

# ARTICLES

## GENDERED COMPLICATIONS OF COVID-19: TOWARDS A FEMINIST RECOVERY PLAN

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### ABSTRACT

*COVID-19 exposed the limitations in the current economic system on public and private support for gender equity and the intersecting impact of gender, race, and class in that lack of support. Women of color, particularly those who are Black, Latina, or Native American, were at the intersection of the inequities in the pandemic economy. The catalogue of COVID-19's impact covers all aspects of women's lives: work, family, education, health, reproduction, mental and physical well-being, and leisure.*

*This Article argues that COVID-19 has complex implications for gender equality and gender equity as state and local governments, the federal government, and private actors focus on recovery plans. The negative effects of the pandemic include hundreds of thousands of deaths, lingering health complications for many who have contracted the virus, massive economic disruption and loss for individuals, families, and communities, and the exacerbation of structural inequalities in areas ranging from children's education to women's status. The creative policy responses prompted by the devastating impact of COVID-19 provide promise for building a more transformative and equitable future. Indeed, while a return to the status quo might be possible, developing a roadmap to resilience provides an opportunity to address the gender inequities in our social infrastructure—if there is political will to follow that roadmap. Proposing a feminist recovery plan, this Article focuses on a set of issues relating to pre-existing gender inequities concerning work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women—particularly, women of color—in providing essential but undervalued care work.*

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“This is our moment to build a system that is capable of delivering gender equality.”

—Hawai’i State Commission on the Status of Women, *Building Bridges, Not Walking on Backs: a Feminist Economic Recovery Plan for COVID-19* 1 (2020)

I. INTRODUCTION

The COVID-19 pandemic made pre-existing gender disparities worse globally, and pre-existing problems within social, political, and economic systems amplified the pandemic’s impact.<sup>1</sup> In the United States, the pandemic has exposed the structural limitations on public and private support for gender

1. See U.N., *Policy Brief: The Impact of COVID-19 on Women* (2020), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf>; see generally Orly Lobel, *Knowledge Pays: Reversing Information Flows and the Future of Pay Equity*, 120 COLUM. L. REV. 547 (2020) (discussing gender inequity).

equity,<sup>2</sup> and the intersecting impact of gender, race, and class in that lack of support.<sup>3</sup> This article argues that, because of the pandemic's disproportionate impact on women, post-recovery plans must recognize and address these pre-existing intersectional inequities and support gender equity.<sup>4</sup> The argument is pragmatic in calling for needed laws and policies, but stems from a normative premise that government has a responsibility to address these inequities.<sup>5</sup> Conceptions of the social contract, core public values of equality and fairness, and shared vulnerability support the need for this type of plan.<sup>6</sup>

The catalogue of COVID-19's impact covers all aspects of women's lives: work, family, education, health, reproduction, mental and physical well-being,

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2. This Article refers to "gender equity" as fair treatment relative to needs and a commitment to addressing the cultural, legal, and political obstacles that hinder gender equality. On this definition of "gender equity" and its role in achieving gender equality, see Breda Pavlic et al., *Gender Equality and Equity: A Summary Review of UNESCO's Accomplishments Since the Fourth World Conference on Women (Beijing 1995)*, UNESCO 5 (May 2020), <https://unesdoc.unesco.org/ark:/48223/pf0000121145>; *Gender Equality v. Gender Equity: What's the Distinction?*, PIPELINE (FEB. 5, 2018), <https://www.pipelineequity.com/voices-for-equity/gender-equity-vs-gender-equality/> (quoting UNESCO definition and arguing that "if equality is the end goal, equity is the means to get there"); Katica Roy, *Why We Need Gender Equity Now*, FORBES (Sept. 14, 2017), <https://www.forbes.com/sites/ellevate/2017/09/14/why-we-need-gender-equity-now/#7100fa6177a2> (same); see also Agnes Binagwaho, *The Difference Between Gender Equity and Equality—and Why It Matters*, FORTUNE (Mar. 25, 2020), <https://fortune.com/2020/03/25/gender-equality-and-equity-iwd-womens-education/> (elaborating on the International Women's Day theme, "[a]n equal world is an enabled world," by arguing that global failure to reach the promises made in the 1995 Beijing Declaration "stems from not having [gender] equity at the center of countries' approaches;" gender equity "works to correct the historical wrongs that have left women behind" and "bridges the gaps in equality" with laws, policies, and programs that "work to change the culture to be more supportive of women").

3. See, e.g., Catherine Powell, *Color of Covid and Gender of Covid: Essential Workers, Not Disposable People*, 32:3 YALE J. L. & FEMINISM (forthcoming 2021).

4. On the need for a gender-equitable recovery plan, see C. Nicole Mason with Andrea Flynn & Shengwei Sun, *Build(ing) the Future: Bold Policies for a Gender-Equitable Recovery*, INSTITUTE FOR WOMEN'S POLICY RESEARCH (2020), <https://iwpr.org/wp-content/uploads/2020/11/Policies-for-a-Gender-Equitable-Recovery-Finals2.pdf>. The catalogue of COVID-19's impact on women's lives that this article provides draws primarily on reported trends and statistics from the first several months of the pandemic; we have done some updating to reflect trends as the pandemic neared its first anniversary. Even though these statistics speak to a particular point in time, we believe that they capture general trends about the pandemic's impact. Similarly, our evaluation of how various state and federal recovery plans attempted to address these gendered impacts speaks to efforts during 2020, with some attention to initial efforts by the Biden/Harris Administration. Further, this article was substantially complete before vaccines for COVID-19 became available to the public; thus, we do not assess the impact of vaccination and further economic reopening on the gendered trends that we discuss.

5. Thus, this article does not seek to elaborate a normative argument for *why* gender equity is important, but we believe such an argument follows from moral, legislative, and constitutional commitments to gender equality; similar commitments to racial equality undergird the imperative of remedying intersectional inequities of race and gender.

6. On the need for a new social contract attentive to racial and gender justice, see, for example, Powell, *supra* note 3. One of the authors has argued elsewhere that a new social contract should support care as a public value and foster institutional arrangements that address the gendered economy of care. See LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 84–114 (2006). On shared vulnerability, see *infra Part IV* for discussion of Martha Albertson Fineman's vulnerability theory.

leisure,<sup>7</sup> and even retirement security.<sup>8</sup> The unprecedented job losses during the pandemic hit women harder than men,<sup>9</sup> and reports repeatedly emphasized how the loss of child care set women back in the workplace and had a negative effect on their children, particularly children in low-income families.<sup>10</sup> Women are a larger percentage of workers in the service-related jobs in which businesses furloughed or laid off employees to ensure social distancing. At the same time, the nature of women's employment also resulted in greater vulnerability to exposure to COVID-19. Women are the overwhelming majority of health and home care workers and child care workers, and thus are on the frontlines of providing paid care to both children and the elderly.<sup>11</sup> More than half of home health care workers are women of color;<sup>12</sup> one in five workers is a single mother.<sup>13</sup>

These gendered patterns intersect with a "racial justice paradox" that reveals what Catherine Powell calls the "color of COVID": "people of color [are] overrepresented among both the unemployed and among essential workers" being asked to take risks at work.<sup>14</sup> Further, the "color of COVID" and the "the gender of COVID" mean that women of color, particularly those who are Black, Latina,

7. This Article uses the terms "woman" and "women" broadly to include cisgender women and trans women, as well as people who identify as nonbinary but are affected by the gendered effects of the pandemic. It also discusses how these gendered effects relate to particular groups of women, for example, women married to men who live in two-parent households or women rearing children in single-parent households. It also recognizes that the pandemic has compounded effects of inequality for the LGBTQ+ community. See, e.g., *Resources: COVID-19*, TRANSGENDER L. CTR., <https://transgenderlawcenter.org/resources/covid19>; Petruce Jean-Charles, *LGBTQ Americans Are Getting Coronavirus, Losing Jobs. Anti-Gay Bias Is Making It Worse For Them*, USA TODAY (May 10, 2020, 3:30 PM), <https://www.usatoday.com/story/news/nation/2020/05/09/discrimination-racism-fuel-covid-19-woes-lgbtq-americans/3070036001/>.

8. Mark Miller, *Female Workers Could Take Another Pandemic Hit: To Their Retirements*, N.Y. TIMES (Dec. 11, 2020), <https://www.nytimes.com/2020/12/11/business/women-retirement-covid-social-security.html>.

9. See Mason, *supra* note 4, at 6 (reporting that "[w]omen have experienced a disproportionate number of job losses since the start of the pandemic");

Sarah Chaney, *Women's Job Losses from Pandemic Aren't Good for Economic Recovery*, WALL ST. J. (June 21, 2020), <https://www.wsj.com/articles/womens-job-losses-from-pandemic-arent-good-for-economic-recovery-11592745164>.

10. Patricia Cohen, *Recession with a Difference: Women Face Special Burden*, N.Y. TIMES, (Nov. 17, 2020), <https://www.nytimes.com/2020/11/17/business/economy/women-jobs-economy-recession.html>.

11. Women constitute 76% of the essential workers in health care and 73% of those in government and community-based services. Celine McNicholas & Margaret Poydock, *Who Are Essential Workers? A Comprehensive Look at Their Wages, Demographics, and Unionization Rates*, ECON. POL'Y INST.: WORKING ECONOMICS BLOG (Mar. 19, 2020, 11:25 AM), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>.

12. Jocelyn Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, CTR. FOR AM. PROGRESS (Apr. 23, 2020, 9:00 AM), <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

13. *Advocating for Home Health Workers in the Pandemic*, HOME CARE MAG. (Apr. 20, 2020), <https://www.homecaremag.com/news/advocating-home-health-workers-coronavirus-pandemic>.

