
CAN'T BUY ME LOVE: FUNDING MARRIAGE PROMOTION VERSUS LISTENING TO REAL NEEDS IN BREAKING THE CYCLE OF POVERTY

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I. INTRODUCTION

A. "WE DON'T HAVE MUCH, BUT WE HAVE LOVE."

Anthony watched the worker hastily usher his girlfriend Pam into the small, blue room. The blinds on the door clicked shut behind her, unlike the other rooms in the Civic Center Department of Public Social Services office. The Civic Center Office caters almost exclusively to public assistance applicants living in Skid Row, Los Angeles, California. Most of the other rooms don't even have doors. On a busy day, everybody hears frustrated applicants arguing with their case workers.

Anthony didn't get up when Pam walked away. He leaned over and apologetically explained to me that he didn't like leaving her alone, but he wasn't allowed in the room while she underwent a medical examination. Checking to make sure the blinds were still closed, he opened his tattered manila folder and leafed through his old documents: proof of work applications, letters confirming his medical condition, and handwritten telephone numbers of various community mental health centers. At 60 years old, Anthony's hands were shaking when he found what he was looking for: a piece of light green paper folded in half with "Anthony" written on the

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front in blue marker. Inside he showed me a poem, several carefully drawn flowers, and a personal note he didn't want me to read.

Anthony looked at his feet. He said he liked to surprise Pam with a card every now and again: sometimes on special occasions and sometimes just to put a smile on her face. His birthday was in September, the month before, and Pam had surprised *him* with the card. Anthony raised his eyes and said, "We don't have much, but we have love. She knows I would do anything for her. We're going to get married when we get everything settled." He told me that they had been together for 20 years, supporting each other through ups and downs. As Anthony spoke, I was drawn to his determination. He peacefully accepted his life's tragedies: growing up in poverty and dealing with mental illness. After about fifteen minutes, Pam came out and we resumed the usual business of discussing their options in California's system of public relief.

As Anthony was leaving, he told Pam that we had spoken of her in her absence. She smiled and looked lovingly at Anthony. She asked him, "Why were you bothering her about our business?" He smiled back and said, "She listened."

I was touched by the intimacy and thoughtfulness of two people who had obviously received so few breaks in life. Even in the face of dire poverty, they found love. While they were blessed to be born in the wealthiest nation in the world, they were simultaneously denied wealth *and* good health.

Anthony and Pam don't need love; they have it. They need health care, a supportive environment for treatment, food, and shelter. At some point, the government decided to start teaching people to find love and marriage instead of providing them with things they need. In 1996, welfare reform diverted money from direct family support to marriage promotion.¹ That's why I'm writing this Note.

B. THE U.S. GOVERNMENT'S ROLE IN DEFINING MARRIAGE

The U.S. government is in the business of defining and promoting marriage and has been for some time.² In 1862, the President and Congress passed legislation securing the monogamous definition of marriage

¹ See *infra* Part II.

² See The Healthy Marriage Initiative, Admin. for Children & Families, U.S. Dep't of Health & Human Servs., General Information, <http://www.acf.hhs.gov/healthymarriage/about/mission.html#background> (last visited Mar. 19, 2009).

by banning bigamy.³ The Supreme Court promoted marriage as one of the “basic civil rights of man,” and “fundamental to our very existence and survival” in the landmark 1967 holding of *Loving v. Virginia*.⁴

Right now, federal money funds many state- and locally-run marriage promotion programs. The government spends roughly \$150 million per year to encourage people to marry.⁵ President George W. Bush, in the second year of his presidency, pledged: “My administration will give unprecedented support to strengthening marriages. Many good programs help couples who want to get married and stay married.”⁶ The government also pays private companies to research marriage and create these programs.⁷ Such research “contends that this relative inattention to the concept of commitment reflects a cultural focus on individualism and individual fulfillment, and . . . that strong marriages require mutual commitment. Commitment represents a focus on the couple and the partner—not the self.”⁸ Despite these programs, the divorce rate has not wavered,⁹ marriage rates have not soared,¹⁰ and people still fluctuate in and out of poverty in accordance with economic recessions and booms.¹¹

³ Act of July 1, 1862, ch. 126, 12 Stat. 501 (1862). Historically, the U.S. Government has tried to enforce a specific definition of marriage ever since President Lincoln banned bigamy in 1862 with the Morrill Anti-Bigamy Act (punishing bigamy with a fine of up to five hundred dollars or a prison term of up to five years). *See id.*

⁴ 388 U.S. 1, 12 (1967).

⁵ *See* Press Release, U.S. Dep’t of Health & Human Servs., Welfare Reform Reauthorized, (Feb. 8, 2006), <http://www.hhs.gov/news/press/2006pres/20060208.html>.

⁶ The Healthy Marriage Initiative, Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., Premarital and Marriage Education, http://www.acf.hhs.gov/healthymarriage/about/factsheets_premarital_edu.html (last visited Mar. 18, 2009); *see also* 42 U.S.C. § 602(a) (2006).

⁷ KRISTIN ANDERSON MOORE ET AL., CHILD TRENDS RESEARCH BRIEF, WHAT IS “HEALTHY MARRIAGE”? DEFINING THE CONCEPT 1 (2004),

http://www.acf.hhs.gov/healthymarriage/pdf/child_trends-2004whatishm.pdf.

⁸ *Id.* at 4.

⁹ *See* NAT’L CTR. FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS REPORTS, BIRTHS, MARRIAGES, DIVORCES, AND DEATHS: PROVISIONAL DATA FOR 2007 1 (2007),

http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_21.pdf. The divorce rate was 49% in 2005, 48% in 2006, and 49% in 2007. *Id.*

¹⁰ While the divorce rate has remained around 49%, the following number of people married: in 1998, 2,256,000; in 1999, 2,358,000; in 2000, 2,329,000; in 2001, 2,327,000; in 2002, 2,254,000; in 2003, 2,187,000; in 2004, 2,279,000; in 2005, 2,230,000; in 2006, 2,193,000; in 2007, 2,205,000. NAT’L CTR. FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS REPORTS, BIRTHS, MARRIAGES, DIVORCES, AND DEATHS: PROVISIONAL DATA FOR 1999, 2001, 2003, 2005, 2007, <http://www.cdc.gov/nchs/products/nvsr.htm>.

¹¹ *See infra* Figure 1.

II. WELFARE REFORM IN AMERICA

A. THE PATH TO WELFARE REFORM

In 1992, President Bill Clinton made a campaign promise to “end welfare as we know it.”¹² Republicans collected on this promise in 1996 by urging him to sign the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) of 1996.¹³ The Act emphasized marriage as a solution to poverty.¹⁴ It began: “The Congress makes the following findings: 1) Marriage is the foundation of a successful society. 2) Marriage is an essential institution of a successful society which promotes the interests of children.”¹⁵ Before 1996, Aid to Families with Dependant Children (“AFDC”) and Job Opportunities and Basic Skills (“JOBS”) were the primary sources of welfare for needy families.¹⁶ In 1993, the AFDC program served an average 4.98 million cases per month.¹⁷

AFDC’s predecessor, Aid to Dependant Children, was criticized because some said it discouraged marriage.¹⁸ As a result, in 1960, the government changed the name of the program from Aid to Dependant Children to Aid to Families with Dependant Children, foreshadowing its future promotion of two-parent family values.¹⁹

During the 1980s and early 1990s, welfare policy and the public perception of welfare created a strong foundation for PRWORA.²⁰ The conservative “welfare agenda” sought to solve women’s poverty by modifying women’s behavior and family planning, thereby reducing the number of children born into poverty.²¹ For example, minor parents only received aid

¹² James Toedtman, *Key Move in Presidency*, NEWSDAY, Aug. 1, 1996, at A35.

¹³ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁴ *Id.* §101.

¹⁵ *Id.*

¹⁶ See U.S. GEN. ACCOUNTING OFFICE, REPORT TO THE RANKING MINORITY MEMBER, COMMITTEE ON FINANCE, U.S. SENATE, WELFARE TO WORK: PARTICIPANTS’ CHARACTERISTICS AND SERVICES PROVIDED IN JOBS 1 (1995),

http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/02/1c.pdf.

¹⁷ *Id.*

¹⁸ See Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1667 (2005) (stating that AFDC replaced ADC because it discouraged marriage); see also JOHN ICELAND, *POVERTY IN AMERICA* (2006) (stating that Franklin D. Roosevelt created “Aid to Dependant Children”(AFDC’s predecessor)).

¹⁹ See Onwuachi-Willig, *supra* note 18, at 1665, 1669.

²⁰ See *infra* notes 21–36 and accompanying text.

²¹ Nancy E. Rose, *Scapegoating Poor Women: An Analysis of Welfare Reform*, 34 J. ECON. ISSUES 143, 146 (2000).

if they lived with their biological parents.²² Another program “promoting” marriage refused families the benefits of marriage in aid calculations if the wife’s children were not biologically the husband’s.²³ The government even contemplated encouraging recipient women to “implant the contraceptive Norplant.”²⁴ These behavioral incentives all indirectly sought to promote marriage and prevent births out of wedlock.²⁵

AFDC did not fare much better than its predecessor in its reception of criticism. The 1980s movement glorifying decadence and lawlessness had an individualist undertone which subtly criticized those dependent upon the government for help.²⁶ In the 1980s, people who made more than one million dollars per year saw their incomes increase by about 2,184%, and those making between two hundred thousand and one million dollars per year increased by 697%.²⁷ At the same time, the incomes of four-fifths of all American workers declined.²⁸ This was a ruggedly individualistic decade where the rich ruthlessly got richer, and resented their obligations to America’s poor.²⁹

Relishing this environment, Republicans publicly criticized the lack of work requirements for single or married recipient mothers in AFDC.³⁰ Politicians scared the public with images of black “welfare queens” who were taking advantage of government resources by pumping out children to increase their monthly welfare check.³¹ Also, public perception erroneously depicted most single mothers on welfare as totally dependent on welfare for their income.³² Prominent welfare critic Charles Murray called for an absolute end to welfare because of the “chronic” welfare dependency

²² See *id.* (This policy held despite the finding that two-thirds of these teenage mothers were victims of incest, often by men still living in the home.).

²³ See Rose, *supra* note 21.

²⁴ *Id.* This policy was never realized, possibly due to the constitutional problems and negative health risks associated with the drug. See *id.*

²⁵ See *id.* at 146–57.

²⁶ See CHARLES DERBER, *THE WILDING OF AMERICA: HOW GREED AND VIOLENCE ARE ERODING OUR NATION’S CHARACTER* 12 (1996). Michael Milken invented ways to defraud investors, amassing wealth without regard to his colleagues. *Id.*

²⁷ Susan L. Thomas, “Ending Welfare As We Know It,” or Farewell to the Rights of Women on Welfare? A Constitutional and Human Rights Analysis of the Personal Responsibility Act, 78 U. DET. MERCY L. REV. 179, 182 (2001).

²⁸ *Id.*

²⁹ See DERBER, *supra* note 26 (discussing how the corporate greed of the 1980s fueled a national epidemic of violence and “wilding” (white-collar “violence”).

³⁰ See *id.* at 133, 136; see also Thomas, *supra* note 27, at 179–80.

³¹ Thomas, *supra* note 27, at 179 & n.1.

³² Barbara Gault et al., *Prospects for Low-Income Mothers’ Economic Survival Under Welfare Reform*, *PUBLIUS* 175, 179 (1998).

that allowed single mothers to have children without bearing the economic burden.³³ However, three-fourths of single mothers who received welfare from 1984 through 1988 had substantial income from another source and only received enough welfare to supplement their income.³⁴ These mothers received outside assistance from their families, their own employment, or non-means-tested benefits.³⁵

B. REALIZATION OF WELFARE REFORM

During the 1994 mid-term elections, Newt Gingrich led a major campaign to cut public assistance.³⁶ The pressure from his crusade, and the distorted public perception of AFDC recipients, left the Republican Congress clamoring for welfare reform.³⁷ Finally, under much pressure, President Bill Clinton acquiesced and signed into law the widely criticized Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).³⁸

The Act replaced AFDC with Temporary Assistance to Needy Families (“TANF”).³⁹ TANF provides block grants to states, allowing them to spend federal money within the parameters of TANF’s detailed purposes.⁴⁰ States have to “match” a percentage of the federal grant with their own funds, called the state maintenance of effort.⁴¹ The maintenance of effort requirement is determined by the performance of the state’s programs since 1995.⁴² “By law, federal TANF funds are subject to appropriation by the state legislature.”⁴³

³³ Charles Murray, *Losing Ground: American Social Policy 1950–1980* 160–61 (Basic Books 2d ed. 1994) (1984).

³⁴ Roberta Spalter-Roth et al., *Welfare That Works: The Working Lives of AFDC Recipients*, 17 *Focus* (1995), available at http://www.irp.wisc.edu/publications/focus/textver/17.2.a/welfare_that_works.txt.

³⁵ *Id.*

³⁶ Phoebe G. Silag, Note, *To Have, To Hold, To Receive Public Assistance: TANF and Marriage-Promotion Policies*, 7 *J. GENDER RACE & JUST.* 413, 415 (2003).

³⁷ *Id.*

³⁸ *Id.* Signing the PRWORA was also one of the most criticized (by Democrats) things Mr. Clinton did during his entire presidency. See Peter Edelman, *The Worst Thing Bill Clinton Has Ever Done*, *ATLANTIC MONTHLY*, Mar. 1997, at 43–58, available at <http://www.theatlantic.com/issues/97mar/edelman/edelman.htm>.

