Temporary Assistance for Needy Families*, BENEFITS.GOV, <https://www.benefits.gov/benefit/613> [<https://perma.cc/GSY9-SMSH>]; see also Francisco Navas, *A Single Mom, Undocumented, Living in the Shadow of ICE*, THE GUARDIAN (Feb. 19, 2018), <https://www.theguardian.com/us-news/2018/feb/19/undocumented-mother> (recounting the story of a single mother who faces unique challenges, such as not being able to obtain a driver's license or take out a mortgage, and being constantly threatened by ICE, as a result of her undocumented status).

155. *Temporary Assistance for Needy Families (TANF) and Moving to Independence*, PA. DEP'T HUMAN SERVS., <https://www.dhs.pa.gov/Services/Assistance/Pages/TANF.aspx> [<https://perma.cc/LNC9-AFEX>].

156. See Amanda Freeman, *Single Moms and Welfare Woes: A Higher Education Dilemma*, THE ATLANTIC (Aug. 18, 2015), <https://www.theatlantic.com/education/archive/2015/08/why-single-moms-struggle-with-college> [<https://perma.cc/PA5B-MYE9>] (noting that TANF “encourages case workers to focus on work versus education”).

recipients. It generally constitutes a significant portion of the after-tax income of low-income families.<sup>157</sup> The EITC is especially important for single-mother households due to its sensitivity to the number of dependent children within a household.<sup>158</sup> However, it is not available to undocumented mothers and their children.<sup>159</sup> In addition, instead of a regular monthly allotment it is only distributed once a year in connection with the annual federal tax filing season.<sup>160</sup>

Child support and informal cash assistance are important sources of income for many single mothers, even if they are often unreliable.<sup>161</sup> Child support comprises 14% of the average custodial parent's income, which helps some to stay above the poverty level.<sup>162</sup> However, custodial parents often do not receive the full amount of child support they are due. In 2015, for instance, only 44% of custodial parents reported receiving the full amount of child support owed to them, while 31% of custodial parents received no payments at all.<sup>163</sup> Court closures and unemployment related to the pandemic further complicated the effort by single mothers to obtain child support payments.<sup>164</sup>

The CARES Act allocated \$12 billion to the Department of Housing and Urban Development to provide community development and support, mitigate renewed risks of housing instability, and lend aid to those experiencing homelessness.<sup>165</sup> The allocation was significant but insufficient to meet the need.<sup>166</sup> In addition, only one in five

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157. Kartik Athreya, Devin Reilly & Nicole Simpson, *Single Mothers and the Earned Income Tax Credit: Insurance Without Disincentives?* 1–2 (IZA Discussion Paper Ser. No. 8114, 2014).

158. *Id.* at 2.

159. See *Do I Qualify for the EITC?*, IRS (Jan. 2020), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/do-i-qualify-for-earned-income-tax-credit-eitc> [<https://perma.cc/5SD2-GH28>].

160. Megan A. Curran & Elisa Minoff, *Supporting Children and Families Through the Pandemic, and After: The Case for a US Child Allowance*, SOC. SCI. & HUMANITIES OPEN 1, 2 (2020).

161. See Melody K. Waring & Daniel R. Meyer, *Welfare, Work, and Single Mothers: The Great Recession and Income Packaging Strategies*, 108 CHILD & YOUTH SERVS. REV. 1, 2 (2020).

162. *Id.*

163. See *44 Percent of Custodial Parents Receive the Full Amount of Child Support*, U.S. CENSUS BUREAU (Jan. 30, 2018), <https://www.census.gov/newsroom/press-releases/2018/cb18-tps03.html> [<https://perma.cc/ULQ5-U5F3>].

164. See Bobrow, *supra* note 44 (highlighting the story of a single mother in New York City who could not obtain late child support payments from her ex-husband due to court closures).

165. See Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). Almost a quarter of this \$12 billion allocation went to HUD's primary rental assistance and public housing programs. MATTHEW GERKEN & ABBY BOSHART, THE CARES ACT SUPPORTS KEY PROGRAMS, BUT MORE IS NEEDED SOON 1–2 (Apr. 2020), [https://www.urban.org/sites/default/files/publication/102078/the-cares-act-supports-key-programs-but-more-is-needed-soon\\_0.pdf](https://www.urban.org/sites/default/files/publication/102078/the-cares-act-supports-key-programs-but-more-is-needed-soon_0.pdf) [<https://perma.cc/5VT8-XEDR>].

166. GERKEN & BOSHART, *supra* note 165, at 8.



households who were eligible for housing assistance before the crisis actually received it; since the pandemic, even more are likely eligible but unserved.<sup>167</sup> The CARES Act is relatively generous to homeowners, offering mortgage payment forbearance to the 70% of borrowers with federally backed mortgages.<sup>168</sup> The Act is less helpful to renters, who have been granted temporary eviction moratoriums but who will ultimately have to pay missed rent payments as a lump sum. This is a difficult task for individuals who, on average, have much more limited savings to weather financial hardships than do homeowners.<sup>169</sup> Many experts claim Congress will need to take supplemental action to match the scope of the housing crisis.<sup>170</sup>

Congress also addressed food insecurity and health care. The FFCRA gave states flexibility to expand SNAP benefits, which led to an almost immediate 40% increase in monthly benefits.<sup>171</sup> But the expansions are limited to the duration of the public health (not the economic) emergency, and the CARES Act failed to build on the FFCRA to further expand SNAP benefits, despite evidence from the 2008 recession that SNAP was one of the most effective stimulus policies.<sup>172</sup> The FFCRA expanded Medicaid by increasing the state federal medical assistance percentage by 6.2%,<sup>173</sup> and the CARES Act

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167. *See id.*

168. LAURIE GOODMAN & DAN MAGDER, AVOIDING A COVID-19 DISASTER FOR RENTERS AND THE HOUSING MARKET 5 (Apr. 2020), [https://www.urban.org/sites/default/files/publication/102013/avoiding-a-covid-19-disaster-for-renters-and-the-housing-market\\_0.pdf](https://www.urban.org/sites/default/files/publication/102013/avoiding-a-covid-19-disaster-for-renters-and-the-housing-market_0.pdf) [<https://perma.cc/VR4J-6E6Q>].

169. The eviction moratorium was extended through the end of 2020. Order to Temporarily Halt Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020). Homeowners with a mortgage (48 million in number) have a median annual income of \$93,000, while renters (44 million) have a median income of \$41,000. GOODMAN & MAGDER, *supra* note 168, at 1.

170. *See, e.g.*, GERKEN & BOSHART, *supra* note 165, at 9 (advocating for expanded vouchers for eligible families and increased funding for housing assistance programs); GOODMAN & MAGDER, *supra* note 168, at 3 (suggesting a national rental assistance program would have been more effective federal aid to the housing market); MICHELLE D. LAYSER, EDWARD W. DE BARBIERI, ANDREW J. GREENLEE, TRACY A. KAYE & BLAINE G. SAITO, MITIGATING HOUSING INSTABILITY DURING A PANDEMIC 1 (2020) (arguing for more housing relief that eliminates “administrative hurdles, reliance on voluntary participation, [and] resource constraints”).

171. *USDA Increases Monthly SNAP Benefits by 40%*, U.S. DEP’T. AGRIC. (Apr. 22, 2020), <https://www.usda.gov/media/press-releases/2020/04/22/usda-increases-monthly-snap-benefits-40> [<https://perma.cc/4WUT-EH7S>]. The USDA launched or expanded a number of other emergency relief programs to aid family nutrition. These include Pandemic-EBT, which provides free and price-reduced meals that children would have otherwise received at schools, the Emergency Food Assistance Program, and Disaster Household Distributions. *Id.*

172. Parrott et al., *supra* note 124.

173. *See Families First Coronavirus Response Act (FFCRA)*, Pub. L. No. 116-127, 178 Stat. 134 (2020). The federal medical assistance percentage determines the federal share of state Medicaid funding. Lynn A. Blewett & Robert Hest, *Emergency Flexibility for*

provided further support by granting states flexibility in setting Medicaid eligibility standards during COVID-19.<sup>174</sup>

These relief packages have delivered significant, but limited, aid to millions in need. Instead of tying relief to the end of the public health crisis or to economic recovery, most CARES Act benefits expired in July 2020, leaving many single mothers with less support despite the unrelenting crisis.<sup>175</sup> Administration of the CARES Act has been flawed, and eligibility requirements exclude key groups from aid.<sup>176</sup> Among these groups are visa holders and undocumented immigrants, most of whom are ineligible for assistance under the FFCRA and the CARES Act.<sup>177</sup> This has likely been devastating to thousands of immigrant, single-parent households trying to weather the COVID-19 storm. By mid-November 2020, no new major relief had arrived from the federal government.<sup>178</sup> While single-mother families are often hardest hit, as Thanksgiving 2020 approached, fewer than one-half of households with children were very confident they could afford needed food in the next month, and four in ten households with children struggled with other essential expenses.<sup>179</sup>

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*States to Increase and Maintain Medicaid Eligibility for LTSS Under COVID-19*, 32 J. AGING & SOC. POL'Y 343, 346 (2020).

174. See Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat 281 (2020).

175. See Greg Iacurci, *Two Kids, No Support System and \$167 in Unemployment Benefits: One Single Mom's Plight in the Age of Covid-19*, CNBC (Sep. 5, 2020, 9:15 AM), <https://www.cnbc.com/2020/09/05/theres-no-escape-for-single-mothers-ingle-mo-plight-in-the-age-of-covid-19-.html> [https://perma.cc/W6ET-B9ZP].

176. Grace Enda, William G. Gale & Claire Haldeman, *Careful or Careless? Perspectives on the CARES Act*, BROOKINGS INST. (Mar. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/03/27/careful-or-careless-perspectives-on-the-cares-act> [https://perma.cc/48WM-XW78].

177. Fernando A. Wilson & Jim P. Stimpson, *US Policies Increase Vulnerability of Immigrant Communities to the COVID-19 Pandemic*, 86 ANN. GLOBAL HEALTH 1, 1 (2020) (noting that immigrant communities were among the most in need of aid during pandemic, since many of them already live in poverty, are without health insurance, and work in high-infection-risk industries without adequate protection); see also Marisa Peñaloza, *Undocumented Workers Demand Better, Safer Working Conditions During Pandemic*, NPR (May 1, 2020, 4:00 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/01/849128105/undocumented-workers-demand-better-safer-working-conditions-during-pandemic> [https://perma.cc/3UBT-AWGD].

178. Reade Pickert & Olivid Rockeman, *End of Year Means End of Federal Aid for Millions of Americans*, WASH. POST (Nov. 20, 2020), [https://www.washingtonpost.com/business/on-small-business/end-of-year-means-end-of-federal-aid-for-millions-of-americans/2020/11/18/5b571274-298d-11eb-9c21-3cc501d0981f\\_story.html](https://www.washingtonpost.com/business/on-small-business/end-of-year-means-end-of-federal-aid-for-millions-of-americans/2020/11/18/5b571274-298d-11eb-9c21-3cc501d0981f_story.html) [https://perma.cc/ZT5D-K4ZE]. Further aid was passed in December 2020 and expected to be passed in March 2021. Theresa Glennon, *Empathy's Promise and Limits for Those Disproportionately Harmed by the COVID-19 Pandemic*, 27 WASH. & LEE J. CIV. RTS. & SOC. JUST. \_\_\_\_ (forthcoming 2021).

179. Joseph Llobrera, *As Thanksgiving Approaches, Fewer Than Half of Households with Kids Very Confident About Affording Needed Food*, CTR. ON BUDGET AND POL'Y

#### 4. *Disparities in Health, Health Care and Schooling*

In addition to dealing with the economic fallout and job losses associated with the pandemic, single-mother families confront health, healthcare access and schooling difficulties brought on by the virus and the measures to contain its spread. Women face unique health risks, such as the effect of coronavirus infection on pregnancy and postpartum health.<sup>180</sup> The extent of COVID-19's threat to pregnant women is still unknown, but the risk of serious illness and adverse pregnancy outcomes is likely enough that pregnant women are being advised to take extra precautions against exposure.<sup>181</sup> Pregnant women are substantially more likely to be hospitalized for coronavirus complications than nonpregnant women.<sup>182</sup> Further, Black and Hispanic pregnant women are almost five times more likely to be exposed to coronavirus than white pregnant women.<sup>183</sup> Some pregnant women are leaving the workforce to avoid exposure or, if temporary leave is not an option, they must continue working at elevated risk to themselves and their babies.<sup>184</sup>

The racial health inequities associated with the coronavirus pandemic are not limited to pregnant women. BIPOC groups face disproportionate rates of infection, serious complications and death.<sup>185</sup>

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PRIORITIES (Nov. 18, 2020), <https://www.cbpp.org/blog/as-thanksgiving-approaches-fewer-than-half-of-households-with-kids-very-confident-about> [<https://perma.cc/6AQB-7PRG>].

180. *Pregnancy, Breastfeeding, and Caring for Newborns*, CDC (Dec. 28, 2020), <https://www.cdc.gov/Coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html> [<https://perma.cc/ZM3K-HBFM>].

181. *See id.*

182. Sascha Ellington, Penelope Strid, Van T. Tong, Kate Woodworth, Romeo R. Galang, Laura D. Zambrano, John Nahabedian, Kayla Anderson & Suzanne M. Gilboa, *Characteristics of Women of Reproductive Age with Laboratory-Confirmed SARS-CoV-2 Infection by Pregnancy Status—United States, January 22–June 7, 2020*, 69 CDC MORBIDITY & MORTALITY WKLY. REP. 769, 769 (2020) (“Among women with COVID-19, approximately one third (31.5%) of pregnant women were reported to have been hospitalized compared with 5.8% of nonpregnant women.”).

183. *See* Dustin D. Flannery, Sigrid Gouma, Miren B. Dhudasia, Sagori Mukhopadhyay, Madeline R. Pfeifer, Emily C. Woodford, Jeffrey S. Gerber, Claudia P. Arevalo, Marcus J. Bolton, Madison E. Weirick, Eileen C. Goodwin, Elizabeth M. Anderson, Allison R. Greenplate, Justin Kim, Nicholas Han, Ajinkya Pattekar, Jeanette Dougherty, Olivia Kuthuru, Divij Mathew, Amy E. Baxter, Laura A. Vella, JoEllen Weaver, Anurag Verma, Rita Leite, Jeffrey S. Morris, Daniel J. Rader, Michal A. Elovitz, E. John Wherry, Karen M. Puopoli & Scott E. Hensley, *SARS-CoV-2 Seroprevalence Among Parturient Women in Philadelphia*, 5 SCI. IMMUNOLOGY 1, 2 (2020).

184. *See* Kyle Swenson, *Ten Bucks Left, No Place to Go: How the Pandemic and a Broken Unemployment System Are Upending People's Lives*, WASH. POST (Aug. 1, 2020), <https://www.washingtonpost.com/local/coronavirus-unemployment-delays-dc> [<https://perma.cc/DF6L-EG4Q>] (describing the decision by Lakeisha, a Whole Foods worker, to leave her job after colleagues tested positive for coronavirus, to reduce her health risk while pregnant).

185. *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC

Sociologists and public health experts believe that “social determinants of health” help explain these health inequities.<sup>186</sup> BIPOC individuals are less likely to have health insurance than non-Hispanic white individuals,<sup>187</sup> and they face other significant hurdles to obtaining health care, such as “lack of transportation, child care, or ability to take time off of work; communication and language barriers; cultural differences between patients and providers; and historical and current discrimination in healthcare systems.”<sup>188</sup> Diminished access to health care increases rates of coronavirus illness and death by preventing patients from seeking care until symptoms become severe and contributing to the types and severity of pre-existing conditions that are correlated to increased mortality in coronavirus patients.<sup>189</sup> BIPOC individuals are also more likely to have these pre-existing health conditions.<sup>190</sup> Factors beyond health status and care that contribute to health inequities during the coronavirus pandemic include crowded and/or segregated housing conditions; educational, income, and occupational gaps that disproportionately keep BIPOC workers in essential, high-exposure-risk jobs; and disproportionate reliance on public transportation.<sup>191</sup>

BIPOC single-parent families also face a number of secondary effects of the pandemic. Single mothers are more likely to have partners and their children are more likely to have other parents affected by the high rates of coronavirus infections in America’s jails, prisons, and immigration detention centers.<sup>192</sup> Studies reveal that as

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(July 24, 2020) [hereinafter *Health Equity Considerations*], <https://www.cdc.gov/Coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [https://perma.cc/TF4P-SPUZ]. One study concludes: “Among cases with known race and ethnicity, 33% of persons were Hispanic, 22% were Black, and 1.3% were AI/AN. These findings suggest that persons in these groups, who account for 18%, 13%, and 0.7% of the U.S. population, respectively, are disproportionately affected by the COVID-19 pandemic.” Erin K. Stokes, Laura D. Zambrano, Kayla N. Anderson, Ellyn P. Marder, Kala M. Raz, Suad El Burai Felix, Yunfeng Tie & Kathleen E. Fullerton, *Coronavirus Disease 2019 Case Surveillance United States—January 22–May 30, 2020*, 69 CDC MORBIDITY & MORTALITY WKLY. REP. 759, 763 (2020).