14. Catherine Powell, *The Color of Covid: The Racial Justice Paradox of Our New Stay at Home Economy*, CNN (Apr. 18, 2020, 9:13 AM), <https://www.cnn.com/2020/04/10/opinions/covid-19-people-of-color-labor-market-disparities-powell/index.html>.

and Native American, are at the intersection of the inequities exposed by the pandemic, a result that reflects longstanding intersectional inequities.<sup>15</sup> They are a prominent part of the female workforce in low-paid and undervalued frontline jobs—including care work—vital to the economy but lacking the flexibility of being able to work from home and have been disproportionately affected by the so-called “shecession” of pandemic-related job loss.<sup>16</sup> Women of color are also disproportionately represented among those women in poverty in the U.S., and the lack of adequate policy responses to the pandemic’s impact on work and family is increasing that economic insecurity.<sup>17</sup>

At the same time, the pandemic also reveals the protective effects of class for some women: women in professions where working from home is feasible, or who are not essential workers, or who depend upon or benefit from the domestic labor of other women. However, the pandemic has had gendered effects even among more privileged professional women—such as women in academia: their greater likelihood than male colleagues to be engaged in domestic chores and child care during the pandemic has negatively affected their productivity more than that of their male peers.<sup>18</sup>

When it comes to family responsibilities, mothers have assumed the majority of child care and schoolwork responsibilities for children who can no longer attend day care or whose schools have closed.<sup>19</sup> In September 2020, as the new school year began (often virtually), a staggering “865,000 women dropped out of

15. See Catherine Powell, *The Color and Gender of COVID: Essential Workers, Not Disposable People*, THINK GLOBAL HEALTH (June 4, 2020), <https://www.thinkglobalhealth.org/article/color-and-gender-covid-19-essential-workers-not-disposable-people>. For elaboration of this argument, see Powell, *supra* note 3. On the importance of an intersectional analysis of COVID-19, see Kimberlé Crenshaw et al., *Under the Blacklight: The Intersectional Failures that COVID Lays Bare*, AFR. AM. POL’Y F. (Mar. 28, 2020), <https://www.youtube.com/watch?v=OsBstnmBTaI>. On the concept of intersectionality more generally, see Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

16. Powell, *supra* note 3; Alisha Hardisanni Gupta, *Why Some Women Call This Recession a ‘Shecession,’* N.Y. TIMES (May 9, 2020), <https://www.nytimes.com/2020/05/09/us/unemployment-coronavirus-women.html>; Claire Ewing-Nelson, *All of the Jobs Lost in December Were Women’s Jobs*, NAT’L WOMEN’S L. CENT. (Jan. 2021), <https://nwlc.org/wp-content/uploads/2021/01/December-Jobs-Day.pdf>.

17. Release: *New Fact Sheet on Women in Poverty Underscores the Need to Extend COVID-19 Unemployment Insurance*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), <https://www.americanprogress.org/press/release/2020/08/03/488573/release-new-fact-sheet-women-poverty-underscores-need-extend-covid-19-unemployment-insurance/> (explaining the impact of the expiration of temporary COVID-19-related unemployment insurance on women’s poverty: “While nonwhite women make up about 40 percent of the population, they make up nearly 60 percent of women in poverty”).

18. Keymanthri Moodley & Amanda Gouws, *How Women in Academia Are Feeling the Brunt of COVID-19*, THE CONVERSATION (Aug. 7, 2020), <https://theconversation.com/how-women-in-academia-are-feeling-the-brunt-of-covid-19-144087>.

19. Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html>.

the labor force”—four times the rate of drop out by men (216,000).<sup>20</sup> Mothers of young children are disproportionately among this group who feels “driven out” by the impossibility of managing work and family demands.<sup>21</sup>

Although the pace of job loss and the increased amount of child care affecting women are new, the weaknesses in support for gender equity are not. Prior to the pandemic, women faced barriers affecting work, family leave, and child care; they also experienced unequal parenting burdens. Those unequal burdens flowed both from women doing more work in dual-parent heterosexual households and from the fact that almost five times as many children live with a single mother than with a single father.<sup>22</sup> As with child care, the COVID-19 pandemic has highlighted the care needs of older Americans and of the precarious condition of the undervalued—and predominantly female—workforce that provides elder care.<sup>23</sup>

The pandemic has also posed challenges for—and exacerbated inequities in—women’s reproductive health. A number of states deemed abortion a nonessential service that could be postponed,<sup>24</sup> while other states explicitly protected access to abortion.<sup>25</sup> Due to the pandemic, “far fewer women want to get pregnant” and seek to delay pregnancy or have fewer children; yet women reported that it has become harder to get birth control.<sup>26</sup> Higher percentages of Black (38%) and

20. Soo Youn, *Quitting Was Her Only Option. She is One of 865,000 to Leave the Workforce Last Month*, THE LILY (Oct. 7, 2020), <https://perma.cc/RCR9-YE6Z>.

21. *Id.* (quoting sociologist Marianne Cooper, author of the book CUT ADRIFT: FAMILIES IN INSECURE TIMES).

22. Erin Duffin, *Number of Children Living with a Single Mother or a Single Father in the U.S. from 1970 to 2019*, STATISTA (Jan. 13, 2020), <https://www.statista.com/statistics/252847/number-of-children-living-with-a-single-mother-or-single-father/>; Naomi Cahn, *Women and the Frontlines of COVID-19*, FORBES (April 5, 2020), <https://www.forbes.com/sites/naomicahn/2020/04/05/women-and-the-frontlines-of-covid-19/#6fb4a60c7030>.

23. Here, gender intersects both with race and immigration status as healthcare workers providing elder care tend to be immigrants and may lack immigration status. *See, e.g.*, Joey Peters, *In Healthcare Work, African Immigrants Feel Brunt of COVID-19*, SAHAN J. (May 27, 2020), <https://sahanjournal.com/health/in-healthcare-work-african-immigrants-feel-brunt-of-covid-19/> (describing pressure on African immigrants to work long hours during COVID-19 pandemic); Shefali Milczarek-Desai, *The Other Front Line: Immigrant Workers, Nursing Homes and COVID-19*, ARIZ. DAILY STAR (Mar. 24, 2020), [https://tucson.com/opinion/local/ua-law-prof-the-other-front-line-immigrant-workers-nursing-homes-and-covid-19/article\\_01e2d45e-b0e7-5d47-a88b-9ec0e454d5e4.html](https://tucson.com/opinion/local/ua-law-prof-the-other-front-line-immigrant-workers-nursing-homes-and-covid-19/article_01e2d45e-b0e7-5d47-a88b-9ec0e454d5e4.html) (describing lack of safety measures and threats of deportation endured by immigrant health-care workers during the pandemic).

24. Sabrina Tavernise, *Texas and Ohio Include Abortion as Medical Procedures That Must Be Delayed*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/us/coronavirus-texas-ohio-abortion.html>; Laura Sobel et al., *State Action to Limit Abortion Access During the COVID-19 Pandemic*, KAISER FAM. FOUND. (June 25, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-action-to-limit-abortion-access-during-the-covid-19-pandemic/>.

25. Elizabeth Nash et al., *Ten Things State Policymakers Can Do to Protect Access to Reproductive Health Care During the COVID-19 Pandemic*, GUTTMACHER INST. (May 18, 2020), <https://www.guttmacher.org/article/2020/05/ten-things-state-policymakers-can-do-protect-access-reproductive-health-care-during>.

26. Sarah McCammon & Maureen Pao, *Survey: Women Are Rethinking Having Kids as They Face Pandemic Challenges*, NPR (June 24, 2020, 7:41 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/06/24/882953643/survey-women-are-rethinking-having-kids-as-they-face-pandemic-challenges> (quoting Laura Lindberg, the study’s “lead researcher”).



Latina women (43%) than white women (29%) reported such challenges.<sup>27</sup> In the United States and globally, the pandemic has also intensified domestic violence, a form of injury that disproportionately affects women.<sup>28</sup>

Even the political response to the pandemic reflects and reinforces pre-existing gender patterns. Before the pandemic, women (including white women and women of color) held elected office at a rate significantly below that of men, and of women's overall percentage of the population.<sup>29</sup> Women made gains in the 2020 election, including the first woman elected to national office (Senator Kamala Harris as Vice President), but still constitute just over one-quarter of all members of Congress.<sup>30</sup> While we do not claim that the course of the pandemic would have been different had more women been in leadership positions, we do claim that the pandemic's consequences have been exacerbated by political leadership modeling a particular mode of masculinity.

The United States has a dramatically higher proportional number of COVID-19 cases and deaths than its peers around the globe; one evident cause is the toxic masculinity—or “mask-ularity”<sup>31</sup>—of President Donald Trump and some of his political allies, which associated masks and other protective measures with shame and weakness even *after* Trump himself contracted the virus.<sup>32</sup> Such toxic masculinity includes both an exaggerated emphasis on toughness and risk-taking, including “reopening” the economy without sufficient regard to how to do so safely in light of protecting workers and public health, as well as an absence or suppression of empathy or caring about the staggering human toll of the

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27. *Id.*

28. See *Policy Brief: The Impact of COVID-19 on Women*, *supra* note 1, at 19.

29. See *Women in Elective Office 2020*, CTR. FOR AM. WOMEN & POL., <https://www.cawp.rutgers.edu/women-elective-office-2020>; *Women of Color in Elective Office 2020*, CTR. FOR AM. WOMEN & POL., <https://www.cawp.rutgers.edu/women-color-elective-office-2020>; *Black Women in American Politics 2019*, CTR. FOR AM. WOMEN & POL. & HIGHER HEIGHTS 5 (2019), <https://cawp.rutgers.edu/sites/default/files/resources/black-women-politics-2019.pdf> (reporting how Black women “made history as nominees and winners” in 2018 elections for Congress, but noting their “persistent underrepresentation” as candidates and officeholders in the Senate and in statewide elected office, including as governors). While women (overall) are underrepresented in electoral office, compared to men, “Black women have outpaced Black men and White women in winning electoral seats,” and women of color “are better represented among ethni-racial state legislators than White women are among White state legislators.” Nadia E. Brown & Danielle C. Lemi, “*Life For Me Ain’t Been No Crystal Stair*”: *Black Women Candidates and the Democratic Party*, 100 B.U. L. REV. 1613, 1620–23 (2020) (discussing the “paradox of participation,” referring to Black women’s “high levels of political participation” despite “their perceived disadvantages and sociodemographic deficiencies”).

30. Naomi Cahn, *Why Aren’t There Even More Women Political Leaders?*, FORBES (Dec. 6, 2020), <https://www.forbes.com/sites/naomicahn/2020/12/06/why-arent-there-even-more-women-political-leaders/?sh=6974f9aa3d16>.

31. Matt Lewis, *Trump Minions Go Crazy for His Toxic ‘Mask-ularity’*, DAILY BEAST (May 16, 2020, 4:20 PM), <https://www.thedailybeast.com/trump-minions-go-crazy-for-his-toxic-mask-ularity>.

32. See Dr. Julia Marcus, *The Dudes Who Don’t Wear Masks*, ATLANTIC (June 23, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/dudes-who-wont-wear-masks/613375/> (noting negative influence of President Trump’s mocking mask wearers as weak and reporting research that, even though men are at higher risk than women for dying from COVID-19, they are especially likely not to wear masks because they view wearing them as “shameful,” “a sign of weakness,” and “not cool”).

pandemic.<sup>33</sup> That dangerous performance of masculinity is also evident in Trump's callous use of George Floyd to tout economic recovery and in his "law and order" response to the widespread protests against police brutality and systemic racism spurred by Floyd's videotaped murder under the knee of Derek Chauvin.<sup>34</sup>

This Article does not assume that female leaders necessarily or exclusively embrace certain "feminine" values lacking in toxic masculinity, such as care and empathy. However, in contrast to the federal response in the United States, it is notable that countries led by women had "systematically and significantly better" COVID-outcomes in the early stages of the pandemic, measured in numbers of cases and deaths.<sup>35</sup>

In cataloguing pre-existing gender disparities and the impact of COVID-19 on women, this Article argues that COVID-19's gendered effects are symptomatic of deeper, structural problems. While the Article was written during the pandemic, it takes a longer perspective to suggest that the effects of COVID-19 must be placed in the context of pre-existing inequities. Consequently, the pandemic is likely to have complex implications for gender equality as state and local governments, the federal government, and private actors focus on recovery plans. Moreover, the heightened visibility of the Black Lives Matter movement<sup>36</sup> during the pandemic brought these inequities into even sharper relief, leading to calls to address the "pandemic" of racism and its intersecting effects with COVID-19.<sup>37</sup>

33. This Article uses the term "toxic masculinity" to refer to a set of beliefs or behaviors that the person holding or performing them associates with masculinity, or with what being a boy or man in a particular society requires, and that have harmful effects, including perpetuating gender inequality, misogyny, racism, and homophobia. *See infra* note 160 (further discussing the development and implications of toxic masculinity).

