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BUILDING A GUARANTEED INCOME TO END THE “CHILD WELFARE” SYSTEM

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The United States is on track to reduce child poverty by nearly fifty percent through the expansion of the Child Tax Credit (“CTC”) in the American Rescue Plan Act of 2021.¹ But the policy will deliver even more. The CTC is also expected to facilitate parent agency and propel parent and child social mobility.² Furthermore, because of the strong connection between poverty and the risk for child maltreatment,³ the program will likely galvanize a reduction in child welfare cases and clear a critical path to eliminate the “child welfare” system (“CWS”).⁴

In fighting what is apparently a renewed war on child poverty, the time is ripe for policymakers to reimagine and dismantle the CWS. Its practices exacerbate the deep poverty of women and children, hasten family instability, and demobilize already marginalized communities. Part I of this Piece provides background on disparities in the CWS and discusses how policymakers have excluded Black American families from needed public aid, accelerating their risk for child welfare intervention.⁵ Part I then argues that policymakers have used the CWS to police poverty and to regulate Black families. Part II asserts that poverty presents a risk factor for neglect and that policymakers should target poverty elimination as a means of reducing the incidence of child neglect. Part III discusses the efforts of the non-profit organization Mother’s Outreach Network (“MON”) around this issue. MON uses a community lawyering framework⁶ to build the power of parents in disrupting the CWS by focusing on the goal of economic security for families.

¹ Christopher Pulliam & Richard V. Reeves, *New Child Tax Credit Could Slash Poverty Now and Boost Social Mobility Later*, BROOKINGS (Mar. 11, 2021), <https://www.brookings.edu/blog/up-front/2021/03/11/new-child-tax-credit-could-slash-poverty-now-and-boost-social-mobility-later/> [https://perma.cc/FM7N-YG8X]. *But see* CHILD. DEF. FUND & CTR. FOR THE STUDY OF SOC. POL’Y, *TO REACH EVERY CHILD, THE CHILD TAX CREDIT ELIGIBILITY REQUIREMENTS MUST BE CHANGED* (2021), <https://www.childrensdefense.org/wp-content/uploads/2021/06/CTC-Qualifying-Child.pdf> [https://perma.cc/8BF2-TJ52] (noting that despite the benefits of the CTC, current policies nevertheless pose significant barriers to the ability of biological parents of children in foster care to secure the CTC for their kids).

² Pulliam & Reeves, *supra* note 1.

³ Brenda Jones Harden et al., *The Child Maltreatment Prevention Landscape: Where Are We Now, and Where Should We Go?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 97, 104 (2020).

⁴ This Piece refers to the system of actors in government agencies, courts, and private sector who implement the U.S. government’s concept of child welfare, namely “a continuum of *services* designed to ensure that children are safe and families have the necessary support to care for their children successfully.” CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., *FACTSHEET: WHAT IS CHILD WELFARE? A GUIDE FOR EDUCATORS* (2018), https://www.childwelfare.gov/pubPDFs/cw_educators.pdf [https://perma.cc/JJ5R-RQAA]. This Piece interrogates the effectiveness of this system.

⁵ This Piece focuses on Black families. Latinx and Native American children also have a long history of overrepresentation in the CWS. *See* UPEND, *FREQUENTLY ASKED QUESTIONS*, <https://cssp.org/wp-content/uploads/2020/05/upEND-EXTERNAL-FAQ.pdf> [https://perma.cc/KH8G-3L3R] (last visited Dec. 21, 2021).

⁶ “Community lawyering” and “movement lawyering” are used interchangeably in this Piece to denote an approach that uses community-building and advocacy-related activities to generate social change and support community initiatives. *See* Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT’L L. 375, 376 (2013) (describing various definitions and conceptions of community lawyering).

I. DISPARITIES IN THE CHILD WELFARE SYSTEM

A. The Child Welfare System is Racialized.

The official count of children in the CWS nationally is nearly one half million.⁷ This figure excludes the large number of children believed to occupy the “hidden” or “shadow” kinship foster system that CWS uses to place children outside their homes,⁸ and it omits the number of children that CWS agencies monitor in their homes.⁹ CWS involvement is strongly correlated with race, having a single mother, and being poor.¹⁰ Black children are disproportionately represented across the American CWS,¹¹ including in the foster care system.¹² For example, in the District of Columbia, Black children comprise eighty-two percent of foster system cases,¹³ as compared to fifty-two percent of children in the city.¹⁴ Black parents are more likely to be surveilled and investigated by child welfare agencies and to have their children removed and remain in foster care for long periods of time.¹⁵ Black families are also more prone to losing their children to adoption.¹⁶

⁷ CHILD. DEF. FUND, *THE STATE OF AMERICA’S CHILDREN 2021*, at 64 (2021). The number of children in the country who have been impacted by the CWS more generally (such as by receiving an investigation response or experiencing other forms of CWS involvement) is in the millions—3,476,000 in 2019. CHILD. BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., *CHILD MALTREATMENT 2019*, at ii (2019) [hereinafter *CHILD MALTREATMENT*], <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf> [https://perma.cc/SMA8-3JWY].

⁸ See Angie Schwartz & Cathy Krebs, *Addressing Hidden Foster Care: The Human Impact and Ideas for Solutions*, A.B.A. (Mar. 31, 2020), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/addressing-hidden-foster-care-the-human-impact-and-ideas-for-solutions/> [https://perma.cc/Q5PQ-R7MG] (describing the practice by which child welfare agencies, without court review, coerce parents into placing their child with a relative to avoid the child’s placement in foster care). See also Lizzie Presser, *How ‘Shadow Foster Care is Tearing Families Apart*, N.Y. TIMES (Dec. 2, 2021), <https://www.nytimes.com/2021/12/01/magazine/shadow-foster-care.html> [https://perma.cc/FV39-G9LH] (discussing how government agencies that need to reduce their caseloads use this unofficial system that harms children and families).

⁹ See Alan Dettlaff et al., *It Is Not a Broken System, It Is a System that Needs to Be Broken: The UpEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 504 (2020) (describing the harmful effects of child welfare surveillance in the home).

¹⁰ Tanya Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 226 (2013).

¹¹ Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 536–38 (2019).

¹² According to 2018 data, Black children were 13.71% of the population, yet 22.75% of children in foster care were Black. *Disproportionality and Race Equity in Child Welfare*, U.S. DEP’T NAT’L CONF. OF STATE LEGISLATURES (Jan. 26, 2021), <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx> [https://perma.cc/74WA-VE4Q].

¹³ See *Foster Care Demographics*, CHILD & FAM. SERVS. <https://cfsdashboard.dc.gov/page/foster-care-demographics> [https://perma.cc/4QEW-Z5YV] (last visited June 15, 2022).

¹⁴ See *Child Population by Race in District of Columbia*, ANNIE E. CASEY FOUND. KIDS COUNT DATA CTR. <https://datacenter.kidscount.org/data/tables/103-child-population-by-race> [https://perma.cc/Q96C-MFFV] (last visited June 15, 2022).

¹⁵ Cooper, *supra* note 10, at 242.

¹⁶ Trivedi, *supra* note 11, at 540.

B. Current Child Welfare Policies Reflect Historically Racialized Approaches to Child Welfare and Cash Assistance Programs.