³⁹ See 42 U.S.C. § 602 (2006).

⁴⁰ *Id.*

⁴¹ See *Temporary Assistance for Needy Families*, 63 *SOC. SECURITY BULL.* 62, 62 (Supp. 2000) (state maintenance of effort must be 80% of the amount of nonfederal funds they spent in FY 1994 on AFDC and affiliated programs.)

⁴² Jack Tweedie, *More than Just “Welfare,”* 26 *State Legislatures* 30, 30–33 (2000), available at <http://www.ncsl.org/programs/pubs/200welf.htm#welfare>.

⁴³ See *id.*

C. GOALS, REQUIREMENTS, AND INCENTIVES OF THE NEW WELFARE

When a federal block grant reaches the state, state legislators have broad discretion on how to spend the money.⁴⁴ While the Supreme Court created an entitlement to public assistance in 1970, the 1996 Act revoked this arrangement.⁴⁵ As a result, states have even more flexibility with federal money, as long as their actions support the stated goals.⁴⁶

TANF aims to: “[(1)] assis[t] needy families so that children can be cared for in their own homes, [(2)] reduc[e] the dependency of needy parents by promoting job preparation, work and marriage, [(3)] preven[t] out-of-wedlock pregnancies, and [(4)] encourag[e] the formation and maintenance of two-parent families.”⁴⁷ Three of the four “purposes” (2, 3, 4) refer at least implicitly to marriage as a solution to the problem of needy families.⁴⁸

While TANF gave greater latitude to states in creating public assistance programs, it also created more restrictions for recipients than AFDC.⁴⁹ “Recipients . . . must work as soon as they are job ready or no later than two years after coming on assistance.”⁵⁰ Single parents must participate in “work activities” for at least thirty hours per week, while one parent in a married couple must participate in “work activities” for at least thirty-five hours per week.⁵¹ “Work activities” include: “unsubsidized or subsidized employment; on-the-job training; work experience; community service; job search—not to exceed 6 total weeks and no more than 4 consecutive weeks; vocational training—not to exceed 12 months; job skills training related to work; satisfactory secondary school attendance; [and] providing child care services to individuals who are participating in community service.”⁵² Recipients may have benefits terminated for a violation of the “work activities” requirement.⁵³ Also, after an individual receives

⁴⁴ *Id.*

⁴⁵ *See, e.g.,* Goldberg v. Kelly, 397 U.S. 254, 262 (1970); *see also* 42 U.S.C. § 602 (2006).

⁴⁶ 42 U.S.C. § 602.

⁴⁷ Office of Family Assistance, Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., TANF Factsheet (2008), http://www.acf.hhs.gov/opa/fact_sheets/tanf_factsheet.html (last visited March 19, 2008).

⁴⁸ *See id.* and accompanying text.

⁴⁹ *See* 42 U.S.C. § 602; *see also* Rebecca E. Zietlow, *Two Wrongs Don’t Add up to Rights: The Importance of Preserving Due Process in Light of Recent Welfare Reform Measures*, 45 AM. U. L. REV. 1111, 1113 (1996).

⁵⁰ Office of Family Assistance, *see supra* note 47.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

TANF for five years, his or her family is no longer eligible to receive cash aid from TANF (states may shorten this time allowance).⁵⁴

Under AFDC, a caretaker parent was allowed to stay at home with his or her children and receive aid.⁵⁵ Under TANF however, a single parent must work, since the definition of “work” does not include remaining at home with his or her children.⁵⁶

The government has encouraged states to reach TANF’s stated goals by offering looser requirements and financial incentives.⁵⁷ States must “ensure that 50 percent of all families and 90 percent of two-parent families are participating in work activities. If a state reduces its caseload . . . without restricting eligibility, it can receive a caseload reduction credit. This credit reduces the minimum participation rates the state must achieve.”⁵⁸ The five states that reduced the “illegitimacy ratio” without increasing the number of abortions received a bonus of \$100 million for fiscal years 1999 through 2002.⁵⁹ The “illegitimacy ratio” is the ratio of babies born to unmarried mothers to the number of all babies born.⁶⁰ In reaction to this measure, states have made abortions even less available, and created family “caps,” which limit the amount of assistance one family may receive, despite the number of children.⁶¹ This system is largely suspected to be a long-term plan to “privatize” economic responsibility.⁶²

D. RESULTS AND REAUTHORIZATION OF THE NEW WELFARE

States have spent their welfare block grants on various programs that comply with TANF.⁶³ These programs spend federal money in a variety of ways, including:

providing extra cash bonuses to recipients who get married, deducting money from welfare checks when mothers are living with men who are not the fathers of their children; increasing monthly welfare checks for married couples, offering marriage and relationship education classes,

⁵⁴ See *id.*

⁵⁵ See Office of Human Servs. Policy, U.S. Dep’t of Health & Human Servs., Aid to Families with Dependent Children and Temporary Aid for Need Families, <http://aspe.hhs.gov/HSP/abbrev/afdc-tanf.htm> (last visited Mar. 20, 2009).

⁵⁶ See Office of Family Assistance, *supra* note 47 and accompanying text.

⁵⁷ See Rose, *supra* note 21.

⁵⁸ Office of Family Assistance, *supra* note 47.

⁵⁹ See Rose, *supra* note 21, at 148.

⁶⁰ Susan Frelich Appleton, *When Welfare Reforms Promote Abortion: “Personal Responsibility,” “Family Values,” and the Right to Choose*, 85 GEO. L.J. 155, 174–75 (1996).

⁶¹ See *id.* at 159.

⁶² See *id.*

⁶³ See Silag, *supra* note 36, at 418–20.

and putting up billboards in low-income communities promoting the value of marriage.⁶⁴

In Pennsylvania, the Healthy Marriage Education Project offers a 12-week marriage education course for low-income, unmarried couples with children.⁶⁵ Arizona set aside one million, one hundred thousand dollars of its block grant for booklets about successful marriage and “marriage-skills seminars.”⁶⁶ These seminars are run by various private contractors, including religious institutions.⁶⁷ The Oklahoma “Prevention and Relationship Enhancement Program” funds businesses, churches, faith-based community groups, and educators in their efforts to enhance marriage.⁶⁸ West Virginia has a cash incentive plan: married welfare recipients receive one hundred dollars per month more than they would receive as unmarried recipients.⁶⁹ In September of 2004, the government awarded nine hundred thousand dollars to a Minnesota “nationwide repository for healthy marriage programs and research.”⁷⁰ The project may receive up to four million, five hundred thousand dollars over five years.⁷¹ Alaska received a three million, two hundred thousand dollar TANF bonus and is using five hundred thousand dollars to promote marriage through a Faith-Based Community Initiatives Program.⁷² A Washington, D.C. program seeks to teach troubled married couples how to base their “healthy union” on “mutual love, respect and shared goals.”⁷³ “Family-to-Family” recruits healthy families to “mentor” unstable families.⁷⁴

While the states have great flexibility in creating appropriate programs to achieve TANF’s stated goals, some programs have been terminated.⁷⁵ Wisconsin tried to use two hundred twenty thousand dollars in TANF funds to “hire a ‘marriage policy coordinator’ to assist members of the clergy in

⁶⁴ Sarah Olson, *Marriage Promotion, Reproductive Injustice, and the War Against Poor Women of Color*, DOLLARS & SENSE (2005), <http://www.dollarsandsense.org/archives/2005/0105olson.html>.

⁶⁵ Nat’l Healthy Marriage Res. Ctr., Programs and Initiatives in Pennsylvania, <http://www.healthymarriageinfo.org/programs/pennsylvania.cfm> (last visited Mar. 28, 2009).

⁶⁶ See Silag, *supra* note 36, at 418.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 419.

⁷⁰ Ctr. for Family Policy & Practice, *Update on Marriage Promotion Initiative, Legislation and Research*, 6 POL’Y BRIEFING (Sep. 2004), available at http://www.cffpp.org/briefings/brief_0409.html.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Elimination of Low-Income Marriage Penalties: Hearing Before the Comm. on S. Appropriations Subcomm. on D.C.*, 109th Cong. (2006) [hereinafter *Hearing*] (testimony by Kate Jesberg, Director, Dep’t of Health & Human Servs., D.C.).

⁷⁴ *Id.*

⁷⁵ See Silag *supra* note 37, at 419; Ctr. for Family Policy & Practice, *supra* note 70.

adopting community marriage standards.”⁷⁶ However, this use of the grant was held to be unconstitutional under the First Amendment as a violation of the Establishment Clause.⁷⁷ Another TANF grant was revoked in Virginia for different reasons.⁷⁸ Parents Educating Parents, an experimental mentoring program, received nine hundred ninety thousand dollars from a federal agency and one hundred twenty-five thousand dollars from the state in 2004.⁷⁹ A later audit “revealed that \$277,000 had been spent by the organization with no tangible results,” and the program was shut down.⁸⁰ However, “neither the state nor the federal government intend[ed] to seek recoupment of the funds.”⁸¹

In 2006, President Bush reauthorized TANF by signing the Deficit Reduction Act (“DRA”) of 2005.⁸² This bill designated \$150 million to “support programs designed to help couples form and sustain healthy marriages.”⁸³ One third of this money is to be used by the states for “programs designed to encourage responsible fatherhood.”⁸⁴ Like the original goals of TANF, welfare block grants aim to assist needy and poor families by (1) funding “competitive research and demonstration projects to test promising approaches to encourage healthy marriages and promote involved, committed and responsible fatherhood” and “marriage education, marriage skills training, public advertising campaigns, high school education on the value of marriage and marriage mentoring programs” and (2) “promoting fatherhood [through] counseling, mentoring, marriage education, enhancing relationship skills, parenting, and activities to foster economic stability.”⁸⁵ One commentator has noticed that our welfare system today seems much more like social rehabilitation to re-moralize America.⁸⁶

III. THE GOVERNMENT’S PERSPECTIVE ON TANF AND MARRIAGE PROMOTION

Government officials generally point to the importance of marriage and raising children with a father present.⁸⁷ They say “a welfare system

⁷⁶ See Silag, *supra* note 36, at 419.

⁷⁷ *Id.* at 418–20.

⁷⁸ Ctr. for Family Policy & Practice, *supra* note 70.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Office of Family Assistance, *see supra* note 47.

⁸³ Press Release, *supra* note 5.

⁸⁴ *Id.*

⁸⁵ The Healthy Marriage Initiative, *supra* note 2.

⁸⁶ See Silag, *supra* note 36, at 418–20.

⁸⁷ See *infra* notes 88–93 and accompanying text.

that helps single mothers become employed, but ignores the need to promote fatherhood and marriage, may serve only to enable unmarried women to rear children without the presence of the father.”⁸⁸ As U.S. Assistant Secretary for Children and Families from 2001 until 2007, Wade F. Horn argued, “[moving] welfare-dependent single mothers into the paid labor force and [putting their kids in subsidized child care[] is not enough,” because a “better world is one in which kids grow up in the context of two-parent married households.”⁸⁹ Even more alarmingly, Mr. Horn said, “An increase in the earnings of single mothers [may] decrease the probability that they will marry.”⁹⁰ This was clearly a controversial statement.⁹¹ Decreasing women’s wages to make them dependant on men (thus “promoting marriage”) will simply put them and their children in a position of increased vulnerability in the face of poverty. His solution? “[Horn] has suggested that single mothers may participate in [job preparation] programs only if funds are left over after all two-parent married families have taken their share.”⁹² He has also suggested “re-stigmatiz[ing]” divorce as a possible solution, all for the sake of marriage promotion.⁹³

Secretary of Health and Human Services Michael O. Leavitt acted on Mr. Horn’s distaste for moving poor women into the work force, proposing a downgrade to the Child Care Bureau in 2006.⁹⁴ The Child Care bureau was a product of the Clinton Administration, specifically to “oversee subsi-

⁸⁸ Wade F. Horn & Andrew Bush, *Why Our Welfare System Must Promote Fatherhood*, 3 FACTS & OPINIONS 1, 4–5 (1997), available at <http://www.limitedgovernment.org/publications/pubs/FandO/foNov97.pdf>.

⁸⁹ Wade F. Horn, *Child Support and Welfare Costs*, 4 GEO. PUB. POL’Y REV. 13, 16 (1998).

⁹⁰ Dorothy E. Roberts, *Symposium: Welfare Reform and Economic Freedom: Low-Income Mothers’ Decisions About Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029, 1053–54 (2004) (quoting Wade F. Horn & Andrew Bush, *Fathers, Marriage and the Next Phase of Welfare Reform*, ACTION INST. POL’Y F. (Spring 2003)).

⁹¹ Mr. Horn’s “solution” is blatantly sexist. His worry that women’s wages will increase, thus decreasing their probability of marriage, echoes the voices of historical opposition to the women’s civil rights movement. “[Feminist scholars] agree that economic empowerment of women is a central feature of [a challenge to the gender power imbalance]. Some center this debate in a broad-based challenge to the gendered structure of wage labor, arguing that our sex-segregated occupational structure should be dismantled, and suggesting a reevaluation of the gendered construct of “work.” Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155, 1155 (1991).

⁹² Cara C. Orr, Note, *Married to a Myth: How Welfare Reform Violates the Constitutional Rights of Poor Single Mothers*, 34 CAP. U. L. REV. 211, 229 (2005).

