# Bringing Families out of ‘Cap’tivity: the Path Toward Abolishing Welfare Family Caps

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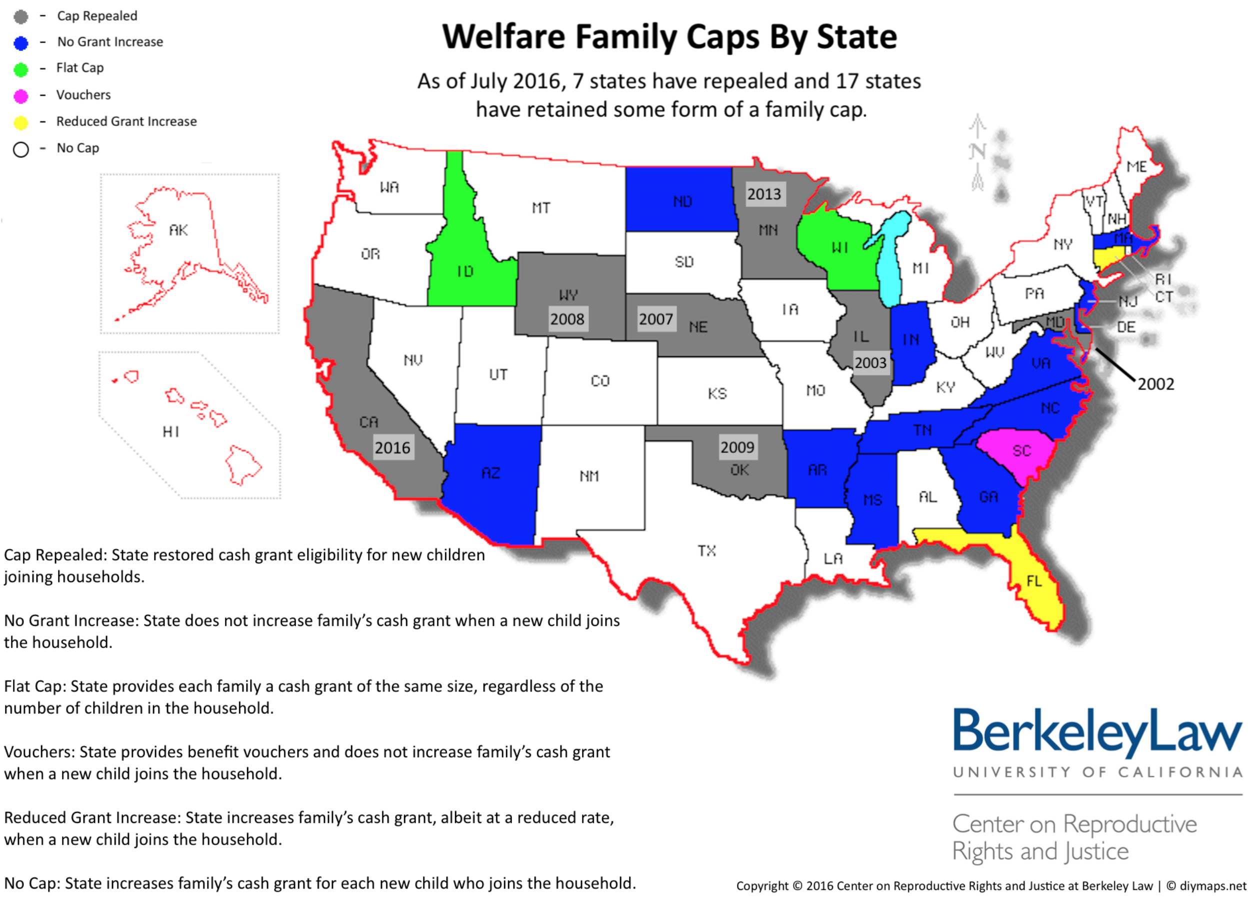
# Overview

For more than twenty years, states have tried and failed to curb childbearing among welfare recipients through the application of "Family Cap" policies, which deny additional cash aid to babies born into families already receiving cash assistance. [1]

At the height of their popularity in the 1990s, Welfare Family Cap (or "Family Cap") policies existed in twenty-four states.[2] As of 2016, seventeen states have some variation of a Family Cap in place. Of these seventeen states, twelve deny eligibility for basic needs cash grants to babies born into families already in receipt of this particular public benefit.[3] Two others, Connecticut and Florida, significantly reduce the grant size for a newborn with an older sibling(s). Idaho and Wisconsin provide a flat cash grant rate regardless of the size of the family.[4] South Carolina only gives a newborn additional assistance in the form of food and clothing vouchers.[5] Since 2002, seven states have repealed their Family Caps, including California, highlighted herein for its 2016 repeal victory.

Welfare Family Caps have failed to achieve their proponents' purported primary objective of lowering the number of children born into families receiving public assistance. Instead, these policies have exacerbated poverty, increasing food and housing insecurity and worsening health and social outcomes. They stem from, and have perpetuated, false stereotypes and racist myths about welfare beneficiaries, attempting to coerce reproductive decision-making in marginalized communities.

This issue brief outlines the pejorative purposes and punitive effects of Family Caps, highlights their repercussions for poverty, chronicles repeal efforts in other states, and discusses the need for their elimination nationwide.




## ORIGINS

Between 1992 and 2003, twenty-four states adopted Welfare Family Caps to discourage childbearing by welfare beneficiaries and to reduce the amount of money distributed to families receiving basic needs cash grants.[6] Most of these policies were enacted in the wake of so-called "welfare reform"[7] that ushered in a new federal cash aid program, Temporary Assistance for Needy Families (TANF). TANF permitted states to adopt Welfare Family Caps, which prevented or limited the would-be increase in cash assistance for additional children born into families in which any other member was already receiving assistance.[8]

## FAULTY PREMISES

A trifold set of inaccurate assumptions about welfare recipients commonly underlies Family Caps.[9] All are embedded in the idea that motivations of low income mothers are fundamentally driven by financial interests. First, welfare recipients are thought to have large families, though they bear the same number of children, on average, as parents in the general population.[10] Second, cash aid is assumed to incentivize childbearing[11] and disincentivize marriage.[12] Yet social science research demonstrates that welfare recipients do not, in fact, have additional children in order to receive the modest increase in their families' basic needs cash grant.[13] Finally, Family Cap supporters inversely believe that welfare recipients will stop bearing children if cash aid is denied.[14] However, multiple studies have revealed that Family Caps do not reduce childbearing by welfare recipients.[15] The only study to establish a correlation between Family Caps and lowered birthrates found the links only in states whose Medicaid programs covered abortions.[16]

## UNSUBSTANTIATED THEORY

The speedy adoption of Welfare Family Caps reflected an unsubstantiated theory about human behavior that numerous empirical studies have since decisively refuted. In the 1990s, economists and public policy makers popularized the theory broadly known as "rational actor theory."[17] In regard to welfare, this model claimed that welfare recipients weighed the costs of having a child against the benefits of public assistance when deciding whether or not to get pregnant or carry a pregnancy to term.[18]

Even at the time, considerable available evidence demonstrated that this model was deeply flawed.[19] Two empirical cases substantiated doubt with the model. First, if welfare disincentivized marriage and incentivized births that would otherwise not have occurred, one would expect to see higher birth rates and more children born to unmarried women in states with more generous cash assistance allowances during this period. Instead, however, states with more meager grants before passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) tended to have higher rates of childbearing to single mothers.[20] Second, if cash aid truly encouraged additional births, one would have expected the birth rate among unmarried welfare recipients to decrease between the 1970s and the 1990s, as the real value of cash grants declined considerably. Again, data do not support this. Finally, when considering research demonstrating that few welfare recipients, and often few caseworkers, are aware of Family Caps,[21] it seems unlikely that parents were ever making the kinds of strategic decisions around childbearing that some legislators imagine.