186. The CDC defines “social determinants of health” as “[c]onditions in the places where people live, learn, work, and play [that] affect a wide range of health risks and outcomes.” *Social Determinants of Health: Know What Affects Health*, CDC (Jan. 26, 2021, 12:00 AM), <https://www.cdc.gov/socialdeterminants/index.htm> [https://perma.cc/P98E-RRAF].

187. *Health Equity Considerations*, *supra* note 185.

188. *Id.*

189. *See id.*

190. *Id.*

191. *Id.*

192. *See, e.g.*, Carlos Franco-Parades, Katherine Jankousky, Jonathan Schultz, Jessica Bernfeld, Kimberly Cullen, Nicolas G. Quan, Shelley Kon, Peter Hotez, Andrés F. Henao-Martinez & Martin Krsak, *COVID-19 in Jails and Prisons: A Neglected Infection in a*

of July 2020, the COVID-19 case rate among the incarcerated was more than five times higher than the U.S. population case rate.<sup>193</sup> These outbreaks are likely inflicting additional stress on single mothers who have children with incarcerated fathers.<sup>194</sup> Given the disproportionate representation of BIPOC individuals in the incarcerated population, a higher percentage of BIPOC single mothers and children are likely experiencing distress and loss related to prison outbreaks.<sup>195</sup>

The children of single-mother families may experience serious developmental and educational delays due to school closures. Even under normal circumstances, seasonal breaks undermine academic progress and are exacerbated by the “homework gap”: the difference in achievement between students who have at-home digital learning resources like computers and internet access and students who do not.<sup>196</sup> Although 85% of U.S. households with school-age children have internet access at home,<sup>197</sup> high barriers remain for low-income families, racial and ethnic minorities, and those living in remote rural areas.<sup>198</sup> The pandemic and associated social distancing measures

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*Marginalized Population*, PLOS NEGLECTED TROPICAL DISEASES 1 (June 22, 2020), <https://journals.plos.org/plosntds/article?id=10.1371/journal.pntd.0008409> [<https://perma.cc/S2U8-R8YB>].

193. See, e.g., Brendan Saloner, Kalind Parish, Julie A. Ward, Grace DiLaura & Sharon Dolovich, *COVID-19 Cases and Deaths in Federal and State Prisons*, JAMA NETWORK 1 (July 8, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2768249> [<https://perma.cc/3HMK-ECNY>]. The coronavirus death rate was also higher, at 39 deaths per 100,000 prisoners versus 29 deaths per 100,000 nonincarcerated persons. *Id.* at 2.

194. The Bureau of Justice’s most recent estimates put the number of fathers with minor children in prison at 744,200, compared with 65,600 mothers, leaving a total of 1,706,600 minor children without at least one parent. LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, PARENTS IN PRISON AND THEIR MINOR CHILDREN 13, app.1 (2009), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf> [<https://perma.cc/4VHJ-DMAF>].

195. In 2018, compared to white U.S. residents, Black residents were imprisoned at a rate five times higher, and Hispanic residents were imprisoned at a rate that was two and one-half times higher. See E. ANN CARSON, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATISTICS, PRISONERS IN 2018, NCJ 253516, at tbl.5 (2020), <https://www.bjs.gov/content/pub/pdf/p18.pdf> [<https://perma.cc/VNW9-RLPR>].

196. MEGAN KUHFIELD & BETH TARASAWA, THE COVID-19 SLIDE: WHAT SUMMER LEARNING LOSS CAN TELL US ABOUT THE POTENTIAL IMPACT OF SCHOOL CLOSURES ON STUDENT ACADEMIC ACHIEVEMENT 3 (2020), [https://www.nwea.org/content/uploads/2020/05/Collaborative-Brief\\_Covid19-Slide-APR20.pdf](https://www.nwea.org/content/uploads/2020/05/Collaborative-Brief_Covid19-Slide-APR20.pdf) [<https://perma.cc/2TUM-MKDR>]; DANIEL J.W. NEAL, CLOSING THE HOMEWORK GAP: A GUIDE TO INCREASING STUDENT SUCCESS WITH HOME CONNECTIVITY 7 (2016), [https://web.archive.org/web/20170809062554/http://www.kajeet.net/hubfs/Closing\\_the\\_Homework\\_Gap.pdf](https://web.archive.org/web/20170809062554/http://www.kajeet.net/hubfs/Closing_the_Homework_Gap.pdf).

197. See Brooke Auxier & Monica Anderson, *As Schools Close Due to the Coronavirus, Some U.S. Students Face a Digital ‘Homework Gap’*, PEW RES. CTR. (Mar. 16, 2020), <https://www.pewresearch.org/fact-tank/2020/03/16/as-schools-close-due-to-the-coronavirus-some-u-s-students-face-a-digital-homework-gap> [<https://perma.cc/VY5Q-K6VP>].

198. NEAL, *supra* note 196, at 8 (explaining that “low-income families are four times more likely to be without broadband access [at home] than those with higher incomes”).

are likely to widen these pre-existing achievement gaps, as many school districts have suspended in-person learning indefinitely.<sup>199</sup> Remote education is likely to diminish children's rate of educational growth<sup>200</sup> with increased absences, limited internet access, and lack of adult supervision at home<sup>201</sup> having the greatest impact upon children of single mothers.<sup>202</sup> Gaps created by remote learning are likely to affect children long after the coronavirus crisis ends.<sup>203</sup> Even schools that open their doors for the 2020–2021 school year may see declines in student achievement.<sup>204</sup>

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As compared with the overall percentage of American homes with school-aged children lacking broadband service (roughly 17.5%), 38.6% of Black families and 37.4% of Hispanic families are without internet at home. *Id.* at 7–8; see also ANGELINA KEWALRAMANI, JIJUN ZHANG, XIAOLEI WANG, AMY RATHBURN, LISA CORCORAN, MELISSA DILIBERTI, JIZHI ZHANG & THOMAS D. SNYDER, NAT'L. CTR. FOR EDUC. STATISTICS, STUDENT ACCESS TO DIGITAL LEARNING RESOURCES OUTSIDE OF THE CLASSROOM, at xiii (2018), <https://nces.ed.gov/pubs2017/2017098.pdf> [<https://perma.cc/S93T-LYQR>] (describing the reduced rates of internet access in rural areas).

199. For the end of the 2019–2020 school year, nearly every state had ordered or recommended that schools cease in-person instruction, affecting nearly 55.1 million children nationwide at the peak of mass closures. *Map: Coronavirus and School Closures*, EDUC. WK. (Mar. 6, 2020), <https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html> [<https://perma.cc/T3H7-THGS>]. Arrangements for the 2020–2021 school year are almost constantly changing and vary by state and district, but as of August of 2020 at least a handful of states had ordered closures for the first half of the school year, and many more local jurisdictions had done the same. *Map: Where are Schools Open?*, EDUC. WK. (July 28, 2020), <https://www.edweek.org/ew/section/multimedia/map-covid-19-schools-open-closed.html> [<https://perma.cc/GGU9-G57P>].

200. Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis & Ellen Viruleg, *COVID-19 and Student Learning in the United States: The Hurt Could Last a Lifetime*, MCKINSEY & CO. (June 1, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-life-time#> [<https://perma.cc/8UEM-SHXA>].

201. Auxier & Anderson, *supra* note 197; Dana Goldstein, Adam Popescu & Nikole Hannah-Jones, *As Schools Move Online, Many Students Stay Logged Out*, N.Y. TIMES (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html> [<https://perma.cc/CL9G-6UNQ>]; Holly Kurtz, *National Survey Tracks Impact of Coronavirus on Schools: 10 Key Findings*, EDUC. WK. (Apr. 10, 2020), <https://www.edweek.org/ew/articles/2020/04/10/national-survey-tracks-impact-of-coronavirus-on.html> [<https://perma.cc/V7NH-SQ4U>].

202. See Elizabeth A. Harris, *'It Was Just Too Much': How Remote Learning is Breaking Parents*, N.Y. TIMES (Apr. 27, 2020), <https://www.nytimes.com/2020/04/27/nyregion/coronavirus-homeschooling-parents.html> [<https://perma.cc/TJK3-CG3K>]; see also Lanya McKittrick & Paul Hill, *Lessons from Remote Learning: Parent Perspectives*, CTR. REINVENTING PUB. EDUC. (June 17, 2020), <https://www.crpe.org/thelens/lessons-remote-learning-parent-perspectives> [<https://perma.cc/2KMW-TELZ>].

203. Dorn et al., *supra* note 200.

204. Lisette Partelow, Jessica Yin & Scott Sargrad, *Why K–12 Education Needs More Federal Stimulus Funding*, CTR. FOR AM. PROGRESS (July 21, 2020), <https://www.americanprogress.org/issues/education-k-12/reports/2020/07/21/487865/k-12-education-needs-federal-stimulus-funding> [<https://perma.cc/C92L-ZCTW>].

### 5. COVID-19 and Psychological Harm

This combination of economic, health, and family structure stressors has been psychologically devastating for thousands of single mothers. The social isolation associated with social distancing measures has been injurious for mental health, with elevated rates of feelings of depression among parents living with young children.<sup>205</sup> Mothers report experiencing those feelings at even higher rates than fathers.<sup>206</sup> For single-parent households, socially distancing at home with children taxed parental mental health; 57% of single parents reported feeling depressed at least a few times a week, while only 38% of adults in two-parent households reported the same.<sup>207</sup> In addition to the stress of constantly caring for children, many single mothers have had to juggle home and work responsibilities or recent loss of employment as a result of the pandemic.<sup>208</sup> For low-income or low-wealth families, job loss provokes additional stress about meeting basic needs.<sup>209</sup> Single motherhood is an isolating experience for many even in times of normalcy, but social distancing and ongoing fears of transmission of the virus have robbed many mothers of their support system at a time they may have needed it most.<sup>210</sup>

Pandemic-induced changes and parental stress can harm children as well.<sup>211</sup> Many children are facing significant disruptions to their usual routines, their learning environments, and possibly their

205. DANIEL A. COX & SAMUEL J. ABRAMS, AM. ENTER. INST., *THE PARENTS ARE NOT ALL RIGHT: THE EXPERIENCES OF PARENTING DURING A PANDEMIC* 4–5 (2020), <https://www.aei.org/wp-content/uploads/2020/07/AEI-Parenting-During-a-Pandemic-Survey-Report-1.pdf> (“Close to half (44 percent) of parents say they feel depressed a few times a week or more often. Among those without children, 32 percent report feeling depressed at least a few times a week.”).

206. *Id.*

207. *Id.*

208. Misty L. Heggeness, *Why Is Mommy So Stressed? Estimating the Immediate Impact of the COVID-19 Shock on Parental Attachment to the Labor Market and the Double Bind of Mothers* 17–18 (Fed. Rsrv. Bank of Minneapolis, Working Paper No. 33, 2020), <https://www.minneapolisfed.org/institute/working-papers-institute/iwp33.pdf> [<https://perma.cc/R98Z-SJY8>].

209. COX & ABRAMS, *supra* note 205, at 7 (finding that 49% of parents with children living at home are “somewhat or very worried” about paying their rent or mortgage, and that 25% of parents say they have struggled to pay for food since February, compared with 13% of those without children); Jessica Valenzuela, Lori E. Crosby & Roger R. Harrison, *Commentary: Reflections on the COVID-19 Pandemic and Health Disparities in Pediatric Psychology*, 45 J. PEDIATRIC PSYCHOLOGY 839, 839–40 (2020).

210. *See, e.g.*, Bobrow, *supra* note 44 (quoting Shoshana, a recently widowed mother who said: “[b]eing a single parent is really lonely, even when you’re not social-distancing . . . . The whole support system I had put in place to keep me going has now completely fallen apart.”).

211. NAT’L ACADS. OF SCIS., ENG’G & MED., *supra* note 7, at 70.

homes. Social risk factors such as housing and food insecurity negatively affect children's health.<sup>212</sup> Many are aware of the pandemic and are already quite fearful of its effects. Children whose parents are on the front lines may fear their parents will become sick, especially if their parents are at greater risk of serious illness. When both parents and their children experience stress, its effects can be amplified; in contrast, alleviation of those stresses has a positive interactive effect that allows parents to improve their parenting and better assist their children.<sup>213</sup>

## II. DISREGARD, DENIGRATION AND DISCRIMINATION: STRUCTURAL INEQUALITIES IN THE LIVES OF SINGLE-MOTHER FAMILIES

### A. Denigration of Single Mothers with Sexist and Racist Tropes

The U.S. history of social and economic policies to aid families is rife with disapproval and denigration of single mothers and their families, leading to significant disregard and discrimination. Scholars have examined the substantial and negative differences in governmental treatment of lower-income families, particularly those affecting single mothers.<sup>214</sup> While the term "single mothers" covers a wide range of situations,<sup>215</sup> single motherhood has been framed in a condemnatory and disparaging manner for the entire existence of the United States. The public language used to express that denigration has, to some extent, shifted from the language of crime and immorality to the vocabulary of dependency.<sup>216</sup> To be financially dependent on a husband is "good" dependency; to be dependent on state financial assistance is to be psychologically and morally weak.<sup>217</sup>

These shifts in the formal language used, however, have not changed a pernicious, multifaceted and interlocking pattern. The language of single motherhood could focus on the extraordinary amount of work single mothers do to raise children alone, high rates

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212. Louise E. Vaz, David V. Wagner, Rebecca M. Jungbauer, Katrina L. Ramsey, Celeste Jenisch, Natalie Koskela-Staples, Steven Everist, Jared P. Austin, Michael A. Harris & Katherine E. Zuckerman, *The Role of Caregiver-Reported Risks in Predicting Adverse Pediatric Outcomes*, 45 J. PEDIATRIC PSYCH. 957, 958 (2020).

213. NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 7.

214. *See, e.g.*, Jill Hasday, *Parenthood Divided: A Legal History of the Bifurcated Law of Parental Relations*, 90 GEO. L.J. 299, 364 (2002).

215. *See* Valerie Heffernan & Gay Wilgus, *Introduction: Imagining Motherhood in the Twenty-First Century—Images, Representations, Constructions*, 29 WOMEN: A CULTURAL REV. 1, 4–5 (2018).

216. *See* Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309, 309 (1994).

217. *Id.* at 320–21.



of paid employment among single mothers of all races,<sup>218</sup> and the significant barriers they face in the labor market and social welfare programs. The rhetoric could recognize that so many single mothers act with the highest ideals of care and self-reliance possible under often difficult life circumstances. The rhetoric could also recognize the real and significant impediments to marriage for many women, and especially for women who are low-income and/or BIPOC.<sup>219</sup>

Instead, rhetoric has focused on describing single mothers as leeches on society, and it has done so through the ugliest intersection of the assumed “immorality” of single mothers with racist, sexist and classist tropes.<sup>220</sup> Race, gender and class have been weaponized in the rhetorical trope of the immoral single mother as the “welfare queen,” infamously trumpeted by Ronald Reagan.<sup>221</sup> While Reagan never specifically mentioned the race of this “welfare queen,” he knew that his audience, primed by many generations of racist stereotypes, would automatically assume that those who need welfare are single, Black, lazy and promiscuous.<sup>222</sup>

These racist stereotypes of Black single mothers were manipulated by politicians to generate negative views of them and their white counterparts.<sup>223</sup> These efforts have also drawn on the misogyny that targets women who do not follow the prescribed path of marriage and motherhood. They and their families are depicted as unworthy of the public’s concern or support because of the mother’s “deviant” sexual behavior.<sup>224</sup> And despite government laws and policies structured to make it much more likely that single-mother families will struggle with poverty, single mothers are blamed for their own poverty. In contrast, marital families are depicted as wholesome and virtuous, and the many employment, tax, and public benefits policies that disproportionately support marital families are valorized.<sup>225</sup>

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218. See Claire Cain Miller & Ernie Tedeschi, *Single Mothers Are Surging Into the Work Force*, THE N.Y. TIMES (May 29, 2019), <https://www.nytimes.com/2019/05/29/upshot/single-mothers-surge-employment.html> [<https://perma.cc/8V2W-REEJ>].

