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**Golden Gate University School of Law
Poverty Law Symposium**

**Emily R. Champlin, J.D.
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The Myth of the “Welfare Queen”: Reproductive Oppression in the Welfare System

I. Introduction

Our war on poverty has turned from eliminating poverty to eliminating the poor. Women of color are the first casualties of this war. They are scrutinized, hated, and erased. We do this through the stereotype of the “welfare queen.” The term is used “as a dog-whistle, a way to to play on racial anxieties without summoning them directly.”¹ The image that appears when someone invokes this term is a lazy, greedy, woman of color who continues to have children in order to receive bigger welfare checks. For the last forty years welfare policymakers have used this stereotype to oppress the reproductive lives of these women.

This paper focuses on two major policy flaws that are rooted in the racist stereotype of the “welfare queen.” These policies work together to punish single motherhood and deny poor women the ability to control their own reproductive futures. They were enacted under the guise that they will stop the cycle of poverty. In reality, they drive women and families deeper into it.

First, in the background section, this paper gives an overview of the history of the “welfare queen” myth and the dramatic changes in the U.S. welfare system.

In the analysis section, part one covers the family cap rule, which punishes poor women who have children if they are already on welfare. It also provides a brief history of how welfare benefits have been used to coercively sterilize poor women of color for decades.

Part two covers the lack of adequate funding for contraceptives and abortion care. The two

¹ Gene Demby, *The Truth Behind the Lies of the Original “Welfare Queen,”* National Public Radio (December 23, 2013), available at <http://www.npr.org/sections/codeswitch/2013/12/20/255819681/the-truth-behind-the-lies-of-the-original-welfare-queen>.

strategies of preventing poor women from procreating, while also barring their access to pregnancy prevention, create an impossible situation for poor women in this country. They are denied the right to have children and they are denied the right to not have children. The biggest problem is the fact that simply because these women are poor, governments believe they have the right to dictate their entire family planning future. This alienates a fundamental right based purely on socioeconomic status.

The final section of this paper presents simple and introductory recommendations for changing our systems of welfare from inherently classist and racist regimes that oppress poor women, to a structure that will return to the original target of eliminating poverty instead of the poor.

II. Background

Ronald Reagan first used the term in his race for president in 1976. He used it to show how he was the man to fix the “broken welfare system.”² He exaggerated accounts of women on welfare across the country, but he always came back to a particular woman in Chicago who was rumored to have conned the taxpayers out of \$150,000.³ Her name was Linda Taylor, and she was one of the most infamous con-artists of our history.⁴ Reagan claimed she had taken 80 aliases to collect food stamps and social security.⁵ She allegedly collected veteran's benefits for four fictional dead husbands.⁶

She was investigated for robbery, homicide, and baby trafficking.⁷ Yet, the case that went forward against her was welfare fraud, and the other charges were set aside.⁸ This shows that making an example of baby traffickers or possible murderers was less important to the District Attorneys on the

2 Josh Levin, *The Welfare Queen*, Slate Magazine (December 19, 2013), available at http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

case. It is clear that the priority was setting an example of what happens to “welfare queens.”⁹

This one person was used to spark almost a half-century of punishment and reproductive oppression of poor women. After Reagan's “welfare queen” seed was planted, policymakers started to restructure welfare and cut away at the Social Security Act.¹⁰ The final death knell was when Bill Clinton passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996.¹¹ This completely changed the structure of welfare. Aid to Families with Dependent Children (AFDC) was now called Temporary Assistance to Needy Families (TANF).¹²

TANF's focus was to reduce the amount of people on welfare, period.¹³ Its key mode of doing this was getting rid of the idea that benefits were an entitlement.¹⁴ Under AFDC, if a person rightfully qualified for a benefit, these were considered a property right. They could be protected by due process of law. Under TANF, there was no such protection.¹⁵ The other main strategy was putting a five year lifetime cap on welfare benefits.¹⁶

TANF's congressional findings blamed our country's welfare dependence on single mothers. It states that “marriage is the foundation of a successful society” and “eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.”¹⁷ Therefore, they reasoned, the solution was to punish single motherhood while lifting up marriage as the solution to poverty. This not only ignores the existence of domestic violence, it is an antiquated notion that women cannot sustain themselves. PRWORA also claims to create many job training and placements opportunities to

9 Also, she was a white woman who dressed as many different races to commit her crimes but dressed as a black woman during her welfare fraud trial; therein solidifying the media's portrayal of welfare queens as black women. *See* Demby, *supra* note 1.