⁹³ PANDORA HOPKINS, HUMAN DIGNITY & HUMILIATION STUDIES, HOUSE OF CARDS AND THE USE OF SHAME AND STIGMA AS STRATEGY: A FOLKLORE STUDY OF AN ELITE GROUP 3 (2005), <http://www.humiliationstudies.org/documents/HopkinsBerlin05meeting.pdf>.

⁹⁴ Erik Eckholm, *Federal Plan for Change in Child Care Draws Protest*, N.Y. TIMES, Mar. 10, 2006, at A14.

dies for low-income mothers and improve the quality of child care.”⁹⁵ Mr. Leavitt argued that the downgrading would “minimize[] the importance of child care assistance in supporting working families, particularly low-income parents.”⁹⁶

Mr. Horn also believes that a system of carrot-and-sticks will bribe poor mothers to marry.⁹⁷ He believes that “[TANF] places pressure on poor single mothers to marry by circumscribing their access to public benefit programs that are important to their survival.”⁹⁸ Mr. Horn has also promoted the Heritage Foundation's proposal to provide women “at high risk of bearing a child out of wedlock a \$5,000 cash payment if [they have their] first child within marriage.”⁹⁹ Horn explained that as long as these women remain married to their spouses, this payment would be distributed in annual payments of one thousand dollars over the five years following the birth of their within-wedlock child.¹⁰⁰

Proponents of Welfare Reform policies argue that raising children in a healthy, two-parent family is so important that any means of marriage promotion is warranted.¹⁰¹ They cite “a large body of evidence across the social sciences [that] indicates that human beings develop in the healthiest way within a functional family (i.e., with the biological or adoptive mother and father in a stable marriage).”¹⁰²

Another school of thought argues that “[a] child’s academic and social performance is closely related to the structure of the family in which a person is raised; and such performance is important for the quality of human and social capital. . . . Social science research also shows that the breakdown of the family weakens social capital because it accentuates social pathologies. Abuse of women and children is more likely to occur in irregular families. Men who have witnessed domestic violence are more likely to abuse their own wives and children.”¹⁰³

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Wade F. Horn, *Wedding Bell Blues: Marriage and Welfare Reform*, 19 BROOKINGS REV. 39, 39–42 (2001).

⁹⁸ Orr, *supra* note 92.

⁹⁹ *Id.*; see also Horn, *supra* note 97.

¹⁰⁰ See Orr, *supra* note 92.

¹⁰¹ See Maria Sophia Aguirre, *Marriage and the Family in Economic Theory and Policy*, 4 AVE MARIA L. REV. 435, 453–54 (2006).

¹⁰² *Id.* at 453.

¹⁰³ *Id.* at 453–54.

IV. PROBLEMS WITH TANF AND MARRIAGE PROMOTION

I will argue that the current spending on marriage promotion is improper. Marriage promotion, in the form of welfare benefits, is unconstitutional because it violates the Due Process Clause of the Fourteenth Amendment and the Establishment Clause of First Amendment of the U.S. Constitution. Marriage promotion is socially irresponsible for thirteen reasons: (1) marriage cannot reduce poverty; (2) women (especially low-income women) are extremely vulnerable to abuse in marriage; (3) marriage cannot be expected to perform a 'Cinderella' role, sweeping women away from their insecurities and obstacles; (4) poor women often want to marry but are prevented by other barriers; (5) through marriage promotion welfare, society sends women the mixed messages that they need to be a better caretaker, but they also must work outside of the home; (6) contrary to the body of evidence provided by conservative Republicans, children of single parents are *not* doomed to a life of crime; (7) providing 'social capital' to children by coercing their parents to marry is much less beneficial than supporting the family with actual capital; (8) marriage promotion programs prey on the vulnerable low-income population and are nonexistent in mid- to upper-class America; (9) 'rehabilitating' families is a dangerous experiment; (10) the welfare program that funds marriage promotion is not properly structured to promote marriage; (11) the welfare program that funds marriage promotion is not properly structured to reduce poverty; (12) the marriage solution assumes that one or both partner(s) in a marriage may find employment, and this is not always true; and (13) using government funds to promote marriage is fiscally irresponsible. I will also reveal holes in the government's claim that marriage promotion welfare is a grand success. I will propose alternate solutions to reducing poverty: our first step should be restructuring our societal springboard, emphasizing equal education and health care to provide opportunities and prevent obstacles at a young age. Our second step should be helping the poor gain access to a fair and supportive job market that provides them with adequate pay and benefits. Our third step should be restructuring our societal safety net, providing more opportunities earlier to prevent people from getting stuck in a position of becoming dependent on our government's resources. Therefore, emergency relief will be confined to the neediest.

A. CONSTITUTIONAL PROBLEMS

1. Fourteenth Amendment Due Process Clause

The government cannot coerce individuals into marriage.¹⁰⁴ In 1923, the Supreme Court expressly held that “[the Fourteenth Amendment to the Constitution] denotes not merely freedom from bodily restraint but also the right of the individual . . . to marry.”¹⁰⁵ In *Loving v. Virginia*,¹⁰⁶ the Supreme Court reiterated in the context of interracial marriage: “Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State.”¹⁰⁷ In 1977, the Supreme Court “ha[d] long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. A host of cases . . . have consistently acknowledged a ‘private realm of family life which the state cannot enter.’”¹⁰⁸

TANF violates the Fourteenth Amendment both on its face and in practice.¹⁰⁹ TANF expressly favors married couples in its work hours requirement.¹¹⁰ While single parents must work thirty hours per week, only one parent in a married couple must work thirty-five hours per week, allowing the other parent to stay home with the child.¹¹¹ This disparate treatment coerces individuals to marry, violating the well-established individual freedom not to marry.

Additionally, Mr. Horn, one of the administrators of TANF, believes that “[t]his policy places pressure on poor single mothers to marry by cir-

¹⁰⁴ See *infra* Part IV.A.1.

¹⁰⁵ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

¹⁰⁶ 388 U.S. 1 (1967).

¹⁰⁷ *Id.* at 12.

¹⁰⁸ *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (U.S. 1977) (citations omitted).

¹⁰⁹ See *infra* notes 110–111.

¹¹⁰ See 42 U.S.C. § 607(c)(1) (2006).

(A) All families. For purposes of subsection (b)(1)(B)(i) of this section, a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection (B) 2-parent families. For purposes of subsection (b)(2)(B) of this section, an individual is engaged in work for a month in a fiscal year if—(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection

Id.

¹¹¹ *Id.*

cumscribing their access to public benefit programs that are important to their survival.”¹¹² By recognizing the vulnerability of the population he is bribing, Mr. Horn is confirming that the welfare deal is unconscionable.

West Virginia’s “cash-incentive plan” is thinly veiled bribery meant to increase marriage.¹¹³ Offering a family an additional third of their base monthly stipend is a form of government coercion to marry. While a \$100 cash stipend may not seem like much, it is to a family that receives, in aid, about a third of the amount necessary to pay rent.¹¹⁴ Imagine you were employed at a large law firm as a first year associate, and you were making the 2007 normal competitive rate of \$160,000 per year.¹¹⁵ Now, picture that your debt far exceeds your earnings, and you are in very real danger of not being able to feed, clothe, or provide housing for your children. The government offers you about \$53,000 per year if you are married. Do you feel like this is a bribe? Do you feel free to not marry?

2. The Establishment Clause

The First Amendment to the United States Constitution asserts: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”¹¹⁶ This has been interpreted by the Supreme Court to mean:

Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’¹¹⁷

¹¹² Horn, *supra* note 97.

¹¹³ See Silag *supra* note 36, at 419 and accompanying text.

¹¹⁴ See *infra* Parts IV.B.1 and IV.B.11 and accompanying text.

¹¹⁵ See Peter Lattman, *Simpson Thacher Raises the Bar*, WALL. ST. J., Jan. 22, 2007, available at <http://blogs.wsj.com/law/2007/01/22/simpson-thacher-raises-the-bar/?mod=WSJBlog> (stating that associate’s first year salary was \$160,000 in 2007).

¹¹⁶ U.S. CONST. amend. I.

¹¹⁷ *Everson v. Bd. of Educ.*, 330 U.S. 1, 15–16 (1947) (quoting *Reynolds v. United States*, 98 U.S. 145, 164 (1878)).

More recently, in the 2003 case *Lawrence v. Texas*,¹¹⁸ the Supreme Court determined: “[The issue in *Bowers v. Hardwick*¹¹⁹], we now conclude, discloses the Court’s own failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.”¹²⁰ In the same case, the Supreme Court recognized the severity of the breach of privacy in the state’s attempt to control intimate conduct: “Their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home.”¹²¹ The Supreme Court concluded by emphasizing the private role of individual choice in marriage and discouraging government from “defining” or “setting the boundaries” of marriage.¹²²

However, the secular plea from the Supreme Court belies the pattern of decisions of lower courts regarding same-sex marriage.¹²³ Palpable in the lower opinions is religious imagery and overtly religious language when analyzing marriage.¹²⁴ Judges have referred to the “holy estate” of marriage, and described marriage as a “sacred precinct[.]”¹²⁵ One trial court cited both the Bible and specific Judeo-Christian beliefs in disposing of a claim seeking same-sex civil marriage rights.¹²⁶

The history of TANF marriage promotion reveals the blatant religious undertones of marriage promotion programs in America. The legislative branch has tried to “protect” marriage, often attracting allegations of un-

¹¹⁸ 539 U.S. 558 (2003).

¹¹⁹ 478, U.S. 186 (1986).

¹²⁰ *Lawrence*, 539 U.S. at 567.

¹²¹ *Id.*

¹²² *Id.* “This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons.” *Id.*

¹²³ See *infra* note 124 and accompanying text.

¹²⁴ See *Baker v. Nelson*, 191 N.W.2d 185, 186 (Minn. 1971) (“The institution of marriage as a union of man and woman . . . is as old as the book of Genesis.”); *Jones v. Hallahan*, 501 S.W.2d 588, 589 (Ky. Ct. App. 1973) (“Marriage was a custom long before the state commenced to issue licenses for that purpose. For a time the records of marriage were kept by the church.”); *Singer v. Hara*, 522 P.2d 1187, 1197 (Wash. Ct. App. 1974) (quoting the “book of Genesis” language from *Baker v. Nelson*).

¹²⁵ *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965).

¹²⁶ See *Dean v. Dist. of Columbia*, No. 90-13892, 1992 WL 685364, at *4, *8 (D.C. Super. Ct. June 2, 1992).

constitutional legislation under the Establishment Clause.¹²⁷ One of the most recent attempts to control and define marriage has been the legislature's reaction to the gay marriage movement.¹²⁸ In 1996, Congress passed the Defense of Marriage Act,¹²⁹ despite possible conflicts with the Full Faith and Credit Clause of the Constitution.¹³⁰ The Act held that states did not have to recognize lawful same-sex marriages formalized in other states, and restricted the definition of marriage as between one man and one woman.¹³¹ The legislators did little to veil their religious motivations, and the tone of the debate on both the House and the Senate floors was outwardly religious.¹³²

¹²⁷ See 42 U.S.C. § 601 (2006); 1 U.S.C. § 7 (2006); see also Joanna Grossman, *The Proposed Marriage Protection Act: Why It May Be Unconstitutional*, FINDLAW'S WRIT, July 27, 2004, <http://writ.news.findlaw.com/grossman/20040727.html> (“[Full Faith and Credit] Clause provides that ‘Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.’ On its face, that would seem to compel states to recognize each others’ marriages—if marriages qualify as public acts.”); Tanya Marie Johnson, *The Defense of Marriage Act and the Establishment Clause* 3–4 (Soc. Sci. Research Network, Apr. 21, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=901766 (arguing the legislature's action is a violation of the Establishment Clause); James M. Donovan, *DOMA: An Unconstitutional Establishment of Fundamental Christian Christianity*, 4 MICH. J. GENDER & L. 335, 338 (1997) (“DOMA has crossed this forbidden line between the secular and the religious. DOMA, motivated and supported by fundamentalist Christian ideology, and lacking any genuine secular goals or justifications, betrays the Establishment Clause of the U.S. Constitution.”).

¹²⁸ 1 U.S.C. § 7.

¹²⁹ *Id.*

¹³⁰ U.S. CONST. art. IV, §1.

¹³¹ 1 U.S.C. § 7; see also 28 U.S.C. § 1738(c) (2006).