## STEREOTYPES

Although Family Cap policies are largely a product of 1990s welfare reform, the ideas behind them — that certain groups of people have children irresponsibly and, therefore, must have their reproduction controlled by authorities — are longstanding. Some scholars have likened Family Caps to the eugenic sterilization efforts at the beginning of the 20th century: "The [Family Cap] rule evolved from America's eugenic laws that once forced sterilization upon its [presumed] inferior and, therefore, reproductively unfit population."[22] People living in poverty, those with mental or physical disabilities, and disfavored racial minorities and immigrants have been targeted for forced sterilization or population control over the course of U.S. history.[23]

The characterization of poor people of color as irresponsible reproducers who were welfare-dependent[24] was so pervasive throughout the U.S., particularly during the 1960s and 1970s, that private physicians and state-funded programs forced or coerced tens of thousands of African-American,[25] Mexican-origin,[26] Native-American,[27] and Puerto Rican[28] women to undergo sterilization without their

*"The [Family Cap] rule evolved from America's eugenic laws that once forced sterilization upon its [presumed] inferior and, therefore, reproductively unfit population."*

***- Eric McBurney***

> *"The 'welfare queen' became a convenient villain, a woman everyone could hate."*
>
> ***- Josh Levin***

knowledge or consent.[29] For example, low-income Mexican-origin women were targeted for coercive sterilization in California when public concern arose from the perceived growth of a welfare-dependent class and media portrayals of women having crossed the border to receive welfare benefits.[30]

The 1970s also ushered in the trope of the "welfare queen." Although this phrase was coined to describe a forty-seven-year-old Chicago resident, Linda Taylor, who allegedly used as many as 80 aliases to receive cash assistance through fraudulent means, politicians later co-opted the term to describe any mother, particularly a black mother, who relies upon cash aid.[31] For example, during Ronald Reagan's 1976 unsuccessful presidential campaign, he described Taylor's welfare fraud as an epidemic of abuse of the federal benefits systems, rather than an aberrant anecdote.[32] Despite the fact that Taylor was "the kind of criminal who victimizes absolutely everyone," her story was effective at helping Reagan gain support for his plans to slash welfare spending.[33] "The 'welfare queen' became a convenient villain, a woman everyone could hate," wrote Josh Levin in an investigative report about Taylor.[34] "She was a lazy black con artist, unashamed of cadging the money that honest folks worked so hard to earn."[35] Politicians, the media, and the general public extrapolated from this singular, sensational story to create a stereotype so powerful that it fueled support for welfare reform efforts.[36] Twenty years later this stereotype continues to color public discourse about cash assistance programs.[37]

Misconceptions, disproven theories, and stereotypes about welfare recipients play a role in keeping these failed policies in place – despite their inefficacy.

# Results

Numerous researchers, organizations, and agencies have studied the effects of Welfare Family Caps, concluding they have failed to achieve their proponents' primary purported objective of lowering the number of children born to welfare recipients. While these policies have not reduced the birthrate of the affected populations, they have increased the poverty rate[38] – and with it, exacerbated the effects of poverty for capped children, their siblings, and their parents. By increasing poverty, Family Caps have had numerous negative effects on the economy as well.

## INFLUENCE ON CHILDBEARING

Numerous studies have shown that Family Caps have not lowered birth rates,[39] namely because welfare recipients do not have additional children in order to collect slightly more cash aid.[40] In addition, various personal values, familial conditions, and structural factors influence women experiencing both intended and unintended pregnancy. Not everyone is building their families according to carefully laid plans based on rational actor theory. In fact, approximately half of pregnancies in the U.S. are unintended.[41] Women living in poverty experience unintended pregnancy at a rate five times higher than do women at the highest income level.[42]

Abortion rates are also higher among poor women. The single study to find a correlation between Family Caps and lowered birthrates only established the links in the minority of states that use their Medicaid funds to cover abortion.[43] This makes sense, because a poor pregnant woman who cannot afford to pay for the costs of a child excluded from cash assistance may not be able to afford the out-of-pocket costs for an abortion either. Approximately one-quarter of pregnant women insured by Medicaid who seek but cannot afford an abortion will carry the pregnancy to term.[44] Two years later, these women will be three times more likely to be living in poverty than their similarly financially situated peers who were able to receive abortion care.[45]

> *"I don't know a woman — and I don't think she exists — who would have a baby for the sole purpose of having another $130 a month."*
>
> ***- State Senator Holly Mitchell (D)***

As for welfare recipients who do engage in family planning, studies show they are not basing their decisions on the presence or absence of Family Cap policies. Many cash aid recipients do not know the policies exist, and those who do are not motivated by the potential paltry increase in their monthly grant either to get pregnant or to carry a pregnancy to term.[46]

As mentioned earlier, families who receive public assistance and those who do not have the same average number of children: two.[47] However, they differ in *when* they have children. Compared to affluent women who are postponing their first births until later in the reproductive cycle, women living in poverty are more likely to have their first child earlier and to follow with the birth of their second child in relatively short order. Having limited means with which to pay for childcare, young women living in poverty correctly assess that they are more likely to be able to call upon reasonably healthy mothers and kin than will be the case later in life.

## IMPACT ON POVERTY

Despite public assistance programs, most welfare recipients live in dire poverty.[48] In the median state in 2015, a family of three received $429 in cash aid per month, putting them at 26% of the Federal Poverty Level;[49] in 14 states, such a family received less than $300 per month.[50] Even with the support of cash assistance, families frequently cannot afford to take care of their daily needs.[51] While the would-be increase in a capped family's cash grant is not enough to incentivize childbearing, much less enough to lift a family out of poverty, it does make a difference in the family's security and ability to function. Again, we look to California, where the newly reinstated aid will average $130 per additional child each month – enough to cover some newborn essentials, such as diapers and wipes.

### MONTHLY CASH GRANT FOR A FAMILY OF THREE IN STATES THAT RAISED BENEFIT LEVELS BETWEEN JULY 2014 AND JULY 2015

| | SOUTH CAROLINA | TEXAS | DISTRICT OF COLUMBIA | OHIO | NORTH DAKOTA | WASHING-TON | MONTANA | MARYLAND | WYOMING |
|---|---|---|---|---|---|---|---|---|---|
| TANF Benefits in U.S.D. | $277 | $281 | $434 | $473 | $486 | $521 | $586 | $636 | $652 |

When states withhold this much-needed cash assistance through Family Caps, they cause financially strapped parents to search desperately for ways to support their children on less per capita funding. One study found that Family Caps increase the poverty rate of children by 13.1%.[52] The impacts of this escalation are significant. Children who grow up in poverty are more likely to experience cognitive, emotional, and physical health challenges than children from affluent families.[53]

Children born into capped families face increased risks for homelessness and other hardships associated with extreme poverty. A 2006 study of 2,000 women in California assessed the impact of Family Caps, finding that, "[b]y every parameter of family security reported on, families with excluded children were less secure than families that had not been capped."[54] Mothers whose children had been capped reported higher levels of hardship and distress as well as higher levels of housing and food insecurity. They were also more likely to struggle with paying for transportation and utilities and had a significantly harder time providing diapers and clothing for their children.[55] Perhaps most disturbingly, women in capped families were more likely to have taken a child to the hospital in the preceding six months.[56] Infants and toddlers in

The cost of childhood poverty in the U.S. is $500 billion per year, nearly 4% of the GDP.

Family Caps have intensified the impact of poverty among mostly young, poor, single mothers and their children, making it difficult to survive and impossible to thrive.

Family Caps increase the poverty rate of children by 13.1%.

families that face grant reductions experience a 30% increase in hospitalization and a 90% higher risk of hospitalization when they visit the emergency room than infants and toddlers in families that receive full grants.[57]

Thus, available data show that Family Caps do not support the goals of the very cash assistance programs they modify. Rather than ameliorate the effects of poverty on children, they exacerbate child poverty and its repercussions.

## EFFECT ON THE ECONOMY

**Poverty Has Negative Economic Repercussions.**
By exacerbating poverty, Family Caps also have a negative impact on the economy. An analysis of research studies on poverty suggests that the cost of childhood poverty in the U.S. is $500 billion per year, nearly 4% of the gross domestic product (GDP).[58] Children raised in poverty are more likely to have low earnings and low work productivity in adulthood.[59] Some estimates suggest that childhood poverty reduces productivity and economic output by approximately 1.3% of the GDP every year.[60]

Further, researchers estimate that children who grow up in poverty are 1.3 times more likely to engage in criminal activity than their counterparts raised in only slightly more affluent circumstances,[61] raising the cost of crime by about 1.3% of the GDP. Childhood poverty has been associated with 40% of crimes committed by adults.[62]

Finally, children raised in poverty are at substantially higher risk for developmental challenges and health problems. Living conditions related to poverty increase the likelihood of being in a special education program by 4% among elementary and middle school students and 5% among high school students.[63] Childhood poverty is associated with poor health throughout life, which burdens the healthcare system and further reduces work productivity.