219. See Melissa Murray, *What’s So New About the New Illegitimacy?*, 20 AM. U. J. GENDER POL’Y & L. 387, 428–29 (2012).

220. See Catherine R. Albiston & Laura Beth Nielsen, *Welfare Queens and Other Fairy Tales: Welfare Reform and Unconstitutional Reproductive Controls*, 38 HOW. L.J. 473, 486 (1995).

221. Murray, *supra* note 219, at 420.

222. See generally Anthony Cook, *The Moynihan Report and the Neo-Conservative Backlash to the Civil Rights Movement*, 8 GEO. J.L. & MOD. CRIT. RACE PERSP. 1, 11 (2016); see also Lisa Pruitt, *Welfare Queens and White Trash*, 25 S. CAL. INTERDISC. L.J. 289, 290 (2016).

223. See Pruitt, *supra* note 222, at 295.

224. See, e.g., Heffernan & Wilgus, *supra* note 215, at 3.

225. See *id.*; KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* 46–47 (2018).

Throughout history, girls and women who have children when they are not married have been subjected to harsh treatment and rhetoric, which has also been employed against their children. Until the mid-twentieth century, sex outside of marriage was criminal.<sup>226</sup> The condemnation was especially harsh for single mothers, and for many years, the fathers of their children were protected from child support obligations because of the fear that these “tramps” would use child support actions to milk “respectable” men of their money.<sup>227</sup> White, middle class families were so worried that their daughters would be tainted forever by an “out-of-wedlock” birth that they often shipped them off to institutional settings for the latter part of their pregnancies and coerced them into giving up their children for adoption.<sup>228</sup>

Despite this judgmental campaign against single motherhood, rates of childbearing by single mothers have risen dramatically since the late twentieth century.<sup>229</sup> Women with less education and lower incomes are more likely to have children outside of marriage, in part because marriage is a potentially devastating economic bargain for them.<sup>230</sup> These same women are likely to find that their skills and labor are severely undervalued in the labor market. They are more likely to work for employers who do not provide any benefits or other labor protections.<sup>231</sup> When single mothers need government assistance, they encounter punitive measures designed to place numerous obstacles in their path to first obtaining, and then keeping, those benefits.<sup>232</sup> With the pandemic, the lack of labor protections has

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226. Joanne Sweeny, *Undead Statutes: The Rise, Fall, and Continuing Uses of Adultery and Fornication Criminal Laws*, 46 LOY. U. CHI. L.J. 127, 128–30 (2014) (explaining that even in the 21st century, “almost twenty states still had laws criminalizing adultery, fornication or both.”).

227. *Id.* at 147–48.

228. ANN FESSLER, *THE GIRLS WHO WENT AWAY: THE HIDDEN HISTORY OF WOMEN WHO SURRENDERED CHILDREN FOR ADOPTION IN THE DECADES BEFORE ROE V. WADE* 8–9, 11–12 (2006).

229. Elizabeth Wildsmith, Jennifer Manlove & Elizabeth Cook, *Dramatic Increase in the Proportion of Births Outside of Marriage in the United States from 1990 to 2016*, CHILD TRENDS (Aug. 8, 2018), <https://www.childtrends.org/publications/dramatic-increase-in-percentage-of-births-outside-marriage-among-whites-hispanics-and-women-with-higher-education-levels> [<https://perma.cc/6RN5-9UPJ>].

230. Only 10% of births to women with at least a bachelor’s degree occur outside marriage, while nonmarital births constitute 59% of births to women with a high school diploma and 62% of births to women with less than a high school diploma. *Id.*; see also Murray, *supra* note 219, at 429–30.

231. See NAT’L WOMEN’S L. CTR., *UNDERPAID & OVERLOADED: WOMEN IN LOW-WAGE JOBS* 3 (2014), [https://www.nwlc.org/sites/default/files/pdfs/final\\_nwlc\\_lowwagereport\\_2014.pdf](https://www.nwlc.org/sites/default/files/pdfs/final_nwlc_lowwagereport_2014.pdf) [<https://perma.cc/3S5M-8QNZ>].

232. JUDITH A. LEVINE, *AIN’T NO TRUST: HOW BOSSES, BOYFRIENDS AND BUREAUCRATS FAIL LOW-INCOME MOTHERS AND WHY IT MATTERS* 9–12 (2013) (describing how single

disproportionately impacted single mothers.<sup>233</sup> And with the devastating increase in unemployment since the start of the pandemic, even more families are encountering the disregard and denigration—or “ritual degradation”<sup>234</sup>—single mothers have long experienced in social welfare programs.<sup>235</sup>

It is no accident that protections for labor and social welfare programs fail single mothers, and that the failure is tied not only to prejudice against single mothers, but also to biases based on race, gender and class and the intersecting nature of those biases. Untangling this interconnected web of biases is an enormous undertaking, and this Article is but one small effort among others in that direction.

Despite the interrelated nature of the major hurdles faced by single mothers, the conversations in the United States about the difficulties single mothers face in the labor market tend to blame them and largely ignore the devastating effect of the legal norms related to employment. Conversations about inequalities in the provision of resources to single-mother families remains largely focused on their deviant nature, not the history of denigration and discrimination they have faced. While many of the stereotypes used to justify the disparaging treatment of single mothers and their families rest on the multiple forms of bias described above, they are viewed as truths, not forms of discrimination. Courts have ignored and even validated the clear biases that these policies put into action, relying instead on government assurances that despite any statements to the contrary by individual lawmakers and policymakers, the justifications are based on impartial decisions regarding social welfare.<sup>236</sup> The deep structural nature of these biases is rendered invisible by the courts and has not provoked Congressional action.

The following two sections will examine, first, disparities in labor protections and the government’s failure to adequately define and enforce equity in the labor market, let alone craft significant laws

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mothers experience mistreatment by employers and welfare workers with power, who fail to acknowledge the overlapping disadvantages the mothers face).

233. See Henderson, *Single Mothers Hit Hard by Job Losses*, *supra* note 45.

234. This apt phrase was coined by Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 297 (2013).

235. See, e.g., Laurel Walmsley, *Gov. Says Florida’s Unemployment System Was Designed to Create ‘Pointless Roadblocks,’* NPR (Aug. 6, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/08/06/899893368/gov-says-floridas-unemployment-system-was-designed-to-create-pointless-roadblock> [<https://perma.cc/47S2-ZUMN>] (quoting Governor DeSantis: “I think the goal was for whoever designed, it was ‘Let’s put as many kind of pointless roadblocks along the way, so people just say, oh, the hell with it, I’m not going to do that.’”).

236. See *infra* notes 362–75 and accompanying text.

and policies that would ensure single-parent families the protections they need to thrive in the labor market while caring for their families. Second, a similar analysis will be conducted with regard to some of the most significant social welfare programs. Due to the failure to appreciate the special needs of single-mother families and intersecting forms of discrimination, these programs are not only inadequate to meet basic needs but are structured to denigrate those families in need of assistance.

### *B. Structural Barriers in Employment*

The primary support for families is earned by their members. Yet, women, and especially BIPOC and immigrant women, face a labor market that fails to protect their dignity and provide adequate financial support for their families. This is especially true for single-mother families.

For much of its history, the United States lacked anything that could be described as significant protections for Black people, who were denied any freedom over any aspect of their lives, including their labor and their children, and legally treated as property, which not only denied them any legal protections, but granted legal protections to those who subjugated them.<sup>237</sup> Others suffered through indentured servitude or exclusion from the laws of citizenship.<sup>238</sup>

Labor markets and families have been crafted around the ideal of the married couple, envisioned by lawmakers as a white couple, with one male wage earner and one female homemaker. Yet some women, and most especially single women and women of color, always worked for pay.<sup>239</sup> The end of the nineteenth century and early years of the twentieth century saw larger numbers of women enter the paid workforce, but almost exclusively in low-paid work such as domestic service, garment and food production, and clerical and sales positions.<sup>240</sup> This “fueled widespread anxiety about the changes in traditional family life.”<sup>241</sup> In those years, when severe income gaps rivaled those seen today, fewer men and women married, and the

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237. See Trina Jones, *Race, Economic Class, and Employment Opportunity*, 72 LAW & CONTEMP. PROBS. 57, 63–64 (2009).

238. *Id.*

239. Stephanie Bornstein, *The Statutory Public Interest in Closing the Pay Gap*, 10 ALA. C.R. & C.L. L. REV. 1, 2 (2019).

240. Arianne Renan Barzilay, *Labor Regulation as Family Regulation: Decent Work and Decent Families*, 33 BERKELEY J. EMPL. & LAB. L. 119, 126–27 (2012) [hereinafter Barzilay, *Labor Regulation*].

241. *Id.* at 127.

birth rate dropped.<sup>242</sup> In response, the early twentieth century saw a movement to secure “decent wages” for the marital family structure.<sup>243</sup> However, much of the support for the family wage focused on white marital families with male wage earners.<sup>244</sup>

The Fair Labor Standards Act of 1938 (FLSA) was designed to secure for such families a decent wage and working conditions that would permit them to rely on a male breadwinner and enable women to stay in their “separate spheres” as homemakers and mothers.<sup>245</sup> However, while FLSA appeared to be a “gender-neutral and color-blind” regulation, it excluded many jobs often held by Black workers and women from its protections.<sup>246</sup> The excluded positions largely held by women, African Americans, and immigrants included retail, laundry and cleaning, waitressing, hotel and restaurant employment, beauty salons, household employment, agricultural labor, and many clerical positions.<sup>247</sup> They also excluded the smallest employers, who were not engaged in interstate commerce.<sup>248</sup> Black workers had no protection from racial discrimination in employment, and even the federal work programs designed to offset the Depression aided few BIPOC workers. White women were usually let go if their husbands also were employed by the federal government.<sup>249</sup> During World War II, Black men were shunted into low-paying, low-skill jobs, leaving them at great risk for post-war underemployment.<sup>250</sup> Throughout the 1930s and 1940s, employees of the Women’s Bureau in the Labor Department recognized that if women were underpaid, it would undermine men’s wages as well, but their warnings were largely unheeded.<sup>251</sup>

Over time, many of the exemptions in the FLSA were lifted.<sup>252</sup> Many single mothers still work in the originally exempted fields, which often continue to have lower wages and sometimes fewer

242. See ANDREW CHERLIN, *LABOR’S LOVE LOST: THE RISE AND FALL OF THE WORKING-CLASS FAMILY IN AMERICA* 79 (2014).

243. Barzilay, *Labor Regulation*, *supra* note 240, at 134.

244. See, e.g., Eileen Boris & Michael Honey, *Gender, Race and the Policies of the Labor Department*, *MONTHLY LAB. REV.* 26, 27–28 (1988) (noting that special bureaus within the Labor Department advocated for better treatment for Black workers and women workers during World War I, but that support for Black workers disappeared at the end of the war).

245. Barzilay, *Labor Regulation*, *supra* note 240, at 141–44; see also Julie C. Suk, *An Equal Rights Amendment for the Twenty-First Century: Bringing Global Constitutionalism Home*, 28 *YALE J. L. & FEMINISM* 381, 393 (2017).

246. Suzanne B. Mettler, *Federalism, Gender & the Fair Labor Standards Act of 1938*, 26 *POLITY* 635, 644–47, 651 (1994).

247. Barzilay, *Labor Regulation*, *supra* note 240, at 145; Mettler, *supra* note 246, at 641.

248. Boris & Honey, *supra* note 244, at 28.

249. *Id.*

250. *Id.* at 30.

251. *Id.* at 29.

252. Mettler, *supra* note 246, at 653.

worker protections. Restaurant workers may be paid a “subminimum wage” that is less than one-third the minimum wage, and while employers are supposed to make up any shortfall, enforcing this requirement is quite difficult for many workers.<sup>253</sup> Thus, FLSA has not alleviated the many challenges single mothers face in trying to earn sufficient income to support their families with working hours that are compatible with child-rearing.<sup>254</sup> The consequences are significant. Research demonstrates that a mother’s poverty increases the rate of poor health outcomes for both her and her children.<sup>255</sup>

Union protections have not reached many working women, especially those in the jobs held by less educated workers. In 1983, union membership was at 20%.<sup>256</sup> Interpretations of the National Labor Relations Act have undermined its efficacy in many ways, including by permitting employers to replace striking workers. In 2019, union membership was at an all-time low, including only 10% of all working Americans.<sup>257</sup>

Working women have also failed to gain wage parity with working men. In 1963, the Equal Pay Act (EPA) was passed to prohibit sex discrimination in wages.<sup>258</sup> The EPA has been of limited utility to women workers, however, as claimants must show that within the same establishment, their pay is less than men “for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.”<sup>259</sup> Interpretations that have undermined the EPA’s efficacy in dismantling gender discrimination include overly broad definitions of the

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253. See *Minimum Wages for Tipped Employees*, U.S. DEPT OF LAB.: WAGE AND HOUR DIV. (Jan. 1, 2021), <https://www.dol.gov/agencies/whd/state/minimum-wage/tipped> [<https://perma.cc/8HDC-BDYY>].

254. The amendment of the FLSA in 2010 to make some provisions for nursing mothers (who must be given breaks to nurse and a safe place to do so by larger employers, but do not need to be paid for such time) is a very minor improvement. Barzilay, *Labor Regulation*, *supra* note 240, at 149–51.

255. Sarah B. Andrea, Lynne C. Messer, Miguel Marino, Julia M. Goodman & Janne Boone-Heinonen, *The Tipping Point: Could Increasing the Subminimum Wage Reduce Poverty-Related Antenatal Stressors in U.S. Women?*, 45 ANNALS OF EPIDEMIOLOGY 47, 47 (2020).

256. Megan Dunn & James Walker, *Union Membership in the United States*, U.S. BUREAU LAB. STATS. (Sept. 2016), <https://www.bls.gov/spotlight/2016/union-membership-in-the-united-states/pdf/union-membership-in-the-united-states.pdf> [<https://perma.cc/WE2E-8B8P>].

257. Jeffry Bartash, *Long Decline in Union Membership Shows No Sign of Abating*, MARKET WATCH (Jan. 31, 2020), <https://www.marketwatch.com/story/share-of-union-workers-in-the-us-falls-to-a-record-low-in-2019-2020-01-22> [<https://perma.cc/CPK9-BKHD>] (citing *Union Membership (Annual) News Release*, U.S. BUREAU LAB. STATS. (Jan. 22, 2020), <https://www.bls.gov/news.release/union2.htm> [<https://perma.cc/KTZ4-YFSC>]).

258. Bornstein, *supra* note 239, at 6.

259. *Id.* (quoting 29 U.S.C. § 206(d)(1)).

factors that employers are permitted to consider in setting wages, limits on damages that effectively render discrimination simply a cost of doing business, inadequate protections for workers from retaliation, and restrictions on the use of class actions.<sup>260</sup>

In addition, because of the persistent sex segregation in specific jobs, it can be very difficult for women to prove that their job includes “similar working conditions,” or “requires equal skill, effort, and responsibility,” a phrase that has been narrowly interpreted to require a nearly identical male point of comparison.<sup>261</sup> Thus, the EPA fails to address the consistent undervaluing of jobs that are most identified with female workers, including most jobs involving caregiving for children, elders, and persons with disabilities.<sup>262</sup> The low wages for many caregiving jobs lead many, including single mothers, to have to work a second job to make ends meet, reducing the time they have to care for their children and placing them under severe physical and emotional stress.<sup>263</sup>

The failure to recognize inequities in labor valuations and incongruent treatment of workers throughout the labor market makes it especially difficult for women to obtain time off for pregnancy, the post-birth period, and the essential caregiving needs of their children.<sup>264</sup> Single parents face a “caregiver conundrum.”<sup>265</sup> They are undervalued in the employment market and lose opportunities as employers favor those without any caregiving responsibilities, which undermines their ability to care for their children.<sup>266</sup> These issues are multiple and interrelated: women continue to face significant

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260. See *The Paycheck Fairness Act*, AM. BAR ASS'N, [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/discrimination/the-paycheck-fairness-act](https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/discrimination/the-paycheck-fairness-act) [<https://perma.cc/24W7-ZJH9>]. One research organization estimated that if women were able to earn the same amount as men for jobs classified as substantially similar, 60% of working women would receive a pay increase averaging \$6,870 per year. Jessica Milli et al., *Briefing Paper: The Impact of Equal Pay on Poverty and the Economy*, INST. FOR WOMEN'S POL'Y RES. tbl. 1 (2017), <https://iwpr.org/iwpr-publications/briefing-paper/the-impact-of-equal-pay-on-poverty-and-the-economy> [<https://perma.cc/S35U-XBLH>].

261. Bornstein, *supra* note 239, at 6–7.

262. See Nidi Sharma, Subho Chakrabarti & Sandeep Grover, *Gender Differences in Caregiving Among Family—Caregivers of People with Mental Illnesses*, 6 WORLD J. OF PSYCHIATRY 7, 8 (2016).