¹³² See 142 CONG. REC. H7270-04 (daily ed. July 11, 1996); 142 CONG. REC. S10067-01 (daily ed. Sept. 9, 1996) (Senator Helms began discussion on the Senate floor by recounting a story about an African-American minister who he had visited recently: “I asked him, Mr. President, if he had a message for the folks back home. And he said, ‘I sure do. Tell them that God created Adam and Eve—not Adam and Steve.’ Some may chuckle at this good-natured minister’s humor. But he meant exactly what he was saying. In fact, it was a sort of sermonette. The truth is, he was hitting the nail on the head, if you want to use that cliché, or telling it like it is. However one may choose to describe this minister’s getting down to the nitty-gritty, it was no mere cliché, Mr. President. There could not have been, as a matter of fact, a better way to begin this debate in favor of the Defense of Marriage Act, which is H.R. 3396.”); 142 CONG. REC. S10100-02 (daily ed. Sept. 10, 1996) (The legislators did little to hide their religious intent: Senator Byrd said, after quoting from his family Bible, “Woe betide that society, Mr. President, that fails to honor that heritage and begins to blur that tradition which was laid down by the Creator in the beginning.” Senator Coats said, “The definition of marriage is not created by politicians and judges, and it cannot be changed by them. It is rooted in our history, in our laws and our deepest moral and religious convictions, and in our nature as human beings.” Senator Burns spoke to the “holy estate of matrimony” and “the sanctity of marriage.” Senator Bradley said, “I believe marriage is, first of all, a predominantly religious institution.”); 142 CONG. REC. H7441-03 (daily ed. July 11, 1996) (Representative Hutchinson said, “[M]arriage is a covenant established by God.” Representative Talent said, “The institution of marriage is not a creation of the State. . . . [Rather,] [i]t has been sanctified by all the great monotheistic religions and, in particular, by the Judeo-Christian religion which is the underpinning of our culture.”); 142 CONG. REC. H7480-05 (daily ed. July 12, 1996) (In the face of this religious zeal, Representative Jackson of Illinois warned that: “religious groups may not govern who

The legislative branch of our government has even proposed an amendment to our Constitution defining marriage as between one man and one woman, despite accusations of religious motivation; the Federal Marriage Amendment (“FMA”) has been before Congress four times, in 2002, 2003, 2004, and 2005.¹³³ The FMA has never passed.¹³⁴ In another outward appeal to adopt a “religious” definition of marriage, all witnesses who testified in support of the constitutional amendment during the hearing before the Senate Judiciary Committee were fundamentalist Catholic, Mormon, or Protestant, with the exception of three witnesses, indicating an inextricable tie to religion.¹³⁵

As a continuation of this religious foray into secular politics, TANF was passed by a conservative Republican Congress seeking to inject morality back into America.¹³⁶ As part of their pledge, the Republican-controlled 104th House of Representatives created a “Contract with America,” vowing to reduce “illegitimacy and teen pregnancy by prohibiting welfare to minor mothers and denying increased AFDC for additional children while on welfare, cut spending for welfare programs, and enact a tough two-years-and-out provision with work requirements to promote individual responsibility.”¹³⁷ This “Contract” was a blatant imposition of conservative morality and Republican values upon poor Americans. By summoning religious opposition to unmarried mothers, the Republican Congress violated the Establishment Clause of the Constitution.

As a result of TANF, Goodwill Industries and local faith-based organizations may receive government funding for their community outreach programs.¹³⁸ Alarming, they may also advance beliefs and an agenda

receives a civil marriage license. . . .” He said, “[W]hen I came to Congress, I placed my hand on the Bible and swore to uphold the Constitution; now, I am being asked to place my hand on the Constitution and uphold the Bible, the Koran, the Torah, and other religious doctrine.” Representative Frank said, “We have no power to give anyone any sacraments. We are not in the business of dispensing sacraments, and I hope we never get there.”)

¹³³ See H.J. Res. 93, 107th Cong. (2002); H.J. Res. 56, 108th Cong. (2002); S.J. Res. 26, 108th Cong. (2003); S.J. Res. 26, 108th Cong. (2003); S.J. Res. 30, 108th Cong. (2004); S.J. Res. 1, 109th Cong. (2005).

¹³⁴ S.J. Res. 1, 109th Cong. (2005) (cloture on the motion to proceed not invoked).

¹³⁵ Justin T. Wilson, Note, *Preservationism, or the Elephant in the Room: How Opponents of Same-Sex Marriage Deceive Us into Establishing Religion*, 14 DUKE J. GENDER L. & POL’Y 561, 593–97 (2007).

¹³⁶ Thomas W. Ross, *The Faith-Based Initiative: Anti-Poverty or Anti-Poor?*, 9 GEO. J. ON POVERTY L. & POL’Y 167, 174 (2002).

¹³⁷ See U.S. House of Representatives, *Republican Contract with America*, <http://www.house.gov/house/Contract/CONTRACT.html> (last visited Mar. 20, 2009).

¹³⁸ Tweedie, *supra* note 42.

that the government does not intend to promote.¹³⁹ Federal money funds church-run communication seminars for couples; they may endorse that religion's specific view of marriage.¹⁴⁰ TANF also encourages discrimination, as there may be many communities that support Catholic or Episcopalian seminars, but feel uncomfortable with a mosque receiving federal funding for a communication and marital skills seminar for local Muslims.¹⁴¹ Therefore, prejudice against religions may play into funding and local policy decisions.

Programs in Arizona, Oklahoma, and Minnesota directly fund the marriage promotion programs of religious groups. In Arizona, religious institutions run seminars about "marriage skills."¹⁴² In Oklahoma, churches and faith-based community groups receive federal money to "enhance" marriage.¹⁴³ The Faith-Based Community Initiative Program in Alaska was to receive \$500,000 from a TANF bonus of \$3,200,000 to fund a Healthy Marriage Initiative.¹⁴⁴ According to the U.S. Supreme Court, "[n]o tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."¹⁴⁵ American tax dollars are going directly to churches to allegedly fix the problem of poverty. This is not only unconstitutional, but an unconscionable diversion of money that should be helping needy families.

While our government takes a strong stance on supporting and cultivating marriage, not all in the religious community support this intrusion.¹⁴⁶ Alfonso Cardinal Lopez Trujillo, a Catholic Cardinal, believes that the government should respect human rights of every person, including the right to marry or not marry and that the government has a supporting role regarding the formation of families.¹⁴⁷ He believes that the government should do whatever it can to not impede marriage, but he clearly does not place the burden of promoting marriage upon the government.¹⁴⁸

¹³⁹ See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² Horn, *supra* note 97.

¹⁴³ See *id.*

¹⁴⁴ Ctr. for Family Policy & Practice, *supra* note 70.

¹⁴⁵ *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947).

¹⁴⁶ See *infra* notes 147-148 and accompanying text.

¹⁴⁷ See Alfonso Cardinal Lopez Trujillo, 4 AVE. MARIA L. REV. 297, 318, 340-41 (2006).

¹⁴⁸ See *id.*

B. SOCIAL PROBLEMS

1. Marriage Can't Fix Poverty

Economic security cannot be accomplished by marriage. "Of women in poverty who marry, only 1 in 10 will experience a family income increasing to above the poverty line. In addition, 40 percent of poor children already live in two-parent homes; which illustrates that the marriage will not magically release the grip of poverty."¹⁴⁹

Also, because people are likely to marry within their own socioeconomic group, low-income women attract low-income men to marry.¹⁵⁰ Two low-income salaries are not enough to lift a poor woman out of poverty; in fact, some estimate that "low-income women would need to have roughly 2.3 husbands apiece in order to lift them out of poverty."¹⁵¹

Marriage among poor people will not render them able to leave welfare and support their families without government assistance. The Marriage Solution assumes that both, or at least one, partner will be able to find gainful employment. Clearing the first hurdle of finding work is still not enough for a family to survive without public assistance. For example, a recent study shows that welfare recipients usually spend about one third of their income on child care.¹⁵² The Fair Market Rent¹⁵³ for a one-bedroom apartment in Los Angeles County, California, in 2007 was \$957 per month.¹⁵⁴ The minimum wage in California is \$8.00 per hour.¹⁵⁵ In March 2008, there were twenty-one working days. If two parents worked for

¹⁴⁹ Molly Greiner, Iowa Women Initiating Social Change, Marriage Promotion (Jan. 2003), <http://www.uiowa.edu/~iwis/marriage.htm> (last visited Mar. 19, 2009).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Press Release, U.S. Census Bureau, Nearly Half of Preschoolers Receive Child Care from Relatives (Feb. 28, 2008), *available at* <http://www.census.gov/Press-Release/www/releases/archives/children/011574.html> (stating that families in poverty spent about 29% of their income on child care).

¹⁵³ Nat'l. Low Income Hous. Coal., Out of Reach: Appendix: Explanation of Fair Market Rent, *available at* <http://www.nlihc.org/oor/oor2000/appendix.shtm> (last visited Mar. 19, 2009) ("In general, the [Fair Market Rent] for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (nonluxury) nature with suitable amenities. . . . The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months).").

¹⁵⁴ Los Angeles County, California Detailed Profile, http://www.city-data.com/county/Los_Angeles_County-CA.html (last visited Mar. 17, 2009) (median rent).

¹⁵⁵ See Cal. Dep't of Indus. Relations, Minimum Wage, http://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm (last visited March 19, 2009).

minimum wage in March of 2008 they would earn an aggregate of \$2,688 per month. \$952 of this amount would be used for their rent, leaving them with \$1736. After deducting a third of one of their salaries (\$448) towards child care, the couple would be left with \$1288 for health expenses, clothing, gas, car payments, telephone payments and food. As such, combining two poor parents' income is not going to lift their family out of poverty.

A marital promotion scheme like TANF is an illogical solution to poverty because almost half of marriages end in divorce, which is much more likely to expend scarce resources and push people into poverty.¹⁵⁶ Around 49% of marriages end in divorce.¹⁵⁷ According to 2003 statistics, 7.5 per one thousand people in the fifty states married, while 3.8 per one thousand people in forty-five states divorced.¹⁵⁸ Divorce also has a disparate effect on women, because "their incomes decrease dramatically due to the meager financial provisions they receive upon divorce."¹⁵⁹

2. Women Are Vulnerable in Marriage, Especially Poor Women

Women are limited in marriage, unequal because of our patriarchal infrastructure.¹⁶⁰ The inequality of women in marriage has influenced rape law; until very recently, men could use marriage as a defense to the charge of rape.¹⁶¹ Domestic violence, a form of control over women and an enforcement of the antiquated patriarchal belief that men "own" their wives, is the leading cause of injury to women in America.¹⁶² Domestic violence facts are stunning:

Ninety-five percent of all domestic violence is male to female. *Sixty percent* of all married women, of all races and classes, experience physical violence from their husbands at some time during their marriage. Fourteen percent of ever-married women report being raped by their current or former husband, and rape is a significant form of abuse in fifty-four percent of violent marriages. It is estimated that two to four million

¹⁵⁶ See Michael Selmi & Naomi Cahn, *New Perspectives on Work/Family Conflict: Caretaking and the Contradictions of Contemporary Policy*, 55 ME. L. REV. 289, 294 (2003).

¹⁵⁷ NATIONAL VITAL STATISTICS REPORTS, *supra* note 9.

¹⁵⁸ NAT'L CTR. FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS REPORTS, BIRTHS, MARRIAGES, DIVORCES, AND DEATHS: PROVISIONAL DATA FOR 2003, available at http://www.cdc.gov/nchs/data/nvstr/nvstr52/nvstr52_22.pdf.

¹⁵⁹ See Orr, *supra* note 92, at 236.

¹⁶⁰ Nadine Taub, *Welfare "Reform": An Attack on Us All*, 11 BERKELEY WOMEN'S L.J. 259, 267 (1996); Orr, *supra* note 92, at 237.

¹⁶¹ Orr, *supra* note 92, at 237.

¹⁶² *Id.*

women are abused each year. Of the at least 1.8 million women battered each year, 4,000 of them die.¹⁶³

When I am interviewing domestic violence victims, I ask about the history of violence and recent abuse. I explain the questions are for a declaration so the judge can decide whether or not to grant the temporary restraining order. Every time, almost without exception, the victim seems hesitant to condemn the actions of her abuser. She explains why he got so mad—that she tried to tell him she was out with her cousin and not with another man, that she started yelling first, and that she knew she shouldn't have come home late because he has been in a sour mood lately. These women blame themselves: they feel responsible for a man hitting them with a closed fist.

Domestic violence is widespread; it is a “cross-class phenomenon.”¹⁶⁴ However, American women receiving public assistance are particularly vulnerable, “not because poor men are pathological but because poor women can become trapped in abusive situations by virtue of their economic circumstances.”¹⁶⁵ Consequently, there is an “over-representation of battered women within low-income [communities] and within the [welfare] population.”¹⁶⁶ While the incidence of battery is much lower in the general population, “between fifteen and thirty percent [of poor women] were currently being subjected to physical abuse or serious emotional abuse consisting of credible threats to their lives.”¹⁶⁷ “[B]etween fifty and eighty percent of [female] welfare recipients have experienced some form of abuse [, and] between fifteen and fifty-six percent of [female] welfare recipients reported that they had been subjected to domestic violence within the preceding twelve months.”¹⁶⁸

The startling answer always comes in response to the question of when the abuse started. Some women stay with their husbands for decades, internally excusing his behavior almost constantly. These women are afraid to be alone; afraid to be unmarried, or single; afraid to miss the perfect married life; afraid to face the bills and rent alone; afraid to raise the children alone. A week before this writing, I sat across from a 39-year-old woman with three children. As she recounted various episodes of spousal

¹⁶³ *Id.* (emphasis added).

¹⁶⁴ Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 152 (2002).

¹⁶⁵ *Id.* at 153

¹⁶⁶ *Id.* at 154

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

abuse, from her husband trying to run her over in 1990 to him threatening her with hedge clippers in 2001, she became more and more embarrassed. After I heard of each incident, I asked if the police was called. Sometimes she did call the police, but she always lied about how she was hurt to protect her husband. I could not imagine how hard it was for her to finally come into the clinic and take legal action against him. As such, I was surprised to see her blush and become extremely ashamed when I asked the routine question of whether the husband was arrested after a more recent episode of abuse. This 39-year-old woman put her hand on my arm, and told me that she knows she should have had him arrested long ago. She looked into my eyes, asking me for forgiveness. Her eyes teared up; she shook her head and told me she couldn't have afforded rent and food for the children without him, that he'd never touched them and that they needed a father. I stopped her before she went on and told her I wasn't judging her; that I understood these situations were not black and white. This living evidence animates the statistics that demonstrate that women in poverty are in an exceptionally susceptible position.