10 Peter Edelman, *So Rich, So Poor: Why it's so Hard to End Poverty in America*, The New Press, pg. 84-100 (2012).

11 *Id.* at 86.

12 *Id.*

13 *Id.* at 1-5.

14 *Id.* at 88.

15 *See* 42 U.S.C.A § 601(b) (West 1997).

16 *Edelman*, at 95.

17 Pub.L. 104-193, *See Sec. 101. “Findings.”* (West 1996).

help people get off of welfare.¹⁸ However, more often than not these programs failed to help women on welfare effectively pull out of poverty.¹⁹

III. Analysis

I. Welfare family caps attempt to eradicate “welfare queens” by punishing single motherhood while claiming they are ending poverty, when in fact they are creating a never-ending cycle of poverty.

Family caps were first created under AFDC with a major ideological difference to TANF: under AFDC, if a state wanted to impose a family cap, they first had to get specific permission from the federal government.²⁰ This was “because projects that condition eligibility on behavior contravene the mandated eligibility requirements set forth in the Social Security Act.”²¹ The very idea of a family cap is against the original welfare doctrine. They punish women for simply wanting a family. Under TANF it is entirely up to the states whether or not they want to institute one.²² There is no federal oversight or objection.²³

Currently, seventeen states employ a family cap rule.²⁴ At one point the number of states was as high as twenty-four. Recently though, states such as Illinois, Nebraska, and Oklahoma have repealed their family caps.²⁵ States still enforcing their family cap rule often cite to budget crises as the reason they cannot repeal it.²⁶ They claim the state's budget simply could not handle the burden of funding all

18 *Edelman*, at 93.

19 *Id.* at 93-95.

20 Christopher Dinkel, *Welfare Family Caps and the Zero-Grant Situation*, 96 *Cornell L. Rev.* 365, 372 (2011).

21 Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 *Yale L.J.* 719, 721 (1992).

22 *Dinkel*, at 372.

23 *Id.*

24 Kristen Schumacher, *Senate Committee Scheduled to Debate the CalWORKs Maximum Family Grant Rule*, California Budget and Policy Center (April 7, 2014), available at <http://calbudgetcenter.org/blog/senate-committee-scheduled-to-debate-the-calworks-maximum-family-grant-rule/>.

25 *Id.*

26 Elena Gutierrez, *Bringing Families out of 'Cap'tivity: the Need to Repeal the CalWORKs Maximum Family Grant Rule*, University of California Berkeley School of Law, Center for Reproductive Rights and Justice (April 2013), available at https://www.law.berkeley.edu/files/bccj/CRRJ_Issue_Brief_MFG_Rule_FINAL.pdf.

the capped children. Not funding these children's success from the beginning is actually propelling a cycle of poverty that will increase the amount of future money spent on welfare and the prison system.

A. Family caps are rooted in a history of eugenics and continue to control women of color's reproductive autonomy.

The history of eugenics and reproductive oppression involved in family caps is easy to trace. For example, California still has their family cap, called the Maximum Family Grant Rule (MFG). The MFG has two exceptions. First, if the pregnancy is a result of incest or rape.²⁷ However, the sexual assault must be reported to a medical, mental health, or law enforcement agency within a certain window.²⁸ Sexual assault advocates have been fighting against requirements like this for many reasons.