34. Maegan Vazquez, *Trump Invokes George Floyd's Name While Taking Economic Victory Lap*, CNN (June 5, 2020, 3:30 PM), <https://www.cnn.com/2020/06/05/politics/donald-trump-george-floyd-rose-garden/index.html>.

35. Supriya Garikipati & Uma S. Kambhampati, *Are Women Leaders Really Doing Better on Coronavirus? The Data Backs It Up*, THE CONVERSATION (Aug. 28, 2020), <https://theconversation.com/are-women-leaders-really-doing-better-on-coronavirus-the-data-backs-it-up-144809>. For a similar, earlier assessment, see Avivah Wittenberg-Cox, *What Do Countries with the Best Coronavirus Responses Have in Common? Women Leaders*, FORBES (Apr. 13, 2020), <https://www.forbes.com/sites/avivahwittenbergcox/2020/04/13/what-do-countries-with-the-best-coronavirus-reponses-have-in-common-women-leaders/#1e3251a53dec>.

36. *See* Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> (charting American voters' growing support for the movement since the death of George Floyd).

37. *See* 'We Are Living in a Racism Pandemic,' Says APA President, AM. PSYCH. ASS'N (May 29, 2020), <https://www.apa.org/news/press/releases/2020/05/racism-pandemic>; *see also* Powell, *supra* note 3, at 1, 7 (arguing that COVID-19 pandemic provides "window into the underlying pandemics of inequality, economic insecurity, and injustice," and provides a "'portal' to a more just and equal world") (for word "portal," quoting Arundhati Roy, *The Pandemic is a Portal*, YES! MAGAZINE (Apr. 17, 2020)); Catherine Powell, *"Viral Justice": Interconnected Pandemics as Portal To Racial Justice*, JUST SEC. (Aug. 5, 2020), <https://www.justsecurity.org/71742/viral-justice-interconnected-pandemics-as-portal-to-racial-justice/> (arguing that "[w]e live in a moment of interconnected pandemics" of policing, poverty, and racism).



Responses to the pandemic provide the opportunity to address these inequities. This Article argues that, without doing so, roadmaps to recovery remain incomplete.<sup>38</sup> A feminist recovery plan has the potential to address such inequities in a transformative way with long-term effects. Such a plan will also build “resilience”—understood as “[t]he ability of people, households, communities, countries, and systems to mitigate, adapt to and recover from shocks and stresses in a manner that reduces chronic vulnerability and facilitates inclusive growth.”<sup>39</sup> Indeed, “resilience” is a key concept in plans for economic recovery and preparing for future pandemics.<sup>40</sup> A feminist recovery plan, this Article argues, must also address those inequities evident from the intersection of gender, race, and class in the pandemic’s effects.<sup>41</sup> It must aim not only at addressing immediate needs arising from the pandemic, but also at longer-term strategies “for creating stronger systems and institutions that reflect the experiences and contributions of

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38. Cf. Lobel, *supra* note 1, at 552 (“Unpacking the factors that contribute to the persistent gender pay gap is key to understanding the need for multilayered reforms that target the different causes and stages of unequal compensation.”); Ines Smyth & Caroline Sweetman, *Introduction: Gender and Resilience*, 23 GENDER & DEV. 405, 405 (2015), <https://www.tandfonline.com/doi/abs/10.1080/13552074.2015.1113769> (arguing for the importance of “development and humanitarian researchers, policymakers and practitioners” approaching resilience “from a gender perspective” and in ways that “support women’s rights and gender equality”).

39. Smyth & Sweetman, *supra* note 38, at 405 (quoting USAID definition of resilience); *see also* Ann S. Masten et al., *Resilience in Development: The Importance of Early Childhood*, *ENCYCLOPEDIA EARLY CHILDHOOD DEV.* (Oct. 2013), <http://www.child-encyclopedia.com/resilience/according-experts/resilience-development-importance-early-childhood> (defining “resilience” broadly as “the capacity of a dynamic system to withstand or recover from significant challenges that threaten its stability, viability, or development”). As explained *infra* Part IV, this Article draws on the analysis of resilience employed by Martha Albertson Fineman in vulnerability theory. *See, e.g.,* Martha Albertson Fineman, *Introduction to PRIVATIZATION, VULNERABILITY, AND SOCIAL RESPONSIBILITY: A COMPARATIVE PERSPECTIVE* 1, 4 (Martha Albertson Fineman et al. eds., 2017).

40. For some examples of state recovery plans referring to resilience, *see* RESILIENCE ROADMAP, CA. GOV (Aug. 6, 2020), <https://tcr.app.box.com/s/y0wgbeigsqoi0musl278yn1vghzvp9m> (California plan); BEYOND RECOVERY: REOPENING HAWAII, (2020), [https://governor.hawaii.gov/wp-content/uploads/2020/05/Gov\\_Reopening-Presentation-Slide-Deck\\_18-May-2020.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/05/Gov_Reopening-Presentation-Slide-Deck_18-May-2020.pdf) (Hawaii plan; referring to “state roadmap to recovery and resilience”). For an example linking resilience and equity, *see* NY FORWARD: A GUIDE TO REOPENING NEW YORK AND BUILDING BACK BETTER (2020), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopeningGuide.pdf> (referring to opportunity to build back “more resilient, and more equal”; to building back “core parts of our society and our economy to be more resilient to future pandemics,” but also to address systemic issues that have limited progress and opportunity). *See also* Danielle Allen et al., ROADMAP TO PANDEMIC RESILIENCE: MASSIVE SCALE TESTING, TRACING, AND SUPPORTED ISOLATION (TTSI) AS THE PATH TO PANDEMIC RESILIENCE FOR A FREE SOCIETY, 17 (Edmond J. Safra Center for Ethics at Harvard University, April 20, 2020) (stating that focus should be “not on ‘opening’ the economy but on mobilizing a pandemic-resilient economy”).

41. On the need for a *feminist* recovery plan, *see* HAWAII STATE COMMISSION ON THE STATUS OF WOMEN, BUILDING BRIDGES, NOT WALKING ON BACKS: A FEMINIST ECONOMIC RECOVERY PLAN FOR COVID-19 1 (2020); *see also* Powell, *supra* note 3 (arguing that, because “women of color sit at the intersection of race, gender, and economic disparities,” they “must be placed at the center of policy solutions”). As elaborated in Part IV, we view this call for a feminist recovery plan as consistent with a call for a “gender-equitable recovery.” *See* Mason, *supra* note 4, at 6 (offering a “blueprint for a gender-equitable recovery”).

women in the workforce, in society, and in their families.”<sup>42</sup> A feminist recovery plan would build upon the so-called “business case” for gender equality, recognizing it not only as a social but a business “imperative.”<sup>43</sup>

This may be a propitious moment for such transformational change: the Administration of President Joe Biden and Vice President Kamala Harris embraces a recovery plan attentive to structural inequalities and “stark, intergenerational inequities” revealed by and made worse by the pandemic.<sup>44</sup> The Article begins, in Part II, with an overview of persistent, pre-pandemic gender inequity in the areas relating to work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women, particularly women of color, in providing essential but undervalued care work.

Part III then canvasses how COVID-19 has highlighted and exacerbated these unequal patterns of care and work and how gender, race, and class intersect in these effects. Part III also considers how the challenges posed by responding to the pandemic suggest potentially promising and constructive steps forward. It considers some of the initial federal and state responses.

Part IV suggests that moving forward post-pandemic should mean moving beyond the status quo, and envisions what form a feminist economic recovery plan could take. In articulating new approaches to work and family, it draws on elements of federal and state responses, highlighting some promising policies as well as where such responses fall short. It argues that crucial policies include workplace flexibility, paid leave, equal pay, and freedom from employment discrimination, as well as accessible, affordable, and high-quality child care, addressing familial barriers to remote learning, and greater recognition of—and better working conditions for—essential workers. These policies were critical before the pandemic, and they will support gender equity after the pandemic.

## II. GENDER AS A RISK FACTOR PRE-PANDEMIC

Understanding how the pandemic has both illuminated and worsened gender inequities relating to work and family requires a brief inventory of those inequities. This Part briefly reviews such inequities, including the gender pay gap and lower pay in traditionally “female” jobs, and women’s disproportionate role in providing paid and unpaid care.

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42. Mason, *supra* note 4, at 6.

43. See Bettina C. K. Binder et al., *The Plight of Women in Positions of Corporate Leadership in the United States, the European Union, and Japan: Differing Laws and Cultures, Similar Issues*, 26 MICH. J. GENDER & L. 279, 283 (2019); Shelly Zalis, *Lessons from the World’s Most Gender-Equal Countries*, FORBES (Oct. 30, 2018), <https://www.forbes.com/sites/shellyzalis/2018/10/30/lessons-from-the-worlds-most-gender-equal-countries/#5db76c567dd8>.

44. President-elect Biden Announces American Rescue Plan, [https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID\\_Relief-Package-Fact-Sheet.pdf](https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID_Relief-Package-Fact-Sheet.pdf).

## A. THE WORKPLACE: THE GENDER PAY GAP

The gender pay gap, or the median annual earnings ratio, for women “of all races” is \$0.82 for every \$1.00 earned by men of all races.<sup>45</sup> That ratio, however, masks significant differences among women: measured against every \$1.00 white men earn, Asian American women earn \$0.90 and white women, \$0.79, while Black women earn \$0.62, Native American women, \$0.57, and Latinx women, \$0.54.<sup>46</sup> The average gender pay gap is also larger between married mothers and fathers,<sup>47</sup> with the arrival of additional children exacerbating the gap.<sup>48</sup>

The gender pay gap is a combination of multiple factors, not just overt sex discrimination.<sup>49</sup> Consider that women are clustered in lower-paying jobs. In the top slice—the top 0.1%—of earners, only one in ten are women.<sup>50</sup> Despite comprising less than half the labor force, women account for almost seventy percent of low-wage workers in jobs that pay under \$10 per hour.<sup>51</sup> Jobs traditionally identified as female and which are still held predominantly by women—such as home health and child care workers—typically have lower pay and fewer benefits than jobs traditionally identified with men and which are still held predominantly by

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45. Robin Bleiweis, *Quick Facts About the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Mar. 24, 2020, 9:01 AM), <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>.