Rushing poor women into marriage will only increase the number of women in these particularly vulnerable situations. It will increase the competition to be the most physically desirable, belying the accompanying insecurity that inevitably fuels such a contest.¹⁶⁹ Until we can educate people equally and create equal work opportunities for women, marriage promotion legislation will just exacerbate the problem by masking the solution. Because of the inequality women face during and after marriage, and the fact that marriage is a statistically unsuccessful institution (as evidenced by divorce rates), marriage is not a solution to poverty that can be relied upon to alleviate the social, economic, and political disadvantages that poor unmarried mothers endure.¹⁷⁰ In fact, marriage may exacerbate undesirable social phenomena like violence against women, gender division, and poverty.¹⁷¹

3. Marriage Cannot “Save” Impoverished Women

In my personal experience, women in America are culturally indoctrinated to be rescued. Growing up, every Disney movie I saw ended with a

¹⁶⁹ See *infra* notes 173–178 for evidence that women compete to be physically desirable to attain the perfect marriage and for the proposition that this quest for physical beauty (is fueled by and) unanimously results in insecurity.

¹⁷⁰ See NATIONAL VITAL STATISTICS REPORTS, *supra* note 9.

¹⁷¹ See *supra* Part IV.B.2.

prince rescuing a princess and living happily ever after.¹⁷² Women live this fantasy through articles in *Cosmopolitan* about “how to please your man,”¹⁷³ through cosmetic surgery,¹⁷⁴ painful high heels,¹⁷⁵ eating disorders,¹⁷⁶ and acne cream.¹⁷⁷ Women are taught to feel incomplete, so they bend over backwards to mask their insecurity with physical beauty.¹⁷⁸

¹⁷² See Jodi Liss, Editorial, *Moviemakers' Creativity Doesn't Extend to Gender*, BALT. SUN, July 10, 2007, at 9A (“In all of Pixar's feature films, going back to 1995's *Toy Story*, there has not been one female central figure.”); Kathy Maio, *Women, Race & Culture in Disney Movies*, <http://www.newint.org/easier-english/Disney/diswomen.html> (last visited Mar. 18, 2009) (“Disney's heroines have changed very much since the days of *Snow White*: they are all happy housewives. [T]his does not give a good message to young girls today.”).

¹⁷³ *Cosmopolitan*, *Are you a Great Date?*, <http://quiz.ivillage.com/cosmopolitan/tests/date.htm> (last visited Mar. 20, 2009) (featuring quizzes that “rate” how good of a date someone is); *Cosmopolitan*, *Sex & Love*, <http://www.cosmopolitan.com/sex-love/sex/> (last visited Mar. 19, 2008) (featuring the following articles: “The Best Places to Meet a Guy,” “Needy Moves you Must Nix,” “His Nine Pleasure Triggers,” and “Sex Texts to Entice Him”).

¹⁷⁴ Nat'l Org. of Women Found., *Women's Health Project*, http://www.nowfoundation.org/issues/health/whp/whp_fact1.html (last visited Mar. 19, 2009).

¹⁷⁵ Am. Ass'n for Women's Podiatrists, Inc., *High Heels—High Fashion that Can Hurt Your Feet: High Shoe Heights Increase Strain and Injuries*, <http://www.aawpinc.com/foot-health-info.htm> (last visited Mar. 28, 2009) (“With this season's high heeled shoes taller than ever, women need to use extra care in selecting and wearing these fashionable dress shoes. The three-or four-inch heights, combined with the thin ‘stiletto’ heel styles currently in vogue can lead to a variety of foot and ankle problems, according to specialists in the field. ‘With higher shoes, your feet tend to slip forward,’ says Dr. Marlene Reid, a Fellow of the American College of Foot and Ankle Surgeons. This may amplify discomfort, especially if the shoes don't fit properly in the first place. She suggests women look for shoes with padding in the forefoot area, cushioning the toes and ball of the foot. And be sure there is sufficient shoe width to maintain comfort.”).

¹⁷⁶ Nat'l Org. of Women Found., *Women and Eating Disorders*, http://www.nowfoundation.org/issues/health/whp/whp_fact2.html (last visited March 19, 2009) (“5–10 million women and girls suffer from anorexia and/or bulimia, in the United States alone. Approximately one million men and boys suffer from anorexia and/or bulimia, in the United States alone. 25 million people suffer from compulsive overeating, in the United States alone. Eighty-six percent of people with eating disorders report the onset of the illness by the time they reach the age of 20 (by no means is an eating disorder ‘less severe’ when the eating-disordered person is above the age of 20). The death rate for eating disorders is approximately 20 percent. An estimated 85–95% of people with anorexia nervosa and bulimia and 65% of people with binge eating disorders are female. Approximately 80% of women want to lose weight.”).

¹⁷⁷ Post on Health Message Boards, <http://www.healthboards.com/boards/archive/index.php/t-172.html> (last visited Sept. 24, 2008) (“The other day I was really feeling down and out about still breaking out at the age of 32! Well . . . low and behold I found pictures on the internet with celebrities with acne. Britney Spears, Cameron Diaz, Brad Pitt, Leonardo DiCaprio, etc. They even have acne scars. This sounds horrible, but I felt a bit better knowing they too have breakouts. I think we all forget that they have makeup people, photo editing and lighting tricks on their side.”).

¹⁷⁸ Sue Hutchison, *We're so Vain; Pursuing Perfection Through TV Surgery Leaves Us Less than Whole*, SAN JOSE MERCURY NEWS, May 14, 2004, at 1G (“On ABC's ‘Extreme Makeover’ we saw women who have had so much plastic surgery that they're thrilled when their own bewildered toddlers don't recognize them. (‘Mommy?’) On MTV's ‘I Want a Famous Face,’ people barely old enough to vote want to be ‘cut’ to look like Brad or Britney. And on ‘The Swan,’ a group of eight women who have had their individuality homogenized with a smorgasbord of nose jobs, breast implants and liposuc-

Women self-medicate the ache of poverty by latching onto the promise of economic security that comes with marriage.¹⁷⁹ Women raised in unstable situations rush to marry, have children, and bond with a man, forcing the re-creation of a stable family they've never had.¹⁸⁰ This is an undesirable social trend, as it benefits society as a whole to minimize sicknesses such as eating disorders, negative self-image issues, stability issues and post-poverty trauma, and co-dependency.

4. The Many Obstacles to Marriage for Poor Women

Women in poverty have many obstacles to marriage, including income: "many social policy analysts are quick to point out that in general, poor people are not poor because they're unmarried. Rather, they may be unmarried because they're poor: the socioeconomic conditions in low-income communities contribute to a climate in which healthy marriages are difficult to sustain."¹⁸¹ "Money is the number one reason for divorce, and going into a marriage (which is difficult enough) not having some type of financial plan and savings adds on unnecessary stress."¹⁸²

Also, there may be an actual practical shortage of men to marry.¹⁸³ African-American women seeking to marry African-American men face a

tion vie for the chance to compete in a beauty pageant. . . . You can dismiss radical makeover programs as freak shows, but the ratings are hard to ignore. People seem to be buying into the message that life is just like high school, and anyone whose looks don't conform to how they're wearing noses and cheekbones this year is destined to be a miserable loser. Deb Burgard, a psychologist in Los Altos who specializes in treating eating disorders, says the shows mirror the culture's hostility toward those who don't measure up to the American beauty image. 'I've been studying these issues since 1985, and I've never seen it this bad,' she said. 'These shows are saying, "If you have a perfect body, you can have a perfect life." It's like the women's version of the "get-rich-quick" scheme.'")

¹⁷⁹ Gillian Markson, Families.com, When You Get Married Too Soon (June 17, 2006) <http://marriage.families.com/blog/when-you-get-married-too-soon> (last visited Mar. 19, 2009) ("It is obvious to an observant eye that in today's society, people often decide to marry for the wrong reasons: Social pressure, an apparent promise of economic security, and an overzealous potential spouse [may] push people to get married too soon—and the effects can be disastrous.").

¹⁸⁰ Lauren Romano, *Why Marriage Should Not Be Rushed*, ASSOCIATED CONTENT, July 13, 2007, http://www.associatedcontent.com/article/305222/why_marriage_should_not_be_rushed.html ("It seems that many people, mostly young people, are in way too much of a rush to get married. Marriage should not be something that should be rushed into. It's supposed to be something that is for life, not something that you can get into and out of with the snap of a finger. Nor should you want to."); see also Suzanne MacNevin, *Anti-Feminism Beliefs and Criticism*, FEMINIST E-ZINE, Jan. 2008, <http://www.feministezine.com/feminist/modern/Dealing-with-Antifeminism.html> ("People rush into marriage way too easily. It is much wiser in my opinion to give the relationship time and then when they are more certain of their compatibility and ability to commit then they should consider marriage.").

¹⁸¹ See Olson, *supra* note 64.

¹⁸² See Romano, *supra* note 180.

¹⁸³ See Olson, *supra* note 64.

unique problem: “there are approximately two and a half women for every African-American man who is employed and not in jail.”¹⁸⁴

5. “Providing/Parenting” Conflict

In America, women are encouraged to marry and remain in unhappy marriages, then they are encouraged to work, and then they are encouraged to stay at home with their children (and deal with the stigma of being a “lazy” housewife); the mixed messages are overwhelming. In the 1960s, the number of welfare recipients “exploded.”¹⁸⁵ This was due to many factors, including the increase of female-headed households (because of women’s newfound independence and subsequent refusal to stay at home in unhappy marriages).¹⁸⁶ The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) is a direct response to this: trying to solve women’s poverty by pushing them to make “good” choices, most fundamentally working for wages or getting married.¹⁸⁷ *Expressio unius est exclusio alterius*.¹⁸⁸ if getting married is a “good choice,” logically, women who are unmarried have made a “bad” decision. This sentiment ignores the reality of the struggles women face in all social roles: wife, mother, and employee. The voice of the government is confusing: “[a] de-centered normative perspective reveals that other motives are at play. The context of single motherhood under welfare reform catches mothers in a conflict between providing economically for their children and being good parents. The “providing/parenting” conflict raises a host of non-economic issues, resolved in ways that are not within the assumed income-maximizing logic of welfare reform.”¹⁸⁹

If women do choose to work, they have a barrage of issues to face: “[o]ne wage-reliant mother living with her eight year-old son in an unsafe neighborhood offered this perspective on the relationship between her job and caring for her child: ‘I am ashamed to say it, but I have a latchkey child. When he comes home from school, he locks himself in the house and waits for me to come home. In the summertime, he can go outside, but only if he calls me to check in every hour. I had to get him a little watch with a timer

¹⁸⁴ *Id.*

¹⁸⁵ See Rose, *supra* note 21 at 153.

¹⁸⁶ *Id.*

¹⁸⁷ See Office of Family Assistance, *see supra* note 47.

¹⁸⁸ FindLaw for Legal Professionals, <http://dictionary.lp.findlaw.com> (search for “expressio unius est exclusio alterius”) (“New Latin, the explicit mention of one (thing) is the exclusion of another.”).

¹⁸⁹ Judith E. Koons, *Making Peace with Difference: A Hermeneutic of Inclusive Conversation*, 12 TEX. J. WOMEN & L. 1, 40 (2002).

so that he would remember to check in with me. If I don't get that call, I leave work to go find him."¹⁹⁰

Many women choose to stay at home and raise their children, and their work is devalued in the eyes of society. It is not recognized by the PRWORA as gainful employment, and it is saddled with a stigma resulting from the ideals of our paternalistic society: it's not "real" work; it's the ideal job for a lazy woman.¹⁹¹ No housewives receive wages for their work. Financially, our society does not value the (typically female) job of a housewife. Therefore, while society criticizes women for working and not raising their children, the PRWORA criticizes women who don't work and raise their children.¹⁹²

6. Kids Are Not "Doomed" by Unmarried Parents

Conservative arguments condemning one-parent families are flawed because they rely on a single set of data without addressing the strong opposition.¹⁹³ There is a wealth of literature regarding the psychological development of children, and all of it is highly subjective and situational.¹⁹⁴ Also, "the problems often associated with children who grow up in one-parent families—poverty, failure in school, and juvenile delinquency—cannot be attributed to single parenthood alone."¹⁹⁵ What comes first, the chicken or the egg? It is not clear whether single parenthood causes these problems, or whether there are more low-income single-parent homes due to the strain of poverty, and there is a higher incidence of these problems in low-income communities because of a strain of resources? Stressful eco-

¹⁹⁰ *Id.*

¹⁹¹ *See id.* at 38–41.

¹⁹² MARY EBERSTADT, HOME-ALONE AMERICA: THE HIDDEN TOLL OF DAY CARE, BEHAVIORAL DRUGS, AND OTHER PARENT SUBSTITUTES xiii (2004) Social pathologies American children face are the result of "the ongoing, massive, and historically unprecedented experiment in family-child separation in which the United States and most other advanced societies are now engaged.").

¹⁹³ *See infra* Part IV.B.6.

¹⁹⁴ *See, e.g.*, Jacob Cohen, *The Earth is Round* ($p < .05$), AM. PSYCHOLOGIST, 997 (1994), available at http://web.math.umt.edu/wilson/Math444/Handouts/Cohen94_earth%20is%20round.pdf.