Rape and sexual assault is one of the most underreported crimes.²⁹ Many factors contribute to the fact that survivors of sexual assault do not report. Self-blame, fear of the perpetrator, fear of not being believed, and fear that the system will not give them justice, all create a barrier to reporting.³⁰ In a justice system that is so untrusted by sexual assault survivors, a requirement of reporting an assault is almost a guarantee that people will not be able to access this exception.

The second exception is if the pregnancy is the result of a contraceptive failure.³¹ The woman must have been using one of three approved contraceptives, all of which are highly invasive methods that are either semi-permanent or permanent sterilization.³² Sterilization has been used to control poor women, primarily women of color, for much of our history.³³ “The mothering abilities of these women

27 Gutierrez, *supra* note 23.

28 *Id.*

29 *Reporting Rates, Rape, Abuse, and Incest National Network* (last visited March 28, 2016), available at <https://rainn.org/get-information/statistics/reporting-rates>.

30 *Reporting of Sexual Violence Incidents*, National Institute of Justice (October 26, 2010), available at <http://www.nij.gov/topics/crime/rape-sexual-violence/pages/rape-notification.aspx>.

31 Gutierrez, *supra* note 23.

32 *Id.*

33 Beverly Horsburgh, *Schredereesodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 *Cardozo L. Rev.* 531, 535 (1996).

are systematically devalued and they are the objects of widespread sterilization abuse.”³⁴ The strategy used to be quite out in the open, but today it is far more subversive in policies like the Maximum Family Grant rule exceptions.

Until the case of *Relf v. Weinberger*, there were no official rules preventing coercive sterilization in any federal statutes or regulations.³⁵ This allowed rampant sterilization abuse, particularly in the welfare system. The plaintiffs in *Relf* sued the federal government because people on Medicaid during childbirth were coerced into sterilization in order to continue receiving their benefits.³⁶ The named plaintiffs, the Relf sisters from Alabama, were fourteen and twelve years old when they were unknowingly sterilized.³⁷ Their mother, who was an illiterate poor Black single mother, thought she was marking her “X” on a consent form that would allow her daughters to be given temporary birth control shots.³⁸ What actually happened was they were surgically sterilized.³⁹

The *Relf* case exposed that somewhere between 100,000 and 150,000 poor people were sterilized annually under federally funded programs.⁴⁰ During the case the federal government added regulations requiring and defining “informed consent” for any further sterilizations funded by federal dollars.⁴¹ Some scholars have pointed out however, that enforcement of these new regulations are hard to implement and rarely taken seriously.⁴²

At the heart of policies that deny poor women the ability to have children is the idea that they do not deserve to shape their own lives and families. The fact that they cannot afford the best conditions and education for their children does not give regulating bodies the right to regulate their bodies. As

34 *Id.*

35 *Relf v. Weinberger*, 372 F.Supp 1196 (D.C. 1974).

36 *Id.* at 1199.

37 *Relf v. Weinberger*, Southern Poverty Law Center (last visited April 18, 2016), available at <https://www.splcenter.org/seeking-justice/case-docket/relf-v-weinberger>.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Horsburgh*, at 557.

discussed below, families in poverty usually come from impoverished beginnings and are caught in an endless cycle. The worst thing we can do for them is cut off more resources.

B. Family caps' claimed purpose is to stop families from falling deeper into poverty, when in fact they perpetuate an endless cycle of poverty.

There have been many suits filed by individuals subject to a family cap rule. In each holding the court agrees that the government has a legitimate interest in breaking the cycle of poverty through incentivizing poor women to stop having children.⁴³ The problem with this analysis is that it completely ignores the practical effects of denying aid to a family in poverty. It also ignores its own role in creating the cycle of poverty we have in this country. These major flaws show that the true purpose of family caps is to punish “welfare queens” into not having children.