46. *Id.*

47. This gap varies by state. The National Women’s Law Center reports that the smallest gap is in Vermont, where mothers are “typically paid 81 cents for every dollar paid to fathers, translating to a typical loss of about \$10,543 in earnings annually.” The largest gap is in Arizona and Louisiana, where mothers are “typically paid just 59 cents for every dollar paid to fathers.” Amanda Fins, *Effects of COVID-19 Show Us Equal Pay is Critical for Mothers*, NAT’L WOMEN’S L. CTR. 4 (2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/05/Moms-EPD-2020-v2.pdf>. Strikingly, \$0.59 was the average amount that women working full time earned—for every dollar earned by men—in 1963, when Congress passed the Equal Pay Act. *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*, NAT’L COMM. ON PAY EQUITY (2019), <https://www.pay-equity.org/info-time.html#:~:text=Since%20the%20Equal%20Pay,every%20dollar%20earned%20by%20men.&text=That%20means%20that%20the%20wage,half%20a%20cent%20per%20year!>

48. The pay gap doubles between men and women with the birth of their first child. Claire Cain Miller, *The Ten Year Baby Window That is the Key to the Women’s Pay Gap*, N.Y. TIMES (April 9, 2018), [https://www.nytimes.com/2018/04/09/upshot/the-10-year-baby-window-that-is-the-key-to-the-womens-pay-gap.html?em\\_pos=small&emc=edit\\_up\\_20180409&nl=upshot&nl\\_art=2&nlid=80161125emc%3Dedit\\_up\\_20180409&ref=headline&te=1](https://www.nytimes.com/2018/04/09/upshot/the-10-year-baby-window-that-is-the-key-to-the-womens-pay-gap.html?em_pos=small&emc=edit_up_20180409&nl=upshot&nl_art=2&nlid=80161125emc%3Dedit_up_20180409&ref=headline&te=1) (noting that “[t]he pay gap grows larger with each additional child”); see Erling Barth, Sari Pekkala Kerr & Claudia Olivetti, *The Dynamics of Gender Earnings Differentials: Evidence from Establishment Data* 5-6 (2019), <https://www.nber.org/papers/w23381> (most of married women’s earning growth loss occurs when children are born).

49. See, e.g., Lobel, *supra* note 1, at 555; Claire Cain Miller, *Women’s Gains in the Work Force Conceal a Problem*, N.Y. TIMES (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/upshot/womens-gains-in-the-work-force-conceal-a-problem.html>.

50. Jeremy Ashkenas, *Nine New Findings About Inequality in the United States*, N.Y. TIMES (Dec. 16, 2016), <https://www.nytimes.com/interactive/2016/12/16/business/economy/nine-new-findings-about-income-inequality-piketty.html>.

51. Jasmine Tucker & Kayla Patrick, *Low-Wage Jobs Are Women’s Jobs: The Overrepresentation of Women In Low-Wage Work*, NAT’L WOMEN’S L. CTR. (2017), <https://nwlc.org/wp-content/uploads/2017/08/Low-Wage-Jobs-are-Womens-Jobs.pdf>.

men.<sup>52</sup> Home health aides are among the nation's most poorly paid workers, with a median yearly income of \$24,060 in 2018.<sup>53</sup> Only in 2015 did the U.S. Department of Labor extend the federal minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) to the two-million-plus home care workers in the United States.<sup>54</sup> Protections are still lacking at the state level.<sup>55</sup> Such caregiving is physically taxing, but the wages are so low that many workers cannot afford health insurance; forty-six percent rely on Medicaid for health coverage.<sup>56</sup> As elaborated in Part III, this predominantly female workforce is also made up predominantly by women of color and has been at the frontlines of the pandemic.

The gender pay gap also reflects that women have fewer years of work experience and are more likely to work part-time (with lower hourly wages and benefits) than men because they are more likely to assume care-based obligations.<sup>57</sup> Although the dual-earner family is more common today than the family with the husband as sole breadwinner, persisting attitudes about gender roles more strongly associate work—and the corresponding financial obligations—with men, and caring for children more strongly with women.<sup>58</sup> More than seventy percent of both men and women say it is very important for a man to be able to support a family financially to be considered a good partner, and only a quarter of men say the same for a woman (thirty-nine percent of women think this is important).<sup>59</sup> When the husband does not work full-time, the divorce risk is almost a third higher than when he is working full-time.<sup>60</sup>

These gender inequities in employment are worse for women of color, who stand at the intersection of multiple barriers. At the very top of earners, under one

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52. Grant Suneson, *What are the 25 Lowest Paying Jobs in the US? Women Usually Hold Them*, USA TODAY (June 7, 2019, 7:27 AM), <https://www.usatoday.com/story/money/2019/04/04/25-lowest-paying-jobs-in-us-2019-includes-cooking-cleaning/39264277/>.

53. U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK: HOME HEALTH AIDES AND PERSONAL CARE AIDES (2019) <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm> (noting that median pay for home health aides in 2019 was approximately \$12 per hour).

54. *The USDOL Home Care Rules: What does good implementation look like?*, NAT'L EMP. L. PROJECT (June 2016), <https://www.nelp.org/wp-content/uploads/Fact-Sheet-USDOL-Home-Care-Rules-Good-Implementation.pdf>.

55. *See generally Home Care Workers Rights in the States*, NAT'L EMP. L. PROJECT (Aug. 2016), [https://s27147.pcdn.co/wp-content/uploads/State-chart-on-companionship-regs\\_revised\\_August-2016\\_Final.pdf](https://s27147.pcdn.co/wp-content/uploads/State-chart-on-companionship-regs_revised_August-2016_Final.pdf).

56. Soo Oh, *The Future of Work is the Low-Wage Health Care Job*, VOX (July 3, 2017, 10:00 AM), <https://www.vox.com/2017/7/3/15872260/health-direct-care-jobs>.

57. Bleiweis, *supra* note 45.

58. *See* Gretchen Livingstone & Kim Parker, *8 Facts about American Dads*, PEW RSCH. CTR. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/fathers-day-facts/>.

59. Kim Parker & Renee Stepler, *Americans See Men as the Financial Providers, Even as Women's Contributions Grow*, PEW RSCH. CTR. (Sept. 20, 2017), <https://www.pewresearch.org/fact-tank/2017/09/20/americans-see-men-as-the-financial-providers-even-as-womens-contributions-grow/>.

60. Belinda Luscombe, *Men Without Full-Time Jobs Are 33% More Likely to Divorce*, TIME (June 27, 2016, 10:36 PM), <https://time.com/4425061/unemployment-divorce-men-women/>.

percent of Fortune 500 CEOs are women of color, and none are Black or Latina.<sup>61</sup> Latinas' and Native American women's share of the low-paid workforce is twice as large as their share of the workforce overall, while Black women's share in the low-paid workforce is 1.5 times as large as their overall-workforce share.<sup>62</sup> Black mothers contribute significantly to the financial security of their families, as they are more likely to be the breadwinners in their households—and are more likely to be a single head of household, particularly among the “low-paid workforce.”<sup>63</sup> On the other hand, women of color are overrepresented in low-wage jobs like retail, hospitality, and restaurants.<sup>64</sup>

## B. PAID AND UNPAID CARE

Long before the pandemic, references to a “child care crisis” in the United States signaled that the lack of affordable, accessible, and high-quality child care was an obstacle to full participation by mothers in the workforce.<sup>65</sup> Fathers too must handle this issue, of course, but not finding child care has virtually no impact on their employment.<sup>66</sup> With this nationwide shortage of child care, more than half of Americans live in “child care deserts,” defined as areas where there are more than three children per opening at a licensed child care center.<sup>67</sup>

The unavailability of a child care program is more likely to affect mothers' employment than fathers'.<sup>68</sup> Although the problem of finding high-quality child care is one that crosses class lines, it also has race and class dimensions. Child

61. Courtney Connley, *The Number of Women Running Fortune 500 Companies Hits a New High*, CNBC (May 19, 2020, 2:45 PM), <https://www.cnbc.com/2020/05/19/the-number-of-women-running-fortune-500-companies-hits-a-new-high.html#:~:text=There%20are%20also%20just%20three,Fortune%20500%20company%20last%20year>.

62. Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, NAT'L WOMEN'S L. CTR. 3 (2020), [https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report\\_pp04-FINAL-4.2.pdf](https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf).

63. *Id.* at 6.

64. Naomi Cahn, *COVID-19's Impact On Women of Color*, FORBES (May 10, 2020, 6:01 PM), <https://www.forbes.com/sites/naomicahn/2020/05/10/mothers-day-and-covid-19s-impact-on-women-of-color/#61f83be541ac>.

65. See generally Leila Schochet, *The Child Care Crisis Is Keeping Women Out of the Workforce*, CTR. FOR AM. PROGRESS (Mar. 28, 2019, 8:00 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/>.

66. *Id.* at 2 (“Mothers who were unable to find a child care program were significantly less likely to be employed than those who found a child care program, whereas there was no impact on fathers' employment.”).

67. *Id.* at 6; Rasheed Malik et al., *The Coronavirus Will Make Child Care Deserts Worse and Exacerbate Inequality*, CTR. FOR AM. PROGRESS (June 22, 2020, 6:30 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2020/06/22/486433/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/>.

68. Megan Leonhardt, *U.S. Parents Lost \$35 Billion by Staying Home with Their Kids—The Coronavirus Pandemic Could Make It Worse*, CNBC (May 22, 2020, 1:32 PM), <https://www.cnbc.com/2020/05/22/child-care-indirectly-costs-parents-35-billion-coronavirus-may-increase-that.html>. Even before the pandemic, “mothers who were unable to find a child care program were significantly less likely to be employed than those who found a child care program, whereas there was no impact on fathers' employment.” Schochet, *supra* note 65, at 2.



care deserts are most likely to be in low- and middle-income and rural communities.<sup>69</sup> Further, Black women experience more difficulty finding child care than do white women, and lower-income women are less likely to be happy with the quality of the care they have found.<sup>70</sup>

In the informal care sector, women assume the majority of caretaking for children and for elderly parents.<sup>71</sup> Among married heterosexual couples who have children and where both parents work, wives provide 10.3 hours per week of child care, while husbands provide 7.2 hours of child care; where there is a child who is age five or under, married women provide 16.8 hours per week, while married men provide 10.6 hours.<sup>72</sup> Nearly twenty-five percent of children in the United States live with one parent, typically the mother; such parents experience added time demands in juggling care and work.<sup>73</sup>

The burden of informal caretaking is not only financial but also physical and emotional. Here, too, there are intersecting gender and race effects. Research shows that “[h]ealth problems affect 25 percent to 30 percent of informal caregivers, particularly those who are African American, female, unemployed, middle-aged, and who are providing [the] highest levels of care”—problems that are, “in turn, associated with increased emotional distress and mental health problems.”<sup>74</sup> Further, limited access by immigrants to insurance and healthcare worsens these disparities.<sup>75</sup>

Pre-pandemic, the United States already stood out as a laggard among comparable nations for its lack of paid leave for workers’ family caregiving responsibilities or for their own health care.<sup>76</sup> In the absence of such policy, however, by 2018, the majority of large private employers had adopted some form of paid leave policies in recognition of workers’ challenges in balancing paid work and

69. Malik, *supra* note 67, at 4.

70. Schochet, *supra* note 65, at 8.

71. Halley Bondy, *Caregiving, or Career? The Choice No Woman Should Have to Make*, NBC NEWS (Jan. 29, 2020, 1:17 PM), <https://www.nbcnews.com/know-your-value/feature/caregiving-or-career-choice-no-woman-should-have-make-ncna1125616> (noting that 60 percent of caregivers are women, but the proportion of men who provide care (40 percent) is rapidly growing).