Looking to child welfare programs as mechanisms for poverty relief and family regulation is not new in the United States.¹⁷ For example, for over a century, America sent tens of thousands of Indigenous children to boarding schools for cultural reeducation—an example of cultural genocide which Secretary of the Interior Deb Haaland has described as an “attempt to wipe out Native identity, language and culture.”¹⁸ Between 1854 and the 1930s, large American cities sent more than 200,000 impoverished children on “orphan trains” to families in midwestern cities.¹⁹ And in the nineteenth century, states accelerated erecting institutions for children separated from their parents, reflecting a growing belief their parents ought to be punished for their “immorality.”²⁰

These Reformer-era changes reframed child welfare. Where child welfare had once been framed as social welfare, designed to relieve the ills of poverty, it expanded during this era into a child protection system focused on investigation and parents’ depravity.²¹ Accordingly, special justices could now base a finding of child neglect on the mother being a “notorious or immoral woman” or an adulteress convicted of fraud, or allowing her child in a house of prostitution.²² Through their efforts to extend state authority over parental control, Progressive-era reformers, some historians theorize, hoped to retain social hegemony over the growing population of working-class and immigrant families.²³ Societies for the Prevention of Cruelty to Children, first founded in New York City in December 1874, were private agencies that mushroomed to over 150 nationwide within twenty-five years.²⁴ Created and empowered to act as

¹⁷ See Judith C. Areen, *Intervention Between Parent and Child: A Reappraisal of the State’s Role in Child Neglect and Abuse Cases*, 63 GEO. U. L. CTR. 887, 895–96 (1975) (describing the Elizabethan Poor Law in which children of the poor were put to work or into apprenticeships).

¹⁸ Deb Haaland, *Deb Haaland: My Grandparents Were Stolen From Their Families as Children. We Must Learn About this History.*, WASH. POST. (June 11, 2021, 9:00 AM), <https://www.washingtonpost.com/opinions/2021/06/11/deb-haaland-indigenous-boarding-schools/> [<https://perma.cc/RHF6-WSYR>]; see also *American Indian Boarding Schools Haunt Many*, NPR (May 12, 2008, 12:01 AM), <https://www.npr.org/templates/story/story.php?storyId=16516865> [<https://perma.cc/X3RX-N5KP>].

¹⁹ Angelique Brown, *Orphan Trains (1854-1929)*, SOC. WELFARE HIST. PROJECT (2011), <https://socialwelfare.library.vcu.edu/programs/child-welfarechild-labor/orphan-trains/> [<https://perma.cc/2A43-FC2B>].

²⁰ Areen, *supra* note 17, at 903–04 (explaining the transition of neglect proceedings in the states from explicit poverty relief to protection from “parental immorality”); DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 7–8 (2002) [hereinafter ROBERTS, *SHATTERED BONDS*].

²¹ Dorothy Roberts, *Prison, Foster Care, and The Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492–93 (2012) [hereinafter Roberts, *The Systemic Punishment of Black Mothers*].

²² See Areen, *supra* note 17, at 903 n.91.

²³ Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1389 (2020).

²⁴ *Societies For The Prevention Of Cruelty To Children*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/societies-prevention-cruelty-children> [<https://perma.cc/CKE5-6BWC>] (last visited June 19, 2022).

law enforcement agencies²⁵ with agents, the Societies “focused on punishing cruel parents rather than on the provision of better environments for children.”²⁶ Black families escaped this scrutiny as the migration of Black people from the South to the cities of the North did not ensue until the late 1910s.²⁷

Ironically, twentieth-century child welfare was inherently racialized, even as it excluded Black children. The majority of foster care institutions barred Black children until the 1950s.²⁸ Yet by 2000, Black children comprised the largest group of children in foster care.²⁹ This figure climbed in tandem with integration in the post-civil rights era. The myth of rescuing Black children drove their overrepresentation in the American CWS, causing life-long harm and trauma to families.³⁰ Studies report that children suffer emotional and psychological trauma of separation, and possible further abuse.³¹ Scholars observe “it is far from clear that the child welfare system has improved outcomes, particularly for the 437,000 children in foster care.”³² The systemic problems of the CWS include children’s exposure to abuse and neglect while in care and violence from other children and adults, including the police.³³ This was the case for teenager Makia Green in Columbus, Ohio in 2021 who was fatally shot at a foster home by a police officer called to resolve a dispute involving the victim.³⁴ CWS can levy emotional and psychological damage upon children and their parents, including the subjugation of children and their families in shadow arrangements that coerce parents into surrendering their children and their rights without counsel in care arrangements.³⁵ This contributes to children developing depression, sleep disturbance, substance use, and post-traumatic stress disorder.³⁶

Amidst this shift in child welfare policies, American policymakers repeatedly denied equitable public aid to Black families. Since the Reconstruction era, legislators have failed to advance anti-poverty measures supporting the well-being of Black children. In the late

²⁵ *Id.*

²⁶ See Areen, *supra* note 17, at 903–04.

²⁷ ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* 8–15 (2010).

²⁸ ROBERTS, *SHATTERED BONDS*, *supra* note 20, at 7 (noting that the few institutions, or “colored orphan asylums,” that took in Black children were vastly outnumbered and terribly overcrowded. For example, the 1923 census reported that out of 1,070 institutions in 31 northern states, 35 institutions took in Black children only, 264 accepted all races, and 711 accepted only white children).

²⁹ *Id.* at 8.

³⁰ Trivedi, *supra* note 11, at 531.

³¹ *Id.* at 528.

³² Huntington & Scott, *supra* note 23, at 1389–90.

³³ See, e.g., *M.D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 243, 271–88 (5th Cir. 2018) (upholding much of the trial court’s determination that Texas had violated the constitutional rights of the approximately 12,000 children in foster care, including by exposing them to abuse and neglect while in care; further, upholding much of a sweeping remedial order to address problems systemic to foster care system).

³⁴ Nicholas Bogel-Burroughs et al., *Ma’Khia Bryant’s Journey Through Foster Care Ended With an Officer’s Bullet*, N.Y. TIMES (May 8, 2021), <https://www.nytimes.com/2021/05/08/us/columbus-makhia-bryant-foster-care.html> [<https://perma.cc/ZKL8-9GAS>].

³⁵ See Presser, *supra* note 8.

³⁶ See Bogel-Burroughs et al., *supra* note 34.

nineteenth century, states granted white women mothers' pensions but not Black mothers.³⁷ In 1935, lawmakers passed the Aid to Dependent Children ("ADC") program with the creation of the Social Security Act.³⁸ Certain states used dehumanizing rules to exclude Black mothers as "unsuitable."³⁹ These rules were challenged in litigation, and ultimately this civil rights advocacy paid off.⁴⁰ In 1962, ADC's name changed to Aid to Families with Dependent Children ("AFDC"), and benefits for mothers were added universally so that the program included Black mothers.

Thereafter, however, AFDC benefit levels were steadily reduced. Between 1970 and 1994, benefits dropped by forty-seven percent.⁴¹ Originally designed to address child well-being and maltreatment, cash welfare programs gradually became focused on narratives of parent behavior.⁴² The "Welfare Queen" stereotype of Black women as lazy and resistant to work drove public debate around "reforming" AFDC.⁴³ In 1996, lawmakers passed the Personal Responsibility and Work Opportunity Act, which created the Temporary Assistance for Needy Families ("TANF") program. TANF is a grant program to states that contains structural vectors of discrimination. These include conditioning payments on work, cutting benefits for non-compliance, and allowing states broad spending authority. As a result, many states spend an ever-diminishing share of their grants on children.⁴⁴

Professor Dorothy Roberts characterizes this use of the CWS as punishment for a perceived lack of parental economic self-sufficiency.⁴⁵ Professor Roberts writes that "the nuclear family model produces a welfare state that provides stingy benefits to poor mothers—benefits that are stigmatized and encumbered by behavioral regulations."⁴⁶ In Washington, D.C. ("D.C."), U.S. Senator Robert Byrd (D – W. VA.) used precisely these kinds of regulations to weaponize the CWS. Senator Byrd commanded a "crackdown on welfare fraud" in 1961. This policy fueled massive overcrowding, primarily of Black boys, at the D.C. Junior Village

³⁷ John E. Hansan, *Public Welfare: Aid for Dependent Children*, VCU LIBRS. SOC. WELFARE HIST. PROJECT, <https://socialwelfare.library.vcu.edu/public-welfare/public-welfare-aid-for-dependent-children/> [<https://perma.cc/S8DY-LZCG>] (last visited Dec. 21, 2021).