The results of family caps are the exact opposite of their claimed objective. Many studies have been done on the effects of stress and poverty on children. There is a direct tie between the amount of stress in a child's environment and their cognitive ability.⁴⁴ High levels of stress hormones, in particular one called Cortisol, is found in children who experience poverty.⁴⁵ The stress of hunger, lack of basic necessities, and watching their parents struggle cause them to have higher amounts of stress hormones. The more a brain is flooded with Cortisol, the bigger the negative effect on the areas of the brain that control memory and emotion-regulation.⁴⁶ These effects mean that children in poverty often end up doing poorly in school, and later poorly in their careers.⁴⁷ Poverty creates a group of people with diminished cognitive ability which blocks their access to achieve higher education and higher paying jobs. They grow up to be parents who struggle, as their parents did, to provide basic necessities.

43 *Dinkel*, at 366-368.

44 Jim Schnabel, *Poverty and Cognition: How the Poor Get Poorer*, The Dana Foundation (February 25, 2015), available at http://dana.org/News/Poverty_and_Cognition_How_the_Poor_Get_Poorer/.

45 *Id.*

46 *Stresses of Poverty May Impair Learning Ability in Young Children*, National Institutes of Health (August 28, 2012), available at <http://www.nih.gov/news-events/news-releases/stresses-poverty-may-impair-learning-ability-young-children>.

47 *Id.*

They live their whole lives in a world of constant toxic stress.

Children who grow up under the stress of poverty are more likely to get in trouble at school because of their diminished emotion control capacity.⁴⁸ That trouble at school creates even more barriers to higher education. Many of these stressed children will end up in the criminal legal system. Once they have a conviction on their record, their small chance at a good job effectively disappears.

When a family cap rule is enforced against a family already dealing with the stress of poverty, it ensures that the children in that family continue to be held back because of the toxic cognitive effects of that stress. An increase in aid could help single mothers provide more basic necessities. It would help the mother's level of stress allowing her more energy and quality time with her children, which is proven to help learning.⁴⁹ This would then allow the children to lessen their stress, do better in school, and have an actual chance at breaking the cycle of poverty.

II. Our welfare system punishes single motherhood but does nothing to ensure access to contraceptives and abortion care for poor women.

This country has poured millions of dollars into abstinence only education and either reduced or eliminated funding for contraceptives and abortion care.⁵⁰ The results are in: abstinence only education does not prevent unwanted pregnancies.⁵¹ As discussed below, the only things that are successful are comprehensive sexual health education, direct access to contraceptives, and quality abortion care. For poor women, if these are not publicly funded, they might as well not exist.

A. There is some federal funding for contraceptives but the Hyde Amendment bans all federal funds for abortion care.

Another side-effect of the “welfare queen” stereotype is that the federal government doesn't

48 Eric Jensen, *Teaching with Poverty in Mind* (November 2009), available at <http://www.ascd.org/publications/books/109074/chapters/How-Poverty-Affects-Behavior-and-Academic-Performance.aspx>.

49 *Id.*

50 *A History of Federal Funding for Abstinence-Only-Until-Marriage Programs*, Sexuality Information and Education Council of the United States (2010), available at <http://www.siecus.org/index.cfm?fuseaction=page.viewpage&pageid=1340&nodeid=1>.

51 *Id.*

think poor women deserve equal access to full reproductive health care. Medicaid and Title X of the Public Health Service Act do fund a large amount of contraceptives.⁵² However, PRWORA's insistence on getting women off of welfare and into the job market will not be realistic until there are protections like employer paid reproductive health care.

When the Affordable Care Act was passed it mandated that employers provide birth control coverage in company insurance policies.⁵³ This resulted in the infamous case *Burwell v. Hobby Lobby* which held that private, closely held corporations have the right to refuse coverage of birth control because it violates their “sincerely held religious beliefs.”⁵⁴ This opened the floodgates and allows employers to impose their religious beliefs upon their employees. If a state does not have a strong governmental funding scheme for contraceptives, poor women's reproductive health is nonexistent.