263. See, e.g., Courtney Harold Van Houtven, Nicole DePasquale & Norma B. Coe, *Essential Long-Term Care Workers Commonly Hold Second Jobs and Double- or Triple-Duty Caregiving Roles*, 68 J. AM. GERIATRIC SOC'Y 1, 3 (2020).

264. Deborah Dinner, *The Costs of Reproduction: History and the Legal Construction of Sex Equality*, 46 HARV. C.R. & C.L. L. REV. 415, 417 (2011); Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1185 (1989).

265. Nicole Buonocore Porter, *Embracing Caregiving and Respecting Choice: An Essay on the Debate Over Changing Gender Norms*, 41 SOUTHWESTERN L. REV. 1, 1 (2011).

266. *Id.* at 1–2.

discrimination related to childbearing and caregiving responsibilities, and they are also less likely to work in environments that provide health insurance and paid leave to meet their needs related to pregnancy, childbearing and caregiving.<sup>267</sup>

The rapid growth of the gig economy has increased gender discrimination and the lack of protections for women workers.<sup>268</sup> Gig-economy jobs may provide some caregivers with additional flexibility.<sup>269</sup> However, studies raise concerns about gender and race discrimination in jobs on these platforms.<sup>270</sup> Because those working in the gig-economy are categorized as independent contractors, they are usually outside the protections of laws related to equal pay and employment discrimination.<sup>271</sup> Independent contractors who must take time off for pregnancy, birth, or caregiving responsibilities do not receive any income during the period of leave.<sup>272</sup>

Workplace norms regarding long hours undermine women's ability to care for their children, and most especially impact single mothers, who do not have another parent in the home to fill in the childcare gap.<sup>273</sup> Studies have shown that employers are often willing to pay a premium for what many mothers, and especially single mothers, are least able to do: work long and inflexible hours.<sup>274</sup> However, employers' demands for long hours and their refusal to accommodate workers' needs for caregiving are not considered discriminatory unless they are based on illegal gender stereotypes, or their employers are covered by the Family Medical Leave Act (FMLA) and the employee's request fits within the narrow (and unpaid) confines of that Act.<sup>275</sup>

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267. See Pamela Gershuny, *The Combined Impact of PRWORA, FMLA, IRC, FRD, DPPA, and BAPCPA on Single Mothers and Their Children*, 18 WM. & MARY J. WOMEN & L. 472, 482 (2012).

268. Arianne Renan Barzilay, *The Technologies of Discrimination: How Platforms Cultivate Gender Inequality*, 13 L. & ETHICS OF H. RTS. 179, 184–85 (2019).

269. See Arianne Renan Barzilay & Anat Ben-David, *Platform Inequality: Gender in the Gig-Economy*, 47 SETON HALL L. REV. 393, 400–01 (2017) (citing flexibility in work hours as a benefit of gig-economy jobs).

270. Arianne Renan Barzilay, *Discrimination Without Discriminating? Learned Gender Inequality in the Labor Market and Gig Economy*, 28 CORNELL J. L. & PUB. POL'Y 545, 549 (2019) [hereinafter Barzilay, *Discrimination Without Discriminating?*] (finding that women's labor through online platforms provided women with only two-thirds the income of men). To some extent, this pay disparity relates to women requesting lower pay, or what Professor Renan Barzilay calls "learned inequality." *Id.* at 550.

271. *Id.* at 553.

272. See *id.*

273. See Barzilay, *Discrimination Without Discriminating?*, *supra* note 270, at 558.

274. Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104 AM. ECON. REV. 1091, 1091–92, 1110 (2014).

275. The FMLA permits eligible employees to take leave to care for family members with a "serious health condition." However, that excludes from coverage many of the routine illnesses that children encounter, which limits its benefit to women who still



Beyond difficulties in obtaining accommodations for pregnancy, birth and child-rearing, there is also substantial evidence of work-related penalties for motherhood itself.<sup>276</sup> Mothers are perceived to be less competent than women without children and men, whether or not they are fathers. Employers are less interested in hiring mothers, offer lower starting salaries than they offer other comparable workers, and hold mothers to higher performance standards.<sup>277</sup> Without legal protections against family responsibility discrimination, it is difficult for women to combat these perceptions.<sup>278</sup>

Thus, women continue to face structural disadvantages in the labor market, and these disadvantages have the greatest impact on women with less education, as well as those who are BIPOC, immigrants or raising their children alone. It is still the case that the jobs available to many women—many of whom have caregiving responsibilities—traditionally pay the lowest wages, have the fewest benefits, and fall outside many statutory protections.<sup>279</sup> And as noted earlier, single mothers often have the jobs that have been most affected by the pandemic and the need for social distancing, leaving families that rely on a mother's income bereft and vulnerable to homelessness, food scarcity, and other significant disruptions.

### *C. Inadequate and Discriminatory Approaches to Economic Assistance*

Negative stereotypes of single mothers and their families have resulted in a wholly inadequate, complex, and humiliating approach to the government assistance provided to single mothers and their families. Single-mother families need what all families need: shelter, food, health care, child care, education, clothing and other sundries, transportation, communication and internet services, or the income for these necessities.

The starting place for evaluating how well the United States helps families meet these basic needs is to determine what services

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need to take time off from work to care for their children. See Rona Kaufman Kitchen, *Missing the Mark: How FMLA's Bonding Leave Fails Mothers*, 31 HOFSTRA LAB. & EMP. L.J. 303, 307 (2014).

276. Catherine Albiston, *Institutional Perspectives on Law, Work, and Family*, 3 ANNUAL REV. L. & SOC. SCI. 397, 405 (2007).

277. *Id.*

278. *Cf. id.* A small number of states provide job protections for family responsibilities and federal employees are protected from discrimination based on their parental status. See *Family Status and Caregiver Discrimination Around the Country*, A BETTER BALANCE (July 14, 2020), <https://www.abetterbalance.org/resources/family-status-and-caregiver-discrimination-around-the-country> [<https://perma.cc/P9JF-9DSA>].

279. See, e.g., Trina Jones, *A Different Class of Care: The Benefits Crisis and Low-Wage Workers*, 66 AM. U. L. REV. 691, 695–97 (2017).

are publicly provided universally through taxes and what necessities families have to obtain themselves. Among economically developed countries, the United States provides the least amount of universal financial aid and relatively few services to families.<sup>280</sup> This increases the amount of money families need to meet these basic needs.<sup>281</sup> A second important factor, discussed above, is that the meager wages and benefits, along with other work barriers faced by many single mothers in the labor force, prevent many single mothers from fully financing their families' needs themselves. Finally, U.S. social welfare policy is based on the assumption that any family that cannot take care of its own needs has morally failed and should be viewed with suspicion to ensure that they are "worthy" of support and do not receive more support than absolutely necessary. For those single-mother families deemed less worthy, assistance and services are inadequate to meet their family's needs and provided in a stigmatizing, discouraging and denigrating manner.<sup>282</sup> The first and third factors are evaluated here.

Major differences in the standard practices regarding the provision of income and services between the United States and comparable countries, such as some members of the Organisation for Economic Co-operation and Development (OECD), mean that U.S. families need a higher level of income to meet their basic needs. Most notably, a number of countries at comparable levels of economic development provide a universal child benefit—a cash grant automatically given to all families with children.<sup>283</sup> These significant distributions of income to families with children do not depend on whether parents work or have any other sources of income.<sup>284</sup> The United States does not have a universal child grant. While the United States does provide financial assistance to families with children through the tax system, such as through a partially refundable child tax credit, a nonrefundable childcare tax credit, and the EITC, these are only available to those who have income and those who file tax returns, thus excluding many families, and particularly families with single parents who are not employed.<sup>285</sup> Single parents with family responsibilities that make

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280. See H. Luke Shaefer, Sophie Collyer, Greg Duncan, Kathryn Edin, Irwin Garfinkel, David Harris, Timothy M. Smeeding, Jane Waldfogel, Christopher Wimer & Hirokazu Yoshikawa, *A Universal Child Allowance: A Plan to Reduce Poverty and Income Instability Among Children in the United States*, 4 RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 22, 25–26 (2018) (stating, for example, that the U.S. does not provide a universal child allowance, health care, free or heavily subsidized universal childcare).

281. *Id.*

282. Hasday, *supra* note 214, at 300–01.

283. Shaefer et al., *supra* note 280, at 25–26.

284. *Id.*

285. See Marianne P. Bitler, Annie Laurie Hines & Marianne Page, *Cash for Kids*, 4

paid work impracticable, such as those caring for infants, young children or family members with disabilities, or those whose health conditions prevent them from working, may be excluded from these non-stigmatized forms of assistance.<sup>286</sup>

Instead of universal publicly funded child grants, the United States relies on its child support system to assist the primary caregiver when the parents do not live together. This is inadequate for many reasons discussed earlier, including the fact that many parents do not make enough money to be able to pay child support.<sup>287</sup>

In addition, many countries provide much more generous assistance to families for health care, child care, and university education. Many provide free or low-cost access to health care, which is a significant financial burden for many U.S. families.<sup>288</sup>

In the United States, even middle-income employees with employer-based health insurance often spend a burdensome amount of their income on health insurance and deductibles.<sup>289</sup> Child care is another very significant financial burden for families with young children, and it is especially burdensome for families with only one parent. The United States does not, like other economically developed countries, provide free or heavily subsidized universal child care or early education to all families.<sup>290</sup> Many families, especially those at the lower levels of income, struggle to find or pay for child care absent access to subsidized childcare programs that serve only a small percentage of those eligible or if they do not have enough income to obtain a significant benefit from the childcare tax credit.<sup>291</sup>

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RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 43, 44 (2018). The \$2000 child tax credit (per child) offsets taxable income and is partially refundable (up to \$1400 per child for many tax filers). TAYLOR LAJOIE, THE CHILD CARE TAX CREDIT: PRIMER 1 (2020), <https://files.taxfoundation.org/20200413132740/Child-Tax-Credit-A-Primer.pdf> [<https://perma.cc/VL2E-96RY>]. For discussion of the EITC, see *supra* text at notes 157–60.

286. See Bitler et al., *supra* note 285, at 44.

287. Tonya Brito, *The Child Support Debt Bubble*, 9 U.C. IRVINE L. REV. 953, 960 (2019).

288. Marion Devaux, *Income-Related Inequalities and Inequities in Health Care Services Utilisation in 18 Selected OECD Countries*, 16 EUR. J. HEALTH ECON. 21, 29–30 (2015).

289. Worker contributions to family plans for employer health insurance plans in the United States averaged \$5,431 per year in 2018. When deductibles are included, the average cost per year was \$7,388. Sara R. Collins, David C. Radley & Jesse C. Baumgartner, *Trends in Employer Health Care Coverage, 2008–2018: Higher Costs for Workers and Their Families*, THE COMMONWEALTH FUND (Nov. 21, 2019), <https://www.commonwealthfund.org/publications/2019/nov/trends-employer-health-care-coverage-2008-2018> [<https://perma.cc/SK5S-B5BG>].

290. Shaefer et al., *supra* note 280, at 26.

291. See LAJOIE, *supra* note 285, at 7 (“The [Child and Dependent Care Tax Credit] allows each filer to claim a dollar-for-dollar reduction in liability on as much as \$3,000 of certain child-care expenses per child, up to a total benefit maximum of \$6,000. This credit is not refundable . . . .”); *supra* text at notes 134–49.

Finally, young families with children in the United States may struggle with burdensome education debt. By one estimate, 45% of white households and 50% of Black households headed by people between 25 and 40 years old carried student debt in 2017.<sup>292</sup> While those who take on such debt do not receive as much income benefit from higher education as earlier generations, the debt itself impacts other life opportunities, often throughout their childbearing years.<sup>293</sup> Black and Hispanic households carry greater student debt burdens.<sup>294</sup> In many other developed countries, young families do not carry significant debt from pursuing higher education.<sup>295</sup>

In the United States, many other forms of assistance for families follow one of two tracks: families deemed worthy of assistance usually encounter fairly simple criteria for approval under programs such as Social Security retirement or survivor benefits.<sup>296</sup> Those who need assistance because they are raising children without a marital partner are not eligible for these non-stigmatized, simplified forms of assistance. While stigmatizing assistance to those in poverty has been a “constant theme throughout American history,”<sup>297</sup> assistance programs have been expanded and revised. Two tracks of assistance developed over the course of the twentieth century.

Government programs originating in the early twentieth century to assist widowed mothers and their children deferred to their privacy, but this deference was largely limited to mothers who had lost their husbands in the only way recognized as respectable, through death.<sup>298</sup> The goal of these programs was to provide enough financial assistance to permit (almost exclusively white) mothers to stay at home with their children.<sup>299</sup> To the extent that other mothers—which included never-married, separated or divorced mothers—received assistance, their assistance was based on “much more interventionist, instrumental, and suspicious principles.”<sup>300</sup> BIPOC mothers were

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292. Luke Herrine, Comment, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 307 (2020).

293. *Id.* at 308–09.

294. *Id.* at 309–10.

295. Devon Flanagan, Note, *Are Student Loans Hurting Not Helping Students?*, 39 SUFFOLK TRANSNAT'L L. REV. 361, 369–75 (2016) (comparing debt in Germany, the United Kingdom, and Japan).

296. For a history of welfare in the United States in the middle part of the twentieth century, see, e.g., KAREN M. TANI, STATES OF DEPENDENCY: WELFARE, RIGHTS AND AMERICAN GOVERNANCE, 1935–1972 116–21, 124–25, 136 (2016); Martha Minow, *The Welfare of Single Mothers and Their Children*, 26 CONN. L. REV. 817, 830 (1994).

297. Nantiya Ruan, *Corporate Masters & Low-Wage Servants: The Social Control of Workers in Poverty*, 24 WASH. & LEE J. C.R. & SOC. JUST. 103, 104, 110 (2017).

298. See Hasday, *supra* note 214, at 352.

299. Sara Sternberg Greene, *The Bootstrap Trap*, 67 DUKE L.J. 233, 245 (2017).

300. Hasday, *supra* note 214, at 350.

often explicitly excluded through state law or practice.<sup>301</sup> Mothers were at risk of having their children removed if poverty kept the mothers from adequately caring for them.<sup>302</sup>

Then, as now, single mothers received so little in financial assistance that they needed to work, but in another Catch-22, that work led them to be viewed as neglectful mothers when their work took them out of the home.<sup>303</sup> Eventually, programs for “worthy” widows with children and programs for other, less worthy, mothers were explicitly delinked. More generous and respectful provisions governed widows under the Social Security Act, and very limited and judgmental assistance was provided to other families through the Aid to Dependent Children (ADC) program, later renamed Aid to Families with Dependent Children (AFDC).<sup>304</sup> Some states excluded “undesirable” families from assistance under ADC, including Black families or those led by never-married mothers.<sup>305</sup> Social workers were given intrusive powers to determine which recipients were worthy based on issues such as housekeeping, children’s school attendance, and mothers’ sexual morality.<sup>306</sup>

The welfare payments provided under AFDC were often blamed for the increases in single-mother births even though the 1960s and 1970s brought radical changes to the role of women in multiple ways, and there was no evidence that these increases were related to AFDC.<sup>307</sup> As discussed above, AFDC was also inextricably linked in the public’s mind with single Black mothers through repetition by politicians, the mass media and others.<sup>308</sup> Throughout the history of welfare, states with larger percentages of Black residents have provided lower levels of monthly assistance than states with a higher percentage of white residents.<sup>309</sup>

The Family Support Act of 1988<sup>310</sup> began the process of mandating work requirements for mothers who received welfare assistance. In the 1990s, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) transformed AFDC into

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301. *Id.* at 351.

302. *Id.* at 330–31.

303. *Id.* at 356 n.224.

304. The program was renamed to Aid to Families with Dependent Children in 1962. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 104(a)(3), 76 Stat. 185 (1962).

305. Greene, *supra* note 299, at 246.

306. See Hasday, *supra* note 214, at 361–64; see also Noah D. Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550, 557–58 (2012).

307. Greene, *supra* note 299, at 247–48.

308. *Id.* at 248.

309. See, e.g., *id.* at 247.

310. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988).