³⁸ Areen, *supra* note 17, at 910 n.131.

³⁹ ROBERTS, SHATTERED BONDS, *supra* note 20, at 176.

⁴⁰ See *King v. Smith*, 392 U.S. 309 (1968) (striking down a 1964 Alabama welfare regulation which required that when a man lived in a home or was a frequent visitor "for purpose of cohabiting," the recipient forfeit their AFDC eligibility. Due to this rule, Alabama dropped 16,000 children from the rolls, ninety percent of whom were Black); see also *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969) (invalidating a rule that allowed termination of welfare payments in cases where the recipient parent would not disclose the name of the child's father).

⁴¹ Teka Lo, *A Brief History of National Welfare Rights Organization*, PUB. INTELLECTUALS (Oct. 21, 2020), <https://www.publicintellectuals.org/national-welfare-rights-organization/> [<https://perma.cc/8PDP-PC4J>].

⁴² Harden et al., *supra* note 3, at 99.

⁴³ ROBERTS, SHATTERED BONDS, *supra* note 20, at 194.

⁴⁴ Diana Azevedo-McCaffrey & Ali Safawi, *To Promote Equity, States Should Invest More TANF Dollars in Basic Assistance*, CTR. ON BUDGET & POL'Y PRIORITIES 14 (Jan. 12, 2021), <https://www.cbpp.org/sites/default/files/atoms/files/1-5-17tanf.pdf> [<https://perma.cc/VTE8-W65H>].

⁴⁵ Roberts, *The Systemic Punishment of Black Mothers*, *supra* note 21, at 1485–86.

⁴⁶ *Id.* at 1487.

orphanage, which housed children removed from their mothers due to violations of the welfare rules of the time.⁴⁷

C. Anti-Black Racist Policies Demobilize Black American Parents

The enduring exclusion of Black families from effective cash aid programs and the destabilization of Black families represent what Professor Roberts terms a perennial “subject” status rather than full American citizenship.⁴⁸ The lack of full citizenship can mean being denied due process with the advice of counsel when parental rights are at stake, from the initiation of an investigation, to the opening of a CWS case, to the close of a case, to the termination of parental rights. It means being separated from one’s child due to lack of financial means and insecure housing, while the government of the richest nation in human history fails to provide assistance to forestall this. Lack of full citizenship means “child abuse investigation reports being weaponized against parents by former partners, landlords, or disgruntled neighbors as a form of harassment,” as explained by parent advocate Joyce MacMillan, executive director of JMacForFamilies.⁴⁹ Finally, when purveying inequitable citizenship, the government provides cash assistance, TANF, that is conditioned on work, which disproportionately affects Black women and families and directly and indirectly excludes Black mothers from social insurance programs.⁵⁰ This dynamic is further exacerbated by the interplay of the many institutions involved in marginalizing Black parents. The mutually-embedded roles that child welfare and carceral systems play in funneling Black parents back and forth undermine the ability of Black families to mobilize against these systems of oppression.⁵¹

At every stage of CWS involvement, state actors have the discretion to erode parent autonomy. From reports of abuse, to investigations, to surveillance, to adjudications of removal, to the permanency phase, decisionmakers have tremendous discretion in determining what constitutes abuse and neglect. Though this power is subject to constitutionally protected rights to due process, state discretion nevertheless dramatically narrows parent agency.⁵² A school nurse can decide whether to report a hunch to a hotline or address a parent directly.⁵³

⁴⁷ Diane Bernard, *It Was Created as a Refuge for Needy Kids. Instead, They Were Raped and Drugged*, WASH. POST (May 18, 2019), <https://www.washingtonpost.com/history/2019/05/18/it-was-created-refuge-needy-kids-instead-they-were-raped-drugged/> [https://perma.cc/G85Z-RQ3F].

⁴⁸ Dorothy Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L. J. 1563, 1576–79 (1996) [hereinafter Roberts, *The Problem of Black Citizenship*] (reviewing two books examining the racial politics of child welfare and subsequent consequences for single Black mothers).

⁴⁹ *Why a Child Welfare ‘Miranda Rights’ Law Is Essential | A Q&A with Advocate and Organizer Joyce McMillan*, THE NEW SCH. (June 2, 2021), <http://www.centernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-qampa-with-advocate-and-organizer-joyce-mcmillan> [https://perma.cc/5H9H-HXYQ].

⁵⁰ Roberts, *The Problem of Black Citizenship*, *supra* note 48, at 1572–73.

⁵¹ Roberts, *The Systemic Punishment of Black Mothers*, *supra* note 21, at 1483.

⁵² *Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring due process for natural parents at state-initiated proceedings to terminate parental rights).

⁵³ LINDA C. FENTIMAN, *BLAMING MOTHERS: AMERICAN LAW AND THE RISK TO CHILDREN’S HEALTH* 184–85 (2017) (describing the ways in which “discretionary decisionmaking permeates the legal apparatus directed at child abuse,” and the role of doctors, teachers, and

A social worker can judge whether more monitoring is appropriate or intervention is required. In addition to determining whether a child is abused or neglected, judges play an expansive role in dictating the minutiae of a child's life, including what medical and social services should be ordered. Each of these decisions can be informed by powerful biases that involve everything from views about motherhood to opinions about socioeconomic status and race.⁵⁴

Ultimately, Black families' overrepresentation in child welfare has been driven by anti-Black racism expressed in unjust public aid policy. To alleviate overrepresentation in child welfare, policymakers must opt to fight for Black families' economic security. This, in turn, will require policymakers to acknowledge the citizenship and humanity of Black families.

II. CONFRONTING THE RISK FACTOR FOR NEGLECT

A. American Policymakers and Child Welfare System Actors Conflate Poverty with Neglect.

The majority of reported child welfare cases across the nation involve neglect.⁵⁵ The federal Child Abuse and Prevention Treatment Act ("CAPTA") sets guidance for the minimum acts by parents and other caregivers that constitute abuse and neglect against a child eighteen years or younger or that is not yet emancipated. CAPTA provides that child neglect and abuse are, at minimum, "[a]ny recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation . . . or an act or failure to act, which presents an imminent risk of serious harm."⁵⁶ Each state and D.C. defines abuse and neglect under its own civil and criminal statutes. While D.C. law provides that a lack of financial means by itself is not neglect,⁵⁷ the definition of a "neglected child"⁵⁸ includes poverty factors as a basis for neglect in its ten criteria: a neglected child is one "without proper prenatal care or control, subsistence" for his or her "physical" health.⁵⁹ In addition, the definition of "negligent treatment" or "maltreatment" describes criteria related to financial means: maltreatment includes the "failure to provide adequate food, clothing, shelter, or medical care . . . and the deprivation is not due to the lack of financial means of his or her parent, guardian or other custodian."⁶⁰

police in deciding between addressing potential issues with parents directly and reporting families for suspected abuse.)

⁵⁴ *Id.*

⁵⁵ CHILD MALTREATMENT, *supra* note 7, at 22 (noting that "[t]he FFY 2019 data show, three-quarters (74.9%) of victims are neglected, 17.5 percent are physically abused, and 9.3 percent are sexually abused.").

⁵⁶ Child Abuse Prevention and Treatment and Adoption Reform, 42 U.S.C § 5101–5119c.