**Reducing Poverty Improves the Economy.**
In turn, reducing poverty could result in positive economic benefits that support the repeal of Family Caps. Doubling the income of families below the poverty line increases the subsequent adult earnings of children in those families by 30-40%.[64] The *timing* of additional income matters. Not unexpectedly, extra income early in a child's life is associated with more favorable outcomes, lower levels of aggression,

lower levels of unemployment, lower levels of early parenthood, and a range of other behavioral and cognitive outcomes.[65]

Additionally, a substantial portion of the cost invested in tax credits for poor families may be offset by long-term earnings gains. There is also evidence that investment in early childhood development programs can have economic benefits in terms of increased earnings when participating children join the workforce at 18.[66] As Harry Holzer et al. note: "…expenditures on effective poverty reduction policies can be viewed as public or social *investments,* which generate returns to society over time in the form of higher real GDP, reduced expenditures on crime and health care, reduced costs borne by crime victims and those in poor health, and more general improvements in everyone's quality of life."[67]

*Doubling the income of families below the poverty line increases the subsequent adult earnings of children in those families by 30-40%.*

# Advocacy

As criticism of Family Caps mounted around the turn of the century, advocates began to agitate for repeal of the failed policies through legislative and budgetary advocacy, as well as legal challenges. Since then, seven states have eliminated their Family Caps and four other states have considered doing so.[68] What follows is a synopsis of available information for each state known to have undergone repeal efforts at some point.

### KANSAS HALTED IMPLEMENTATION IN LIGHT OF LIFETIME LIMITS.

Kansas had planned to implement a Family Cap prior to enactment of the Personal Responsibility and Work Opportunity Reform Act of 1996, but decided not to do so in light of the new federally imposed time limitations.[69] TANF prevented a parent from receiving more than sixty months of assistance, which Kansas officials believed sent a strong signal about the temporary nature of welfare and sufficiently disincentivized childbearing.[70]

### INDIANA FAMILY BROUGHT UNSUCCESSFUL CLASS ACTION LAWSUIT.

In Indiana, a mother who received cash aid and her minor child brought a class action lawsuit against the state, arguing that the Family Cap policy was unconstitutional because it violated the equal protection and substantive due process clauses of the Constitution.[71] Because the Family Cap in Indiana does not deny benefits to the child if the child is living in a different house, the plaintiffs argued the Cap coerced parents into giving the children to another caretaker.[72] The Indiana Court of Appeals disagreed, holding “the State has a legitimate interest in encouraging welfare recipients to act responsibly in childbearing. The State does not deprive the Class of the right to have children; rather, it merely chooses not to subsidize the increased costs of an additional child.”[73] There have not been any further attempts to repeal the Family Cap in Indiana.

### ARIZONA REPEAL EFFORTS STYMIED BY VETO.

In 2001, the Arizona legislature introduced two bills to repeal the state’s Family Cap—the first was an unsuccessful bill to repeal the cap, and the second would have accomplished the repeal through the budget process. The unsuccessful stand-alone repeal bill, H.B. 2397, introduced by State Representative Mark Anderson (R) and co-sponsored by Representatives Dean Cooley (R) and Jeff Hatch-Miller (R), would have allowed an increase in cash assistance for any new child born, if the child’s parents married and agreed to participate in a communication skills program.[74] This bill was held in legislative committee and did not advance to a full vote of the legislature. The legislature subsequently approved an appropriations bill introduced by then-state Senator Mary Hartley (D), S.B. 1390,[75] as part of a larger package to reform the TANF program. Although this bill passed the state Senate by 22-7 and the House by 34-24, and received support from both the House Majority and Minority Party Caucuses,[76] then-Governor Jane Dee Hull (R) vetoed the bill. In her veto message, Governor Hull said she believed a strict budget on TANF funds would be more beneficial to families in crisis on welfare as caseloads increased and stated: "Embedded in the policies of welfare reform is the concept that individuals must accept at least some of the consequences of their own life choices, an idea I support."[77] A number of legislators from both chambers led an attempt to override the veto, but this effort failed.[78]

## NORTH DAKOTA ADVOCATES INTRODUCED UNSUCCESSFUL BILL.

In 2001, North Dakota State Senator Aaron Krauter (D) authored a bill with Senator Tim Mathern (D). The bill would have eliminated the state's Family Cap, but it failed to pass the Budget Committee.[79]

## MARYLAND WAS THE FIRST STATE TO REPEAL ITS FAMILY CAP.

Maryland was the first state to repeal its Family Cap. In October 2002, Maryland began allowing counties to opt out of its "child-specific benefit," and all of them chose to opt out.[80] Because the state issued vouchers instead of cash assistance distributed through a third party, the program was costly and burdensome.[81] The voucher program also sent the message to welfare families that the state did not believe that families on welfare could be financially responsible, thus propagating dependence on the programs instead of encouraging independence from welfare.[82] After every county opted out of the "child-specific benefit," the legislature did not renew the Family Cap policy in 2004.[83]

## ILLINOIS REPEALED ITS FAMILY CAP SECOND.

Illinois began its repeal process in 2003 after a General Accounting Office study showed that the Family Caps were not only ineffective but harmful, because they deepened poverty.[84] In order to avoid a sharp budget increase, the Illinois legislature voted to phase out the Family Cap over the course of four years.[85] The Illinois repeal bill, H.B. 3023, was introduced by State Representatives Sara Feigenholtz (D), Mary E. Flowers (D), Barbara Flynn Currie (D), and then-State Representative Constance A. Howard (D), as well as State Senators Iris Y. Martinez (D), Senator Christine Radogno (R), Senator Mattie Hunter (D), Senator Jacqueline Y. Collins (D), and then-State Senator Barack Obama.[86] Starting in August 2003, the Family Cap no longer applied to new children born into families receiving cash assistance.[87] As the state freed up funds, it restored eligibility for older children in families that had previously been subject to the Family Cap. Once all funding had been restored in July 2007, the program ended entirely.[88]

## NEBRASKA ADVOCATES ATTEMPTED REPEAL THROUGH LEGAL AND LEGISLATIVE MEANS.

Unmarried mothers in Nebraska brought a successful class action lawsuit to prevent the Family Cap from applying to families in which no adult was employable due to a disability.[89] The court stated, "the Family Cap serves to promote a transition from public assistance to economic self-sufficiency, [so] there is little to be gained in applying the Family Cap to families who receive non-time-limited assistance because full self-sufficiency is unrealistic."[90] In 2007, then-State Senators Arnie Stuthman (R) and Philip Erdman (R) introduced L.B. 351 and the legislature passed the bill, repealing the state's Family Cap due to the policy's failure to achieve the desired results.[91]

> *"Such a [Welfare Family Cap] limitation serves to equalize treatment of Work First recipients and other residents of the State who do not automatically receive higher incomes following the birth of a child."*
>
> ***- New Jersey Governor Chris Christie (R)***

### WYOMING REPEALED ITS FAMILY CAP TO MAXIMIZE FEDERAL FUNDS.

In 2008, then-State Representative Marty Martin (D) introduced legislation to repeal the Family Cap. The bill sailed through the House and passed in the Senate on the basis that the state could use existing TANF funds to cover the costs of cash grant increases to families that had been capped.[92]

### OKLAHOMA REPEALED ITS FAMILY CAP TO SAVE ADMINISTRATIVE COSTS.

In Oklahoma, State Senator Patrick Anderson (R) and then-State Representative Ron Peters (R) met little opposition in passing S.B. 292 in 2009.[93] The Department of Human Services had requested the bill's introduction in order to save the $6,000 a year it cost to issue vouchers and warrants under the Family Cap's requirements.[94] The policy was unsuccessful and too costly to maintain.[95]