TANF.<sup>311</sup> TANF imposed lifetime limits on receiving aid, required recipients to meet work requirements, and gave states greater flexibility to impose additional requirements on recipients.<sup>312</sup> After their children's infancy, mothering was no longer considered adequate employment for recipients, although it is a highly valued form of employment for married mothers.<sup>313</sup> Since the advent of TANF, spending through the program has dropped considerably, and much of the money has been redirected away from cash support and job training to other state programs, such as child welfare programs.<sup>314</sup>

Although the low-wage jobs that many women who receive TANF funds hold are volatile—jobs that come and go with the seasons, economic ups and downs, or health emergencies—TANF itself does not prevent poverty for these expected periods of unemployment.<sup>315</sup> And the history of bureaucratic delays, hostile treatment by social workers, societal condemnation of “hand-outs” and their own identify as self-sufficient has led many eligible mothers to avoid applying for TANF.<sup>316</sup> For those who have achieved some level of self-sufficiency, health crises or common emergencies like needed car repairs can lead families into a quick downward cycle, exacerbated by the credit score reductions that make finding new jobs and new places to live almost impossible.<sup>317</sup> By 2010, only one-quarter of poor families with children received cash assistance, down from two-thirds prior to the introduction of TANF.<sup>318</sup>

Single mothers who had been able to save are often forced to spend down all savings in order to qualify for aid if they face even temporary unemployment or another income shock.<sup>319</sup> In order to

311. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996). PRWORA was passed despite arguments by advocates that it was a “war against poor women,” and specifically poor single mothers. Gwendolyn Mink, *The Lady and the Tramp (II): Feminist Welfare Politics, Poor Single Mothers, and the Challenge of Welfare Justice*, 24 FEMINIST STUD. 55, 56 (1998).

312. See Greene, *supra* note 299, at 233; see also Minow, *supra* note 296, at 818–19.

313. See Minow, *supra* note 296, at 822–23; see also Mink, *supra* note 311, at 58–59.

314. Greene, *supra* note 299, at 250–51.

315. See *id.* at 279–80; see also Lily L. Batchelder, *Taxing the Poor: Income Averaging Reconsidered*, 40 HARV. J. ON LEGIS. 395, 397 (2003) (noting the high level of income volatility of low-income workers). Similarly, the FMLA only requires employers to give leave for serious health conditions, not the “usual” illnesses that force children out of childcare or school. Kitchen, *supra* note 275.

316. See JOEL HANDLER, SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE: THE PARADOX OF INCLUSION 8 (2004); see also Greene, *supra* note 299, at 267–69; and see LEVINE, *supra* note 232, at 47–49.

317. See Greene, *supra* note 299, at 267–69.

318. See Julie A. Nice, *Whither the Canaries: On the Exclusion of Poor People From Equal Constitutional Protection*, 60 DRAKE L. REV. 1023, 1027 (2012) [hereinafter Nice, *Whither the Canaries*].

319. See Stacia Martin-West, *The Role of Social Support as a Moderator of Housing Instability in Single Mother and Two-Parent Households*, 43 SOC. WORK RES. 31, 33 (2019).

avoid the stigma associated with welfare and other forms of government assistance, mothers may go into great debt before they seek assistance.<sup>320</sup> This leaves all too many single-mother families living at the brink, or falling on and off the edge of meeting their family's basic needs. Their children may experience multiple bouts of homelessness and hunger, which undermine their health, well-being and education.<sup>321</sup>

Other benefits that families need, like food and health care, are increasingly provided in the same distrustful manner, with increasing demands for documentation, invasive requirements such as drug tests, and work.<sup>322</sup> Increased program complexity and demands of recipients not only strain families and prevent many eligible families from receiving needed assistance, but they also impose tremendous strains on the bureaucratic systems designed to implement them—strains that lead to serious breakdowns in times of crisis, such as the Great Recession and the pandemic.<sup>323</sup>

These extensive failures of employment laws and social welfare programs undermine family welfare and stability in the time of COVID-19. Yet, they do not violate the U.S. Constitution as it has been interpreted. The absence of constitutional rights related to the issues faced by single mothers has made it difficult for single mothers to be viewed as rights holders rather than as objects of scorn. Recognition of rights educates the public about those rights holders and leads to dramatic shifts in public values. For example, in just the last twenty years, the development of constitutional protections for gay and lesbian couples has led to dramatic shifts in public opinion about same-sex couples and their right to marry—a right that was largely outside the realm of imagination for many Americans as recently as 1996.<sup>324</sup> In the United States, judicial affirmation of equal protection and due process rights are often decisive steps in

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320. Scholars have warned that for many Americans, the health pandemic can turn into a debt pandemic. See Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic*, 11 CAL. L. REV. ONLINE 222, 224 (2020).

321. See Nice, *Whither the Canaries*, *supra* note 318, at 1027 (citing studies that poverty in childhood undermines educational achievement, income and health as adults).

322. See Maria E. Valencia, Note, *Supplemental Nutrition Assistance Program (SNAP) Formerly Known As Food Stamps: The Unfair Target of Constitutionally Suspect Conditions*, 27 SAN. JOAQUIN AGRIC. L. REV. 233, 235 (2017–2018); David Wasserstein, Comment, *Working 9 to 5? Equal Protection and States' Efforts to Impose Work Requirements for Medicaid Eligibility*, 69 AM. U. L. REV. 703, 716–17 (2019) (noting that at least one state's work requirements were judicially rejected as arbitrary and capricious under the Administrative Procedure Act).

323. See, e.g., Walmsley, *supra* note 235.

324. The Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (1996) (defining marriage for federal purposes as the union of one man and one women, permitting states to refuse recognition to same-sex marriages granted under the laws of other states).

broader social acceptance of group rights.<sup>325</sup> This next section examines the myriad ways in which constitutional claims by single mothers have failed to gain traction.

### III. LEFT TO FACE THE STORM ALONE: MEAGER CONSTITUTIONAL PROTECTIONS FROM STRUCTURAL INEQUALITY FOR SINGLE MOTHERS

Against a statutory background that fails to alleviate the hardships single mothers confront, litigants have invoked constitutional protections such as due process and equal protection. These efforts, however, have been largely unsuccessful.<sup>326</sup> Many of the claims for constitutional protections for those living in poverty that were brought by single mothers failed.<sup>327</sup> Disadvantages to children based on their parents' marital status gained heightened scrutiny, but discrimination against single mothers based on their marital status has been upheld after only the most permissive judicial review.<sup>328</sup> Courts have failed to provide constitutional protections from the interconnected and formidable forms of disadvantage and discrimination that BIPOC single mothers living in poverty face. To date, structural disadvantages based on intersections among marital status, gender, race and ethnicity, and class have gained little attention beyond scholars and political activists.<sup>329</sup>

#### *A. Rejection of Constitutional Protections for Basic Needs*

In the United States, labor rights are not constitutional rights. In some other countries, some workers' rights are specified in the

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325. See, for example, the tremendous improvement in public opinion regarding same-sex marriage since the 2003 Massachusetts Supreme Court decision in *Goodridge v. Department of Public Health*, 798 N.E.2d 941, 948 (Mass. 2003) (establishing a right to marriage by same-sex couples).

326. See Julie A. Nice, *No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default*, 35 *FORDHAM URB. L.J.* 629, 629 (2008) [hereinafter Nice, *No Scrutiny Whatsoever*].

327. See *infra* notes 346–60 and accompanying text.

328. See Courtney G. Joslin, *Marital Status Discrimination 2.0*, 95 *B.U. L. REV.* 805, 806 (2015). Joslin notes that there is, if anything, an uptick in “discrimination based on moral considerations” under the guise of religious liberty by those doing the discriminating. *Id.* at 807; see also *Califano v. Boles*, 443 U.S. 282, 288 (1979).

329. Joslin, *supra* note 328, at 805. Joslin notes that even in the twenty-one states prohibiting marital status discrimination, “discrimination” has been narrowly interpreted or contained to only a few contexts, and often does not protect those who cohabit with a partner. *Id.* at 809. The Federal Fair Housing Act’s prohibition on family status discrimination has been narrowly defined to include only discrimination against families with one or more children. See *id.* at 811.



country's constitution. For example, in Peru, the constitution states that "no employment relationship can limit the exercise of constitutional rights, or violate the dignity of any worker."<sup>330</sup> In the United States most employment is at-will, giving workers few protections.<sup>331</sup> In fact, in the early years of the labor movement, the Supreme Court invoked the Constitution to strike down labor laws and employment protections.<sup>332</sup> While some scholars have argued for constitutional protections for labor and employment, these contentions have not gained traction in the courts, where workers still have to fight to protect statutory protections from arguments that the statutory protections themselves are unconstitutional.<sup>333</sup>

During the Warren Court, some scholars hopefully proclaimed a new era of judicial protection for individuals to gain constitutional protections for the resources needed to meet basic needs.<sup>334</sup> As Archibald Cox exclaimed in 1966, Warren Court precedents led him to believe that courts were now ready to "impose affirmative obligations upon the states" to meet the demands of the Equal Protection Clause in relation to race and poverty.<sup>335</sup> He saw recent equal protection decisions as a "change in our philosophy concerning the roles of law and government in relation to human rights."<sup>336</sup> He believed that the federal government would adopt "the political theory which acknowledges the duty of government to provide jobs, social security, medical care, and housing," bringing it in line with "the field of human rights."<sup>337</sup>

Cox noted that the Court's decisions under the U.S. Constitution are key to shaping public opinion, as "[i]ts opinions are often

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330. Sandra P. Burga de las Casas, Note, *Psychological Harassment in the Workplace and the Right to Work in Dignity: A Comparative Review of the Laws in Colombia, Peru, United Kingdom and the United States*, 25 ILSA J. INT'L & COMP. L. 465, 475 (2019).

331. See, e.g., Kate Andrias, *Building Labor's Constitution*, 94 TEX. L. REV. 1591, 1594–95, 1618 n.4 (2016).

332. See *id.* at 1594, 1610–11.

333. See *id.* at 1596.

334. See, e.g., Archibald Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91, 93 (1966). While this discussion focuses on the importance of Professor Cox's article, we acknowledge too the foundational article by Charles Reich, *The New Property*, 73 YALE L.J. 733, 733 (1964), which set forth arguments for expanded due process protections and arguments that could support an entitlement to aid to meet one's basic needs. See also Jane Schachter, *Unequal Inequalities? Poverty, Sexual Orientation, and the Dynamics of Constitutional Law*, 2014 UTAH L. REV. 867, 873 (2014). Professor Reich's due process arguments were instrumental in establishing procedural protections for recipients of government assistance. See Andrew Hammond, *Litigating Welfare Rights: Medicaid, SNAP, and the Legacy of the New Property*, 115 NW. U. L. REV. 361, 374–75 (2020).

335. See Cox, *supra* note 334, at 92–93.

336. *Id.* at 93.

337. *Id.*

the voice of the national conscience. It shapes as well as expresses our national ideals.”<sup>338</sup> Cox’s reflections on the possibility that judicial interpretation of the U.S. Constitution would intersect with human rights was made at the same time that the U.N. General Assembly was adopting two major human rights conventions: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>339</sup> Cox saw, however, that given the limitations of the judicial branch, much of this advance would need to rest on the shoulders of Congress and the Executive Branch.<sup>340</sup> He saw part of the Court’s job as affirming Congress’ legislative efforts to protect equal rights for all. Where Congress and the Executive Branch failed to do so, the Court should step in.<sup>341</sup> Cox’s optimism may have been heightened by the ambitious legislative agenda of the War on Poverty announced by President Lyndon Johnson in 1964.<sup>342</sup>

In 1969, Frank Michelman explained that the Supreme Court decisions to date under the Equal Protection Clause, which were often understood as related to relative deprivation, could more fruitfully be understood as reflecting a concern for “minimum welfare.”<sup>343</sup> Michelman cautioned advocates away from a wealth discrimination approach, which he thought would be so overbroad as to deter judges from accepting its risks.<sup>344</sup> Scholars continued to debate whether and how the courts might recognize more robust protections for those in poverty, but the Supreme Court, quickly reshaped after the 1968 election of Richard Nixon, was inclined to reject most of these suggestions.<sup>345</sup>

The constitutional vision espoused by Cox, Michelman and others never took root. Instead, the Court developed some protections in circumstances where poverty might lead to a deprivation of a fundamental right or interest, but it did not develop a right to Michelman’s “minimum welfare” or Cox’s more ambitious vision.<sup>346</sup> The Court was deferential to government efforts to address poverty,

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338. *Id.* at 97.

339. International Covenant on Civil and Political Rights, art. 18, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights art. 10, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

340. *See* Cox, *supra* note 334, at 94.

341. *See id.*

342. *See* Schachter, *supra* note 334, at 873.

343. Frank Michelman, *The Supreme Court, 1968 Term—Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7, 9 (1969).

344. *See id.* at 32.

345. *See* Schachter, *supra* note 334, at 877.

346. *See* Michelman, *supra* note 343, at 9; Cox, *supra* note 334, at 93.

even when those efforts left beneficiaries unable to meet their recognized minimum needs.<sup>347</sup>

The Supreme Court's 1970 decision in *Dandridge v. Williams*<sup>348</sup> made it clear that the Court would not ensure that the government provided families with funds adequate to meet their most basic needs.<sup>349</sup> Adopting the most deferential standard of review under the Equal Protection Clause, the Court upheld a welfare program that capped family benefits. Once the cap was reached, it resulted in limiting larger families to grants of the same size as were provided to meet the basic needs of smaller families.<sup>350</sup> The Court acknowledged that the case involved "the most basic economic needs of impoverished human beings."<sup>351</sup> However, it stated, "[w]e recognize the dramatically real factual difference between the cited cases [involving economic regulation] and this one, but we can find no basis for applying a different constitutional standard."<sup>352</sup>

Courts have further held that the U.S. Constitution does not protect a family's access to needed basic services.<sup>353</sup> In *Lindsey v. Normet*,<sup>354</sup> the Supreme Court rejected arguments that "the need for shelter" is a fundamental interest of the poor and that landlord-tenant statutes affecting this right should be subject to more stringent scrutiny.<sup>355</sup> The Court was hesitant to broaden its conception of fundamental rights and interests, stating, "[w]e do not denigrate the importance of decent, safe and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality."<sup>356</sup> The Court has also been reluctant to provide any special protections for poor people as a group.<sup>357</sup> Weak constitutional protections have left those living in poverty to rely on statutory rights. When Congress

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347. See, e.g., *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

348. *Id.* at 471.

349. See Susannah Camic Tahk, *The New Welfare Rights*, 83 BROOKLYN L. REV. 875, 884–85 (2012).

350. See *Dandridge*, 397 U.S. at 485.

351. *Id.*

352. *Id.*

353. See, e.g., Erwin Chemerinsky, *Making the Right Case for a Constitutional Right to Minimum Entitlements*, 44 MERCER L. REV. 525, 525 (1993); Kaaryn Gustafson & Elizabeth Bussiere, *(Dis)Entitling the Poor: The Warren Court, Welfare Rights, and the American Political Tradition*, 42 AM. J. LEGAL HIST. 215, 215–16 (1988).

354. 405 U.S. 56, 56 (1972).

355. *Id.* at 74.

356. *Id.*

357. See Mario L. Barnes & Erwin Chemerinsky, *The Disparate Treatment of Race and Class in Constitutional Jurisprudence*, 72 LAW & CONTEMP. PROBLEMS 109, 112–14, 122–23 (2009).

decided to curtail welfare rights and benefits in PRWORA, there was no body of constitutionally protected rights to interfere.<sup>358</sup>

Apart from some protections for areas where the Court agrees that fundamental rights are at stake, the Supreme Court has side-stepped petitions to apply more rigorous scrutiny, or even rational relation review “with bite,” to other forms of legislation that disadvantage the poor.<sup>359</sup> This pattern of judicial practice makes it more difficult for those with intersectional claims that include poverty to gain searching judicial scrutiny, even when poverty “takes on the character of a stigmatizing identity category,” and that stigma is effectuated by the challenged legislation.<sup>360</sup>

### *B. Inadequate Protections for Marital Status Discrimination*

Single mothers may also face disadvantages related to their marital status.<sup>361</sup> The Supreme Court has approved even clear and negative differential treatment based on marital status without searching scrutiny. For example, in *Califano v. Boles*,<sup>362</sup> the Court considered a statute that provided lesser benefits to some families based on the mother’s marital status at the time of the father’s death. One group of children had mothers who were married to or divorced from their father at the time of his death.<sup>363</sup> When that father died, the widowed or divorced mother received not only the children’s survival insurance benefits, but an additional “mother’s insurance benefit” under the Social Security Act.<sup>364</sup> This additional money was for the purpose of supporting these mothers to stay at home to care for their children.<sup>365</sup> The second group of children had mothers who had never married the children’s father prior to his death.<sup>366</sup> Those mothers did not receive this additional benefit and therefore lost out on this benefit, which would have helped them stay home to care for their children.<sup>367</sup>

Rather than focusing on the purpose of the additional survivor’s benefit—ensuring that children who experienced a death of a parent

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358. See Brendon O’Connor, *The Protagonists and Ideas Behind the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: The Enactment of a Conservative Welfare System*, 28 SOC. JUST. 4, 10 (2001).