⁵⁷ D.C. CODE § 16-2301; *see also* In re A.H., 842 A.2d 674, 687 (D.C. 2004) (explaining that, poverty notwithstanding, "[i]f a child is deprived of parental care 'necessary' for his physical health, for example, if the child is malnourished, not properly clothed, or denied medical care," the reasons behind the deprivation should not matter "in deciding whether the state should be allowed to intervene and protect the child").

⁵⁸ D.C. CODE § 16-2301(9)(A)(i-x).

⁵⁹ D.C. CODE § 16-2301(9)(A)(ii).

⁶⁰ D.C. CODE § 16-2301(24).

Legal definitions aside, studies show that neglect allegations, in particular, are connected to a family's financial distress.⁶¹ Abuse, like neglect, is also driven, at least, in part by factors that are compounded by poverty, as reported in studies that measure the amelioration of poverty by income support programs.⁶² Nevertheless, family poverty reduction is not an observable policy goal of American child welfare agencies. Instead, the cornerstone of federal policy is addressing parent behavior through measures such as time-limited prevention services for mental health, substance abuse, and in-home parent skills.⁶³ Through these programs, federal, state, and local lawmakers do not overtly confront the largest risk factor of caregiver child abuse and neglect: family poverty.

Poverty reveals itself in the CWS in several ways. As author Mikki Kendall writes, “[p]overty can look like neglect, even if a parent is doing their very best.”⁶⁴ This includes forcing “parents to make choices that put children at risk, such as leaving them home alone or with unsafe caregivers.”⁶⁵ Poverty can appear as a parent's anger to a caseworker. Raising children in poverty can look like neglect because “it often comes packaged with depression and anger, poor nutrition and housekeeping, lack of education and medical care, leaving children alone, exposing children to improper influences.”⁶⁶ Sendhil Mullainathan explains that scarcity leads to “tunneling,” meaning that a lack of resources leads to sacrifice—some important needs will be sacrificed for more urgent needs.⁶⁷

CWS actors fail to acknowledge and address this poverty,⁶⁸ instead focusing on parent behavior and morality. Influenced by embedded policies, racial stereotypes, and racial hierarchy, state policymakers ignore and

⁶¹ CHILD MALTREATMENT, *supra* note 7, at 51. The report found that in the 29 states that reported data on poverty-related indicators, 26.9% of children experiencing maltreatment had a parent with a public assistance risk factor. *Id.* The public assistance risk factor was defined as receiving TANF, General Assistance, Medicaid, Social Security, Supplemental Nutrition Assistance (“SNAP”), and others. *Id.* at 126. Meanwhile, 29.4% of children experiencing maltreatment presented a caregiver risk factor related to substance abuse (excluding alcohol) based on data from 38 reporting states. *Id.* at 51. Finally, 28.8% of children experiencing maltreatment were reported to have a domestic violence caregiver factor. *Id.* For maltreated children in D.C., none of the 1,857 children were reported to have public assistance risk factors, but 224 children (12%) displayed an inadequate housing risk factor. *Id.* at 50.

⁶² See Rachel A. Spencer et al., *Association Between Temporary Assistance for Needy Families (TANF) and Child Maltreatment Among a Cohort of Fragile Families*, 120 CHILD ABUSE & NEGLECT 1, 7–8 (2021) (noting that “a \$100 increase in TANF benefits was associated with a reduction of 1.8 reported physical abuse events” and that “[i]mposing a time limit on TANF receipt was associated with an increase of 2.3 reported physical abuse events.”).

⁶³ See Family First Prevention Services Act of 2018, Pub. L. No. 115—123 (authorizing new optional title IV-E funding); see also *Title IV-E Prevention Program*, CHILD BUREAU, <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program> [<https://perma.cc/43K2-P9YN>].

⁶⁴ MIKKI KENDALL, HOOD FEMINISM: NOTES FROM THE WOMEN WHITE FEMINISTS FORGOT 246 (2020).

⁶⁵ *Id.*

⁶⁶ ROBERTS, SHATTERED BONDS, *supra* note 20, at 27.

⁶⁷ SENDHIL MULLAINATHAN & ELДАР SHAFIR, SCARCITY, WHY HAVING TOO LITTLE MEANS SO MUCH 27–29 (2013).

⁶⁸ See generally ROBERTS, SHATTERED BONDS, *supra* note 20, at 26–29.

conflate poverty with neglect.⁶⁹ The resulting policies are particularly harmful for Black solo mothers, the predominant caregivers of Black children in the CWS.⁷⁰ Black women are subjected to the “Sapphire” trope of the Black woman as “the embodiment of sin, evil, and dark.”⁷¹ Welfare recipient and movement leader Johnnie Tillmon summarized the varied tropes: “[AFDC] mothers are lazy, misuse their welfare checks, spend it all on booze and are stupid and incompetent.”⁷²

At the same time, the focus on Black parents’ merit rather than child poverty engenders a new and more punitive form of public aid. The shift from the original framework of maltreatment deriving from financial needs to parental turpitude may help to explain the contemporary demeaning experience Black parents experience across the CWS, from caseworkers to judicial officers.⁷³ For example, Vicki Lens observes of the Child Welfare Court: “The courtroom is also divided by class, with the legal professionals on top, followed by caseworkers, and then parents, who are predominantly poor.”⁷⁴ Kaaryn Gustafson describes the excessive prosecution of Black mothers for welfare transgressions as an act of oppression by the state and an overtly public “ritual” purposed for degradation.⁷⁵

B. Economic Assistance to Families with Limited Resources Plays a Positive Role in Ameliorating Maltreatment Factors.

Scholars have found a robust connection between economic stability and a reduction in child abuse and neglect.⁷⁶ These compelling studies illustrate the economic risk factors for maltreatment and the beneficial role of strengthening household financial security in making prevention possible.⁷⁷ For example, “state restrictions on access to [TANF] are significantly associated with increases in the number of child protection reports, victims of child maltreatment, and foster care placements, even after controlling for changes in incarceration and the nation’s opioid epidemic.”⁷⁸ Research has identified strong risk factors for child welfare involvement and economic hardship, including utility shut-offs, unstable

⁶⁹ Diane Redleaf, *Biden’s Child Welfare Focus Should Be Removing Poverty from Neglect*, IMPRINT (Dec. 21, 2020, 4:00 AM), <https://imprintnews.org/child-welfare-2/biden-child-welfare-focus-removing-poverty-neglect/50041> [<https://perma.cc/FLD7-M4ZE>].

⁷⁰ See ROBERTS, *SHATTERED BONDS*, *supra* note 20, at 89–92.

⁷¹ Kersti Myles, *Jezebels and Jungle Bunnies: How the Stereotypes of Black Women Shape Legislation, the Legal Profession, and Feminist Jurisprudence*, 10 MOD. AM. 1, 3 (2017).

⁷² Johnnie Tillmon, *Welfare is a Woman’s Issue*, 1 MS. MAG. 112 (1972), *reprinted in From the Vault: “Welfare is a Women’s Issue”*, MS. (Mar. 25, 2021), <https://msmagazine.com/2021/03/25/welfare-is-a-womens-issue-ms-magazine-spring-1972/> [<https://perma.cc/3ZBV-NRMQ>].

⁷³ See Vicki Lens, *Judging the “Other”: The Intersection of Race, Gender and Class in Family Court*, 57 FAM. CT. REV. 72 (2019) (analyzing how racial, gender, and class differences manifest in family court proceedings).

⁷⁴ *Id.* at 72.

⁷⁵ Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 301–02 (2013).