### MINNESOTA REPEALED FAMILY CAP TO RELIEVE FAMILIES OF FINANCIAL STRAIN.

Minnesota was the 24th state to implement a Family Cap in 2003. Then-State Representative Neva Walker (DFL) authored the first repeal bill in 2008 with support from then-State Representatives Paul Thissen (DFL), Thomas Huntley (DFL), Mary Ellen Otremba (DFL), and Larry Hosch (DFL).[96] The first bill died in committee, but five years later another bill succeeded. [97] State Senator Tony Lourey (DFL) and then-State Representatives Thomas Huntley (DFL), John Ward (DFL), and current State Representatives Rena Moran (D), Jason Isaacson (DFL), and Diane Loeffler (DFL) authored a bill to repeal the Family Cap through the state's budget process.[98] A broad-based coalition of organizations supported the effort, motivated by an array of values-based concerns.[99] The primary motivation for advocates fighting for repeal was the policy's failure to affect birth rates while adding financial strain to families living in poverty.[100]

### NEW JERSEY ADVOCATES SOUGHT FAMILY CAP ELIMINATION THROUGH VARIOUS MEANS.

New Jersey's advocates have attempted to repeal its Family Cap through legislative advocacy and litigation. In 1998, legislators in both the Assembly and Senate introduced the state's first bills to repeal New Jersey's Family Cap. These bills were introduced in the state's lower house by then-State Assemblymembers Charlotte Vandervalk (R), who chaired the Assembly Health Committee, and Joan Quigley (D),[101] and in the upper house by State Senator Diane Allen (R),[102] which died in committee before being reintroduced several times between 2000 and 2004.[103] Legislative repeal efforts revived in 2016, when State Senators Joseph Vitale (D) and Ronald Rice (D) and State Representatives Elizabeth

Maher Muoio (D) and Valerie Huttle (D) introduced legislation to eliminate the Family Cap from New Jersey's WorkFirst program.[104] Both houses of the state legislature approved, but Governor Chris Christie (R) vetoed the repeal.[105]

In addition to their legislative repeal efforts, New Jersey advocates challenged the Family Caps through litigation in the early 2000s. However, in 2003, both state and federal courts upheld New Jersey's Family Cap against class action lawsuits. In *Sojourner A. v. New Jersey Department of Human Services*, the Supreme Court of New Jersey held that the state's Family Cap did not violate the equal protection or due process guarantees of the state constitution.[106] The same year, in *C.K. v. Department of Human Services*, the Third Circuit Court of Appeals affirmed a lower court opinion holding that the Family Cap did not violate the federal constitution or various statutory and regulatory requirements.[107]

## CALIFORNIA REPEALED ITS FAMILY CAP THROUGH THE BUDGET APPROVAL PROCESS.

California legislators introduced five bills to limit or eliminate their state's Family Cap between 2007 and 2015. Finally, in 2016, the policy was repealed through the budget approval process.  Below, we offer an in-depth look at the history of attempts, failures, and ultimate success in the state that most recently rid itself of a Family Cap.

*"It wasn't my plan to be on welfare. It wasn't my plan to have kids when I did, but then I got pregnant while in an abusive relationship with my fiancée. The MFG rule made it much more difficult to leave welfare and make it on my own."*

***- Vivian Thorp***

# Featured State: California

In 2016, advocates in California finally were successful in removing the state's Family Cap. It was a long and winding road to get there.

## HISTORY

The California Work Opportunity and Responsibility to Kids (CalWORKs) program provides basic needs cash grants to poor families to lessen the detrimental impact of poverty on children. CalWORKs serves 3.3% of the state's population, just a fraction of the 16.4% of Californians who live below the federal poverty level.[108] From 1996 until 2016, CalWORKS included the Maximum Family Grant Rule (MFG rule), which denied cash assistance to a child born into a family in which any parent or child was receiving cash aid ten months before the child's birth.

The MFG rule came into existence through a circuitous route. Before TANF, the federal Aid to Families With Dependent Children (AFDC) program prohibited states from adopting eligibility criteria on the basis of behavioral factors like reproductive choices.[109] However, AFDC authorized the Department of Health and Human Services (HHS) to waive requirements for states experimenting with welfare reform, conditional on states' compliance with reporting and evaluation requirements.[110] By the time PRWORA was enacted in 1996, HHS had waived this particular prohibition on eligibility criteria for twenty states, if you include the provisional waiver received by California.[111] California never obtained a final waiver approval from the federal government, as its Department of Social Services failed to comply with HHS's requests to limit the MFG rule to adult parents only, and to evaluate the waiver's impact on children's well-being.[112] Without a federally approved waiver, California passed its MFG rule in Assembly Bill 473 in 1994, introduced by then-State Senator James L. "Jim" Brulte (R).[113] The controversial rule initially failed as a ballot proposition, but eventually passed as part of a leveraged budget agreement.[114] the MFG rule still could not be implemented. With the passage of PRWORA, however, Congress allowed states to apply child exclusions without a federal waiver,[115] and, despite never having received the waiver required by AB493's implementing language, California's Director of Social Services under the Pete Wilson Administration, Eloise Anderson, began implementation of the MFG rule and denying aid to children.[116]

## EXEMPTIONS

The MFG rule had a few exemptions. Among them, California was the only state to exempt children conceived as the result of contraceptive failure.[117] However, to qualify for the exemption, the pregnancy must have occurred while a woman was using one of a few approved methods of birth control: Norplant (unavailable in the United States since 2002), an intrauterine device, Depo-Provera, or sterilization of either parent. Notably, each of these contraceptives is a long-acting method a woman cannot insert or remove at will, and, in the case of sterilization, is permanent. In other words, women on public assistance were faced with deciding whether to utilize long-term or permanent birth control, or risk becoming pregnant with a child who would not be covered by CalWORKs.

Beyond coercing women to use certain contraceptive methods, these exemptions also invaded the personal privacy of mothers, particularly those who were forced to decide between disclosing personal information and going without cash aid for their newborns. For example, another exemption to the MFG rule existed for children conceived as the result of incest or rape. However, in order to qualify her child for assistance, the woman had to report the sexual assault to a medical professional or law enforcement agent within 12 months of the rape.

## LEGISLATIVE REPEAL EFFORTS

California advocates mounted several legislative attempts to repeal the MFG rule. The first significant campaign against the MFG was the Provide for Every Child bill (A.B. 22) of 2007,[118] which was introduced by Assemblymember Sally Lieber (D) and co-authored by Assemblymember Loni Hancock (D). It aimed to remove the MFG rule on the grounds that a legislative act excluding poor children from receiving necessary assistance was not in the best interests of children. A.B. 22 failed to pass the state's Appropriations Committee or to receive a full vote of the legislature.[119] As this bill made its debut at the beginning of the Great Recession, advocates believe budget concerns were the likely reason for this bill's failure.[120]

In 2011, Assemblymember Mariko Yamada (D) introduced A.B. 833, which would have revised the exemptions to the MFG rule to include newborns with disabilities.[121] Budget concerns also killed this bill and stymied Yamada's efforts to expand the MFG rule exemptions.[122]

In 2013, then-Assemblymember Holly Mitchell (D)[123] announced the first of three very similar bills she would ultimately author in her well-supported multi-year campaign against the MFG rule.[124] A.B. 271 sought to repeal the MFG rule and reinstate eligibility for all minor children who had been excluded. The bill died in committee after receiving support from several prominent Democrats, including the Chair of the Senate Budget Committee, Senator Mark Leno (D).[125] The following year Mitchell was elected to the California Senate, where she authored S.B. 899, which was nearly identical to A.B. 271 and met a similar fate;[126] however, now-Senator Mitchell and a broad-based coalition campaign were gaining traction – garnering bipartisan support, editorial endorsements, and prioritization by the California Legislative Women's Caucus.[127]

Not to be dissuaded from achieving her top policy goal, Senator Mitchell introduced a third bill designed to repeal the MFG rule in 2015. While S.B. 23 carried the same content and objectives as the bills she had previously authored, it attracted the attention of a much larger and more diverse group of supporters. Legislators on both sides of the aisle made impassioned speeches about the racist, classist, and sexist nature of the MFG rule and its devastating consequences in a state that already suffered the nation's highest rate of poverty. Advocates uplifted ethnographic data collected by the California Department of Social Services to point out that among MFG-impacted households, 57 to 60% were Latina and 17 to 24% were African-American.[128] Major media outlets endorsed the bill, more than 130 organizations signed on in support, and hundreds of impacted families, advocates, and community members attended hearings to voice their support.[129] In addition, advocates gathered 12,000-plus signatures from Californians supporting repeal.[130] S.B. 23 easily earned bi-partisan support in Senate committees and later on the Senate floor.[131] It moved on to the

Assembly, passing out of committees[132] and receiving no opposition from the Legislative Budget Office – despite the bill's $220 million price tag. The state's economy had been improving, and the support for repeal gaining momentum as it headed to the Assembly floor for a vote in the summer of 2015. At that point, Governor Jerry Brown and State Senator Mitchell met and decided to transform S.B. 23 into a two-year bill, meaning the Assembly vote would be delayed until the next year. While budget advocacy ultimately rendered the MFG rule language inoperative, State Senator Mitchell will move S.B. 23 to a vote by the Assembly in order to remove the offensive language from the statute entirely.