359. See Nice, *No Scrutiny Whatsoever*, *supra* note 326, at 629; Nice, *Whither the Canaries*, *supra* note 318, at 1033–34.

360. Barnes & Chemerinsky, *supra* note 357, at 119.

361. See, e.g., Hasday, *supra* note 214, at 300–01.

362. 443 U.S. 282, 287 (1979).

363. See *id.* at 285–87.

364. *Id.* at 285–86.

365. See *id.* at 289.

366. See *id.* at 287.

367. See *id.* at 288.

had one parent who could stay at home with them—the Court shifted its focus to the initial possible economic dislocation caused by the death of a family’s wage earner.<sup>368</sup> The Court accepted the government’s assertion, absent evidentiary support, that those who were married or divorced prior to the father’s death were more likely to be economically dependent on that deceased father and to need the additional benefit to remain at home with their children.<sup>369</sup> It failed to require any explanation for why one group of children might have less need for their mother’s presence at home than the other and instead focused on the “unwed mothers” who would benefit if the Court required equal treatment.<sup>370</sup>

At the time of the *Boles* decision, it was so “taken-for-granted” that differential treatment of married mothers and unmarried mothers was appropriate that the dissent did not even contest the point.<sup>371</sup> Instead, the dissent shifted the focus back to the different treatment of the affected children and argued that the relevant classification is “legitimate” versus “illegitimate” children, a classification subject to a higher level of scrutiny under the Equal Protection Clause.<sup>372</sup> The Court’s relaxed review of this blatantly discriminatory provision accepted the government’s justification without any evidentiary support, relied on negative stereotypes of single mothers, and permitted favorable treatment of married and divorced mothers absent any evidence of economic dependency.<sup>373</sup>

After reviewing the relevant Supreme Court cases, Serena Mayeri concludes that while the Court protected children from some types of discrimination based on their parents’ marital status in relation to inheritance, child support and government benefits through the use of the “substantial relationship” test, single mothers were left behind.<sup>374</sup> Courts did not condemn the moral judgments motivating unequal treatment of single mothers. Instead, the Court distinguished parents and their children and found that “[a]dults could be sanctioned for immorality, but innocent children should not suffer needlessly for their parents’ transgressions.”<sup>375</sup> Mayeri also notes that judicial decisions that protected nonmarital children “conveyed

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368. *See Califano*, 443 U.S. at 288–89.

369. *See id.*

370. *Id.* at 295.

371. *See, e.g.*, PETER L. BERGER, *THE SACRED CANOPY: ELEMENTS OF A SOCIOLOGY OF RELIGION* 24 (1967).

372. *See Califano*, 443 U.S. at 297–98 (Marshall, J., dissenting).

373. *See id.* at 293.

374. Serena Mayeri, *Marital Supremacy and the Constitution of the Nonmarital Family*, 103 CAL. L. REV. 1277, 1294, 1340 (2015).

375. *Id.* at 1344 (upholding “government’s interest in discouraging nonmarital sex, cohabitation or childbearing”).

the impression that sex, race, and illegitimacy were separate, non-overlapping categories,” ignoring “their mutually reinforcing and deeply intertwined character.”<sup>376</sup>

### C. Inadequate Privacy Protections

Courts have also failed to adequately protect single mothers from enduring and significant intrusions on their liberty as a condition of government assistance. In the United States, liberty is defined almost exclusively as protection from government intrusion. But once an individual is receiving a government benefit, those intrusions often are not viewed as deprivations of liberty.<sup>377</sup> Absent a right to financial and material resources for their families, most of these intrusions cannot be effectively challenged under the Constitution.<sup>378</sup>

Families that need state assistance—including income, child care, assistance around birth and infancy, and food and housing—are often required to give up key aspects of their privacy to receive that aid. Mothers seeking welfare must either identify their children’s father and assist the government in collecting child support or show good cause why they cannot provide such information, such as evidence that naming the father would undermine their safety.<sup>379</sup> Khiara Bridges describes the significant privacy encroachments pregnant women face through intrusive application questions and mandatory “consultations” required to obtain services through New York’s Medicaid program at a public hospital.<sup>380</sup> The invasive nature of the questions and consultations extend well beyond those that would be faced by pregnant mothers who are able to pay privately for their care. Bridges argues that poverty and single motherhood deprive pregnant women of their constitutionally protected privacy in practice.<sup>381</sup>

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376. *Id.*

377. See, e.g., Khiara M. Bridges, *Towards a Theory of State Visibility: Race, Poverty, and Equal Protection*, 19 COLUM. J. GENDER & L. 965, 968 (2010); Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 27–28 (2014).

378. See Alstott, *supra* note 377, at 30–31.

379. See Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 144–45 (2002) (explaining requirements mothers must comply with and their implications).

380. See Khiara Bridges, *Privacy Rights and Public Families*, 34 HARV. J.L. & GENDER 113, 114, 124–25 (2011) [hereinafter Bridges, *Privacy Rights*].

381. See *id.* at 116–18. Bridges’ empirical findings further support Martha Fineman’s groundbreaking argument that mothers who raise their children alone lose the constitutional presumption of freedom from state intervention. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 177–78 (1995).

Single mothers should enjoy the same government deference to their federal constitutional right to make decisions regarding their own children provided to all parents.<sup>382</sup> But Bridges' work shows that pregnant women who need state-provided health care face great skepticism that their decisions protect the best interests of their children. Instead, a mother's failure to succeed in the labor market brings her under close scrutiny for any possible abuse or neglect of her unborn child.<sup>383</sup> This harsh view is underscored by some state laws that criminalize addiction for pregnant mothers, even when they cannot obtain either adequate prenatal care or drug abuse treatment.<sup>384</sup>

Families who receive welfare have also faced significant intrusions into their reproductive decision making. A number of states, with the permission of federal law, refuse to provide additional financial assistance to a family when an additional child is born into the family while they are on TANF.<sup>385</sup> While caps intrude into family decisions about child-rearing, they have been upheld by courts.<sup>386</sup> They tap into the welfare queen stereotype, interpreting decisions to have children as efforts to extract more money from government systems.<sup>387</sup>

#### *D. Comparative Protections for Single-Mother Families*

In contrast, some European countries have specifically provided protections for motherhood in their Constitutions, whereas others

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382. See, e.g., *Troxel v. Granville*, 530 U.S. 57, 63 (2000) (upholding constitutional rights of parents to direct their children's upbringing).

383. See Bridges, *Privacy Rights*, *supra* note 380, at 163–64; see also Nice, *Whither the Canaries*, *supra* note 318, at 1032–33 (discussing cases that upheld onerous measures or exclusions from welfare).

384. See, e.g., Eliza Duggan, Note, *A Velvet Hammer: The Criminalization of Motherhood and the New Maternalism*, 104 CAL. L. REV. 1299, 1306–08 (2016).

385. See, e.g., Teresa Wiltz, *Family Welfare Caps Lose Favor in More States*, PEW CHARITABLE TR. (May 3, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/05/03/family-welfare-caps-lose-favor-in-more-states> [http://perma.cc/CA7F-VWS9].

386. See *Sojourner A. v. New Jersey Dep't of Human Servs.*, 828 A.2d 306, 316–17 (N.J. 2003). Research shows that family caps do not achieve their legislative purpose of affecting recipient childbearing decisions. Instead they lead to deeper poverty, reduced housing and food security, and poorer health for children. See John T. Cook, Deborah A. Frank, Carol Berkowitz, Maureen M. Black, Patrick H. Casey, Diana B. Cutts, Alan F. Meyers, Nieves Zaldivar, Anne Skalicky, Suzette Levenson & Tim Heeren, *Welfare Reform and the Health of Young Children: A Sentinel Survey in 6 US Cities*, 156 ARCHIVES PEDIAT. & ADOLESCENT MEDIC. 678, 678 (2020); Rebekah J. Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 HARV. J.L. & GENDER 151, 151 (2006).

387. See Khiara M. Bridges, *Quasi-Colonial Bodies: An Analysis of the Reproductive Lives of Poor Black and Racially Subjugated Women*, 18 COLUM. J. GENDER & L. 609, 617–18 (2009).

have done so by statute.<sup>388</sup> These provisions have ensured that all women, including working women, are able to take care of themselves and their children through the period immediately before, during and after the birth of their children, and they provide ongoing assistance to families rearing children. They provide for protection from discrimination, support for the rights of mothers as workers, and community support for mothers and their children. As gender norms have shifted, these provisions have been updated or interpreted to include assurances that fathers are able to access support for caregiving as well.<sup>389</sup>

For example, the German Constitution, Article 6, ensures marriage and the family “the special protection of the state.”<sup>390</sup> This includes assurances that “every mother shall be entitled to the protection and care of the community,” and that “[c]hildren born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.”<sup>391</sup> Germany’s efforts to support parents and children includes benefits for parents to take leave after the birth of a child.<sup>392</sup> Absent such clear constitutional provisions, few believe that the U.S. courts will reverse course and develop constitutional protections for labor rights, subsistence assistance and social services that would benefit single mothers and their children. The lack of constitutional protections for single mothers has symbolic importance and leads many members of the public to view single mothers with disdain rather than as rights holders deserving of dignity and respect.<sup>393</sup>

The inadequate constitutional and statutory protections in the United States have long exposed single mothers and their children to great harm, harm that has been exacerbated by the pandemic in ways that were previously unimaginable. Yet, it does not have to be this way. As Louis Henkin argued more than 40 years ago,

The rights deemed to be fundamental include not only freedoms which government must not invade, but also rights to what is

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388. Suk, *supra* note 245, at 401–02, tbl.1.

389. *Id.* at 427, 429.

390. *Id.* at 405–06.

391. These protections originated in the Weimar Constitution of 1919, preceding any significant development of these rights in human rights declarations or conventions. *Id.* at 406. Professor Suk notes that at least 10 countries have similar protections for mothers in their constitutions. *Id.* at 406–07.

392. *Id.* at 416.

393. See, e.g., Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 411–12, 417–18 (1979) (noting that the limited human rights protected in the U.S. Constitution limit the American idea of human rights to only constitutional rights).



essential for human well-being, which government must actively provide or promote. They imply a government that is activist, intervening, and committed to economic-social planning for the society, so as to satisfy economic-social rights of the individual.<sup>394</sup>

Justice demands that Americans reimagine protections for single-mother families. International human rights norms will aid in this transformation. The next section will examine the human rights doctrines that reframe single mothers and their children as subjects worthy of special support and protection from discrimination. Treating mothers and children as special subjects of assistance and providing them with protection from discrimination in employment and government assistance, can change the lives of single-mother families for the better.

#### IV. FINDING SHELTER: THE HUMAN RIGHTS OF SINGLE MOTHERS AND THEIR CHILDREN

Human rights law outlines special protections for the mother and child relationship, protections that involve ensuring that governments aid mothers to meet their own needs and those of their children. These special protections are situated in the larger human rights context of assuring economic rights for individuals and families. They are also connected to protections from discrimination in the many human rights conventions discussed below. These discrimination protections and economic rights have encouraged European countries to adopt policies like paid parental leave and adequate prenatal and maternity care.<sup>395</sup> Adoption of these human rights conventions by the United States would lead government officials and an educated public to adopt similar policies, concretely improving the lives of families, and especially single-mother families. Human rights advocates should develop an education campaign to bring the full meaning of these otherwise universal commitments to U.S. government officials and the public.

##### *A. Human Rights Include Family Assistance and Economic Rights*

The parent-child relationship, and in particular, the mother-child relationship, has received special protection in human rights

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394. *Id.* at 410–11.

395. See, e.g., Barbara Stark, *How the Age of Rights Became the New Gilded Age: From International Antidiscrimination Law to Global Inequality*, 47 COLUM. HUM. RTS. L. REV. 151, 162, 187 (2015) [hereinafter Stark, *How the Age of Rights*].

instruments. In 1948, the Universal Declaration on Human Rights (UDHR) identified the mother and child relationship as a special aspect of human rights. Article 25 of the UDHR states, “[m]otherhood and childhood are entitled to special care and assistance.”<sup>396</sup>

Many subsequent human rights agreements followed the lead of the UDHR. While the International Covenant on Civil and Political Rights (ICCPR) does not explicitly mention the mother-child relationship, it recognizes in Article 23 that the family is the “natural and fundamental group unit of society and is entitled to protection by the society and the state.”<sup>397</sup> Through this Article, the ICCPR creates a positive right to protection. The ICCPR also provides for and protects parents’ autonomy in raising their children “in conformity with their own convictions.”<sup>398</sup> The United States ratified the ICCPR in 1992.<sup>399</sup>

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), drafted at the same time as the ICCPR, expands these rights. Mothers are entitled to “special protection” during periods before and after childbirth, including the right to paid leave and adequate social security benefits, and states must provide the “widest possible protection and assistance” to the family, especially to parents during the period of care for dependent children.<sup>400</sup> This includes financial assistance when needed. Article 11 of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>401</sup> These rights are not absolute; rather, each State Party commits to undertake steps to the “maximum of its available resources” to move forward to “full realization” of these rights.<sup>402</sup> Although President Jimmy Carter signed this Covenant in 1977, the United States has not ratified it.<sup>403</sup>

The human rights of mothers and their children are further developed in two more recent conventions. The U.N. Convention on

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396. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25(2) (Dec. 10, 1948) [hereinafter UDHR].

397. ICCPR, *supra* note 339, art. 23.

398. *Id.* art. 18.

399. Jimmy Carter, *U.S. Finally Ratifies Human Rights Covenant*, THE CARTER CTR. (June 28, 1992), <https://www.cartercenter.org/news/documents/doc1369.html> [https://perma.cc/FM9P-8TTN].

400. ICESCR, *supra* note 339, art. 10.

401. *Id.* art. 11.

402. *Id.* art. 2(1). As of February 2021, 171 countries have entered into this Covenant. International Covenant on Economic, Social and Cultural Rights, Depositary Notification, C.N.781.2001.TREATIES-6 (Oct. 5, 2001).

403. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT’L L. 365, 365–66 (1990).

the Rights of the Child (CRC) places a positive obligation on states to assist parents in their child care and development responsibilities.<sup>404</sup> The United States has signed, but not ratified, the CRC, making it the only United Nations member state that is not a party.<sup>405</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also includes many provisions focused on protecting the mother-child relationship.<sup>406</sup> CEDAW ensures women's equality within the family, equal rights as parents, and the economic security needed to care for their children.<sup>407</sup> The United States is one of six United Nations member states that have signed, but not ratified, CEDAW.<sup>408</sup>

Although European human rights conventions and charters are, of course, not legally binding on the United States, they serve as a persuasive framework for conceptualizing the legal protection of single mother families. They set forth a series of effective legal protections that are demonstrably achievable in wealthy, economically developed countries. The European Convention on Human Rights (ECHR) states broadly that “[e]veryone has the right to respect for his private and family life.”<sup>409</sup> Entered into force in 2009, the Charter of Fundamental Rights of the European Union (EU Charter) contains language similar to the ECHR.<sup>410</sup> While it, too, does not explicitly mention the mother-child relationship, the EU Charter identifies a right to respect for family life and ensures that the family “shall enjoy legal, economic and social protection.”<sup>411</sup>

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404. See Convention on the Rights of the Child, art. 2, art. 18, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

405. Sarah Mehta, *There's Only One Country That Hasn't Ratified the Convention on Children's Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens> [<https://perma.cc/U3C4-VTHZ>].

406. See Convention on the Elimination of All Forms of Discrimination Against Women art. 5, 9, 16, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. The United States has signed but not ratified this document. *About CEDAW*, GLOBALSOLUTIONS (May 4, 2012), <https://globalsolutions.org/human-rights/cedaw> [<https://perma.cc/ZDX7-NTUV>].

407. See CEDAW, *supra* note 406, art. 16.

408. Heidi Nichols Haddad, *The U.S. Hasn't Signed the World's Foremost Women's Rights Treaty. Activists Have Gotten Local Versions Passed Instead*, WASH. POST (Mar. 8, 2020), <https://www.washingtonpost.com/politics/2020/03/08/us-hasnt-signed-worlds-foremost-womens-rights-treaty-activists-have-gotten-local-versions-passed-instead> [<https://perma.cc/Y9GG-M2W9>].

409. Eur. Convention on Hum. Rts. art. 8(1), Nov. 4, 1950, E.T.S. No. 005 [hereinafter ECHR].

410. See Charter of Fundamental Rights of the European Union, art. 7, art. 33, 2012 O.J. (C 326) 10, 16 [hereinafter EU Charter].