⁷⁶ Cara Baldari & Rricha Mathu, *Increasing the Minimum Wage is Good for Child Well-Being*, FIRST FOCUS ON CHILD. (Aug. 31, 2017), <https://firstfocus.org/blog/increasing-the-minimum-wage-is-good-for-child-well-being> [<https://perma.cc/84N5-YMHP>].

⁷⁷ See *e.g.*, Harden et al., *supra* note 3.

⁷⁸ *Id.* at 101.

housing, food insecurity, and self-perception of economic stress. Ultimately, economic instability increases the risk to poor families of child welfare intervention and family separation.⁷⁹

Conversely, increases in income via state-level Earned Income Tax Credit programs reduce abusive head trauma hospitalizations⁸⁰ and family involvement with child protective services.⁸¹ Similar findings have been made about the connection between child safety and welfare and participation in nutrition assistance programs, the expansion of Medicaid, and supportive housing.⁸² Further, regarding child support, an empirical study of Wisconsin families found that mothers eligible to receive all child support paid on behalf of their children were less likely to have a child subject to a screened-in report of maltreatment than were mothers who were eligible for only partial child support payments.⁸³

Economic assistance propels a demonstrable positive effect in the lives of mothers in the demographic group most at risk of involvement in the CWS, the lowest income Black mothers. In the longest running guaranteed income experiment in America, the Magnolia Mother's Trust proved that financial assistance ameliorates negative family outcomes for mothers living in deep poverty.⁸⁴ Among the recipients of no-strings-attached payments through Magnolia Mother's Trust in the year 2020, protective factors—namely, the ability to pay bills on time—increased from less than one third to eighty-three percent.⁸⁵ Additionally, fewer than two-thirds of participating mothers had sufficient cash for food before the payments; eighty-one percent did after.⁸⁶ A similar rise in the share who were able to regularly buy their children new apparel and shoes occurred.⁸⁷ Increased ownership of cars and ability to buy gas aided their trips to work

⁷⁹ Maria Cancian et al., *The Effect of Family Income on Risk of Child Maltreatment* 3 (Inst. for Rsch. on Poverty, Discussion Paper No. 1385-10, 2010), <https://www.irp.wisc.edu/publications/dps/pdfs/dp138510.pdf> [<https://perma.cc/UW4K-KYRA>].

⁸⁰ Joanne Klevens et al., *Effect of the Earned Income Tax Credit on Hospital Admissions for Pediatric Abusive Head Trauma*, 132 PUB. HEALTH REPS. 505, 506–508 (2017) (discussing results from a study on hospital admissions rates).

⁸¹ Whitney L. Rostad et al., *Reducing the Number of Children Entering Foster Care: Effects of State Earned Income Tax Credits*, 25 CHILD MALTREATMENT 393, 395–96 (2020).

⁸² Harden et al., *supra* note 3, at 101.

⁸³ Cancian et al., *supra* note 79, at 7–11 (presenting results from the study showing that mothers with full income support were about ten percent less likely than mothers with only partial income support to have a child subject to a screened-in report for maltreatment).

⁸⁴ *Magnolia Mother's Trust*, SPRINGBOARD TO OPPORTUNITIES, <https://springboardto.org/magnolia-mothers-trust/> [<https://perma.cc/S8R6-ZK6Z>] (describing the pilot initiative, which began in 2018, to provide low-income Black mothers living in affordable housing in Jackson, Mississippi with monthly payments); Bryce Covert, *They Gave Black Mothers in Mississippi \$1,000 a Month. It Changed Their Lives.*, NEW REPUBLIC (Oct. 12, 2021), <https://newrepublic.com/article/163911/mississippi-basic-income-democrats-child-tax-credit> [<https://perma.cc/JEK8-MGBF>] (reporting on the impact of the Mississippi initiative, the “longest-running basic income experiment since the Nixon era”).

⁸⁵ The Magnolia Mother's Tr., *2020 Evaluation Report*, SPRINGBOARD TO OPPORTUNITIES 1 (2020), <https://springboardto.org/wp-content/uploads/2021/05/MMT-2.0-Evaluation-Two-Pager.pdf> [<https://perma.cc/G5NP-HD6R>].

⁸⁶ The Magnolia Mother's Tr., *supra* note 85, at 1; Covert, *supra* note 84.

⁸⁷ The Magnolia Mother's Tr., *supra* note 85, at 2 (measuring increases in the ability to care for children); Covert, *supra* note 84.

and other critical activities.⁸⁸ The protective factor of having money saved for emergencies was present in nearly ninety percent of the recipients by the conclusion of the program year.⁸⁹ The “Black Women Best” framework describes the manner in which uplifting Black women in the American economy is crucial to the economic solvency of economically excluded Black families and the American economy.⁹⁰

C. Policymakers Fail to Fund Anti-Poverty Initiatives.

Policymakers do not take advantage of opportunities to fund anti-poverty programs, especially in areas with significant proportions of Black children. Jurisdictions with the largest numbers of Black children have allotted fewer of their TANF welfare dollars on payments to children and families.⁹¹ For example, for the predominantly Black children of D.C., the TANF payment level is now around thirty-six percent of the Federal Poverty Level.⁹² While benefit levels have increased since 2015 in several states, D.C. has among the lowest figures in the country and their increase, as in all but six states, failed to keep pace with inflation.⁹³ Where Black children comprise the majority of the residents in a state, the TANF payment tends to be lower.⁹⁴ And in every state and D.C., the TANF payment fails to cover affordable housing, defined as taking up no more than thirty percent of a household’s income.⁹⁵ States choose to prioritize funds for other projects, such as programs that benefit middle class

⁸⁸ The Magnolia Mother’s Tr., *supra* note 85, at 2 (measuring increases in the ability to meet transportation needs, with long-term effects on employment); Covert, *supra* note 84.

⁸⁹ The Magnolia Mother’s Tr., *supra* note 85, at 1; Covert, *supra* note 84.

⁹⁰ See Kendra Bozarth et al., *Black Women Best: The Framework We Need For An Equitable Economy*, ROOSEVELT INST. 1 (2020), https://rooseveltinstitute.org/wp-content/uploads/2020/09/RI_Black-Women-Best_IssueBrief-202009.pdf [<https://perma.cc/8SWL-5UMG>](explaining that “[o]ur economy was built in large part upon Black women’s diminished power—through unpaid, exploited, and forced labor.”).

⁹¹ Ife Floyd et al., *TANF Policies Reflect Racist Legacy of Cash Assistance: Reimagined Program Should Center Black Mothers*, CTR. ON BUDGET & POL’Y PRIORITIES 5, 29 (Aug. 4, 2021), <https://www.cbpp.org/research/family-income-support/tanf-policies-reflect-racist-legacy-of-cash-assistance> [<https://perma.cc/6NV9-BR7C>]; see also Ali Safawi & Cindy Reyes, *States Must Continue Recent Momentum to Further Improve TANF Benefit Levels*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/family-income-support/states-must-continue-recent-momentum-to-further-improve-tanf-benefit-levels> [<https://perma.cc/WJU2-XKWZ>] (last updated Dec. 2, 2021).

⁹² Safawi & Reyes, *supra* note 91, at app. tbl.2; see also *2021 Poverty Guidelines for the 48 Contiguous States and the District of Columbia*, ASSISTANT SEC’Y FOR PLAN. & EVAL. (2021), <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2021-poverty-guidelines> [<https://perma.cc/9C3A-52MS>] (setting the Federal Poverty Level for a household of one at \$12,880; of two at \$17,420; and of three at \$21,960). “Federal Poverty Level” is used interchangeably with “federal poverty line.”

⁹³ Safawi & Reyes, *supra* note 91.