72. Tito Alon et al., *The Impact of COVID-19 on Gender Equality*, 4 CEPR PRESS 62, 72 (2020), [http://faculty.wcas.northwestern.edu/~mdo738/research/Alon\\_Doecke\\_Olmstead-Rumsey\\_Tertilt\\_COVID\\_2020.pdf?campaign\\_id=154&emc=edit\\_cb\\_20200603&instance\\_id=19067&nl=coronavirus-briefing&regi\\_id=34085178&segment\\_id=30021&te=1&user\\_id=ebdfd606c9c3133a0aac56681b93b61](http://faculty.wcas.northwestern.edu/~mdo738/research/Alon_Doecke_Olmstead-Rumsey_Tertilt_COVID_2020.pdf?campaign_id=154&emc=edit_cb_20200603&instance_id=19067&nl=coronavirus-briefing&regi_id=34085178&segment_id=30021&te=1&user_id=ebdfd606c9c3133a0aac56681b93b61).

73. See e.g., Kristen Rogers, *Frosted Flakes for Dinner. Hiding in The Laundry Room. This Is Life for Single Moms Right Now*, CNN (May 8, 2020, 4:41 PM), <https://www.cnn.com/2020/05/08/health/single-mom-challenges-mothers-day-coronavirus-wellness/index.html>.

74. Nancy R. Hooyman, *Social and Health Disparities in Aging: Gender Inequalities in Long-Term Care*, 38 AM. SOC’Y ON AGING 25, 27 (2015) (available at <https://www.jstor.org/stable/26556073>).

75. *Id.*

76. See Gretchen Livingston & Deja Thomas, *Of 41 Countries, Only U.S. Lacks Paid Parental Leave*, PEW RSCH. CTR. (Dec. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/>; SARAH A. DONOVAN, CONG. RSCH. SERV., R44835, PAID FAMILY AND MEDICAL LEAVE IN THE UNITED STATES 2 (Feb. 19, 2020), <https://crsreports.congress.gov/product/pdf/R/R44835>.



their caregiving responsibilities.<sup>77</sup> Even so, a sizable minority of large employers and many smaller employers do not, meaning that workers do not uniformly enjoy this benefit.<sup>78</sup> The top-earning twenty-five percent of workers are at least twice as likely as those in the bottom twenty-five percent to have access to paid family care leave, which provides leave for a serious health condition (including pregnancy and new-baby-care).<sup>79</sup> A similar difference exists with respect to worker access to paid sick leave, which allows employees time off for doctor's appointments, sick-child-care, and similar medical needs. While such leave is nearly universally available at the top quartile of wage distribution (for ninety-two percent of such workers), barely half of workers in the lowest quartile had access to such leave.<sup>80</sup> Caretaking thus imposes an extra financial burden on low-income households, and the lack of paid leave is a symptom of the insecure conditions of their work.

At the state level, fewer than ten states and the District of Columbia have enacted laws requiring access to paid and medical family leave.<sup>81</sup> These provisions include progressive wage replacement, expansive legal definitions of who and what makes a family, and job protections regardless of employer size.<sup>82</sup>

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77. *PL+US 2018 Employer Scorecard*, PL+US (PAID LEAVE FOR THE UNITED STATES), <https://paidleave.us/topemployerpolicies> (noting “tipping point” reached in 2018, with 72% of surveyed companies reporting paid leave policies).

78. *Id.*; see also Drew Desilver, *Access to Paid Family Leave Varies Widely Across Employers, Industries*, PEW RSCH. CTR. (Mar. 23, 2017), <https://www.pewresearch.org/fact-tank/2017/03/23/access-to-paid-family-leave-varies-widely-across-employers-industries/>.

79. Isabel V. Sawhill et al., *A Primer on Access to and Use of Paid Family Leave*, BROOKINGS INST. (Dec. 5, 2019), <https://www.brookings.edu/research/a-primer-on-access-to-and-use-of-paid-family-leave/>.

80. Drew Desilver, *As Coronavirus Spreads, Which U.S. Workers Have Paid Sick Leave—and Which Don't?*, PEW RSCH. CTR. (Mar. 12, 2020), <https://www.pewresearch.org/fact-tank/2020/03/12/as-coronavirus-spreads-which-u-s-workers-have-paid-sick-leave-and-which-dont/>.

81. The states are California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. *Overview of Paid Family & Medical Leave Laws in the United States*, A BETTER BALANCE 1 (Jan. 8, 2020), <https://www.abetterbalance.org/wp-content/uploads/2020/01/CombinedPFMLChart-2.pdf>. Hawai'i has a temporary disability insurance program, which affords workers (after a one-week waiting period) up to twenty-six weeks for a period of “serious off-the-job illness or injury.” *Id.* at 10. By voter initiative in 2020, Colorado has adopted a paid family and medical leave program that will require employers to provide employees with up to twelve weeks of paid leave, and an additional four weeks under certain circumstances (like complications during pregnancy or childbirth). Kimberley Dempster Neilio and Harrison J. Meyers, *What Colorado Employers Need to Know About Newly Approved Paid Family and Medical Leave Program* (Prop. 118), DENV. BUS. J. (Dec. 15, 2020), <https://www.bizjournals.com/denver/news/2020/12/15/what-colorado-employers-need-to-know-about-newly-a.html>. A few additional states provide paid sick leave. *Paid Sick Leave*, NCSL 2 (July 21, 2020), <https://www.ncsl.org/research/labor-and-employment/paid-sick-leave.aspx>; KAISER FAM. FOUND., *State Policies on Paid Family and Sick Leave* (2020), <https://www.kff.org/other/state-indicator/paid-family-and-sick-leave/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Paid%20Family%20Leave%22,%22sort%22:%22asc%22%7D>.

82. See generally *Overview of Paid Family & Medical Leave Laws in the United States*, *supra* note 81.

Connecticut and Oregon are acclaimed for having adopted model practices.<sup>83</sup> Both states offer the highest compensation, with Connecticut ensuring those who make forty times the state's minimum wage or less will get ninety-five percent of their regular pay while away from work, and Oregon mandating full pay for anyone who makes sixty-five percent or less of the state's average weekly wage.<sup>84</sup> Additionally, both states include an expansive definition of family when deciding who can take paid family and medical leave. This list includes spouses, siblings, children, grandchildren, grandparents, parents-in-law, and, in Oregon, registered domestic partners.<sup>85</sup> Both states include anyone "related by blood or affinity whose close association . . . is the equivalent of a family relationship."<sup>86</sup>

As discussed below, the pandemic accelerated consideration at the federal and state level of long-needed policies around child care and paid family and sick leave.

### III. GENDER AS A RISK FACTOR DURING THE PANDEMIC

These gendered patterns of care and work predated the pandemic, but intensified during it. Women assumed even more caretaking responsibility with children out of school and day care, and women were more financially vulnerable to changes in the economy. Moreover, despite slogans like "We're all in this together," the structural inequalities around race and class also shaped how women experienced the pandemic's effects.<sup>87</sup> Most of those effects were negative, but some potentially positive developments suggest possible foundations for an economic recovery more attentive to the inequities that the pandemic brought into sharp focus. In this section, we canvass some of the ways that the pandemic highlighted and made worse existing inequalities. We then turn to promising developments, looking at some federal and state recovery plans meant to combat these inequalities. Finally, we briefly address the interrelationship between the pandemic and politics. Part IV will then examine the strengths and weaknesses of these plans with respect to constructing a robustly feminist economic recovery.

#### A. NEGATIVE IMPACTS

The catalogue of COVID-19's negative impact includes multiple aspects of women's lives: work, child care, reproductive health, and domestic violence.

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83. Bryce Covert, *Connecticut and Oregon Make Paid Family Leave a Reality*, AM. PROSPECT (July 11, 2019), <https://prospect.org/health/connecticut-oregon-make-paid-family-leave-reality/> (praising new family leave policies enacted by Connecticut and Oregon and stating that, with regards to paid family leave, "[b]oth Oregon and Connecticut went further than all of the other states that have come before them.").

84. *Overview of Paid Family & Medical Leave Laws in the United States*, *supra* note 81, at 6.

85. *Id.* at 4.

86. *Id.*

87. Lisa Bowleg, *We're Not All In This Together: On COVID-19, Intersectionality, and Structural Inequality*, 110:7 AM. J. PUB. HEALTH 917, 917 (July 2020).

## 1. Employment

Almost twice as many working women as men are employed in sectors and industries that were substantially impacted by the virus: health care and social assistance and the leisure and hospitality industry. Women, however, receive less pay than do men in each of these fields.<sup>88</sup> Even before the pandemic, women's concentration in these and other low-paying jobs contributed to women "of nearly all races and ethnicities" having higher poverty rates than men in the U.S., with single mothers and women of color disproportionately represented among women in poverty.<sup>89</sup> They are also sectors in which a high proportion of the workforce is unable to work remotely, and the pandemic has meant that workers, particularly women with young children, were disproportionately likely to become unemployed.<sup>90</sup> As an Institute for Women's Policy Research report concluded, for women workers concentrated in these sectors, "the pandemic has only intensified their economic precarity and uncertainty."<sup>91</sup> Studies show that job loss is highest in the United States for immigrants, with non-citizen immigrant women being hit the hardest.<sup>92</sup>

The pandemic has brought into focus the undervalued-but-critical role of women of color in the essential work force, highlighting the intersecting "color" and "gender" of COVID-19 introduced in Part I.<sup>93</sup> Ai-jen Poo and Palak Shah, leaders of the National Domestic Workers Alliance, persuasively argue that this work force is the "critical engine of our economy," both in times of stability and crisis, but is "largely unprotected by our safety net."<sup>94</sup>

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88. Jennifer Median & Lisa Lerer, *When Mom's Zoom Meeting Is the One That Has to Wait*, N.Y. TIMES (June 22, 2020), <https://www.nytimes.com/2020/04/22/us/politics/women-coronavirus-2020.html>.