411. *Id.*

The EU Charter also contains some protections specific to maternity and provides broader protections for basic needs. The EU Charter protects “everyone” from dismissal from their employment for “a reason connected with maternity” as well as “the right to paid maternity leave and to parental leave following the birth or adoption of a child.”<sup>412</sup> It holds EU member states responsible to provide “social security and social assistance” in a variety of circumstances, including maternity and loss of employment, and “recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.”<sup>413</sup> It furthermore provides EU citizens with “a high level of human health protection,” including preventive health care and medical treatment.<sup>414</sup> As discussed further below, the European Social Charter also ensures adequate support for mothers and children.

### *B. Equality and Anti-Discrimination Protections for Mothers and Children*

International human rights conventions provide clear language prohibiting the various forms of discrimination that most starkly affect single mothers in the United States, including race, ethnicity, gender and marital and parentage status. Although the conventions themselves do not discuss the need to view the different forms of discrimination through an intersectional lens, human rights scholars have reminded us of the need to do so.<sup>415</sup> Protections from discrimination based on personal characteristics discussed here are interconnected to the economic rights and other special assistance described above and should be read together.<sup>416</sup>

The first article of the UDHR broadly states that “[a]ll human beings are born free and equal in dignity and rights.”<sup>417</sup> This broad language of equality and the prohibition of discrimination is the cornerstone of all major human rights agreements. The preambles to both the ICCPR and the ICESCR recognize the “equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world.”<sup>418</sup> The ECHR includes similar language that the contracting parties will secure “everyone within their jurisdictions” the rights and freedoms included in the

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412. *Id.* art. 33(2).

413. *Id.* art. 34(3).

414. *Id.* art. 35.

415. See, e.g., Hope Lewis, *Reflections on ‘BlackCrit Theory’: Human Rights*, 45 VILL. L. REV. 1075, 1075–76 (2000).

416. Stark, *How the Age of Rights*, *supra* note 395, at 156–57, 164.

417. UDHR, *supra* note 396, art. 1.

418. ICESCR, *supra* note 339, pmb.; ICCPR, *supra* note 339, pmb.

Convention.<sup>419</sup> Another regional human rights agreement, the American Convention on Human Rights, establishes a right to equal protection of the law for “all persons” in Article 24.<sup>420</sup>

Human rights protections against discrimination are broad. Article 26 of the ICCPR ensures all persons equal protection under the law and prohibits discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>421</sup> Article 2 of the ICESCR contains an almost identical provision, providing that the party states shall guarantee the rights delineated in the Covenant without discrimination of any kind.<sup>422</sup> The International Convention on the Elimination of All Forms of Racial Discrimination includes similar anti-discrimination language and explicitly supports measures to eliminate “laws or regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”<sup>423</sup>

In addition to these broad anti-discrimination protections, many of the texts include the requirement of equality for children regardless of their parents’ marital status. The particular need that children of single mothers have for protection from discrimination was first recognized in the UDHR, which states that “all children, whether born in or out of wedlock, shall enjoy the same social protection.”<sup>424</sup> Most subsequent agreements have followed suit.

The ICCPR provides that every child shall be free of discrimination as to “birth.”<sup>425</sup> The U.N. Human Rights Committee charged with interpreting the ICCPR explained, in General Comment No. 17, that states should enact legislation and practices that ensure discrimination against children is eliminated in every field, “particularly as between . . . legitimate children and children born out of wedlock.”<sup>426</sup> Likewise, the ICESCR provides that children are entitled to special protections from any discrimination “for reasons of parentage or other conditions.”<sup>427</sup> This provision most likely refers to the extensive discrimination against children born to single mothers existing at the time of its passage.

419. ECHR, *supra* note 409, art. 1.

420. Am. Convention on Hum. Rts., art. 24, Nov. 22, 1969, 1144 U.N.T.S. 123.

421. ICCPR, *supra* note 339, art. 26.

422. ICESCR, *supra* note 339, art. 2.

423. Int’l Convention on the Elimination of All Forms of Racial Discrimination, art. 2(1)(c), Mar. 7, 1966, 660 U.N.T.S. 195.

424. UDHR, *supra* note 396, art. 25.

425. ICCPR, *supra* note 339, art. 24.

426. Off. of the High Comm’r for Hum. Rts., CCPR General Comment No. 17: art. 24 (Rights of the Child) (Apr. 7, 1989), <https://www.refworld.org/pdfid/45139b464.pdf> [<https://perma.cc/K6MM-LP4K>].

427. ICESCR, *supra* note 339, art. 10.

These nondiscrimination provisions are included in the CRC and CEDAW as well. The nondiscrimination principle of the CRC affirms that no child should be denied her rights based on “birth or other status.”<sup>428</sup> At the time of adoption, many critics felt the language did not go far enough to express disapproval for the special discrimination facing nonmarital children.<sup>429</sup> Although proposals were submitted to include language explicitly referencing children born out of wedlock, those were ultimately not adopted.<sup>430</sup> CEDAW protects their mothers as well. It provides that women shall have the same rights and responsibilities as parents, regardless of their marital status. CEDAW further prohibits discrimination against single mothers based on the presumption that a woman is financially dependent on a man.<sup>431</sup>

European human rights agreements also have broad-based as well as more specific provisions on discrimination. Article 14 of the ECHR contains a broad-based prohibition of discrimination based on a variety of grounds including race, ethnicity, and gender.<sup>432</sup> The European Social Charter, adopted by the member states of the Council of Europe, contains almost identical language in its preamble.<sup>433</sup>

The ECHR clearly establishes the need for protections against discrimination most likely to affect single mothers and their children. States must act “without discrimination on any ground such as . . . birth or other status.”<sup>434</sup> The European Social Charter further specifies that “[m]others and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.”<sup>435</sup> The parties also agreed to “take all appropriate and necessary measures” to “ensur[e] the effective exercise of the right of mothers and children to social and economic protection,” “including the establishment or maintenance of appropriate institutions or services.”<sup>436</sup>

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428. CRC, *supra* note 404, art. 2.

429. Off. of the U.N. High Comm’r for Hum. Rts., Legislative History of the Convention on the Rights of the Child (2007) at 319–27, <https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf> [<https://perma.cc/L2DN-NR4M>].

430. GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 6, 42 (1995); OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., LEGISLATIVE HISTORY OF THE CONVENTION ON THE RIGHTS OF THE CHILD 19–27 (2007), <https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf> [<https://perma.cc/L2DN-NR4M>].

431. CEDAW, *supra* note 406, art. 5, art. 13, art. 16(1)(d).

432. ECHR, *supra* note 409, art. 14.

433. Eur. Soc. Charter, pmbl., Oct. 18, 1961, E.T.S. 035.

434. ECHR, *supra* note 409, art. 14.

435. Eur. Soc. Charter, *supra* note 433, art. 17.

436. *Id.*

As early as 1970, when the U.S. Constitution was being interpreted to provide few protections to single mothers who needed government assistance, the Council of Europe worked instead to solidify their rights in the face of the longstanding discrimination they had faced. The Committee of Ministers of the Council of Europe delineated the rights of mothers and children under the European Social Charter “irrespective of marital status and family relations” in Resolution (70) 15, adopted on May 15, 1970.<sup>437</sup> This Resolution provides specific and direct guidance to member states about the treatment of single mothers and their children, and it is crystal clear about the importance of providing economic, health and social services support to single mothers related to pregnancy and raising their children.<sup>438</sup> The Resolution views the child’s satisfactory upbringing as dependent on “the possibilities given to his mother to provide him with a welcoming home and of the social and psychological situation created by society.”<sup>439</sup> The Resolution recognizes the links between discrimination and economic support, stating that social work services for mothers should not be segregated by marital status, and that single mothers will need support to combine their family responsibilities with employment responsibilities.<sup>440</sup>

In addition, the European Convention on the Legal Status of Children (European Children’s Convention) came into force in 1978 and has since been ratified by twenty-three countries.<sup>441</sup> Ratifying countries must ensure that children born outside of marriage are provided with the same legal rights as those born to married parents.<sup>442</sup> The European Children’s Convention recognized that wide disparities in the laws of European countries for children born to single parents still existed in the late 1970s. The European Children’s Convention is brief, but it provides that a child born “out of wedlock” shall have the same rights of succession as a child born in wedlock.<sup>443</sup> It also mandates that parents have the same parental obligations to the child regardless of their marital status at the

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437. Comm. of Ministers, *Resolution (70) 15: Social Protection of Unmarried Mothers and their Children*, COUNCIL OF EUR. 36 (May 15, 1970), <https://rm.coe.int/native/09000016804c3355> [<https://perma.cc/X5V9-XUBY>].

438. *See id.*

439. *Id.*

440. *Id.* at 36–37.

441. *Chart of Signatures and Ratifications of Treaty 085*, Council of Europe (Nov. 15, 1975) [hereinafter *Chart of Signatures*], <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/085/signatures> [<https://perma.cc/SMP9-QQDV>].

442. European Convention on the Legal Status of Children Born Out of Wedlock, pmbl., art. 6, art. 9, Nov. 15, 1975, E.T.S. No. 85 [hereinafter European Convention on Status of Children]. For a detailed list of ratifications, see *Chart of Signatures*, *supra* note 441.

443. European Convention on Status of Children, *supra* note 442, art. 9.

child's birth.<sup>444</sup> Similarly, the American Convention on Human Rights states that the law "shall recognize equal rights for children born out of wedlock and those born in wedlock."<sup>445</sup>

### *C. Implementation Processes for Human Rights Protections*

*Under the International Bill of Rights, economic/social rights and civil/political rights are inextricably linked. By ripping them apart, and rejecting economic rights, the United States undermined the whole idea of "human rights."<sup>446</sup>*

Human rights that include the special protections for mothers and children, economic rights that support their families' thriving, and prohibitions on discrimination work hand-in-hand to support each other. Europe's ongoing development of these rights serves as an example of how targeted protections for mothers (which now includes all parents) and children, protections from numerous forms of discrimination, and economic rights can work in tandem to strengthen economic and social policies to support all families, including single-mother families.

The self-evaluation and feedback processes used to improve countries' performance under these conventions provide government officials and the public with important information about their adherence to these broadly accepted human rights norms. The United States, by failing to adopt most of these conventions, has absented itself from these important self-evaluation and feedback processes. Without these processes, U.S. government officials and the public remain largely ignorant of the significant and concrete advances in human welfare these rights have supported in other countries, nor are they aware of how far behind its peer countries the United States lags.

The implementation and enforcement mechanisms of these various conventions have evolved over time. The 1948 UDHR was intended to be aspirational and did not contain any implementation or legally binding enforcement mechanism.<sup>447</sup> On the opposite side of the spectrum, the ECHR is judicially enforceable. Section II of the ECHR established the European Court of Human Rights (ECtHR)

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444. *Id.* art. 6(1).

445. Am. Convention on Hum. Rts., *supra* note 420, art. 17(5).

446. Stark, *How the Age of Rights*, *supra* note 395, at 196.

447. Jacob Dolinger, *The Failure of the Universal Declaration of Human Rights*, 47 U. MIAMI INTER-AM. L. REV. 164, 164 (2016).



to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto.”<sup>448</sup> The Court is tasked with examining complaints made by member states or individuals alleging violations of human rights.<sup>449</sup> Article 46 establishes that the state parties to the Convention will abide by the final judgment of the ECtHR, thus making its decisions binding.<sup>450</sup>

There are numerous examples of how the ECtHR has held countries accountable for violations of the ECHR, including those involving discrimination against single parent families. The ECtHR, in 1979, found a Belgium law, which gave children born “out of wedlock” a different status than children born to a married couple, violated Article 14’s prohibition on discrimination, and Article 8’s “right to respect for . . . family life.”<sup>451</sup> In 1994, the Court found that an Irish law that allowed a child to be put up for adoption without the father’s consent interfered with his Article 8 right to respect for family life.<sup>452</sup> While decisions by the ECtHR have, like those of other courts, been subject to criticism, their transparency allows for comprehensive analysis and review to ensure that the Court’s interpretations of rights are consistent with the rights as set forth in the ECHR.<sup>453</sup>

The American Convention on Human Rights is also judicially enforceable through its creation of the Inter-American Court of Human Rights.<sup>454</sup> However, in contrast to the ECtHR, individuals cannot submit complaints regarding the application or interpretation of the Convention and cases must be referred to it by either the Inter-American Commission on Human Rights or a state party.<sup>455</sup>

The EU Charter creates enforceable obligations for its state parties. For example, the EU Charter protects pregnancy and maternity for women workers.<sup>456</sup> It provides that “[t]o reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.”<sup>457</sup> Most recently, the European Union issued a Directive based on the EU Charter that incorporates key issues for

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448. ECHR, *supra* note 409, art. 19.

449. *See id.* art. 33–34.

450. *Id.* art. 46.

451. *Marckx v. Belgium*, App. No. 6833/74, ¶ 29, 44–47 (June 13, 1979).

452. *See Keegan v. Ireland*, App. No. 16969/90, ¶ 54–55 (May 26, 1994).

453. *See, e.g.,* Conor O’Mahony, *Child Protection and the ECHR: Making Sense of Positive and Procedural Obligations*, 27 *THE INT’L J. CHILDREN’S RTS.* 660, 691–92 (2019).

454. *International Norms and Standards Relating to Disability: Part III. The Reasonable Human Rights System*, U.N. ENABLE.

455. *Id.*

456. EU Charter, *supra* note 410, art. 33(2).

457. *Id.*

supporting families identified here: equality between men and women, including in employment, work and pay; protection from dismissal related to maternity; paid maternity leave and parental leave to support families at a vulnerable time; protection for workers who take leave from discrimination; and provision of flexible work hours.<sup>458</sup> The Directive notes the increasing challenges for workers and their families given longer working hours and changing work schedules.<sup>459</sup> While this Directive does not mandate the provision of child care and long-term services, it urges Member States to take them into consideration as part of their strategy for meeting their equality mandates.<sup>460</sup> The Directive also informs Member States that they should set payment levels for leave at levels that are adequate for a decent standard of living.<sup>461</sup> Single parenting receives mention as one of the circumstances that should lead Member States to adapt their policies concerning leave and flexible work hours to “particular needs.”<sup>462</sup> Unlike many of the international human rights agreements, workers are afforded individual, judicially enforceable rights under this Directive.<sup>463</sup>

In contrast, the European Social Charter is not monitored through a court system and is subject only to the oversight of the European Committee of Social Rights, which does not consider individual complaints.<sup>464</sup> It uses a report submission process, one commonly used by many United Nations human rights conventions as well. The European Committee of Social Rights reviews reports submitted every two years by member-states evaluating their own adherence to the agreed-upon Charter provisions and then submits recommendations and conclusions back to each member-state based on this review.<sup>465</sup> These recommendations are not binding.<sup>466</sup> However, they provide an important form of public accountability for member states

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458. Directive 2019/1158, of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Careers and Repealing Council Directive 2010/18/EU, 2019 O.J. (L 188/79) ¶ 2–3, 34, 40, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158> [<https://perma.cc/5XQ7-SVDU>]. Workers who take leave are to have their employment rights protected so they can return to the same or an equivalent post after their leave. *Id.* ¶ 38.

459. *Id.* ¶ 10.

460. *Id.* ¶ 12.

461. *Id.* ¶ 31.

462. *Id.* ¶ 37. Other special circumstances include parents with a disability or who have children with a disability or long-term illness. *Id.*

463. Directive 2019/1158, *supra* note 458, ¶¶ 41–44.

464. Eur. Soc. Charter, *supra* note 433, pt. IV, art. C–D.

465. D.J. Harris, Note, *The European Social Charter*, 13 INT'L AND COMP. LAW Q. 1076, 1083 (1945).

466. *Id.* at 1085.

and do often lead to positive developments in human rights through legislation and case law at a national level.<sup>467</sup>

These processes are not perfect and states are not always quick to comply with their obligations. For example, in recent years, the Council of Europe has found that lone parents, and especially lone mothers, face greater barriers to employment than other workers, confront greater levels of poverty despite high rates of employment, and continue to suffer from discrimination and prejudice.<sup>468</sup> At the least, however, the European Social Charter and Committee of Social Rights review process establishes a public measuring stick that nudges public policy in the direction of these commitments through procedural and informational transparency and feedback.

Many international human rights agreements, such as the ICCPR and the ICESCR, follow this “soft” enforcement approach, including protocols to submit periodic reports to the Human Rights Committee, which issues recommendations regarding country compliance.<sup>469</sup> The self-evaluation process required to develop these reports is an important step for states to take an accounting of their policies and practices and their effects on the human rights of their residents. While Committee recommendations are not legally binding, they draw attention to any shortcomings in performance by states that have committed themselves to compliance with the treaties.<sup>470</sup> The CRC and CEDAW are monitored through a similar process.<sup>471</sup>

Countries are not forced to comply with these human rights agreements, but by joining these various agreements they commit themselves to an open and constructive feedback process with the goal of improving and evolving their domestic policies to bring them into accord with their human rights obligations.<sup>472</sup> The Committee processes are open to outside groups to present evidence regarding member states’ adherence to the human rights commitments. As a

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467. *Id.* at 1807.