⁹⁴ *Id.*

⁹⁵ In every state, modest rental housing is unaffordable for TANF families. *Id.*

families, rather than getting families into jobs,⁹⁶ while also imposing more work restrictions that fall disproportionately on Black TANF recipients.⁹⁷

There is also a major disparity in the amount of financial assistance disbursed through TANF payments and foster maintenance payments.⁹⁸ This gap increases depending on the number of children in the household.⁹⁹ States incentivize funding in federal laws and policies that encourage practices to place children in government-subsidized foster care rather than in their own homes.¹⁰⁰ As a result, the proportion of spending on foster care and adoption has been up to ten times greater than spending on family reunification.¹⁰¹

The contrast between TANF's limited implementation and the funding decisions around foster care maintenance payments reflects a stark policy choice.¹⁰² By denying subsistence benefits to families while investing in foster care, policymakers have repeatedly sided with policies that prioritize family separation over child welfare. These grim facts reflect the choice of policymakers to ignore poverty, seeking to solve it with services, surveillance, and child removal. In doing so, policymakers shun initiatives that would benefit entire constituencies of families impacted by the CWS, improve child safety, and preserve family unity.

D. Decision-makers Could Opt to Empower Parents with Financial Assistance.

Agencies and judicial officers possess wide latitude in handling allegations of child abuse and neglect. These actors could choose to empower parents by providing them with financial assistance, adequate housing, and other benefits to make choices about their lives. In D.C., twelve percent of cases involve housing insecurity, and across the country the percentage is higher.¹⁰³ A judge has discretion to order the Agency to

⁹⁶ Jenni Bergal, *States Raid Funds Meant for Needy Families to Pay for Other Programs*, PEW (July 24, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/07/24/states-raid-fund-meant-for-needy-families-to-pay-for-other-programs> [<https://perma.cc/2KYA-GQQ2>].

⁹⁷ *Policy Basics: Temporary Assistance for Needy Families*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 31, 2021), <https://www.cbpp.org/research/family-income-support/temporary-assistance-for-needy-families> [<https://perma.cc/8C5S-46WV>].

⁹⁸ Julie Murray et al., *Estimating Financial Support for Kinship Caregivers*, URB. INST. 4 fig.3 (Dec. 2004), <https://www.urban.org/sites/default/files/publication/57846/311126-Estimating-Financial-Support-for-Kinship-Caregivers.PDF> [<https://perma.cc/H882-TDDF>].

⁹⁹ *Id.*

¹⁰⁰ Cooper, *supra* note 10, at 264.

¹⁰¹ Elizabeth Brico, *The Government Spends 10 Times More on Foster Care and Adoption Than Reuniting Families*, TALK POVERTY (Aug. 23, 2019), <https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/> [<https://perma.cc/K3HZ-BHLL>].

¹⁰² See Jessica Pac et al., *Poverty Among Foster Children: Estimates Using the Supplemental Poverty Measure*, 91 SOC. SERV. REV. 8, 17 (Mar. 2017) (noting that “[u]nder Title IV-E of the Social Security Act, states can request federal reimbursement for the costs of foster care payments for children who meet a set of eligibility criteria—namely, that they come from an impoverished home.”).

¹⁰³ Of the 402,000 children who live apart from their families in America's foster care system, nearly 121,000 are separated from their families because their parents lack access to safe, decent, and affordable housing. Ruth White, *Vouchers: Family Unification Program*, NAT'L LOW INCOME HOUS. COAL. 2015 ADVOCATES' GUIDE 4-44, 4-44 (2015), http://nlihc.org/sites/default/files/Sec4.13_Vouchers-Family-Unification_2015.pdf [<https://perma.cc/942K-JYDW>].

provide available resources to families as a mitigation measure for parents who are seeking reunification.¹⁰⁴ When a family faces eviction or otherwise requires critical emergency assistance, a CWS agency could exercise discretion to use available resources such as the Family Unification Program housing vouchers available to families with housing insecurity who are at risk of CWS involvement rather than petition for the removal of their child.¹⁰⁵ Failing this, the presiding judge could order the agency to explore poverty mitigation measures as a preventive approach to removal, as did Judge Ernestine S. Gray in her New Orleans courtroom, stating her outlook, that “[w]e shouldn’t be taking kids away from their parents [just] because they don’t have food or a refrigerator.”¹⁰⁶

III. THE SOLUTION: EMPOWERING FAMILIES TO DEMAND THAT THE CHILD WELFARE SYSTEM ADDRESS POVERTY

The Mother’s Outreach Network (“MON”)’s central campaign toward ending the CWS is the passage, funding, and implementation of a permanent local guaranteed income program in D.C. MON’s broader mission is to support Black D.C. mothers who are fighting for economic security while navigating the oppressive CWS and other carceral systems. MON advocates for Black mothers in several ways: (1) MON’s advocacy programs seek to transform income and CWS policy at the local and federal level in support of the needs of Black mothers, their families, and communities; (2) MON’s community engagement initiatives work to advance the power of mothers and their communities and include know-your-rights workshops in law and civic activism, as well as mutual aid, and community-driven research; and (3) MON’s legal program builds community power by providing legal counsel and representation to aid mothers in challenging placement on the city’s Child Protection Register (“CPR”), in obtaining refundable tax credits and other cash benefits, and in addressing other legal needs related to their individual and collective economic security.¹⁰⁷

As a lawyer-led organization, MON works alongside mothers to deploy community-lawyering strategies and collaborate with a wide range

¹⁰⁴ See Richard A. Webster, *One Judge’s Tough Approach to Foster Care: It’s Only for the Really Extreme Cases*, WASH. POST (Nov. 25, 2019), https://www.washingtonpost.com/national/one-judges-tough-approach-to-foster-care-its-only-for-the-really-extreme-cases/2019/11/24/bd2dd322-0a4c-11ea-97ac-a7ccc8dd1ebc_story.html [https://perma.cc/SS4D-3KUN].

¹⁰⁵ See M. ROBIN DION, ET AL., U.S. DEP’T of HOUS. & URB. DEV., *THE FAMILY UNIFICATION PROGRAM: A HOUSING RESOURCE FOR YOUTH AGING OUT OF FOSTER CARE 1*, https://www.huduser.gov/portal/publications/Supportive_housing_for_youth.pdf [https://perma.cc/V2XN-SHNB]; see also White, *supra* note 103, at 4-44-4-45 (explaining that “HUD’s Family Unification Program (FUP) is a federal housing program aimed at keeping homeless families together and safe, and preventing homelessness among youth aging out of foster care. . . . Eligible families include those that are in imminent danger of losing their children to foster care primarily due to housing problems, and those that are unable to regain custody of their children primarily due to housing problems”).

¹⁰⁶ Webster, *supra* note 104.

¹⁰⁷ See *generally* Press, *MOTHER’S OUTREACH NETWORK*, <https://mothersoutreachnetwork.org/press/> [https://perma.cc/7FNE-R4AN] (last visited June 14, 2022).

of organizations on facilitating parent collective action. MON seeks to catalyze “their mothering skills in their political work.”¹⁰⁸

A. Goals

MON is pursuing the following goals to disrupt the approach that the CWS takes to child maltreatment allegations:

1. Supporting power-building and Black parent political engagement. MON focuses principally on supporting Black mothers facing involvement in the CWS, from D.C.’s “front yard” through to the petition for removal and the permanency phases of adjudication.¹⁰⁹
2. Shrinking the family regulation system through an anti-poverty, anti-racist campaign that will transform the CWS funding structure and disrupt parent involvement in the CWS.
3. Changing the narrative from one that judges parent behavior to one that uplifts the dignity and agency of Black mothers to raise economically secure families.