## BUDGET ADVOCACY

In tandem with legislative efforts to repeal the MFG Rule, advocates in California pursued a budget strategy to repeal the MFG rule through the appropriations process. Despite surging support and targeted advocacy, the Governor did not include funds to cover the costs of the MFG repeal in his proposed January 2016 budget.[133] Advocates continued to put pressure on the leadership of both houses to include the needed funds in their respective bodies' May revised budgets, and they did.[134] In June 2016, Governor Brown approved the California Budget Act of 2016. The $220 million increase in the 2017 budget will restore funding for 130,000 children who had been excluded from CalWORKS, making the lift a little lighter for 95,000 families who will now receive an extra $130 per month for each child.[135] Budget trailer bill A.B. 1603 accomplished everything S.B. 23 sought to do and will go into effect January 1, 2017.[136]

# Observations

Below we highlight characteristics of several successful Family Cap repeal efforts that may heighten success.

**Perseverance.** Introducing bills several years in a row, may allow a repeal campaign to build enough visibility and momentum to garner adequate support from the public, media, and elected officials.

**Research.** Conducting multidisciplinary research to uncover critical data and produce scholarship that can be translated and disseminated to various audiences through advocacy materials, social media, and opinion pieces could bolster advocacy efforts in the states where Family Caps remain.

**Analysis.** Applying a critical lens to explain the racist, sexist, classist origins of Family Caps and using data to demonstrate their disparate impacts on immigrants and communities of color could help to reveal their inherent, incurable problems and persuade people of the need to eliminate them.

**Coalitions.** Working in coalition allows advocacy groups to spread costs, share resources, and demonstrate strength in both numbers and diversity of interests and identities.137

**Budget.** Pursuing a strategy to repeal the Family Cap through the state's budget process in tandem with a legislative strategy may help to give cover to legislators from marginal districts who might otherwise feel obligated to vote no on a repeal. The appropriations process may facilitate repeal of Family Caps since it does not require an up-or-down vote from legislators on the specific policy. Additionally, given that the initial fiscal impact of a repeal can be high, pursuing a budget strategy can eliminate roadblocks in the legislative appropriations arena because there is a clear source for the funding.

**Option.** Rather than pushing for a full statewide repeal, allowing counties to decide whether to retain or repeal the Family Cap may prompt rejection sufficient to nullify, and eventually eliminate, the policy statewide.

**Pace.** Phasing out the Family Cap over time may mitigate the fiscal impact and make it more appealing to elected officials.138

**Convening.** Bringing together economic and reproductive justice advocates from all 24 states that have had a Family Cap could facilitate exchange of information, ideas, strategies, and tactics to enhance collaboration and reinforce future repeal efforts.

# Conclusion

The Welfare Family Cap is a form of population control that attempts to limit the number of children born into families receiving public aid by denying benefits to newborns. Across the states and throughout the years, these policies have failed to reach their proponents' aims of disincentivizing childbearing and reducing the size of families receiving cash assistance.

Family Caps have intensified the impact of poverty among mostly young, poor, single mothers of color and their children, making it difficult to survive and impossible to thrive. By driving families deeper into poverty, these policies destabilize housing and food security while threatening the health and well-being of the poorest children. Exemptions to the rule, though intended to mitigate its effects on certain families, work to exacerbate the coercive qualities of the Family Caps in practice.

In addition to their harmful material effects, Family Caps also cause symbolic harm by perpetuating the devaluation of parenthood among people of color and people living in poverty. Rooted in racist, classist, and sexist sentiments and based on unproven theories of behavior modification, these policies divert attention from our nation's real, structural sources of inequality and poverty.

The recent success in California may provide hope for struggling families and fodder for advocates in other states to ignite or revive their own repeal efforts. Welfare Family Caps, which attempt to coerce reproductive behavior and, in failing to do so, punish poor parents and children, must be eliminated everywhere they exist.

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# Endnotes

[1] Office of the Assistant Secretary for Planning and Evaluation, *Table III: Family Cap Policies by State*, U.S. Department of Health and Human Services (Dec. 3, 2012), http://aspe.hhs.gov/hsp/isp/waiver2/table3.htm.

[2] *Id.*

[3] *Family Cap Policies*, National Conference of State Legislatures (July 2009), http://www.ncsl.org/research/human-services/welfare-reform-family-cap-policies.aspx.

[4] Some studies do not include the flat rates among their overall counts of states with Welfare Family Caps, accounting for the discrepancies between there being 15 or 17 overall. This paper includes the flat rate policies, because they share common purposes and effects with the other Family Caps; *see* Wendy Tanisha Dyer and Robert W. Fairlie, *Do Family Caps Reduce Out of Wedlock Births? Evidence From Arkansas, Indiana, Georgia, New Jersey and Virginia*, (Dec. 2003), Yale University Economic Growth Center Discussion Paper No. 877, http://ssrn.com/abstract=487488.

[5] Prior to the repeal of its Family Cap in 2009, Oklahoma, like South Carolina, only gave newborns additional assistance in the form of food and clothing vouchers.

[6] Jodie Levin-Epstein, *Lifting the Lid Off the Family Cap: States Revisit Problematic Policy for Welfare Mothers*, in CLASP Policy Brief: Childbearing and Reproduction Health Series Brief No. 1, at 3 (2003).

[7] Personal Responsibility and Work Opportunity Reform Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996).

[8] *Id.* Temporary Assistance for Needy Families was authorized by PRWORA.

[9] *Hearing on S.B. 899 Before the S. Comm. on Health and Hum. Servs.*, 2013-2014 Leg. Sess. (Cal. 2014) (statement of Jill E. Adams, Executive Director, Center on Reproductive Rights and Justice).

[10] For example, most families participating in CalWORKs, California's cash assistance program, have one or two children, a figure that is consistent with the birthrate of the state's general population. Caroline Danielson, *California's Welfare Recipients: Family Circumstances, Income, and Time on Aid among CalWORKs Families*, Public Policy Institute of California 11 (2012).

[11] *See* Eric McBurney, *So Long as Lawmakers Do Not Use the N-Word: The Maximum Family Grant Example of How the Equal Protection Clause Protects Racially Discriminatory Laws*, 14 J. of Gender Race & Just. 497 (2011); Dorothy Roberts, Killing the Black Body: Race, Reproduction, and the Meaning of Liberty, (Vintage Books ed., Random House 1997) (1956); Rebekah J. Smith, *Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences*, 29 Harvard Journal of Law & Gender 151, 191 (2006); Elena R. Gutiérrez, *Policing 'Pregnant Pilgrims': Situating the Sterilization Abuse of Mexican-Origin Women in Los Angeles County*, in Women, Health, and Nation: Canada and the United States since 1945 (Georgina Feldberg, Molly Ladd-Taylor & Alison Li eds. 2003) [hereinafter Gutiérrez, *Policing 'Pregnant Pilgrims'*].

[12] During Congressional debates of federal welfare reform, then-Representative George Radanovich (R) of California said that increasing aid for additional children would be "perverse," "usurp the role of husbands," and "drive men away from their families." *See* Ange-Marie Hancock, *The Politics of Disgust: The Public Identity of the Welfare Queen* 99 (2004).

[13] Smith, *supra* note 11, at 191.