89. Robin Bleiweis et al., *The Basic Facts about Women in Poverty*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), [https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?\\_ga=2.74065424.364922471.1602612292-1274926962.1602345265](https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?_ga=2.74065424.364922471.1602612292-1274926962.1602345265); see also *Women and Poverty in America*, LEGAL MOMENTUM <https://www.legalmomentum.org/women-and-poverty-america> (last visited Oct. 27, 2020) (noting contributing role of women's segregation into lower-paying jobs, such as retail and hospitality, as contributing to women's higher risk of poverty than men).

90. Dimitris Papanikolaou & Lawrence Schmidt, *Working Remotely and the Supply-side Impact of COVID-19*, NAT'L BUREAU OF ECON. RSCH. 1 (July 25, 2020) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3615334](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3615334)). Note that, because the pandemic is not a static occurrence, statistics vary depending on when any particular measurement is taken. The overall trends concerning gender, however, are consistent, so the "snapshot" numbers in the article provide a panoramic view.

91. Mason, *supra* note 4, at 15.

92. Rakesh Kochhar, *Hispanic Women, Immigrants, Young Adults, Those With Less Education Hit Hardest By COVID-19 Job Loss*, PEW RSCH. CTR. 4 (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses/> (showing a 19% drop for immigrant workers, compared to a 12% drop for U.S. born workers); Edward Orozco Flores & Ana Padilla, *Persisting Joblessness Among Non-Citizens During COVID-19*, CMTY. & LABOR CTR. U. CAL. MERCED 1 (June 2020), [https://ssha.ucmerced.edu/sites/ssha.ucmerced.edu/files/documents/persisting\\_joblessness.pdf](https://ssha.ucmerced.edu/sites/ssha.ucmerced.edu/files/documents/persisting_joblessness.pdf) ("Job loss was especially acute among non-citizen immigrant women both in California (36.3%) and in the rest of the US (23.7%).").

93. See Powell, *supra* note 3.

94. Ai-jen Poo & Palak Shah, *The Future of Work Isn't What People Think It Is*, N.Y. TIMES, (June 24, 2020), <https://www.nytimes.com/2020/06/24/opinion/sunday/coronavirus-health-workers-nurses.html>.

The consequences of this lack of protection are demonstrated by the child care crisis. Approximately one-quarter of child care workers lost their jobs during the first few months of the pandemic.<sup>95</sup> Almost half of all child care centers closed.<sup>96</sup> Even as child care centers reopened, they faced new guidelines designed to reinforce safety, but that were difficult and expensive to implement, especially in light of the centers' thin profit lines.<sup>97</sup> In addition, with many workers still staying home and because of the social distancing restrictions, child care centers can serve fewer children.<sup>98</sup> Moreover, even as jobs returned during the economic recovery, that recovery has been uneven and unequal: mothers of elementary school-age children (6-12) have been less likely to regain employment than fathers of the same-aged children, and Black women and Black men are also among those taking the longest to regain employment.<sup>99</sup>

## 2. Parental Child Care and Remote Schooling

Along with pandemic-related closures of child care centers, parents also faced the consequences of school closures as well as those of summer camps (for those parents who could afford camps) and other organized summer activities. The intersecting effects of gender, race, and class on who is able to provide care and support remote learning were also evident in the consequences of these closures. As one labor economist explained: "The caregiving crisis intensified by the

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95. Table B-1: *Employees On Nonfarm Payrolls By Industry Sector And Selected Industry Detail*, U.S. BUREAU OF LABOR STATS., <https://www.bls.gov/news.release/empsit.t17.htm> (last visited Aug. 7, 2020) (showing more than one million people held such jobs in July 2019 compared to approximately 775,000 in June 2020 (using seasonally adjusted numbers)). See also Dana Goldstein & Julie Bosman, *As Day Care Centers Reopen, Will Parents Send Their Children?*, N.Y. TIMES (May 30, 2020), <https://www.nytimes.com/2020/05/29/us/coronavirus-child-care-centers.html> (reporting on precarious position of many child care centers and that "[t]he coronavirus cost the industry more than 355,000 jobs in March and April").

96. Karen Travers & Janet Weinstein, *Coronavirus is Pushing the US Child Care Industry to The Brink of Collapse*, ABC NEWS (June 22, 2020, 7:10 PM), <https://abcnews.go.com/Politics/coronavirus-pushing-us-child-care-industry-brink-collapse/story?id=71353735>.

97. K-12 Schools and Child Care Programs: FAQs for Administrators, Teachers, and Parents, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools-faq.html>. For concerns over these CDC guidelines, see, for example, Jen Rose Smith, *Parents and Child Care Providers Are Falling Apart. It Could Get Much Worse*, CNN (June 1, 2020, 7:38 AM), <https://www.cnn.com/2020/06/01/health/preschools-child-care-closing-pandemic-wellness/index.html> (reporting economic difficulties child care centers would face complying with CDC guidelines and one child care provider's decision to close indefinitely because staying "afloat" economically while following the new CDC guidelines would be "impossible"). To operate during the pandemic, child care providers faced an average additional 47% in operating costs. Simon Workman & Steven Jessen-Howard, *The True Cost of Providing Safe Child Care During the Coronavirus Pandemic*, CTR. FOR AM. PROGRESS (Sept. 3, 2020), <https://www.americanprogress.org/issues/early-childhood/reports/2020/09/03/489900/true-cost-providing-safe-child-care-coronavirus-pandemic/>.

98. See, e.g., Collin Eaton, *Companies Agonize Over Reopening Timetables as COVID-19 Spread*, WALL ST. J. (June 24, 2020, 10:15 PM), [https://www.wsj.com/articles/companies-agonize-over-reopening-timetables-after-covid-19-lockdowns-11593036741?mod=djemMoneyBeat\\_us](https://www.wsj.com/articles/companies-agonize-over-reopening-timetables-after-covid-19-lockdowns-11593036741?mod=djemMoneyBeat_us).

99. Heather Long et al., *The Covid-19 Recession is the Most Unequal in Modern U.S. History*, WASH. POST (Sept. 30, 2020), <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>.

pandemic has forced women to choose between employment and care work.”<sup>100</sup> That choice is “particularly pressing” for Black mothers, both because the majority contribute “significantly” to household finances and because Black mothers are more likely than white mothers to be single.<sup>101</sup>

Child care was already expensive before the pandemic, and closures along with pandemic guidelines have made child care even less available.<sup>102</sup> Indeed, the lack of child care had a greater effect on women of color and women in low-income families, and they were more likely to lack backups for that child care.<sup>103</sup>

During the fall of 2020, nearly all households with school-age children reported that those children were engaged “in some form of ‘distance learning’ from home,” although the ability to use online resources varied by socioeconomic class.<sup>104</sup> Parents almost doubled the amount of time they spent on education and household tasks, increasing from thirty to fifty-nine hours per week, with, on average, fathers spending fifteen hours less than mothers.<sup>105</sup> Across the board, employed mothers with the ability to stay home struggled to balance work and home schooling. Further, in households with “dual earning, straight married couples,” one study found that mothers “reduced their work hours four to five times as much as fathers.”<sup>106</sup> Even before the pandemic, research found that working from home increased not only job-related stress but also family conflict.<sup>107</sup>

100. Ella Koeze, *How the Economy is Actually Doing, in 9 Charts*, N.Y. TIMES (Dec. 17, 2020) (quoting Janelle Jones, of Groundwork Collaborative), <https://www.nytimes.com/interactive/2020/12/17/business/economy/economic-indicator-charts-measures.html>.

101. *Id.*

102. Caroline Kitchener, *The Cost of Child Care Has Gone from Astronomical to “Terrifying,”* THE LILY (Dec. 7, 2020), <https://www.thelily.com/the-cost-of-child-care-was-already-astronomical-in-the-pandemic-its-terrifying/>.

103. Alicia Sasso Modestino, *Coronavirus Child-care Crisis Will Set Women Back a Generation*, WASH. POST (July 29, 2020), <https://www.washingtonpost.com/us-policy/2020/07/29/childcare-remote-learning-women-employment/>.

104. Kevin McElrath, *Nearly 93% of Households with School-Age Children Report Some Form of Distance Learning During COVID-19*, U.S. CENSUS BUREAU (Aug. 26, 2020), <https://www.census.gov/library/stories/2020/08/schooling-during-the-covid-19-pandemic.html#:~:text=Nearly%2093%25%20of%20Households%20With,Distance%20Learning%20During%20COVID%2D19&text=Nearly%2093%25%20of%20people%20in,to%20rely%20on%20online%20resources> (“[I]n households with incomes of \$100,000 or more, 85.8% of people with children reported using online resources for distance learning. By contrast, only 65.8% of people in households with incomes of less than \$50,000 . . . reported that children were using online resources.”). Approximately 20% of students lacked access to the requisite technology. Erika Christakis, *School Wasn’t So Great Before COVID, Either*, THE ATLANTIC (Dec. 2020), <https://www.theatlantic.com/magazine/archive/2020/12/school-wasnt-so-great-before-covid-either/616923/> (noting that the pandemic has also exposed limitations in the standard school curriculum).

105. Cohen & Hsu, *supra* note 19.

106. Jessica Grose, *They Go to Mommy First*, N.Y. TIMES (July 6, 2020), [https://www.nytimes.com/2020/07/15/parenting/working-moms-coronavirus.html?campaign\\_id=9&emc=edit\\_nn\\_20200716&instance\\_id=20351&nl=the-morning&regi\\_id=57884714&segment\\_id=33535&te=1&user\\_id=da7a15d6d1a856cd9bf42b014631b281](https://www.nytimes.com/2020/07/15/parenting/working-moms-coronavirus.html?campaign_id=9&emc=edit_nn_20200716&instance_id=20351&nl=the-morning&regi_id=57884714&segment_id=33535&te=1&user_id=da7a15d6d1a856cd9bf42b014631b281).

107. Suzanne Edwards & Larry Snyder, *Yes, Balancing Work and Parenting is Impossible. Here’s The Data*, WASH. POST (July 10, 2020, 6:00 AM) [https://www.washingtonpost.com/outlook/interruptions-parenting-pandemic-work-home/2020/07/09/599032e6-b4ca-11ea-aca5-ebb63d27e1ff\\_story.html?fbclid=IwAR2JfG0GDyBwXNqjD2C1viN6NcGU4Sv24bsxeyYzx4j1hOhzo7\\_h3M7g](https://www.washingtonpost.com/outlook/interruptions-parenting-pandemic-work-home/2020/07/09/599032e6-b4ca-11ea-aca5-ebb63d27e1ff_story.html?fbclid=IwAR2JfG0GDyBwXNqjD2C1viN6NcGU4Sv24bsxeyYzx4j1hOhzo7_h3M7g).