¹⁹⁵ *The Impact of Single Parenthood on Children*, 16 FOCUS (1994/1995), available at <http://www.irp.wisc.edu/publications/focus/textver/16.2.a/impact.txt> (reviewing SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS (1994)); *see also* Mira Čudina-Obradović & Josip Obradović, *Marital Partners' Income as a Detriment of Marriage Quality*, J. GEN. SOC. ISSUES 117, 118 (2006), available at <http://www.ceeeol.com/aspx/getdocument.aspx?logid=5&id=ff8bfe9f-717d-48d8-8cb6-2add3e1f3279> ("[Studies] have clearly shown that permanent low-level income creates a sense of economic hardship which eventually leads to depression.").

conomic circumstances are known to cause depression, and there is a “clear relationship between poverty and marriage failure.”¹⁹⁶

The effects of living with only one parent are not the same for all children. Nor are they universally bad. How successfully children handle the stress of growing up with a single parent, researchers say, has to do with many factors, only some of which can be controlled by parents. “Many of the problems children suffer appear to be set off more by changes in economics than by the turmoil that attends divorce.”¹⁹⁷ Thus, just as single parenthood may sometimes cause poverty, poverty surely creates single parent situations.¹⁹⁸ Speaking as a product of a single parent household, I learned the value of hard work and developed a strong sense of independence. “Living with a single parent does not doom a child to failure; many children from one-parent homes grow up to become productive adults.”¹⁹⁹

7. Actual Capital Is Better for Children than “Social Capital”

When researchers worry about a single-parented child’s “human and social capital,” they myopically disregard poor children’s need for economic capital. The children at issue are raised in poor families, and poverty is their real barrier to a fulfilling life. Maybe instead of bribing mommy and daddy to stay together, we should teach kids how to constructively deal with their anger. For instance, the government could fund activities like art programs or a school band.²⁰⁰ If a child can’t pay a fee to play on a football team, how can she learn sportsmanship and physical

¹⁹⁶ AllFreeEssays, Divorce and Class—Britain, http://www.allfreeessays.net/student/Divorce_and_Class_-_Britain.html (last visited Mar. 27, 2009).

¹⁹⁷ Lawrence Kutner, *Parent & Child*, N.Y. TIMES, Apr. 7, 1988, at C8.

¹⁹⁸ See Čudina-Obradović & Obradović, *supra* note 195 at 119 (“For instance, study . . . proved that per capita family income was associated with higher marital happiness and lower marital conflict. Similarly, [another 1997 study] demonstrated that a low husband’s income is a significant factor in explaining marital problems and low marital quality.”).

¹⁹⁹ See McLanahan and Sandefur, *supra* note 195 at 1.

²⁰⁰ Many sources cite to art, music, and sports programs as having a tremendous positive effect for the development of troubled youth. See Kelly Carr, *Educators Gamble on Giving Troubled Kids a Second Chance*, THE ARIZ. REPUBLIC, Apr. 24, 2006, available at <http://www.azcentral.com/specials/special49/articles/0421meth-school.html> (Teachers use art therapy to help meth-addicted teens with success.); see also Annette Baird, *Houston ARTreach Strives to Keep Children on Right Path*, MEMORIAL/SPRING BRANCH NEWS, Jan. 10, 2008, <http://www.katyartreach.org/artreach2/node/24> (last visited Mar. 19, 2009); YgoY, Appreciation for Children (Dec. 10, 2007), <http://parenting.ygoy.com/appreciation-for-children> (“Children must be encouraged to appreciate art, music, poems, certain games etc so that they develop into a well rounded personality. Art is the best medium of expression of what children perceive about society and life in general.”); Join Together, *Helping Troubled Kids Through Sport*, (May 9, 2003), <http://www.jointogether.org/news/headlines/communitystories/2003/helping-troubled-kids-through.html>.

health? If a child can't pay a college application fee and his teacher tells him to get his G.E.D., how can he access higher education? If it is easier for a child to access drugs than to find a ride to work, what do you think she will do to earn money? The real barriers come from poverty, not from emotional capital. The state needs to invest real money in our youth by way of assisting their parents with necessities, not marriage advice. When our education system is adequate, and all children have health care, maybe then we should worry about tending to our emotional needs.

8. Marriage Promotion Only Exists Within Low-Income Communities

Marriage promotion is also a class-based issue. While the government finds marriage promotion worthy enough to coerce the poor, there is no parallel “moralizing” program for wealthy or middle-class Americans.²⁰¹ There is no policy requiring a politician to be married in order to run for office. There is no policy requiring a corporate shareholder to be married in order to receive subsidies from the government. There is no policy requiring a federal judge to be married in order to be appointed. There is no policy requiring an officer from a “marriage promotion” group be married to receive federal funding to promote marriage. In fact, there are even groups celebrating single parenthood for middle- and upper-class Americans.²⁰² However, there is a membership fee.²⁰³

Wade Horn, the former Assistant Secretary for Families and Children, believes marriage promotion is not a class-based issue, because, “[t]he reason why the president’s Healthy Marriage Initiative mainly targets low-income couples is not because we believe marriage is particularly problematic in low-income communities, but because unlike more affluent couples, low-income couples . . . do not have the resources to purchase marriage-education services.”²⁰⁴ If this was the true goal, the government could have simply provided voluntary marriage counseling services to married couples with income below the poverty line. Alternatively, the government could make the same programs mandatory for wealthy families.

²⁰¹ See *supra* note 101 and accompanying text.

²⁰² See Single Parents Association, <http://www.singleparents.org/faq.html> (last visited Mar. 20, 2009).

²⁰³ *Id.* (setting \$40 annual membership fee).

²⁰⁴ Wade F. Horn, *Wedded to Marriage*, NAT’L REV., Aug. 9, 2005, <http://www.nationalreview.com/comment/horn200508090806.asp>.

9. "Rehabilitating" Families Is a Dangerous Experiment

Can you "create" a responsible father? Marilyn Ray Smith, Deputy Commissioner and Director of the Child Support Division in Massachusetts, thinks so.²⁰⁵ She reported to the Senate Finance Committee that her state's federally-funded program to groom fathers with delinquent child support payments had a compliance rate of 31% increase to 46% after the program.²⁰⁶ Also, she boasts that the program has helped fathers develop loving relationships with their children and some of [the fathers] even married the mother of their child.²⁰⁷ The program directors were trained to respond to domestic violence signs and to detect any symptoms of family abuse, and families in which there was suspected abuse may receive training for the father to "help[] them recognize that treating their child's mother with respect is at the core of responsible fatherhood."²⁰⁸

This type of program's treatment of domestic violence is dangerous. Abusive men often operate in cycles of violence and typically have a solid history of violent behavior.²⁰⁹ The victim simply must leave the abuser, so as not to expose herself or her children to any more abuse. The danger of the program director's failure to identify an abusive situation is grave. Even emergency room doctors who see domestic violence victims daily still cannot precisely pick out every woman who is 'covering' for her abusive husband. Therefore, how successful could recently-trained program directors be?

Also, TANF programs are restricted to retroactive relief. Teaching adults how to love, to respect each other, and to share goals with each other is highly impractical and ideologically impossible.²¹⁰ Children should be taught these things, not (possibly incompatible) couples.²¹¹

²⁰⁵ *Child Support Enforcement Legislation Before the S. Comm. on Finance*, 108th Cong. 8 (2003) (testimony of Marilyn Ray Smith, Deputy Comm'r & IV-D Director).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ See A Safe Place, Lake County Crisis Ctr., Profile of Men Who Batter, <http://www.asafeplaceforhelp.org/battererprofile.html> (last visited Mar. 20, 2009).

²¹⁰ See John J. Ratey, Limits to Plasticity: A User's Guide to the Brain: Perception, Attention, and the Four Theaters of the Brain, <http://www.enotalone.com/article/6231.html> (last visited Mar. 19, 2009) ("Despite the brain's amazing ability to adapt, there are limits to its flexibility. Age does make it harder to reroute and establish new circuits. Music teachers, chess champions, and star athletes all advise parents to start their disciples young. We've all seen how much easier it is for young children to pick up second languages. In an American family that is transferred to Tokyo for a year, the preschool child will learn to converse in Japanese while her mother is still struggling with basic communication.")

²¹¹ See *id.*

Even people who think the government should promote marriage know that remedial measures alone won't do the trick.²¹² Dr. Maria Sophia Aguirre, a Professor of Economics and Business, finds that:

as with any other aspect of the economy, it is not enough to seek the implementation of remedial policies (i.e., those that seek to solve or assist the victims of disrupted families). Rather, the policies need to foster healthy families so that, in turn, families generate good human capital. In this manner, good policy should aim at fostering healthy families and preventing the social and economic ills that stem from familial disintegration.²¹³

She has recognized the inability of the government to come in at the last minute and “rehabilitate” adults by teaching them marital skills (which more often than not translates to life skills).²¹⁴ Why not just create a society whose citizens have access to life skills before it's too late? Dr. Aguirre recognizes the need for marital-skill building at both the microeconomic and the macroeconomic levels, calling “all sectors of society [] to be engaged, including the government, religious institutions, and firms”²¹⁵

10. TANF Does Not Encourage Marriage

Even if marriage did alleviate poverty, TANF itself does not promote marriage. The creators of TANF “contend[] that this relative inattention to the concept of commitment” is a cultural problem.²¹⁶ Our society focuses on “individualism and individual fulfillment.”²¹⁷ TANF creators find this counter-productive, because “strong marriages require mutual commitment.”

Even though marriage may resemble a contract in its formal obligations, the “key elements of marriage” are “commitment and self-giving to another person.”²¹⁸ Therefore, a successful marriage requires couples to be unselfish.²¹⁹ However, while TANF claims to “promote marriage,” it does

²¹² See Aguirre, *supra* note 101, at 451.

²¹³ *Id.*

²¹⁴ See *id.*

²¹⁵ *Id.*

²¹⁶ MOORE, *supra* note 7, at 4.

²¹⁷ *Id.*

²¹⁸ Aguirre, *supra* note 101, at 440.

²¹⁹ See [enddivorce.com, The Keys to a Happy Marriage: Unselfishness, http://www.enddivorce.com/html/unselfishness.html](http://www.enddivorce.com/html/unselfishness.html) (last visited Mar. 19, 2009) (“[Unselfishness] is driven by love and a sense of service. It does not look for reward and does not keep score. We are talking about an attitude of self-sacrifice, not negotiation and compromise, which can become a game to get what you want.”); see also Susan Derry, Relationships—Where did the Love Go?,

so by appealing to poor Americans' selfish survival instinct. TANF creates a situation that may force a single mother to marry to provide for her and her children, the alternative being homelessness and lack of food. In this situation, her selfish protective instinct for herself and her children will force her to marry out of necessity. Since this marriage is based on selfishness, it will be destined to fail. When the marriage fails, it will catapult the mother into greater depths of poverty because of the attendant costs of divorces. Therefore, TANF should not encourage marriage in a vulnerable population by bribe-like carrots-and-sticks. The government is talking out of both sides of its mouth: the rugged individualist ideal, which "fosters personal autonomy and a self-interested mindset," directly conflicts with TANF's moral admonishment for the poor to team up in man-woman pairs to struggle against poverty together.²²⁰ Even conservatives see the "welfare state" as contributing to the breakdown of families, as it "may help to soften the impact of the family breakup, but [it] appears relatively powerless to contain family decline and often even contributes to it."²²¹

People should learn these "life skills" promoted by TANF (communication, selflessness). However, after being ignored by the system and disenfranchised by the government (disappointing schools, low income neighborhoods with the potential for post traumatic stress and no upward mobility, combined with uneducated, pressured and bad decisions) people will not simply attend a counseling session or read a billboard and decide to marry and trust the government.²²² Rather, the government must try to remove the layers of trauma surrounding such individuals.²²³

<http://ezinearticles.com/?Relationships---Where-Did-the-Love-Go?&id=720165> (last visited Mar. 19, 2009); Honorable, Happy, Successful Marriage, <http://mcqesq.wordpress.com/2007/09/21/honorable-happy-successful-marriage> (last visited Mar. 19, 2009).

²²⁰ See Aguirre, *supra* note 101, at 456.

²²¹ *Id.*

²²² ELLEN L. BASSUK, M.D. & STEVEN M. FRIEDMAN, NAT'L CHILD TRAUMATIC STRESS NETWORK, HOMELESSNESS & EXTREME POVERTY WORKING GROUP, FACTS ON TRAUMA AND HOMELESS CHILDREN 1 (2005),

http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/Facts_on_Trauma_and_Homeless_Children.pdf (The poor are disenfranchised by the American government: "Homelessness results from the combined effects of extreme poverty, lack of affordable housing, decreasing government supports, the challenge of raising children alone, domestic violence, and fractured social supports."); see also VIRGINIA MOREIRA, POVERTY AND PSYCHOLOGY: FROM GLOBAL PERSPECTIVE TO LOCAL PRACTICE 79 (Stuart C. Carr & Tod Stratton Sloan eds., 2005) ("Poverty, as the greatest contributor for pathologies, is a form of collective social suffering"); David Empey, Poverty and Crime, <http://www.davidempey.ca/blog/2006/01/08/poverty-and-crime> (last visited Mar. 19, 2009) ("Poverty does more [to] limit your economic possibilities. It also limits your opportunities, and the opportunities you can envision for yourself. Poverty disenfranchises by emphasizing class differences, and this disenfranchisement is more destruction than the fact of being poor.").