[14] Diana Romero and Madina Agenor, *US Fertility Prevention as Poverty Prevention: An Empirical Question and Social Justice Issue*, 19 Women's Health Issues 361 (2009).

[15] Michael Camasso, *Family Caps, Abortion and Women of Color: Research Connection and Political Rejection*, (2007); Wendy T. Dyer and Robert W. Fairlie, *Do Family Caps Reduce Out-of-Wedlock Births? Evidence from Arkansas, Georgia, Indiana, New Jersey and Virginia*, 23 Population Research and Policy Review 441 (2004) [hereinafter Dyer and Fairlie, Population Research and Policy Review]; U.S. Gov't Accountability Off., GAO-01-924, *Welfare Reform: More Research Needed on TANF Family Caps and Other Policies for Reducing Out-of-Wedlock Births* 21 (2001); Ted Joyce et al., *Family Cap Provisions and Changes in Births and Abortions*, 23 Population Research and Policy Review 475 (2004); Melissa S. Kearney, *Is There an Effect of Incremental Welfare Benefits on Fertility Behavior? A Look at the Family Cap*, 39 Journal of Human Resources 295 (2004).

[16] Michael J. Camasso & Radha Jagannathan, *How Family Caps Work: Evidence from a National Study,* 83 *Social Service Review* 389 (2009).

[17] With its intellectual roots in Jeremy Bentham's 19th century utilitarianism, this theory posits that humans examine the perceived costs of a given behavior, weigh those costs against the expected benefits of that action, and engage in a fundamentally mathematical enterprise that leads people to thoughtfully choose the most beneficial and least "expensive" option among those available to them.

[18] Tonya L. Brito, *The Welfarization of Family Law*, 48 U. Kan. L. Rev. 229, 242 (2000).

[19] Although not entirely relevant to our inquiry here, we should note that prominent economists and public policy experts no longer endorse the model of a rational human actor. The emerging field of "behavioral economics" has replaced "rational actor theory," and proven beyond the shadow of a doubt that humans are not efficient calculating machines that compare costs and benefits, but rather real human beings located in a particular social milieu with hopes, fears, emotions and an astonishing array of cognitive biases. *See* Dan Ariely, *Predictably Irrational: The HIdden Forces That Shape Our Decisions* (revised and expanded ed., 2010).

[20] Robert D. Plotnick, *Welfare and out-of-wedlock childbearing: Evidence from the 1980s,* 52 J. Marriage & Fam. 735, 735-46 (1990).

[21] Kaaryn S. Gustafson, *The Criminalization of Poverty,* 99 J. Crim. L. & Criminology 643 (2008-2009) (citing generally to Kaaryn S. Gustafson, *The Morality and Rationality of Welfare* (Spring 2004) (unpublished Ph.D. dissertation, University of California–Berkeley))

[22] McBurney, *supra* note 11, at 532; Janet Simmonds, *Coercion in California: Eugenics Reconstituted in Welfare Reform, The Contracting of Capacity, and Terms of Probation*, 17 Hastings Women's L. J. 269 (2006).

[23] Alexandra Minna Stern, *Sterilized in the Name of Public Health: Race, Immigration, and Reproductive Control in Modern California*, 95 Am. J. Pub. Health 7, 15 (July 2005).

[24] Khiara Bridges, *Reproducing Race: An Ethnography of Pregnancy as a Site of Racialization* (2012); Elena R. Gutiérrez, *Fertile Matters: The Politics of Mexican-origin Women's Reproduction* (2008) [hereinafter Gutiérrez, *Fertile Matters*]; Iris Lopez, *Matters of Choice: Puerto Rican Women's Struggles for Reproductive Freedom* (2008).

[25] *Relf v. Weinberger,* 372 F.Supp 1196 (D.D.C.1974).

[26] *Madrigal v. Quilligan,* 639 F.2d 789 (D.C. Cir. 1981).

[27] Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, 24:2 American Indian Culture and Research Journal 1, 6-7 (2000).

[28] Harriet B. Presser, *The Role of Sterilization in Controlling Puerto Rican Fertility*, 23 Population Studies 343, 343-361 (1969).

[29] Gutiérrez, *Fertile Matters*, *supra* note 24, at 14-34; Gutiérrez, *Policing 'Pregnant Pilgrims'*, *supra* note 11, at 379–403; Silliman et al., *Undivided Rights: Women of Color Organizing for Reproductive Justice* at 118-120 (2004).

[30] Gutiérrez, *Fertile Matters*, *supra* note 24, at 109-122; Gutiérrez, *Policing 'Pregnant Pilgrims'*, *supra* note 11, at 379-403.

[31] *Welfare and Pension Swindle Laid to Woman of Many Aliases*, N.Y. TIMES, Dec. 15, 1974, at 58; *Chicago Relief 'Queen' Guilty,* N.Y. TIMES, Mar. 19, 1977, at 8.

[32] *'Welfare Queen' Becomes Issue in Reagan Campaign*, N.Y. Times (Feb. 14, 1976), http://www.nytimes.com/1976/02/15/archives/welfare-queen-becomes-issue-in-reagan-campaign-hitting-a-nerve-now.html.

[33] Josh Levin, *The Welfare Queen*, Slate (Dec. 19, 2013), http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html.

[34] *Id.*

[35] *Id.*

[36] Hancock, *supra* note 12, at 6-8.

[37] *See* Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 Calif. L. Rev. 1649, 1665 (2005); Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (1996).

[38] Signe-Mary McKernan & Caroline Ratcliffe, *The Effect of Specific Welfare Policies on Poverty*, The Urban Institute, 19 (April 2006), http://webarchive.urban.org/UploadedPDF/411334_welfare_policies.pdf.

[39] *See* Michael Camasso, *Family Caps, Abortion and Women of Color: Research Connection and Political Rejection* 127-28 (2007); Dyer and Fairlie, Population Research and Policy Review, *supra* note 15 at 441; U.S. Gov't Accountability Off., *supra* note 15, at 469; Joyce et al., *supra* note 15 at 503 ; Kearney, *supra* note 15, at 325; Romero & Agenor, *supra* note 13, at 364.

[40] Smith, *supra* note 11, at 191.

[41] Kathryn Kost, *Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends Since 2002*, Guttmacher Institute (2015), https://www.guttmacher.org/sites/default/files/report_pdf/stateup10.pdf.

[42] *Id.*

[43] Camasso & Jagannathan, *supra* note 16, at 428.

[44] Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 Guttmacher Pol. Rev. 1, 16 (2007) ("Studies published over the course of two decades looking at a number of states concluded that 18–35% of women who would have had an abortion continued their pregnancies after Medicaid funding was cut off.")

[45] Reproductive Health Technologies Project, *Two Sides of The Same Coin: Integrating Economic and*

*Reproductive Justice* (August 2015), http://rhtp.org/abortion/documents/TwoSidesSameCoinReport.pdf.

[46] See e.g., Gustafson, *supra* note 20, at 647.

[47] Danielson, *supra* note 10, at 11; *see also* Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 Yale L.J. 719 at 737-738 (1992).

[48] Linda Burnham & Anisha Desai, *California's Child Exclusion Law Attacks Women and Children's Rights*, 16 Race, Poverty & The Environment 38 (2009).

[49] Office of the Assistant Secretary for Planning and Evaluation, *HHS Poverty Guidelines for 2016*, U.S. Dept. of Health and Human Services, https://aspe.hhs.gov/poverty-guidelines (last accessed Feb. 2, 2016).

[50] Ctr. on Budget and Pol'y Priorities, *Chart Book: TANF at 19* 8 (March 29, 2016), http://www.cbpp.org/sites/default/files/atoms/files/8-22-12tanf-rev8-20-15tanf-chartbook.pdf.

[51] *Id.*

[52] McKernan & Ratcliffe, *supra* note 38, at 19.

[53] American Psychological Association, *Effects of Poverty, Hunger, and Homelessness on Youth and Children*, http://www.apa.org/pi/families/poverty.aspx (last accessed Apr. 12, 2015).

[54] Burnham & Desai, *supra* note 48, at 38.

[55] *Id.*

[56] *Id.* at 39.

[57] Joyce et al., *supra* note 15, at 511.