The story is even more bleak when it comes to abortion care. When abortion was made legal in 1973 it was covered by Medicaid, the same as any other medical procedure.⁵⁵ In 1976 however, Representative Henry Hyde wanted to make abortion practically impossible. So he wrote in an amendment to the medicaid bill banning all federal funds from being spent on abortion care.⁵⁶ When Rep. Hyde was introducing his amendment to the House of Representatives, he said that “I would certainly like to prevent, if I could legally, anybody from having an abortion: a rich woman, a middle class woman, or a poor woman. Unfortunately, the only vehicle available is the [Medicaid] bill.”⁵⁷ Hyde knew that this amendment would make abortion an impossibility for poor women.

Even with that blatant admission of targeting poor women, the Supreme Court upheld the Hyde

52 *Publicly Funded Family Planning Services in the United States*, The Guttmacher Institute (March 2016), available at http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.

53 *Obamacare Birth Control*, Obamacare Facts.com (last visited March 28, 2016), available at <http://obamacarefacts.com/obamacare-birth-control/>.

54 *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014).

55 *What is the Hyde Amendment?*, National Network of Abortion Funds (last visited March 28, 2016), available at <https://fundabortionnow.org/learn/hyde>.

56 *Id.*

57 *Id.*

Amendment in *Harris v. McRae*.⁵⁸ They reasoned that the root of the problem was the woman's poverty, not the fact that the federal government refused to provide abortion care.⁵⁹ They further explained that precedent required the government not to put obstacles in the way of accessing abortion, but said nothing about guaranteeing access to abortion.⁶⁰ The fundamental error in this analysis is that it ignores the federal government's role in the problem. According to *Planned Parenthood v. Casey*, the test that applies to governmental interference with access to abortion is the “undue burden test.”⁶¹ This test allows certain restrictions but draws the line at a “regulation that has the *purpose or effect* of placing a substantial obstacle in the path of a woman seeking an abortion....”⁶² The Hyde amendment has both the purpose and the effect of blocking the path of poor women seeking abortions.

B. On the state level, access to contraceptives and abortion care ranges wildly depending on the political climate of that state.

The federal government's perspective on reproductive health care is clear: it's up to the states to provide it. The problem is that some states share the opinion that “welfare queens” do not deserve publicly funded reproductive health care.

Some state have taken great strides in increasing access to contraceptives. Oregon, for example, has given pharmacists the power to prescribe hormonal birth control right in the pharmacy.⁶³ A patient answers a twenty question survey and the pharmacist narrows down the right form of contraceptive for them.⁶⁴ When a policy like this is paired with government funding, this is a success for poor women. However, religious refusals have started to multiply in both pharmacies and the workplace.

Some states have specific laws against a pharmacy refusing to dispense contraceptives based on

58 *Harris v. McRae*, 448 U.S. 279 (1980).

59 *Id.* at 317.

60 *Id.* (citing *Maier v. Roe*, 432 U.S. 464 (1977)).

61 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

62 *Id.* at 877 (emphasis added).

63 Pam Belluck, *Birth Control without Seeing a Doctor: Oregon Now, More States Later*, *New York Times* (January 4, 2016), available at http://www.nytimes.com/interactive/2016/01/04/health/birth-control-oregon-contraception.html?_r=0.

64 *Id.*

religious grounds.⁶⁵ Other states have the exact opposite laws and allow pharmacies to decide whether or not to dispense medication. There have been reports of religious refusals at pharmacies in twenty-five different states. This happens in states with laws for, and against, religious refusals. This brings into question the tactic employed in Oregon. Until courts and all legislatures stand up to the unfair imposition of a pharmacist's religious beliefs on their patients, this method of increasing access will be easily thwarted.

Abortion on the state level has become the primary place where the access battle is being fought. Since 2010 there has been a dramatic spike in Targeted Regulation of Abortion Provider (TRAP) laws.⁶⁶ Between 2011 and 2013 there were more state level abortion restrictions passed than in the entire previous decade.⁶⁷ This consistent onslaught of TRAP laws has one obvious purpose, to make abortion technically legal but practically impossible. While middle and upper class women can pay their way into accessing abortion, TRAP laws continue Rep. Hyde's mission of punishing the poor.