468. *Health Policy: Report on Psycho-social Aspects of Single-Parent Families*, COUNCIL OF EUR., [https://www.coe.int/t/dg3/health/Reportsingleparents\\_en.asp](https://www.coe.int/t/dg3/health/Reportsingleparents_en.asp) [<https://perma.cc/YNZ5-K6HW>].

469. *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU (Apr. 2019), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> [<https://perma.cc/U2RC-3NEB>]; *Human Rights Enforcement Mechanisms of the United Nations*, ESCR-NET, <https://www.escr-net.org/resources/human-rights-enforcement-mechanisms-united-nations>.

470. *FAQ: The Covenant on Civil & Political Rights*, *supra* note 469.

471. *Implementing and Monitoring the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring>; *Frequently Asked Questions (FAQ) About CEDAW*, U.N. WOMEN, <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#howcedawmonitored> [<https://perma.cc/2P2C-TVGG>].

472. *See, e.g.*, Ursula Kilkelly, *The UN Convention on the Rights of the Child: Incremental and Transformative Approaches to Legal Implementation*, 23 *THE INT’L J. HUM. RTS.* 323, 324–25 (2019).

group, these agreements function as education and feedback mechanisms for countries and their citizens and residents. They establish a process by which countries can learn best practices in promoting fundamental human rights from the international community.

The reporting mechanisms built into these agreements have provided valuable feedback to countries regarding protection of the mother-child relationship. The Committee tasked with overseeing state compliance with the CRC has included concern for the needs of single mothers in its reports.<sup>473</sup> Through examining state parties' compliance, the Committee has directly impacted domestic policy.<sup>474</sup> For example, the CRC Committee was critical of provisions of a Moroccan law that created inequality between mothers and fathers.<sup>475</sup> The law made a child unable to claim Moroccan citizenship if born to a Moroccan mother and a non-Moroccan father, where the converse was not the case.<sup>476</sup> That law has since been repealed, due in part to the Committee's feedback expressing concern over the inequality created.<sup>477</sup>

The European Social Charter's feedback system also has produced positive domestic change protecting and promoting the mother-child relationship. The process of change in Ireland, which ratified the European Social Charter in 1964, serves as a clear example.<sup>478</sup> Throughout the 1960s and 1970s, the European Committee of Social Rights deemed on numerous occasions that Ireland was not satisfying the requirements of Article 17 of the Charter, which ensures mothers and children the right to social and economic protection.<sup>479</sup> The Committee's study of the reports submitted by Ireland throughout these decades indicated serious gaps and inadequacies regarding several factors, including the general legal position of illegitimate children, protection of unmarried mothers, protection of mothers before and after confinement, and protection of homeless children.<sup>480</sup>

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473. Martha Davis & Roslyn Powell, *The International Convention on the Rights of the Child: A Catalyst for Innovative Childcare Policies*, 25 HUM. RTS. Q. 689, 696 (2003).

474. *Id.* at 697.

475. U.N. Comm. on the Rts. of the Child, Consideration of Rep. Submitted by States Parties Under Article 44 of the Convention on Its Thirty-Third Session, U.N. Doc. CRC/C/15/Add.211 (July 10, 2003).

476. *Id.* ¶ 25.

477. See U.N. High Comm'r for Refugees, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session*, UNHCR (Sept. 2016).

478. Dep't of the Eur. Soc. Charter & Directorate Gen. Hum. Rts. and Rule of L., *Ireland and the European Social Charter*, COUNCIL OF EUR. 10–11 (Mar. 2019).

479. Eur. Soc. Charter, *supra* note 433, art. 17; see also *infra* note 481.

480. Eur. Comm. of Soc. Rts. Conclusion I (I/def/IRL/17//EN) Ireland Article 17 (May 31, 1967); Eur. Comm. of Soc. Rts. Conclusion II (II/def/IRL/17//EN) Ireland Article 17

The Committee has issued numerous recommendations over the years to the Irish Government to take steps to guarantee adequate social and economic protections for mothers and children.<sup>481</sup>

While many positive steps were taken since then, the Committee of Social Rights continues to monitor and provide feedback for Ireland's treatment of mothers and children, including special protections for single mothers. In 2019, the Committee noted concern for single-parent families, who are disproportionately affected by poverty in Ireland.<sup>482</sup> The Committee's conclusions reminded the Irish government of its duty to ensure the protection of these families in accordance with the principle of equality of treatment.<sup>483</sup> The Committee also asked Ireland to address the measures taken and any results attained in its next report.<sup>484</sup> These reporting mechanisms can provide continuous feedback and encourage countries to operate in accordance with modern international norms.<sup>485</sup>

These brief examples demonstrate how countries learn from these reviews and choose to shift their policies to assure that they are providing their residents with key human rights protections.

#### *D. Advocacy for a Human Rights Framework for Single Mothers and Their Children*

*International human rights law recognizes a right to education, a right to healthcare, a right to social protection for those in need, and a right to an adequate standard of living. In practice, the United States is alone among developed countries in insisting that while human rights are of fundamental importance, they do not include rights that guard against dying of hunger, dying from a lack of access to affordable healthcare, or growing up in a context of total deprivation.*<sup>486</sup>

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(July 31, 1971); Eur. Comm. of Soc. Rts. Conclusion IV (IV/def/IRL/17//EN) Ireland Article 17 (Nov. 30, 1975).

481. See, e.g., Eur. Comm. of Soc. Rights Conclusion I (I/def/IRL/17//EN) Ireland Article 17 (May 31, 1967); Eur. Comm. of Soc. Rts. Conclusion II (II/def/IRL/17//EN) Ireland Article 17 (July 31, 1971); Eur. Comm. of Soc. Rts. Conclusion IV (IV/def/IRL/17//EN) Ireland Article 17 (Nov. 30, 1975).

482. Eur. Comm. of Soc. Rts. Conclusions 2019 (2019/def/IRL/16/EN) Ireland Article 16 (May 12, 2019).

483. *Id.*

484. *Id.*

485. See Eur. Comm. of Soc. Rts., *Conclusions 2019: Ireland*, COUNCIL OF EUR. 2 (Mar. 2020).

486. *Statement on Visit to the USA, by Professor Philip Alston, United Nations Special*

Unlike Europe and most other countries, the United States has failed to ratify most of the international human rights agreements discussed here. Nor has it followed the lead taken by similarly wealthy European countries who have been making progress in meeting their commitments under both international and key regional conventions discussed here. The only international agreement that the United States has ratified is the ICCPR.<sup>487</sup> The United States is an outlier in its refusal to ratify the ICESCR, CRC and CEDAW.<sup>488</sup> Some have argued that due to their wide and lengthy adoption, international human rights are now customary law.<sup>489</sup> This Article focuses instead on why the United States has failed to formally adopt these human rights conventions and how advocates for those rights might improve the chances of explicitly adopting them or tacitly changing legal and societal norms to match their requirements.

Some have argued that ratifying these agreements would impinge on American sovereignty or cause undue interference in U.S. domestic affairs.<sup>490</sup> For example, arguments against ratification of the CRC and CEDAW centered on the fear that the government would be forced to improperly interfere with private family life, and in particular, the constitutionally protected rights of parents.<sup>491</sup> This argument is flawed. Ratifying these agreements would not force the U.S. government to act. Almost all of these agreements are not judicially enforceable. For the majority of the agreements at issue, their only enforcement mechanism is through nonbinding committee reports. They rely on persuasion through public self-examination and international body review and feedback, which educate member states and their residents about their obligations and their success in meeting those obligations.

Another argument against ratification stems from an isolationist attitude that the United States has nothing to learn from the rest of the world on the subject of human rights.<sup>492</sup> This argument is also

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*Rapporteur on Extreme Poverty and Human Rights*, U.N. HUM. RTS. OFF. HIGH COMM'R (Dec. 15, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533> [<https://perma.cc/Q6RK-Y4R2>].

487. See Carter, *supra* note 399.

488. See *United States Ratification of International Human Rights Treaties*, HUM. RTS. WATCH (July 24, 2009), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties> [<https://perma.cc/N79R-G6X4>].

489. See, e.g., Thomas Buergenthal, *The Evolving International Human Rights System*, 100 AM. J. INT'L L. 783, 790 (2006); Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 12 (1982).

490. Lida Minasyan, *The United States Has Not Ratified the UN Convention on the Rights of the Child*, ATLAS CORPS (Sept. 30, 2018), <https://atlascorps.org/the-united-states-has-not-ratified-the-un-convention-on-the-rights-of-the-child>.

491. *Id.*

492. See, e.g., Alston, *supra* note 403, at 381.

flawed, as the United States has plenty of room to improve. As the Human Rights Watch's 2020 World Report stated, the United States has been regressing on key human rights in areas including racism and discrimination, mass incarceration, the rights of women, and access to adequate health care.<sup>493</sup>

The refusal by the United States to ratify many of these conventions may also be related to its overall hostility to economic rights, described as “‘foreign’ to our notion of rights.”<sup>494</sup> Economic rights contained in the ICESCR have often garnered absolute rejection by U.S. administrations.<sup>495</sup> Economic and social rights have been gaining greater attention, however, from scholars and activists.<sup>496</sup> The searing economic inequalities revealed by COVID-19, which have resulted in wholly disproportionate impacts on the health, safety and livelihoods of lower-income families, immigrant families, BIPOC families, and single-mother families may, perhaps, shift the view of many Americans in favor of recognition of these rights.

Open discussion of these rights as developed by other countries, advocacy for single-mother families that identifies the human rights that are at stake in their treatment, and arguments to ratify these agreements, can all be part of a multidimensional strategy to change U.S. laws and policies. The embedded negative stereotypes of single mothers are unlikely to change overnight, but like many other ideas now regarded as bigoted, they are open to change over time.<sup>497</sup>

Advocates can adopt techniques of persuasion and acculturation. Ryan Goodman and Derek Jinks describe two important techniques of persuasion: “framing” and “cuing.”<sup>498</sup> Single mothers have been “framed” as immoral, lazy and opportunistic. In contrast, the news articles highlighting single mothers in the time of COVID-19 project a completely different and more accurate framing of their struggles

493. *United States: Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/united-states>.

494. Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an “Entirely New Strategy,”* 44 HASTINGS L.J. 79, 81 (1992).

495. See, e.g., Alston, *supra* note 403, at 372 (discussing total rejection of economic rights by the State Department in the Reagan Administration).

496. See, e.g., Francesca Bignami & Carla Spivack, *Social and Economic Rights as Fundamental Rights*, 62 AM. J. COMP. L. 561, 563–64 (2014).

497. See LINDA McCLAIN, WHO’S THE BIGOT?: LEARNING FROM CONFLICTS OVER MARRIAGE AND CIVIL RIGHTS LAW 9–11 (2020) (analyzing temporal dimension of bigotry and arguing that change requires experience and moral learning); Douglas NeJaime, *Bigotry in Time: Race, Sexual Orientation, and Gender*, 99 BOS. U. L. REV. 2651, 2653 (2019) (questioning why some bigoted ideas, including ideas about marriage, have been more resistant to change over time).

498. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 636–37 (2004).

and their formidable efforts and persistence to care for their children in the face of adversity. This reframing more accurately captures their lived experiences. Empirical evidence can be used to “cue” government officials and the public to challenge invidious stereotypical beliefs.

The second strategy, acculturation, is “another important mechanism of social influence. . . .”<sup>499</sup> This process involves a number of smaller processes that, over time, change the environment in which government actors operate.<sup>500</sup> Goodman and Jinks explain “[t]hese processes—including orthodoxy, mimicry, and status maximization—mobilize internal and external pressures impelling actors, under the right conditions, to adopt socially legitimated attitudes, beliefs, and behaviors.”<sup>501</sup>

In the absence of strong constitutional claims and clear human rights commitments, advocates should adopt a multidimensional strategy to persuade and acculturate government officials and the public to widely accepted human rights. A multidimensional strategy was extremely successful in the context of marriage for same-sex couples.<sup>502</sup> Although it benefited greatly from confirmation by state and federal courts enforcing constitutional rights, that rights talk was in response “to the multiple and often mutually-reinforcing strategies that can be implemented to change perceptions, conversations, and ultimately, outcomes related to particular laws or policies.”<sup>503</sup>

Educators should lead this educational effort. The United States dedicated itself to human rights education when it bound itself to the UDHR in 1948, which requires that education be directed “to the strengthening of respect for human rights.”<sup>504</sup> Human rights education should be integrated at all levels of education—and certainly be a central part of legal education.<sup>505</sup> Education processes can bring Americans into the debates about human rights that other countries have, debates that can help Americans reframe their views of the subjects of human rights protections. Learning more about how human rights commitments have improved the lives of many in other countries can be part of this learning process.

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499. *Id.* at 638.

500. *Id.* at 642.

501. *Id.*

502. Suzanne B. Goldberg, *Multidimensional Advocacy as Applied: Marriage Equality and Reproductive Rights*, 29 COLUM. J. GENDER & L. 1, 4–5, 33–35 (2015).

503. *Id.* at 4.

504. UDHR, *supra* note 396, art. 26; *see also* Barbara Stark, *Mr. Trump’s Contribution to Women’s Human Rights*, 24 ILSA J. INT’L & COMP. L. 317, 331 (2018).

505. Human rights education plays only a minimal role in education in the United States. Sandra Sirota, *The Inconsistent Past and Uncertain Future of Human Rights Education in the United States*, 47 PROSPECTS 101, 114 (2017).



However, it would be best to actually ratify the key human rights conventions. Then, like most of Europe and the various countries which have ratified these agreements, the United States would receive feedback on current practices that would encourage it to move forward on complying with human rights laws. By not ratifying these agreements, the United States remains very isolated and has missed important international developments. The record of work by the committees tasked with overseeing execution of human rights agreements shows that regular reporting can help eliminate and even prevent human rights violations when external reviewers identify potential warning signs of future abuses. Although at times inconclusive, much evidence suggests that there is a positive correlation between ratification of key human rights agreements and positive changes in state behavior.<sup>506</sup>

#### CONCLUSION

COVID-19 makes clear what many have known already. Structural inequalities, often reinforced by sexist and racist tropes, most hurt families headed by single mothers, and especially those headed by BIPOC mothers. These structural inequalities result from government choices regarding laws and policies and have left single-mother families especially vulnerable in this perilous time. Pandemic-related financial distress, although outside the control of single mothers, could lead to the loss of their children if they cannot provide their children with an adequate home.

In 1990, two mothers who lost custody of their children to the foster care system due to homelessness challenged this unbearable loss.<sup>507</sup> The Delaware Court of Chancery denied their claim for the housing assistance they needed to regain custody of their children from the state.<sup>508</sup> While the Court's opinion followed precedent that such protections were not found in the U.S. Constitution, it voiced the human rights argument made here:

This case is about basic human rights. It is about providing decent housing for the homeless families of our State. That is the societal problem presented here. While the plaintiffs seek to weave the facts of their case into the fabric of our statutory and constitutional

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506. Navi Pillay, *The International Human Rights Treaty System: Impact at the Domestic and International Levels*, 21 HUM. RTS. BRIEF 32, 33 (2014).

507. *Tilden v. Hayward*, CIV. A. No. 11297, 1990 WL 1311162 at \*1 (Del. Ct. Chan. Sept. 10, 1990).

508. *Id.*

law, and thus invoke the judicial power to redress a societal problem, I am convinced that the effort is misplaced. . . . For this Court to impose on the State a judicially crafted solution to the homeless problem, under the guise of substantive due process or through creative interpretations of statutory commands, would require me to ignore the institutional role of courts and the pragmatic principles of restraint that govern them. . . . I believe the General Assembly and the Executive Branch—not the courts—should address plainly and directly the human rights implications of the state programs defended in this case.<sup>509</sup>

We must resist denigrating stereotypes and actively humanize our vision of single mothers and their families to ensure them the dignity and respect they are due. Widely recognized human rights norms would significantly support this reframing. The time for advocating for human rights is now, before new extremes of poverty and harm become normalized. Where our Constitution fails to provide adequate protection from discrimination and vulnerability to “brutal need,”<sup>510</sup> we must advocate for statutory rights and practices in areas like employment and benefits to protect the human rights of our most vulnerable families. Let our most vivid failures during this pandemic impel us to deepen our vision and right our course.

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509. *Id.* at \*17.

510. *Goldberg v. Kelly*, 397 U.S. 254, 261 (1970) (citing *Kelly v. Wyman*, 294 F. Supp. 893, 900 (1968)).