²²³ Empey, *supra* note 222.

A history professor noted:

Following a well-established pattern in post-Great Society policy analysis, the Clinton administration's poverty experts had already embraced and defined the parameters of a sweeping welfare reform featuring proposals that promised to change the behavior of poor people while paying little more than rhetorical attention to the problems of low-wage work, rising income inequality, or structural economic change, and none at all to the steadily mounting political disenfranchisement of the postindustrial working class. Approaching the poverty problem within the narrow conceptual frame of individual failings rather than structural inequality, of cultural and skill "deficits" rather than the unequal distribution of power and wealth, the social scientific architects of President Clinton's original, comparatively less punitive welfare reform proposal made "dependency" their principal target and then stood by helpless as congressional conservatives took their logic to its radical extreme. Their helplessness in the matter was not just a matter of "bad" politics laying "good" scientific knowledge to waste. It was also a failure of the knowledge itself.²²⁴

In addition to the inherent flaws of the process, the entire concept is problematic. "[W]hile there is evidence that two-parent households benefit children, there is little empirical data on what sort of programs work to either promote marriage in the first place or to hold marriages together during troubled times."²²⁵ President Bush spent billions of dollars on a program to encourage marriage without proving the efficacy and economic efficiency of such a program, or government interference at all.²²⁶

The government's emphasis on marriage in this bill is perversely condescending, especially considering it was signed into law by former President Bill Clinton.²²⁷ In a time of politician sex scandals and our general distrust of politicians, what America needs is a good role model, not an enforced lesson in morals.²²⁸ We need a real leader to clear the air, and prevent such problems before they happen.

²²⁴ ALICE O'CONNOR, *POVERTY KNOWLEDGE: SOCIAL SCIENCE, SOCIAL POLICY, AND THE POOR IN TWENTIETH-CENTURY U.S. HISTORY* 3-4. (2001).

²²⁵ Editorial, *Bush Needn't Push Own Marriage Ideals*, STAN. DAILY, Jan. 22, 2004, available at <http://daily.stanford.edu/article/2004/1/22/bushNeedntPushOwnMarriageIdeals>.

²²⁶ *Id.*

²²⁷ Clinton was an ironic role model due to his admissions of cheating on his wife. See *A Chronology: Key Moments in the Clinton-Lewinsky Saga*, CNN, available at <http://www.cnn.com/ALLPOLITICS/1998/resources/lewinsky/timeline> (summarizing Clinton's admissions on Aug. 17, 1998).

²²⁸ Michael Gormley, *Statehouses Often Look Like Frat Houses*, WRAL.COM, Mar. 20, 2008, available at http://www.wral.com/news/national_world/national/story/2611496 ("Of all the wisecracks heard in the marble halls of New York's Capitol after Gov. Eliot Spitzer's downfall in a call-girl scan-

11. TANF Cannot Fix Poverty

A 2006 report for Washington D.C. by the Fiscal Policy Institute found that public assistance is simply not enough to sustain needy families.²²⁹ The report found that a family of four is eligible for monthly cash benefits in the amount of \$463, which is 29% of the poverty line.²³⁰ The Fair Market Rent of a two-bedroom unit in Washington D.C. is \$1,187.²³¹ Therefore, according to these figure, after working and complying with other TANF requirements, a family of four depending on TANF will not be able to pay even half of the Fair Market Rent. According to the study, “[t]he low levels of DC’s TANF benefits make it difficult or impossible to find affordable decent housing, which forces needy families with children to live in unstable situations and in neighborhoods with high crime, poor schools, and limited access to jobs.”²³²

Also, a recent study suggests that TANF may actually be bad for the health of female recipients.²³³ The Western Journal of Nursing Research observes, “Women receiving Temporary Assistance for Needy Families report more stress and have poorer health than women in the general population. Studies suggest chronic stress may contribute to poor health via physiological mechanisms”²³⁴ This is unsurprising, in light of the strict requirements of the program and the grave punishment of not following them.

dal, one jest enlightened as much as it stung: Spitzer’s got to be the only guy in Albany who PAYS for sex. It is an open secret that there is a lot of fooling around going on at the statehouse. And at other statehouses, too.”); *see also* Sheryl Gay Stolberg, *A Scandal-Scarred G.O.P. Asks, ‘What Next?’*, N.Y. TIMES, Aug. 29, 2007, at A1; David Kocieniewski & Danny Hakim, *Spitzer Resigns in Sex Scandal and Turns His Attention to Healing His Family*, N.Y. TIMES, Mar. 13, 2008, at A1.

²²⁹ ED LAZERE & CHRIS TALLENT, FISCAL POLICY INST., NOT ENOUGH TO LIVE ON: DC’S TANF BENEFITS ARE AMONG THE LEAST ADEQUATE IN THE NATION 1 (2006), <http://www.dcfpi.org/31406tanf.pdf>.

²³⁰ *Id.* at 2.

²³¹ *Id.* at 3.

²³² *Id.* at 2.

²³³ *See generally* Shawn M. Kneipp et al., *Psychosocial and Physiological Stress Among Women Leaving Welfare*, 29 W. J. NURSING RES. 864, 864 (2007).

²³⁴ *Id.* (“This study examined psychosocial stress, salivary cortisol, 24-hr ambulatory blood pressure and heart rate, and health among 40 single mothers before and after exiting TANF. As a group, perceived stress decreased after leaving TANF ($p = .02$), with other measures of psychosocial and physiological stress remaining unchanged. Within participants, changes in psychosocial stress predicted depression and general health over time (adjusted $R^2 = .30$ and $.22$; $p = .006$ and $.004$, respectively). These findings indicate psychosocial stress is positively associated with depression and negatively associated with general health as women exit welfare.”).

12. Lack of Available Employment for TANF Recipients

The Marriage Solution is based on the premise that at least one parent will be able to find gainful employment. Many low-income individuals have neither the training nor the resources to advertise themselves in the job market.²³⁵ Although TANF work requirements may be fulfilled by enrolling in certain kinds of education, many individuals either cannot find appropriate jobs for their training, experience, and education, or the job they find is unstable.²³⁶ If a low-income married couple has a stay-at-home parent and another parent who is constantly underemployed or unemployed, the family's resources will be strained and result in a stressful environment for the child. If in a single-parent home the parent is an aid recipient, it makes sense to give that parent benefits to receive an education because the parent is trying to create a stable environment for the child. It is better to help single parents (usually women) overcome the barriers to employment so that they can create a stable living environment for their children, rather than coercing them into a marriage.

²³⁵ Harry J. Holzer, Office of Human Servs. Policy, U.S. Dep't of Health & Human Servs., *The Low-Wage Labor Market: Challenges and Opportunities for Economic Self-Sufficiency: Mismatch in the Low-Wage Labor Market: Job Hiring Perspective*, <http://aspe.hhs.gov/HSP/lwlm99/holzer.htm> ("For instance, young people from families with very low incomes might not be able to afford additional schooling or, because of the poor quality of schools in their neighborhoods, might not have the academic skills to pursue it. Inner-city minorities, especially African Americans, might be constrained from moving to the suburbs by housing market discrimination or high residential costs (where the latter might partially result from exclusionary zoning practices); and they might not commute to these areas because of lack of automobile ownership and difficulties with public transit, as well as a lack of information or support networks in these areas. Such 'mismatch' problems might be exacerbated by discrimination among employers, which some economists had once assumed would disappear in competitive labor and product markets, but which actually appear to persist over time.").

²³⁶ See 42 U.S.C. § 602 (2006); see also Nancy K. Cauthen, Nat'l Ctr. For Children in Poverty, *Family (In)security* (Nov. 2005), http://www.nccp.org/publications/pub_647.html ("More than 30 million Americans—a quarter of the U.S. labor force—work in jobs that pay poverty-level wages and that provide few prospects for advancement and wage growth. Low-wage jobs are often unstable. The work is sometimes less than full-time, seasonal, or temporary, and the hours can be unpredictable. Low-wage jobs are less likely than higher-paying jobs to offer benefits such as health insurance, paid sick leave, retirement plans, and the flexibility to deal with family commitments (e.g., to stay home to care for a sick child.). Working conditions are often stressful and physically and emotionally draining; injury from dangerous, repetitive, or monotonous tasks is commonplace. . . . Shifts in the economy from manufacturing to services have made it virtually impossible for workers without a college degree to command a living wage. The days when a hard-working high school graduate could provide a family with a middle-class income by being a 'union man' (or woman) are all but gone.").

13. Marriage Promotion Is Fiscally Irresponsible

The money for programs supporting marriage has to come from somewhere. One reporter notes:

The Department of Health and Human Services has already diverted over \$100 million within existing programs into marriage promotion. These are programs that have no specific legislative authority to promote marriage. Some examples: \$6.1 million has been diverted from the Child Support Enforcement Program, \$9 million from the Refugee Resettlement Program, \$14 million from the Child Welfare Program, and \$40 million from the Social and Economic Development Strategies Program focusing on Native Americans, among others. Plus, another nearly \$80 million has been awarded to research groups studying marriage.²³⁷

The government is departing from the express purposes of its programs, prioritizing marriage promotion over other extremely worthy programs.

Also, former Assistant Secretary for Children and Families Wade F. Horn has a history of questionable spending practices.²³⁸ In 2005, a report revealed that Mr. Horn paid two prominent syndicated columnists Maggie Gallagher and Mike McManus federal money from the Department of Health and Human Services to promote the government's marriage promotion initiative.²³⁹ In 2002, Ms. Gallagher was paid \$21,500 by the Department to research marriage for her column.²⁴⁰ She responded by asserting that she never thought to inform her readers about her previous employment in the Bush Administration: "I should have disclosed a government contract when I later wrote about the Bush marriage initiative. I would have, if I had remembered it. My apologies to my readers."²⁴¹ In 2001, the Department of Justice also gave her a \$20,000 grant to produce a report on the institution of marriage.²⁴² Mr. McManus also received money from the Department of Health and Human Services to promote marriage.²⁴³ The Department gave him \$4,000 to research marriage for his column, which is published in fifty newspapers nationwide.²⁴⁴ Mr. McManus in 1996 also

²³⁷ Olson, *supra* note 64.

²³⁸ Bill Berkowitz, *The Marrying Man: HHS Marriage Maven Manages Bush Administration's Marriage Promotion Efforts Through Coalition of the Shilling*, MEDIATRANSPARENCY.ORG, Jan. 31, 2005, <http://www.mediatransparency.org/personprofile.php?personID=89>.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

received \$49,000 “from a group that receives HHS money to promote marriage to unwed couples who are having children.”²⁴⁵ This careless government spending is just as wasteful as payments for billboards or marriage pamphlets.²⁴⁶ There is an actual problem (poverty) and the government is wasting money on an ancillary moral issue.²⁴⁷

Solutions to the actual causes of strain on meager financial resources for the poor should take precedence. Education should be a priority for poor individuals, regardless of age. The daycare dilemma should command more resources: subsidized daycare, incentives to companies for providing daycare to their employees, and incentives to research, encourage and support nontraditional families. Practically, exhausting resources on marriage promotion will do little to solve the problem of poverty.

TANF programs are fiscally irresponsible and inefficient. The “Family-to-Family” program discussed in Part II.D demands \$500,000 of federal funds and helps sixty-six families.²⁴⁸ That is an expenditure of \$7,576 dollars per family.²⁴⁹ Parents Educating Parents, the experimental mentoring program also mentioned in Part II.D, wasted \$277,000.²⁵⁰ This money was never recovered.²⁵¹ This sort of experimental program lends itself to an enormous waste of resources.

V. DID TANF WORK?

TANF supporters consider welfare reform a great success.²⁵² They cite grand statistics of achievement; however, these statistics are not as straightforward as they may seem.²⁵³ In practice, while TANF did result in an overall decline in the child poverty rate from 20.8% to 19.9% from 1995 to 1997, the rate of children living in extreme poverty (families earning less than one-half the poverty line) increased during this time period.²⁵⁴ TANF supporters also claim that the overall rate of poverty in America was re-

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Hearing, supra* note 73.

²⁴⁹ *See id.*

²⁵⁰ *See* Ctr. for Family Policy & Practice, *supra* note 70.

²⁵¹ *See id.*

²⁵² *Welfare Reform: Building on Success*, 108th Cong. (2003) (statement of Tommy G. Thompson, Sec’y, Dep’t of Health & Human Servs.).

²⁵³ *See id.*

²⁵⁴ *See* Rose, *supra* note 21 at 152.

duced as the result of welfare reform.²⁵⁵ However, after the economic boom of the late 1990s, poverty steadily increased into the early 2000s.²⁵⁶ Welfare caseloads have not decreased since 2001.²⁵⁷

Another explanation for the “success” of welfare reform could be a totally unrelated welfare program designed to help the poor, the Earned Income Tax Credit (“EITC”).²⁵⁸ In 1993 and 2001, President Bill Clinton expanded the EITC; it became the largest welfare program in America, adding possible thousands of dollars to a low-wage worker's income.²⁵⁹ “With a good package of work supports, including a state as well as a federal EITC, Medicaid, food stamps and child care, a state could, says David Hansell, commissioner of New York State’s Department of Temporary and Disability Services, ‘double someone’s actual income up to 200 percent of the poverty level.’”²⁶⁰

Another explanation for the reduced caseloads in the 1990’s would be the push to deny people benefits: “There’s also evidence that the welfare program has become a more punitive system—one geared to pushing people off the rolls rather than helping them become employed and self-sufficient. And the cost of that approach is showing up in increased use of food stamps, Medicaid and other safety net programs.”²⁶¹

Therefore, reducing the number of families dependent on welfare is not necessarily saving the government money or reducing poverty.²⁶²

“We really don’t do much cash assistance to families anymore,” says Sharon Hirsch, an assistant director in the Durham County (North Carolina) Department of Social Services. That money, she reports, is now going mostly to child-only cases where no parent and no work requirement is involved and to child care for the few families on the rolls. Meanwhile, welfare spending is dwarfed by what the county is now

²⁵⁵ Jonathan Walters, *Is Welfare Working?*, GOVERNING MAG., Feb. 2008, available at <http://www.governing.com/articles/0802welfare.htm>.