[58] Harry J. Holzer et al., *The Economic Costs of Poverty in the United States: Subsequent Effects of Children Growing Up Poor* (January 24, 2007), https://cdn.americanprogress.org/wp-content/uploads/issues/2007/01/pdf/poverty_report.pdf.

[59] Susan E. Mayer, *Revisiting an Old Question: How Much Does Parental Income Affect Child Outcomes?* 27 University of Wisconsin–Madison Institute for Research on Poverty: Focus 1, 21-24 (2010).

[60]Holzer, *supra* note 58, at 10.

[61] *Id.* (citing David Bjerk, *Youth Criminal Participation and Household Economic Status*, Department of Economics Working Paper, McMaster University (2004)).

[62] Holzer, *supra* note 58, at 19 (citing Christopher Jencks and Laura Tach, *Would Equal Opportunity Mean More Mobility?, in* Mobility and Inequality: Frontiers of Research from Sociology and Economics (Stephen L. Morgan et al. eds., 2006)).

[63] Holzer, *supra* note 58, at 21 (citing US Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *25th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2005)).

[64] Holzer, *supra* note 58, at 10.

[65] *Id.* at 15.

[66] The White House, *The Economics of Early Childhood Investments* (December 2014), https://www.whitehouse.gov/sites/default/files/docs/early_childhood_report1.pdf (citing Art Rolnick and Rob Grunewald, *Early Childhood Development: Economic Development with a High Public Return*, The Region, 17(4): 6-12 (2003)).

[67] Holzer, *supra* note 58, at 10 (emphasis in the original).

[68] To identify the seven states that have successfully repealed welfare caps, the four states that have proposed repeals, as well as the strategies advocates used in repeal efforts, we conducted original research using legislative databases, news databases, and by conducting interviews with advocates and legislators between May 2015 and July 2016.

[69] Smith, *supra* note 11, at 153.

[70] *Id.*

[71] *N.B. v. Sybinski*, 724 N.E.2d 1103, 1110 (Ind. Ct. App. 2000).

[72] Kelly J. Gastley, *Why Family Cap Laws Just Aren't Getting It Done*, 46 Wm. & Mary L. Rev. 373, 398 (2004).

[73] *N.B.,* 724 N.E.2d at 1110 (2000).

[74] H.B. 2397, 45th Leg., 1st Reg. Sess. (Ariz. 2001).

[75] S.B. 1390, 45th Leg., 1st Reg. Sess. (Ariz. 2001) (transmitted to Governor on May 3, 2001).

[76] *See Bill Status Overview: SB 1390*, Ariz. St. Leg., https://apps.azleg.gov/BillStatus/BillOverview.

[77] Gov. Jane Dee Hull, Veto Message for Senate Bill 1390 (May 8, 2001), http://www.azleg.gov//govLettr/45leg/1R/SB1390.DOC.htm; *see also "Family Cap" Decapitated and Reinstated*, CLASP Update (Ctr. for Law & Soc. Policy, Wash., D.C.), June 2001, at 16.

[78] *Id.*

[79] *Coordination of Healthy Steps and Medicaid Programs*, North Dakota Legislative Council for the Budget Committee on Health Care (August 2001), http://www.legis.nd.gov/files/resource/committee-memorandum/39041.pdf?20150805153540.

[80] Jodie Levin-Epstein, 16 *Repealing the Family Caps in Illinois: An Interview with Wendy Pollack*, Center for Law and Social Policy 5 (2003) [hereinafter Levin-Epstein, *Interview with Wendy Pollack*].

[81] *Id.*

[82] *Id.*

[83] *Liberals Applaud Maryland Ending Welfare Family Caps*, Washington Times, Jan. 10, 2014, http://www.washingtontimes.com/news/2004/jan/10/20040110-113949-1685r/.

[84] *See* U.S. Gov't Accountability Off., *supra* note 15; Levin-Epstein, *Interview with Wendy Pollack,* note 80.

[85] H.B. 3023, 93rd Gen.Assemb., Reg. Sess. (Ill. 2003). For full vote count on the bill, see http://ilga.gov/legislation/votehistory/93/senate/09300HB3023_05272003_009000T.pdf. *See also Bill Status Overview: H.B. 3023*, Ill. Gen. Assemb., http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3023&GAID=3&DocTypeID=HB&LegId=5596&SessionID=3

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Mason v. State,* 672 N.W.2d 28, 33 (2003).

[90] *Id.*

[91] L.B. 351, 100th Leg., 1st Reg. Sess. (Neb. 2007); *Hearing on L.B. 82 Before the Comm. on Health and Hum. Servs.*, 100th Leg., 1st Reg. Sess. (Jan. 17, 2007), http://www.nebraskalegislature.gov/FloorDocs/100/PDF/Transcripts/Health/2007-01-17.pdf (portions of L.B. 82 were amended and adopted into L.B. 351). *See also* Diana Romero & Liza Fuentes, *The Welfare Family Cap Policy: Fertility Restriction as Poverty Prevention*, Different Takes Issue Paper Series, Population and Development Program, Hampshire College 66 (2010) (Reporting on the Family Cap's null effect on women's reproductive behavior and summarizing empirical evidence in a variety of studies indicating that the Family Cap is ineffective).

[92] H.B. 59, 59th Leg., Budget Sess. (Wyo.2008); for a fiscal analysis of H.B. 59, see http://legisweb.state.wy.us/2008/Fiscal/HB0059.htm.

[93] S.B. 292, 52nd Leg., (Okla. 2009); for legislative history and analysis of the bill, see https://legiscan.com/OK/bill/SB292/2010.

[94] *Id.*

[95] *Id.*

[96] The DFL is the Democratic-Farmer-Labor Party of Minnesota, which is closely aligned with the Democratic Party.

[97] H.F. 3618, 85th House Leg., (Minn. 2008).

[98] H.F. 1233, 88th House Leg., (Minn. 2013). Although this repeal effort was accomplished through an omnibus budget bill, legislators had previously introduced a stand-alone bill to accomplish this repeal. H.F. 256, 88th House Leg. (Minn. 2013), https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0256&ssn=0&y=2013. Advocates had pushed to move up the implementation of this repeal from 2014 to 2015, but this effort was not successful. H.F. 2678, 88th House Leg., (Minn. 2014), https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF2678&ssn=0&y=2014. See also Welfare Rights Minnesota, *House Hearing Tuesday March 11 -- Join Us, (March 3, 2009),* https://welfarerightsmn.com/2014/03/09/house-hearing-tuesday-mar-11-join-us/

[99] The Legal Services Advocacy Project, Children's Defense Fund, NARAL, Minnesota Citizens Concerned for Life and Welfare Rights Committee testified in support of H.F. 256, which was virtually identical to the repeal bill ultimately approved. All of the advocates testifying on this bill discussed the variety of motivations for repealing the cap, including child welfare, abortion opposition, and reproductive equity for people living in poverty. The legislators responded to the child impoverishment issues, asking the Department of Human Services for additional statistics, but did not address abortion or reproductive justice issues. (Health and Human Services Policy Committee, *Meeting Minutes for March 19, 2013*, (2013), http://www.house.leg.state.mn.us/cmte/minutes/minutes.aspx?comm=88015&id=5093&ls_year=88; http://ww2.house.leg.state.mn.us/audio/mp3ls88/hhspol031913.mp3, starting at minute 29.20.)

[100] *Id. See generally* Patricia Donovan, *Does the Family Cap Influence Birthrates? Two New Studies Say 'No'*, 1 Guttmacher Pol'y Rev. 1, 10 (1998) (discussing family caps' lack of impact on birth rates).

[101] A. 2398, 208th Leg. (N.J. 1998).

[102] S. 1404, 208th Leg. (N.J. 1998).

[103] A. 313, 209th Leg. (N.J. 2000); A. 3740, 209th Leg. (N.J. 2001); S. 1087, 209th Leg. (N.J. 2000); A. 181, 210th Leg. (N.J. 2002); S. 680, 210th Leg. (N.J. 2002); A. 285, 211th Leg. (N.J. 2004) (original research conducted by the authors on New Jersey legislation introduced between 1998 - 2016).

[104] S. 1854, 217th Leg. (N.J. 2016); A. 3410, 217th Leg. (N.J. 2016).