B. Initiatives

MON uses the four domains of movement lawyering elaborated by Alexi and Jim Freeman—political, grassroots support, communications/media, and legal resources—to advance its goals of empowerment for Black mothers in D.C.¹¹⁰ MON achieves this empowerment through the following activities:

1. Politics

Guaranteed income policy campaign for direct cash payments to mothers with children who are CFSA-involved. MON’s core policy initiative is its guaranteed income campaign in the local political ecosystem of D.C. D.C. is a city beset by deep racial wealth and income gaps and other gendered and racialized disparities. MON supports a policy campaign for economic justice through targeted direct cash payments to mothers with children who are involved with the D.C. Children and Family Services Agency (“CFSA”). This advocacy includes seeking public funding focused upon the CFSA budget.

The wave of guaranteed income initiatives crossing the country developed from an old policy concept that gained new national relevance during the COVID-19 pandemic. Guaranteed income policy would allocate to every member of a community or country, regardless of age or other circumstances, subsisting below the income floor, an unconditional payment that raises them above this basic income threshold. It has taken

¹⁰⁸ ROBERTS, SHATTERED BONDS, *supra* note 20, at 238.

¹⁰⁹ “Front Yard” families have no present child welfare involvement but could face involvement, such as homeless families. D.C. GOV’T Child & FAM. SERVS. Agency, *FY 2020 Needs Assessment* 8 (Oct. 1, 2020), https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/FY20_Needs_Assessment_FINAL.pdf [<https://perma.cc/7SDB-LZUQ>].

¹¹⁰ Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 156 (2016).

off in the United States and abroad through population-targeted experiments testing the impact of guaranteed income for the amelioration of poverty.

This movement for income justice has been framed as a Black mother's economic and policy issue.¹¹¹ In the 1960s, among the fiercest leaders of this movement was Black mother and economic justice advocate Johnnie Tillmon, who fought for Guaranteed Adequate Income ("GAI").¹¹² She powered this fight through the National Welfare Rights Organization ("NWRO"), a group dedicated to advancing American economic and racial justice.¹¹³ In our contemporary context, scholars have opined, as Ms. Tillmon did decades ago, that centering U.S. economic policy around Black mothers—the strongest labor participants—will elevate the economy. Conversely, "[i]f policymakers continue on their current course, we will remain stagnant as an economy."¹¹⁴

The centerpiece of MON's policy efforts is supporting and developing a community-informed policy and legislative strategy using a racial equity lens. Grounded with Black parents and other D.C. residents, displaced D.C. workers, and organizational stakeholders, the effort seeks to advance MON's goal of building economic justice for D.C.'s most excluded and marginalized Black families: those facing family separation.

MON's policy campaign, if successful, has the potential to be transformative. In the fall of 2021, the efforts of MON and its allied organizations saw the passage of a \$1.5 million fund to support guaranteed income pilot programs operated by nonprofit organizations.¹¹⁵ From a historical perspective, Reverend Dr. Martin Luther King, Jr. theorized that seeking a guaranteed income is the "simplest" solution to poverty.¹¹⁶ Moreover, as Johnnie Tillmon wrote, guaranteed income would dismantle conditions keeping all "women on their knees,"¹¹⁷ giving them more than a pittance and a choice over how to spend money on their families.

¹¹¹ See generally Ebony Childs & Madeline Neighly, *In Celebration of Black Moms: Cash as Care*, ECON. SEC. PROJECT (Apr. 29, 2021), <https://www.economicsecurityproject.org/wp-content/uploads/2021/04/210429-Cash-As-Care-Report.pdf> [<https://perma.cc/7K6E-EH9X>] (centering income justice on "cash as care" for Black mothers).

¹¹² See Tillmon, *supra* note 72 (presenting GAI as a "welfare plan . . . which would eliminate sexism from welfare").

¹¹³ Wilson Sherwin & Frances Fox Piven, *The Radical Feminist Legacy of the National Welfare Rights Organization*, 47 WOMEN'S STUD. Q. 135, 137 (2019).

¹¹⁴ Janelle Jones, *Black Women Best*, DATA FOR PROGRESS (July 15, 2020), <https://www.dataforprogress.org/blog/2020/7/15/black-women-best> [<https://perma.cc/WSE4-MKP7>] (further making this point by noting that "[w]hen the experiences and worth of Black women, and other marginalized communities, are devalued, disempowered, or excluded, this negatively affects our collective ability to produce shared prosperity").

¹¹⁵ Will Schick, *With Pilot Projects in Place, Backers Look to Mobilize Support for a Guaranteed Income in DC*, DC LINE (Oct. 15, 2021), <https://thedcline.org/2021/10/15/with-pilot-projects-in-place-backers-look-to-mobilize-support-for-a-guaranteed-income-in-dc/> [<https://perma.cc/W48M-GRX3>] (citing the D.C. Committee on Business and Economic Development's FY 2022 budget report).

¹¹⁶ REV. DR. MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY 171 (1967).

¹¹⁷ Tillmon, *supra* note 72.

2. Grassroots activism

Coalition Building. Building power and leadership is critical to community lawyering.¹¹⁸ MON is pursuing these paramount goals through coalition strategies that are rooted in the analytic framework of intersectionality.¹¹⁹ This framework prioritizes supporting the grassroots mobilization of mothers within MON’s prospective client community alongside partner organizational providers. First, MON engages in information sharing and training. Second, MON convenes community meetings and working groups, supporting opportunities for Black mothers to speak at forums. Third, MON cultivates partnerships with a broad array of individuals, organizations, and stakeholders at the local, regional, and national levels across an array of issue areas, including law and others; these partnerships consist of varying sizes and levels of involvement with parents.

Black women-led effort. Cultivating coalition activism around income justice, led specifically by Black women, builds power rooted in the history of the American civil rights struggle.¹²⁰ As previously described, Black women activists were early champions of guaranteed income. NWRO leaders supported Congressional bill H.R. 7257, the Adequate Income Plan, as an alternative to Nixon’s welfare reform plan.¹²¹ Through the proposed Plan, “[i]n the place of ‘slave jobs’ and ‘forced work,’ recipients sought a ‘guaranteed adequate income’ for all Americans, similar in many substantive ways to today’s calls for Universal Basic Income (“UBI”).”¹²² The Adequate Income Plan sought to advance the value of civic engagement and the worth of unpaid mothering work.¹²³ Rather than asserting Black mothers’ rights to “maternalism,” the way that white feminists did for mothers, NWRO leaders asserted the value of their non-wage care work, welfare, civic engagement, and activism.¹²⁴ In this way, “the welfare rights movement provided recipients with an education in political mobilization.”¹²⁵

Intersectional power-building. It is impossible to leverage the political force of marginalized groups without intersectional power-building.¹²⁶ MON adopts elements of paradigms described by Charles Elsesser and Dorothy Roberts, respectively. First, MON engages with

¹¹⁸ See Elsesser, *supra* note 6, at 377 (drawing on community lawyers’ definitional insights about the importance of “leadership by organized constituent groups within the communities served” and the commitment to “consciously build[ing] organizational power and community leadership”); Freeman & Freeman, *supra* note 110, at 150 (describing lawyers’ shift to a focus on “building . . . community power”).

¹¹⁹ See *infra* notes 126–129 and accompanying text.

¹²⁰ Cf. Cooper, *supra* note 10, at 270–72 (explicating racial justice lawyering as a “strategy grounded in American history and its civil rights legacy”).

¹²¹ See Adequate Income Plan, H.R. 7257, 92d Cong. (1971).

¹²² Sherwin & Piven, *supra* note 113, at 137. UBI refers to a program through which every person in a community would receive a uniform payment from the government.

¹²³ *Id.* at 138–39.