²⁵⁶ Scott W. Allard, *The Changing Face of Welfare During the Bush Administration*, PUBLIUS 304, 304 (2007) (“The poverty rate has increased from 11.3 percent in 2000 to 12.6 percent in 2005 . . .”).

²⁵⁷ *Id.* (“Welfare cash assistance caseloads have remained fairly constant since 2001.”).

²⁵⁸ Press Release, White House Office of the Press Secretary, President Clinton Proposes to Expand the Earned Income Tax Credit in Order to Increase the Reward for Work and Family (Jan. 12, 2000), http://clinton4.nara.gov/WH/New/html/20000112_2.html.

²⁵⁹ Allard, *supra* note 256, at 309 (“[T]he federal Earned Income Tax Credit (EITC) became the largest means-tested program providing cash assistance to low-income households in America. In 2002, the EITC provided nearly \$36 billion in credits to 19.8 million families . . .”).

²⁶⁰ Walters, *supra* note 255.

²⁶¹ *Id.*

²⁶² *See id.*

spending on other supplemental assistance programs, such as food stamps and Medicaid.²⁶³

If the government is just changing the form of welfare without changing the actual cash outlays, the 1996 reform seems emptier than ever.

In Washington D.C., the Urban Institute conducted a study to observe the progress of families that were able to leave TANF from 1997 through 1999.²⁶⁴ Even though the study was funded by the US Department of Health and Human Services, certain results were still critical of TANF.²⁶⁵ More than four out of five families that left TANF (due to alleged work requirement violations) relied on other public assistance after leaving, such as food stamps, Supplemental Security Income (SSI), and/or the Women, Infants, and Children (WIC) program.²⁶⁶ Also, “[w]hen asked about specific experiences of hardship, such as difficulties paying rent or having utilities cut off or having to skip or reduce the size of meals, working and jobless leavers reported similar levels of difficulty.”²⁶⁷ This indicates that TANF leavers who went from “welfare to work” were not better off than those who left and did not work. “In addition, there was little difference in the reported incidence of hardships before and after exiting TANF.”²⁶⁸ These results highlight the fiscal irresponsibility of TANF.²⁶⁹ Jobless parents do not leave TANF and stop using the government’s resources; they continue doing so in order to survive.²⁷⁰ If other services were provided, such as day care, subsidized nursing help for a sick family member, or education, these parents could work and achieve TANF’s goal of moving people from welfare to work. If families experience the same level of hardship regardless of whether they are participating in TANF, it appears that TANF does nothing to lessen the hardships of impoverished families.²⁷¹ If TANF gave families actual support, as opposed to carrots-and-sticks, the program would realize its goal of reducing poverty.

²⁶³ *Id.*

²⁶⁴ GREGORY ACS & PAMELA J. LOPREST, URBAN INST., THE STATUS OF TANF LEAVERS IN THE DISTRICT OF COLUMBIA, (Jan. 3, 2001), http://www.urban.org/UploadedPDF/dc_tanf_leavers.pdf.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at ii.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

To reiterate, the divorce rate has not wavered,²⁷² marriage rates have not soared,²⁷³ and people still fluctuate in and out of poverty in accordance with economic recessions and booms.²⁷⁴ TANF has not achieved its goals.

VI. PRACTICAL AND FORWARD-THINKING SOLUTIONS

Pam and Anthony's story is real, though it will probably never be heard by Newt Gingrich. Theirs is a true love, not induced by government funding. They don't need marriage counseling from the government; they need health care, shelter and food.

We need to fix the system to give people a chance. As I said before, poverty and lack of resources continues the cycle of poverty. You can statistically tie marriage to poverty all day long, but the homeless people I see in the Department of Public Social Services are almost always poor because of mental health issues or drug addictions. They either have biological mental health sickness, or mental health issues resulting from trauma (e.g. blighted living conditions, abuse, combat). Usually, these people have lived in poverty their entire lives and have never been diagnosed or treated for their disease. They have drug addictions due to the influences of their environment, due to pressures to self-medicate because of their bleak surroundings, and due to bad choices. I can confidently say that, to the best of my knowledge, none of the people I've helped apply for public assistance would be in a better economic situation were they married.²⁷⁵

Our first step in reducing poverty in America is restructuring our societal springboard. The government must create policies that help children learn to be successful, regardless of the economic circumstances of their parents. I would suggest making education a fundamental right, as it is in California.²⁷⁶ Also, I would propose an alternate system of funding public schools based on the need of the district, rather than property taxes. This would provide some measure of equal footing to low-income students.

My friend Cameron spent two years with Teach for America teaching high school in a low-income area in North Carolina. She told stories of crowded classrooms, lack of supplies, and old textbooks. None of this surprised me, but when she told me about the school's guidance counselor, I

²⁷² See *supra* note 9.

²⁷³ See *supra* note 10.

²⁷⁴ See Part VII (Figure 1).

²⁷⁵ See *supra* note 184 and accompanying text for the assertion that people marry within their income level.

²⁷⁶ CAL. CONST., art. IX, § 5.

was shocked. Cameron was counseling her students about practical aspects of the college application process: applying, getting loans, taking “Advanced Placement” classes. One of her students asked her why she was teaching them that, and Cameron was confused by the student’s question. The student explained that her high school guidance counselor had advised her to leave school early, get her high school equivalency degree (G.E.D.), and start working. The guidance counselor said that schools in that area didn’t really send kids to college. Cameron furiously fought back, helping many of her students through the college admissions process. Her students still call her to catch up, and to update her about their progress in higher education.

It is completely illogical to fund marriage promotion programs when our public schools are so inadequate and underfunded. High-quality education and programs that teach marital (life) skills prospectively to children will have much more of a positive effect on children than it will remedially to adults. Children should be required to volunteer a couple of hours a week to worthy causes in public schools to learn selflessness and commitment. Children should also have to participate in team sports to learn communication and, again, commitment. These programs would do so many positive things for an audience that is capable and eager to learn.

While it may help a child to see two healthy parents, many people have the opportunity to positively impact a child’s life. A good education program with quality teachers, coaches, and mentors can significantly increase a child’s sense of self-worth and motivation to work and be productive.

Even Lawrence Mead, a strict conservative in favor of abolishing welfare, has it right in valuing the importance of education: “Barriers—particularly inferior education—have much more influence on the quality of jobs people get *if* they work.”²⁷⁷

Health care from a very young age will help identify and treat mental health problems among the poor, resulting from both biological infirmities and the trauma of living below the poverty line. Health care will deter mentally ill patients from self-medicating with drugs and alcohol, prevent them from becoming a strain on the system by requiring public assistance, avoid frequent treatment in emergency rooms and reduce the strain on state social workers. Health care will prevent families from falling into poverty

²⁷⁷ *Reducing Poverty: Before the H. Comm. On Ways & Means*, 110th Cong. (2007) (statement of Lawrence M. Mead, Professor, New York University).

and the ensuing cycle of public assistance due to the high costs of medical emergency.

Our second step in reducing poverty should be to help the poor gain access to a fair and supportive job market. It is sometimes economically easier for a mother to receive public assistance rather than work:

When low-income mothers move from welfare to work, they often lose medical coverage, food stamps, and housing subsidies while they face increased costs for child care and transportation. Earning an average of below \$800 per month in employment income, low-income mothers in the labor force experience a shortfall that ranges from approximately \$300 to \$530 per month. *Not one* of the 165 wage laborers in the survey was able to meet her expenses with income earned from employment. Far from securing jobs that provided ‘ladders’ to self-sufficiency, the wage-reliant mothers ended up in unstable low-wage work that resembled chutes more than ladders.²⁷⁸

Companies profit from doing business in America; they have the biggest stake in the economy, so they owe a debt greater than simply taxes. Companies reporting over a certain amount of revenue per year should provide complete health care to all employees. These companies should also subsidize the community college or vocational trade education of all employees, without discrimination. Smaller companies should have to pay a part of their employees’ health care benefits and educational benefits, on a pro rata system positively correlated with their income. The government should subsidize the rest. All companies should pay into a pool that funds local daycare for their employees. Also, the poverty line and the minimum wage should be updated to reflect current living conditions city-by-city.

If companies start to pick up the slack, the government will be less burdened by people seeking public assistance. Programs may be downsized, or reduced to rehabilitative care for the chronic homeless or temporary assistance for families between jobs, instead of the current underfunded catch-all programs.

Our third step in reducing poverty should be restructuring our societal safety net. Harley came into the Department of Public Social Services at ten in the morning on a Friday. He carried with him proof of an upcoming welding job in San Diego. Unyieldingly proud of his recent graduation from a job-training program, he was eager to apply for General Relief (emergency cash benefits) so he could pay for his bus ticket to San Diego.

²⁷⁸ See Koons, *supra* note 189 at 39–40.

Six hours later, his caseworker told him he could not be approved for General Relief that day. He needed the money to go work at the job. DPSS' goal is to help people become self-sufficient, so I complained to his caseworker's manager. They approved his caseload that day.

Without an advocate, he couldn't have worked that job. Self-sufficiency should be the aim of public aid, and the responsibility of those employed to distribute public aid. People are willing to work and support themselves. Harley didn't need lessons in morals, he needed cash from the state to start working. What the state could do for him is give him his monthly stipend of \$200 so he could make it to San Diego and start earning his own money. Our safety net must be practically prepared to support low-income families and needy individuals in their daily necessities to survive and work.

VII. CONCLUSION

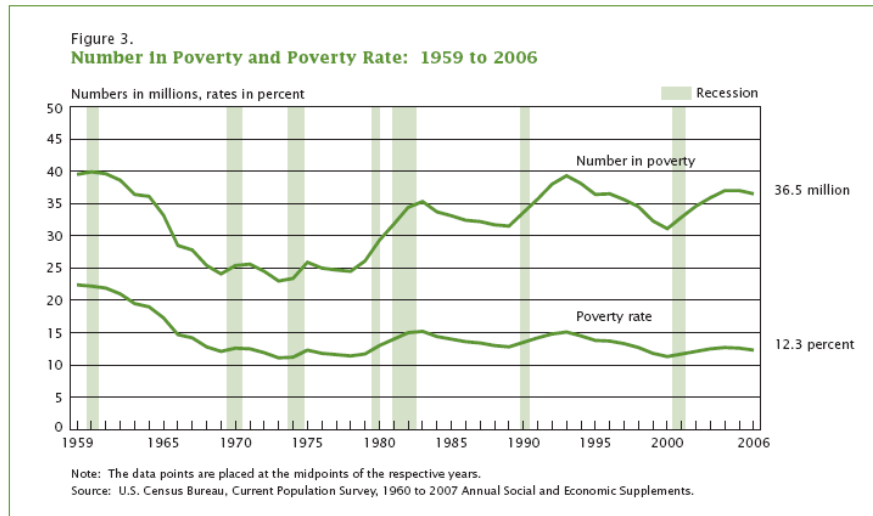
TANF's goal of promoting marriage is antiquated and ineffective in improving the lives of Americans. Government money is being wasted to condescendingly teach adults "marital skills" by untested "mentorship" and counseling programs.

Marriage is not the solution to poverty because poor women are in a unique position of vulnerability: their marriage has about a half and half chance of either supplementing their income or dropping them into poverty upon divorce. The paternalistic desire to marry women off is simply a hazy reminiscence of the time before women gained civil rights, effected to keep women in their place. Additionally, poor women are especially vulnerable to domestic abuse, and the government's pressure on them to get and remain married traps them in the predicament of deciding whether to receive government assistance to feed their child or to leave an abusive spouse.

Practically, TANF does not even encourage marriage; it simply bribes very vulnerable, poor Americans to enter or stay in relationships for a monetary gain. This encourages practical selfishness, the opposite of the government's goals of creating committed and selfless couples. TANF is also only retroactive, so it does not have the advantage of cutting the problem short before it develops. Retroactive programs can only help so much, as people need to want to be helped. Here, the government is not supporting people who ask for it, rather mandating counseling for those individuals the government deems needy.

The lack of marital and life skills in America cannot be solved by programs like TANF; rather, it must play out through the lives of young

Americans. Primarily, the government should visibly support its poor citizens via financial capital, spending on necessities to help them through the ugly desperation of poverty. Solutions like improving our system of education and creating programs that will teach youths respect, commitment, selflessness, and community will shape their impressionable attitudes. Funding programs like these also makes a statement that the poor youth of America are valued, and that we do expect success from them. We need to encourage pride in ourselves and in America, and break the cycle of poverty and indifference. The alternative programs I have proposed will create the kind of supportive community by enfranchising all. And they actually may have the side effect of creating healthier marriages.

FIGURE 1²⁷⁹

²⁷⁹ CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006 11 (2006).