[105] Gov. Chris Christie, Veto Message for A. 3410 (June 30, 2016), http://nj.gov/governor/news/news/552016/pdf/20160630c/A3410AV.PDF; *see also* Bryce Covert, *Chris Christie Rejects Effort To Repeal Racist, Sexist Rule That Punishes Poor Children*, Think Progress (July 2016, 10:07am), http://thinkprogress.org/economy/2016/07/05/3795389/christie-welfare-family-cap/ .

[106] *Sojourner A. v. New Jersey Dep't of Human Servs.*, 177 N.J. 318, 828 A.2d 306 (2003) (holding that the cap did not violate the equal protection and due process guarantees of state constitution).

[107] *C.K. v. New Jersey Dep't of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996) (holding that denial of increased cash benefits for additional children of AFDC program recipients under the Family Development Program did not constitute experimentation involving pregnant women and fetuses, did not violate statute requiring that assistance be furnished to all eligible individuals, and did not infringe procreative rights of "Aid to Families with Dependent Children" (AFDC) recipients).

[108] *CalWORKS Program Percent of Population Receiving CalWORKS*, California Department of Social Services, (January 2015), http://www.cdss.ca.gov/research/res/pdf/caltrends/CWPopRecJan15Map.pdf; *California State and County Quickfacts*, U.S. Census Bureau, (last accessed Aug. 8, 2016), http://www.census.gov/quickfacts/table/PST045215/00,06).

[109] Letter from Western Center on Law and Poverty to California Assemblymember Jimmy Gomez, Chairman, Committee on Appropriations, California State Assembly at 2 (July 17, 2015) (on file with author) [hereinafter Western Center Letter]; Aid to Families with Dependent Children (AFDC), codified at 42 U.S.C. §§ 601-617 (1935). Section 1115.

[110] Office of the Assistant Secretary for Planning and Evaluation, *State Welfare Waivers: An Overview*, U.S. Department of Health and Human Services (Aug. 1, 1997), https://aspe.hhs.gov/legacy-page/state-welfare-waivers-overview-152151.

[111] Western Center Letter at 2.

[112] Western Center Letter at 3.

[113] A.B. 473, 1993-94 Reg. Sess. (Cal. 1994); *id.*

[114] *Id.*; *see* S.R. 54, 2013-14 Reg. Sess. (Cal. 1994) (describing the legislative history of A.B. 473).

[115] Western Center Letter at 3; *see* PRWORA, *supra* note 7.

[116] Some advocates believe California's cap was never properly adopted because the state never received the required federal waiver. The legislative history demonstrates legislators had planned to see the waiver, but never did. (*See e.g.,* Jessica Bartholow, *Scott Walker Official Ignored Law that Protected Low-Income Kids* (June 6, 2014), http://talkpoverty.org/2014/06/06/bartholow/.)

[117] Office of the Assistant Secretary for Planning and Evaluation, *supra* note 1.

[118] A.B. 22, 2007-08 Reg. Sess. (Cal. 2007). The East Bay Community Law Center and the Women of Color Resource Center co-sponsored A.B. 22. *See Analysis of A.B. 22 (Cal. 2007)*, http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0001-0050/ab_22_cfa_20070323_122443_asm_comm.html.

[119] *Id.* For legislative history of A.B. 22, see http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0001-0050/ab_22_bill_20080201_history.html.

[120] Christopher Cadelago, *California Senator Says 'Welfare Queen' Law Must Go,* (Feb. 22, 2015 4:00 AM), http://www.sacbee.com/news/politics-government/capitol-alert/article10966202.html.

[121] A.B. 833, 2011-12 Reg. Sess. (Cal. 2011).

[122] Cadelago, *Supra* note 120.

[123] Mitchell, then a Legislative staffer, had been on the Senate floor when the Senate voted in favor of creating the Family Cap (A.B. 473). The only Senator who spoke in opposition to the MFG rule on the floor that day was then-State Senator Diane Watson (D), who had been one of Mitchell's early mentors.

[124] State Assemblymember Holly Mitchell worked closely with bill sponsors and advocates, such as ACCESS Women's Health Justice, ACLU of California, California Latinas for Reproductive Justice, California Welfare Directors Association, California Partnership, Center on Reproductive

Rights and Justice at Berkeley Law, East Bay Community Law Center, Western Center on Law and Poverty, and Women's Foundation of California.

[125]A.B. 271, 2013-14 Reg. Sess. (Cal. 2013). *See Bill History of A.B. 271 (Cal. 2013)*, http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0251-0300/ab_271_bill_20130903_history.html.

[126] S.B. 899, 2013-14 Reg. Sess. (Cal. 2014). See Bill History of S.B. 899 (Cal. 2014), http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_899_bill_20140523_history.html.

[127] Press Release, Hannah-Beth Jackson, Women's Caucus Announces Priority Legislation and Budget Action to Fix Outdated Infrastructure, (February 11, 2016), http://sd19.senate.ca.gov/news/2016-02-11-womens-caucus-announces-priority-legislation-and-budget-action-fix-outdated.

[128] Suzy Chavez Herrera, *California's Minimum Wage Increase Is Not Enough for the Working Poor*, Rewire, (April 25, 2016), https://rewire.news/article/2016/04/25/californias-minimum-wage-increase-not-enough-working-poor/.

[129] Editorial, *A Welfare-to-Work Rule That Hurts Kids*, L.A. Times (Aug. 21, 2015), http://www.latimes.com/opinion/editorials/la-ed-calworks-20150821-story.html; Editorial, *Poor Need More Than Handouts*, The Sacramento Bee (Feb. 28, 2015), http://www.sacbee.com/opinion/editorials/article11392913.html; *see* Assembly Comm. on Hum. Servs., *Bill Analysis of S.B. 23 (Cal. 2015)* (July 14, 2015), http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sb_23_cfa_20150716_115029_asm_comm.html (showing organizations registered in support).

[130]Press Release, California Latinas for Reproductive Justice, Over 12,000 signatures delivered to Governor Brown in Support of Repealing the Maximum Family Grant, (June 4, 2015), http://www.californialatinas.org/wp-content/uploads/2015/06/MFG_PetitionDelivery_PressRelease.pdf; *see e.g.,* Laura Jimenez, *Stop Punishing Children for Being Born Into Poverty. Repeal the MFG Rule,* Credo Mobil (May 29, 2016), https://www.credomobilize.com/petitions/stop-punishing-children-for-being-born-into-poverty-repeal-the-mfg-rule-1.

[131] Senate Floor Vote on S.B. 23 (Cal. 2015), (June 1, 2015), http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sb_23_vote_20150601_0632PM_sen_floor.html.

[132] Assembly Comm. on Hum. Servs., *Vote on S.B. 23 (Cal. 2015)*, (July 14, 2015), http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sb_23_vote_20150714_000001_asm_comm.html; Assembly Comm. on Appropriations, Vote on S.B. 23 (Cal. 2015), (Aug. 27, 2015),http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sb_23_vote_20150827_000001_asm_comm.html.

[133] John Meyers, Melanie Mason & Christine Mai-Duc, *Gov. Jerry Brown's budget helps schools and the poor -- and saves a lot for a rainy day*, LA Times (Jan. 7, 2016, 4:05pm) http://www.latimes.com/politics/la-pol-sac-jerry-brown-releases-state-budget-20160107-story.html.

[134] Subcomm. No. 1 on Health and Hum. Servs., Agenda (March 30, 2016), agenda, http://abgt.assembly.ca.gov/sub1hearingagendas.

[135] Bryce Covert, *California Will Finally Ditch Racist, Sexist Welfare Rule,* Think Progress (June 15, 2015 10:00am), http://thinkprogress.org/economy/2016/06/15/3788718/california-repeal-welfare-family-cap/.

[136] *Id.*; A.B. 1603, Reg. Sess. 2015-16 (Cal. 2016).

[137] Caitlin Pentifallo, *Family Cap Welfare Reform and Multiracial Coalitions in New Jersey*, 1 Amherst I.U.L.J. 51 (2009).

[138] This type of gradual phasing out of the Family Cap, will, of course, continue to harm families who are already capped, creating a two-tier system; as the newest family members will receive  additional cash aid that may be denied to younger children, it is less optimal than a full repeal.