The TRAP laws fight has culminated in the recent case *Whole Women's Health v. Hellerstedt*, which was heard by the Supreme Court in March 2016.⁶⁸ That decision will dictate whether TRAP laws are allowed to continue or if a firm line will be drawn when access is effectively barred.

Whole Women's Health involves a Texas law called HB 2.⁶⁹ The law used typical TRAP law tactics, including a requirement that abortion clinics in Texas have admitting privileges at hospitals no more than 30 miles away.⁷⁰ On the surface this requirement seems benign. Texas legislators claim it is

65 *Pharmacy Refusals 101*, National Women's Law Center (August 4, 2015), available at <http://nwlc.org/resources/pharmacy-refusals-101/>.

66 Heather D. Boonstra and Elizabeth Nash, *A Surge of State Abortion Restrictions Puts Providers – and the Women They Serve – in the Crosshairs*, The Guttmacher Institute (2014), available at <http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html>.

67 *Id.*

68 *Whole Women's Health v. Hellerstedt*, Center for Reproductive Rights (last visited March 28, 2016), available at <http://www.reproductiverights.org/case/whole-womans-health-v-hellerstedt>.

69 *Id.*

70 *Id.*

for the safety of women seeking abortions.⁷¹ The real world effects of this requirement however, are it forces clinics to close. Many hospitals are Catholic and will refuse to sign an agreement with an abortion clinic. Medical experts also agree that having hospital admitting privileges for a modern abortion procedure is unnecessary.⁷² So far HB 2 has reduced the amount of abortion clinics in Texas from forty to nineteen, in a state that has 5.4 million women of reproductive age.⁷³ If HB 2 is upheld, the number of clinics will be closer to ten.⁷⁴

Yet again, those most affected are poor women. If there are only ten clinics in all of Texas and a woman does not live in the same town as one, she has very little choices. She would have to gather the almost \$500 it costs to get an abortion, plus transit to and from the clinic, hotel costs for at least one night, and possibly find child care for the entire time she is gone.⁷⁵ Many TRAP laws also require a one to two day waiting period, extending the amount of money wasted on a hotel. When a woman lives paycheck to paycheck this means she has to forego rent or groceries simply to exercise a fundamental right. That is the definition of an “undue burden.”

IV. Recommendations

We have to stop invoking the myth of the “welfare queen” to justify failed policies. The first step is to federally repeal all family cap policies. It is time to recognize this policy's critical part in propelling the cycle of poverty in this country. It is also time to recognize that poor women still have fundamental rights to shape their own families.

Second, we need to take judgement out of the picture and provide all types of family planning services to all women in this country. This includes not only federal and state financed contraceptives and abortion care, but also comprehensive sexual health education.

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*

75 *Cost of Abortion Services in the United States*, The Guttmacher Institute (last visited March 28, 2016), available at <http://www.guttmacher.org/in-the-know/abortion-costs.html>.

We also need our courts to stand up against laws that have the practical effect of denying a constitutional and human right. This means stopping the momentum of religious refusals and conducting a real life analysis of laws like the Hyde Amendment. Courts must look beyond the words on the brief in front of them and put themselves in the actual place of the poor woman. They have to ask what an undue burden actually looks like instead of analyzing in a vacuum.

V. Conclusion

The myth of the “welfare queen” is a racist trope that allows the continued punishment of poor single mothers. It allows policies like family caps, enacted under the guise of helping poor families, to in fact drive those families deeper into poverty. It allows the Hyde Amendment, which admits to targeting poor women for needing abortion care, to also drive those families deeper into poverty. Some states try to fill in these gaps, while others strengthen the web of laws that punish poor single motherhood.

When the facts show that a social experiment has failed, it is time to change the strategy. Our welfare system needs to change from punishing the poor into being successful, to supporting the poor into being successful. When it comes to single mothers, this means prioritizing respect for their bodily autonomy. Only starting with that perspective will yield results that actually lift families out of poverty while preserving women's basic human rights.