¹²⁴ *Id.* at 138–39.

¹²⁵ *Id.* at 139.

¹²⁶ See Dorothy Roberts & Sujatha Jesudason, *Movement Intersectionality: The Case of Race, Gender, Disability, and Genetic Technologies*, 10 DU BOIS REV. 313, 313–16 (2013) (introducing “intersectionality for cross movement mobilization” as a framework, with an emphasis on its application at the “movement-building level”).

organizations that Elsesser terms the “partners with organizing capacity” who are working in the same space.¹²⁷ This includes organizations in the anti-poverty and anti-racism space across different domains of activism and focus. Second, MON derives benefits of coalition movement building, tapping what Roberts calls the “radical potential for intersectionality.”¹²⁸ Organizations that possess overlapping goals to end poverty and racism have joined MON’s efforts even as they continue to “grapple with differences, discovering and creating commonalities and revealing interactive mechanisms of oppression” while providing “a model for alternative relationships.”¹²⁹ In this vein, the coalition joins supporters from across the income advocacy spectrum, including libertarians and far left progressive activists, making seemingly strange bedfellows between groups that align despite different ideologies.

Family Economic Security Cash Pilot. Additionally, MON seeks to demonstrate efficacy and parent agency benefits, ultimately building parent power through an unconditional income experiment. MON has begun fundraising to establish a Black mother’s family preservation cash transfer “pilot” program for mothers at different phases of CFSA involvement. This holds power-building potential for women with a history of political marginalization. As discussed above, Magnolia Mother’s Trust has demonstrated the benefits of financial independence for impoverished Black mothers in Mississippi,¹³⁰ and MON seeks to expand upon this kind of initiative with mothers who are confronted with neglect allegations stemming from poverty. MON is collecting data through a survey it is launching within several communities. The pilot is partially funded and expects to provide fifty or more mothers in cohorts of five to ten with \$500 per month for three years.

Mutual Aid Networks. MON continues to develop mutual aid networks to better facilitate community support of the resource needs of impacted parents and to foster leadership and political strength for marginalized groups.¹³¹

3. Communications

MON pursues four communications strategies to build parent power. First, MON strives to foster and convey knowledge essential to leadership skills. Second, MON seeks to change the narrative from parent turpitude to a public narrative of parent power, agency, and economic independence. Third, MON seeks to center communications around parent stories and information for parents. Fourth, MON seeks to promote its

¹²⁷ Elsesser, *supra* note 6, at 386.

¹²⁸ Roberts & Jesudason, *supra* note 126, at 316.

¹²⁹ *Id.*

¹³⁰ See *supra* notes 84–89 and accompanying text; see also Childs & Neighly, *supra* note 111, at 3 (summarizing the program’s recent outcomes of “decrease in food insecurity and . . . increase in the ability to cover basic needs”).

¹³¹ Cf. Daniel Fernandez, *Dean Spade on the Promise of Mutual Aid*, NATION (Dec. 16, 2020), <https://www.thenation.com/article/economy/interview-dean-spade/> [<https://perma.cc/Y5QH-6UC8>] (describing mutual aid, the work of “directly support[ing] each other’s survival needs” while “get[ting] to the root causes of these problems”).

advocacy program by sharing robust informational material and research on the topic of income justice through a social media and internet presence.

4. Legal program

MON is working to complement its transformational advocacy against “large systems of oppression,”¹³² with a civil legal services program for CFSA-involved parents.

Individual Representation. MON’s legal programming includes advocacy for direct cash aid for parents and encouraging child welfare parents’ attorneys to participate in this advocacy, for instance by requesting Child Tax Credits (“CTC”) for biological parents of children in foster care under the CTC 2021 program.¹³³ MON’s Parents’ Tax Workshop and Advice Clinic, which have been featured in the news media,¹³⁴ provide support for no-income and low-income parents, who are at risk of involvement with Child and Family Services. Legal help is currently being delivered: (1) through representation at administrative hearings; (2) through screening, advice, and referral clinics for collateral civil legal services, including for the CTC 2021 program and other refundable tax credit programs that are designed to augment the income of no-income, low-income, and low wage workers; and (3) eventually, through advice and counsel for parents at the CFSA investigation phase.

Systemic Legal Advocacy. MON has begun to undertake its policy advocacy.¹³⁵ The objectives of MON’s planned litigation and legislative advocacy include facilitation of parents’ economic stability to meet their children’s needs, through the following: (1) requiring the provision of a minimum income of 100% of the poverty level for families that CFSA identifies for abuse and neglect allegations, in order to meet the families’ cost of living; (2) requiring the provision of public assistance and housing to support family reunification; (3) repurposing child welfare funding sources for direct cash transfers to parents, (4) using TANF to pay for direct cash transfers up to 100% of the poverty line,¹³⁶ and (5) ending the use of TANF payments for foster care services.

Parent leadership. To instill parent leadership, MON has initiated a Parent Advisory Board on Parent Economic Security to provide guidance to child welfare agencies.

Parent representation. To increase representation in D.C., MON’s advocacy agenda for the future includes: (1) supplementing

¹³² Freeman & Freeman, *supra* note 110, at 155 (considering the role of lawyers against such systems).

¹³³ See Pulliam & Reeves, *supra* note 1 (explaining the child tax credit program).

¹³⁴ Chelsea Cirruzzo, *D.C. Orgs Help Families Utilize Child Tax Credit*, AXIOS (Nov. 4, 2021), <https://www.axios.com/local/washington-dc/2021/11/04/dc-orgs-help-families-utilize-child-tax-credit> [https://perma.cc/VCK2-9NFV].

¹³⁵ Sam P.K. Collins, *Advocates Press for Information About Neglect Cases*, WASH. INFORMER (Oct. 13, 2021), <https://www.washingtoninformer.com/advocates-press-for-information-about-neglect-cases/> [https://perma.cc/C32L-NYLR].

¹³⁶ Azevedo-McCaffrey & Safawi, *supra* note 44 (prescribing ways to redirect TANF funds).

payment levels for panel attorneys appointed by D.C. Superior Court;¹³⁷ and (2) creating an additional attorney panel of civil legal services attorneys, or augmenting the parent defense counsel panel devoted to representing parents at every stage of involvement with Child and Family Services Agency.

IV. CONCLUSION

Two decades ago in her book, *Shattered Bonds: The Color of Child Welfare*, Professor Dorothy Roberts wrote, “[i]t is income insecurity, not welfare receipt, that is the best predictor of foster care placement.”¹³⁸ In another work, Roberts also extolls the mandate for “a strong, inclusive, and dignified welfare state,” decrying the injustice of denying economically marginalized Black Americans this perquisite of citizenship.¹³⁹ Mother’s Outreach Network supports, through parent empowerment lawyering—an approach that advances a guaranteed income program for impoverished American families—starting with those at risk of child welfare intervention. Through racial economic justice for Black mothers and their children, we can achieve liberation for all families threatened with state intrusion and separation of their families.

¹³⁷ D.C. CODE §16-2304(a)-(b)(1) (setting forth children’s and parents’ right to counsel); see also Jonah E. Bromwich, *Family Court Lawyers Flee Low-Paying Jobs. Parents and Children Suffer*, N.Y. TIMES (Apr. 29, 2022), <https://www.nytimes.com/2022/04/29/nyregion/family-court-attorneys-fees.html> [<https://perma.cc/6GDW-F3CS>] (problematizing the low pay of panel attorneys who represent children and indigent adults in criminal and family cases).

¹³⁸ ROBERTS, *SHATTERED BONDS*, *supra* note 21, at 185.

¹³⁹ Roberts, *The Problem of Black Citizenship*, *supra* note 48, at 1602.