During the pandemic, as children continued to “go to mommy first” in dual-earner mother-father households, the gender gap in work hours was increasing by twenty to fifty percent.<sup>108</sup> Further, single mothers reported added stress from juggling work and parenting during the pandemic, as many shouldered sole responsibility for meeting their children’s needs.<sup>109</sup>

As the school year resumed, the gendered effects on employment of who cared for children were vividly clear, as women dropped out of the labor force at a four-to-one ratio compared to men, and mothers with young children were a prominent group among such women.<sup>110</sup> The demands of remote learning have been another factor with gendered effects. While fifty-four percent of the mothers in one survey reported that they would be primarily responsible for their children’s education on weekdays, only twenty-nine percent of fathers said they would be.<sup>111</sup>

Essential workers at greater risk of exposure to COVID-19 faced added difficulty finding people willing to provide child care and support for remote learning.<sup>112</sup> Single-parents (predominantly, single mothers) and those unable to work from home have had the fewest options for help with child care and remote learning that would allow the parent to go back to work.<sup>113</sup>

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108. Grose, *supra* note 106 (reporting that although a study done by researchers William Scarborough and Caitlyn Collins did not investigate “why women whose work circumstances were the same as their husbands were doing more of the child care,” they “speculated” that a partial reason may be that “‘when a child needs help, they go to mommy first,’” and “over days and weeks that has a cumulative, undermining effect”); see also Lydia Dishman, *There’s a Massive Pay Gap Between Men and Women Who Work From Home*, FAST CO. (Mar. 31, 2020), <https://www.fastcompany.com/90484420/theres-a-massive-pay-gap-between-men-and-women-who-work-from-home>.

109. See Rogers, *supra* note 73; Reggie Wade, *Child-Care Needs Weigh on Parents’ Back-to-School Plans: Goldman Sachs*, YAHOO!FINANCE (Aug. 5, 2020) <https://finance.yahoo.com/news/childcare-needs-weigh-on-parents-backtoschool-plans-goldman-sachs-175554022.html> (reporting on analysis by Goldman Sachs).

110. Youn, *supra* note 20 (comparing 865,000 women to 210,000 men). As they anticipated the school year starting, more than half of mothers said they’d be the ones responsible for educating their children on weekdays compared to 29% of men (only 2% of women predicted that their partners would do so). See Claire Cain Miller, *‘I’m Only One Human Being’: Parents Brace for a Go-It-Alone School Year*, N.Y. TIMES (Sept. 8, 2020), <https://www.nytimes.com/2020/08/19/upshot/coronavirus-home-school-parents.html>.

111. Cain Miller, *supra* note 110. A further finding was that while some couples indicated “they planned to split the job equally, . . . men and women disagreed: 36 percent of men, and 18 percent of women, said they were splitting the work.” *Id.*

112. *Id.*

113. *Id.* Faced with a lack of child care options and having to meet other obligations, one in three parents in the survey mentioned above have faced “impossible choices,” such as having “left a child at home without supervision from an adult or teenager.” *Id.* This brings to mind the challenges faced by single mothers in the 1990s, when “welfare to work” requirements failed to support safe, high quality child care: some mothers decided “that the best way to protect their children is to keep them home, teach them how to make grilled cheese sandwiches, dial 911, and operate the dead bolt locks on the door.” Katherine Boo, *After Welfare*, THE NEW YORKER (April 9, 2001), <https://www.newyorker.com/magazine/2001/04/09/after-welfare>.



All of these dynamics around work, family, caretaking, and virtual schooling contribute to a record number of women exiting the workforce, with possible “long-term ramifications” on their “careers and earning potential.”<sup>114</sup> As one news report starkly put it: “The share of women working or looking for work has fallen to the lowest level since 1988, wiping out decades of hard-fought gains in the workplace.”<sup>115</sup>

With respect to the effects of the pandemic on children, low-income, Black, and Latinx families experienced the greatest impact from school closures, when factoring in access to computers, home internet connections, school-provided meals, and direct instruction from teachers.<sup>116</sup> These inequities were evident as education experts reflected on the implications of “the lost [school] year” for children, and of the long-term implications on heightening inequality amidst diminishing resources.<sup>117</sup> While parents across “demographic divides” worried about their children missing school, their different levels of resources and income shaped how they experienced the school year.<sup>118</sup> Parents with a graduate school education were almost twice as likely as those without a college degree to report that they had thought about paying for a private teacher or tutor to help.<sup>119</sup> As parents with more economic resources turned to solutions not uniformly available to working-class and poorer parents—like “learning pods” and even “pod schools”<sup>120</sup>—these trends may deepen inequality because of the critical role of

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114. See Koeze, *supra* note 100.

115. Heather Long, *Virtual Schooling Has Largely Forced Moms, Not Dads, to Quit Work. It Will Hurt the Economy for Years*, WASH. POST (Nov. 6, 2020), <https://www.washingtonpost.com/road-to-recovery/2020/11/06/women-workforce-jobs-report/>.

116. See Dana Goldstein, *Research Shows Students Falling Months Behind During Virus Disruptions*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>. An additional issue, globally, is the gendered effects of school closures due to COVID-19 and challenges about reopenings. There is concern that such developments will have lasting effects on girls and reverse progress on increasing the number of girls who attend school, particularly for poor communities where remote learning is not possible, the burden of care falls to girls, and school closures increase sexual abuse and teen pregnancies. See Robert Jenkins & Rebecca Winthrop, *Education Plus Development: 5 Actions to Bring the most Marginalized Girls Back to School after COVID-19*, BROOKINGS (May 15, 2020), <https://www.brookings.edu/blog/education-plus-development/2020/05/15/5-actions-to-help-bring-the-most-marginalized-girls-back-to-school-after-covid-19/>.

117. *Will This Be a Lost Year For America's Children?*, N.Y. TIMES MAG. (Sept. 11, 2020), <https://www.nytimes.com/interactive/2020/09/11/magazine/covid-school-reopenings.html> (a discussion moderated by Emily Bazelon).

118. Cain Miller, *supra* note 110.

119. *Id.*

120. Caroline Thomson & Adriana Gomez, *Why Parents are Forming ‘Learning Pods’ - and How They Might Deepen Inequality*, PBS NEWS HOUR (Aug. 24, 2020, 1:50 PM), <https://www.pbs.org/newshour/education/why-parents-are-forming-learning-pods-and-how-they-might-deepen-inequality#:~:text=The%20race%20to%20set%20up,inequities%20in%20access%20to%20education.&text=In%20some%20cases%2C%20parents%20are,%24100%20an%20hour%20or%20more.&text=%E2%80%9CWhen%20you%20have%20working%2Dclass,need%20to%20have%20an%20option.%E2%80%9D>; David Zweig, *\$25,000 Pod Schools: How Well-to-do Children Will Weather the Pandemic*, N.Y. TIMES (Aug. 2, 2020), <https://www.nytimes.com/2020/07/30/nyregion/pod-schools-hastings-on-hudson.html>. (describing pod schools offered by some private schools and observing that “there might be no more potent symbol of inequality during the pandemic than the pod school”).

education as a pathway out of poverty and a step toward economic success.<sup>121</sup> Thus, “the numerous harms of being kept out of school—academic, social, emotional, psychological, physical—felt by all children” fall more heavily on children with the least family resources.<sup>122</sup> Further, as one single mother put it, parents priced out of these options feel “like we’re directly failing our children because we can’t offer or afford the same level of opportunities.”<sup>123</sup>

These inequities in the new world of remote education may worsen both the education gap and the wealth gap.<sup>124</sup> In addition, studies show that schools that could safely reopen and remain open are mostly in “wealthier, whiter neighborhoods;” this, too, could widen the “education gap.”<sup>125</sup> Further, Black families began the pandemic with only one-tenth of the wealth of white families; with the loss of jobs and school closings, the pandemic is “worsening the future economic outlook for Black children.”<sup>126</sup>

### 3. Reproductive Health

With respect to reproductive health, prior to the pandemic, the unintended pregnancy rate—the number of women who did not want to be pregnant at the time they became pregnant—was almost fifty percent for all women, but it was five times higher for low-income women than wealthier women, and approximately double for Black women as compared to white women.<sup>127</sup> The maternal mortality rate for Black women is double that for white women.<sup>128</sup>

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121. Cain Miller, *supra* note 110 (quoting Frank Worrell, professor at graduate school of education, University of California, Berkeley, on parents’ worry over missing school: “For many poor families and immigrant families, education really is the way out of poverty . . . Even parents who didn’t have college degrees are recognizing the importance of college in this economy, and wanting that for their kids.”).

122. Zweig, *supra* note 120.

123. Abby Goodnough, *Families Priced Out of ‘Learning Pods’ Seek Alternatives*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/us/covid-schools-learning-pods.html>. As discussed *infra*, some public school districts and nonprofit organizations are trying to provide learning pods (or learning hubs) for students. See e.g., Andrew Kreighbaum, *‘Learning Pods’ Spread to Left-Behind Kids With Cities’ Help*, BLOOMBERG GOV’T (Sept. 24, 2020, 8:11 PM), <https://about.bgov.com/news/learning-pods-spread-to-left-behind-kids-with-help-from-cities/>.

124. See Yarna Serkez & Stuart A. Thompson, *Should Schools in Your County Be Open?*, N.Y. TIMES (Sept. 11, 2020), <https://www.nytimes.com/interactive/2020/08/14/opinion/politics/covid-school-reopening-guidelines.html> (finding that the wealth gap contributes to the education gap).

125. *Id.*

126. Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting*, N.Y. TIMES (June 29, 2020), <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>. The pandemic also exacerbates family wealth disparities. See Cahn, *supra* note 64 (reporting that, “while 13% of White respondents have already skipped paying a bill, that is true for 37% of Black/African-American respondents and 39% of Hispanic/Latino respondents.”).

127. See *Unintended Pregnancy in the United States*, GUTTMACHER INSTIT. (Jan. 2019), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states> (finding that “the unintended pregnancy rate for non-hispanic Black women in 2011 was more than double that of non-Hispanic white women.”).

128. Leah H. Keller, et al., *2021 and Beyond: Key Federal Sexual and Reproductive Health Issues*, GUTTMACHER INSTIT. (Sept. 14, 2020), <https://www.guttmacher.org/article/2020/09/2021-and-beyond-key-federal-sexual-and-reproductive-health-issues#>.

A significant feature of the Affordable Care Act (“ACA”) was its inclusion of required coverage of women’s preventive health care, including requiring contraceptive coverage in employer-provided insurance plans.<sup>129</sup> Even before the pandemic, that requirement faced numerous challenges, including several years of litigation over the scope of religious exemptions.<sup>130</sup> The Trump Administration issued rules exempting private employers with religious and conscientious exemptions from the requirement.<sup>131</sup> The rules were challenged in federal court and initially enjoined; in April, 2020, the Supreme Court heard arguments in the case.<sup>132</sup> Reproductive justice and women’s rights organizations, as amici curiae, explained how an “impending coronavirus-driven recession” could render contraception out of reach: because “cost is a major determinant of whether people obtain contraceptive care, particularly for those with lower incomes and people of color,” the rules “will make contraception cost-prohibitive and inaccessible for many.”<sup>133</sup>

Nonetheless, in July 2020, the Supreme Court upheld the government’s authority to issue the rules, dissolving the injunction.<sup>134</sup> Dissenting, Justice Ginsburg (joined by Justice Sotomayor) warned of the gendered effects of the majority’s ruling: the exemption “leaves women workers to fend for themselves, to seek contraceptive coverage from sources other than their employer’s insurer, and absent another available source of funding, to pay for contraceptive services out of their own pockets.”<sup>135</sup> Indeed, these rules (which could be reversed by the Biden Administration) will likely contribute to worsening disparities in access by low-income women to critical reproductive health care and increase the rate of unintended pregnancy.<sup>136</sup>

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129. HEALTH RESOURCES & SERVICES ADMINISTRATION, WOMEN’S PREVENTIVE SERVICE GUIDE (2020), <https://www.hrsa.gov/womens-guidelines/index.html>.

130. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2372–73 (2020) (describing prior litigation and federal rules).

131. *Id.* at 2377–78.

132. *Id.*

133. Brief for the National Women’s Law Center et al. as Amici Curiae Supporting Respondents at 11–12, 16–17, 21, *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020) (Nos. 19–431 & 19–454), available at [https://www.supremecourt.gov/DocketPDF/19/19-431/141087/20200408113011538\\_19-431%2019-454%20Amici%20Brief%20The%20National%20Womens%20Law%20Center.pdf](https://www.supremecourt.gov/DocketPDF/19/19-431/141087/20200408113011538_19-431%2019-454%20Amici%20Brief%20The%20National%20Womens%20Law%20Center.pdf).

134. *Little Sisters of the Poor*, 140 S. Ct. at 2372.

135. *Id.* at 2400 (Ginsburg, J., dissenting). For an analysis of how gender frames this debate over contraception, see Kevin Wallsten & Rachel VanSickle-Ward, *What’s Next after the Supreme Court’s Birth Control Ruling*, WASH. POST (July 18, 2020), <https://www.washingtonpost.com/politics/2020/07/18/whats-next-after-supreme-courts-birth-control-ruling/>.

136. Brief for Planned Parenthood Fed’n, et al. as Amici Curiae Supporting Respondents at 5, 25, *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020) (Nos. 19–431 & 19–454) available at [https://www.supremecourt.gov/DocketPDF/19/19-431/141096/20200408121244563\\_Amicus%20Brief%20of%20Planned%20Parenthood%20Federation%20of%20America%20et%20al.pdf](https://www.supremecourt.gov/DocketPDF/19/19-431/141096/20200408121244563_Amicus%20Brief%20of%20Planned%20Parenthood%20Federation%20of%20America%20et%20al.pdf). (describing the “critical preventive” role of contraceptive services in helping individuals “avoid unintended pregnancies and promote healthy birth spacing, resulting in improved maternal, child, and family health”).

During the pandemic, Black and Latinx women were more likely to report challenges in accessing contraception than white women.<sup>137</sup> Although many family planning clinics remained open during the pandemic, for women seeking telehealth, many online platforms did not accept insurance or Medicaid.<sup>138</sup> Medical visits for reproductive health services, such as contraception and STIs, dropped dramatically.<sup>139</sup> And the birth rate dropped,<sup>140</sup> a finding in accord with historical times of economic depression.<sup>141</sup>

The pandemic “made abortion access more difficult globally,” both because it exacerbated “pre-existing” obstacles and also gave rise to additional ones.<sup>142</sup> Within the U.S., several states specifically defined abortion as a non-essential or elective health procedure, effectively banning access for the duration of the public-health emergency.<sup>143</sup> Although one rationale for these bans was to conserve scarce personal protective equipment (PPE), Laura Hermer argues that these restrictions stemmed instead from the “culture wars” over abortion.<sup>144</sup> The majority of these bans were lifted, either by court order or through the expiration of the initial executive order.<sup>145</sup> The exception was in Arkansas, where a federal court ruled in favor of the requirement that patients have at least “one negative COVID-19 [] test within 48 hours prior to the beginning of the procedure.”<sup>146</sup>

137. McCammon & Pao, *supra* note 26. For statistical differences, see *supra* text accompanying note 26.

138. Brittni Frederiksen et al., *A Look at Online Platforms for Contraceptive and STI Services During the COVID-19 Pandemic*, KAISER FAM. FOUND. (Apr. 23, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/a-look-at-online-platforms-for-contraceptive-and-sti-services-during-the-covid-19-pandemic/>.

139. Gabriela Weiger, et al., *Potential Impacts of Delaying “Non-Essential” Reproductive Health Care*, KAISER FAM. FOUND. (June 24, 2020), <https://www.kff.org/womens-health-policy/issue-brief/potential-impacts-of-delaying-non-essential-reproductive-health-care/>.

140. Wyattte Grantham-Philips, *COVID Baby Boom? No, 2020 Triggered a Baby Bust - and That Will Have Lasting Impacts*, USA TODAY (Dec. 16, 2020), <https://www.usatoday.com/story/news/nation/2020/12/16/covid-19-baby-bust-coronavirus-pandemic-lead-birth-decline/6507974002/>.

141. See, e.g., Gretchen Livingston & D’vera Cohen, *U.S. Birth Rate Decline Linked to Recession*, PEW RSCH. CTR. (Apr. 6, 2010), <https://www.pewsocialtrends.org/2010/04/06/us-birth-rate-decline-linked-to-recession/>.

142. Elizabeth Chloe Romani & Jordan A. Parsons, *Legal and Policy Responses to the Delivery of Abortion Care During COVID-19*, 151.3 INT’L J. OF GYNECOLOGY AND OBSTETRICS 479 (Dec. 2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3751429](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751429).

143. Rachel Rebouche & Mary Ziegler, *COVID-19 Abortion Bans Could Have Alarming Effects Far Beyond This Crisis*, NEWSWEEK (May 13, 2020, 6:00 AM), <https://www.newsweek.com/covid-19-abortion-bans-could-have-alarming-effects-far-beyond-this-crisis-opinion-1503511>.

144. Laura D. Hermer, *COVID-19, Abortion, and Public Health in the Culture Wars*, 47 MITCHELL HAMLINE L. REV. (2020), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1230&context=mhlr>.

145. *Id.* These abortion restrictions have expired in Alaska, Iowa, Kentucky, West Virginia, Louisiana, Mississippi, and Texas. Federal district courts have blocked abortion restrictions in Alabama, Ohio, Oklahoma, and Tennessee. Laura Sobel et al., *State Action to Limit Abortion Access During the COVID-19 Pandemic*, KAISER FAM. FOUND. (Jun. 25, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-action-to-limit-abortion-access-during-the-covid-19-pandemic/>.

146. ARK. DEP’T OF HEALTH, DIRECTIVE ON RESUMING ELECTIVE PROCEDURES (April 27, 2020), <https://www.health.arkansas.gov/images/uploads/pdf/ResumeElectiveSurgeryDirectiveFINAL4.23.20>.

Though not a direct denial of services, this requirement assumes access to testing and fast results, which poses practical obstacles to patients, given test shortages and the time needed to obtain a test result.<sup>147</sup> By contrast, some states prioritized access to abortion,<sup>148</sup> recognizing the significance of the procedure. Indeed, during the pandemic, new research emerged showing that obtaining access to an abortion can benefit not just a woman's mental health but also her care of a subsequent baby.<sup>149</sup> Further, although the Trump Administration opposed such efforts, the American College of Obstetricians & Gynecologists successfully sued the Food & Drug Administration to ensure broader availability of mifepristone—the first of the two pills needed for medical abortion—so that it could be mailed to women, rather than requiring them to risk exposure to COVID-19 by picking it up in person.<sup>150</sup> However, in its first abortion ruling since Justice Amy Coney Barrett joined the Court, the Supreme Court granted the FDA's request to stay the federal district court's injunction pending the FDA's appeal, reinstating the federal requirement of an in-person pick-up.<sup>151</sup> Strenuously dissenting, Justice Sotomayor (joined by Justice Kagan) argued that the FDA's singling out mifepristone from “the over 20,000 FDA-approved drugs” that did *not* require in-person treatment showed its “more onerous treatment” of abortion than other medical procedures and that the requirement imposed an “unnecessary, irrational and unjustifiable undue burden on women seeking to exercise their right to choose.”<sup>152</sup> Justice Sotomayor also detailed the intersectional impact of gender, race, and class in the burden created by the in-person requirement: “more than half of women who have abortions are women of color, and COVID-19's mortality rate is three times higher for Black and Hispanic individuals than non-Hispanic white individuals.”<sup>153</sup> Further, because “three-quarters of abortion patients have low incomes,” they are “more likely to rely on public transportation” to travel—“sometimes for several hours each way—to the clinic to get their medication, incurring “further risk of exposure.”<sup>154</sup> Even if, under the Biden/Harris Administration, the FDA lifts this restriction—as Representative Carolyn

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pdf [https://web.archive.org/web/20200501012740/https://www.healthy.arkansas.gov/images/uploads/pdf/ResumeElectiveSurgeryDirectiveFINAL4.23.20.pdf].

147. Sobel, *supra* note 145.

148. *Id.* (noting New Jersey, Virginia, and Washington).

149. See Terry Gross, *Study Examines the Lasting Effects Of Having — Or Being Denied — An Abortion*, NPR (June 16, 2020), <https://www.npr.org/2020/06/16/877846258/study-examines-the-lasting-effects-of-having-or-being-denied-an-abortion> (mental health benefits for women who had abortions lasted six months); see generally DIANA GREENE FOSTER, *THE TURNAWAY STUDY* (2020).

150. Margaret Talbot, *The First Abortion Case Before a Post-Ginsburg Supreme Court*, THE NEW YORKER, (Sept. 29, 2020), <https://perma.cc/Z3DB-NFVM>.

151. See Adam Liptak, *Supreme Court Revives Abortion-Pill Restriction*, N.Y. TIMES (Jan. 12, 2021), <https://www.nytimes.com/2021/01/12/us/supreme-court-abortion-pill.html>.

152. Food and Drug Admin. v. Am. College of Obstetricians & Gynecologists, 592 U.S. \_\_ (2021) (Sotomayor, J., dissenting), slip op at 1-2, [https://www.supremecourt.gov/opinions/20pdf/20a34\\_3f14.pdf](https://www.supremecourt.gov/opinions/20pdf/20a34_3f14.pdf).

153. *Id.* at 6.

154. *Id.*

B. Maloney (D-NY) and several colleagues have requested it to do<sup>155</sup>—the Court’s approach in this case offers a troubling picture of how it may resolve future challenges to restrictions on abortion.

#### 4. Intimate Partner Violence

Finally, COVID-19 stay-at-home orders across the United States brought many family members into a heightened amount of daily contact. With workplaces closed and some work shifting to homes, the percentage of people who remained home during normal working hours nearly doubled (from forty-five percent to eighty-five percent). The unintended consequence of these measures was that vulnerable family members were prevented from leaving their abusive households as tensions heightened due to the closures of schools and businesses, job loss, and economic strain.<sup>156</sup> International experience has shown that family violence escalates during and after large-scale disasters or crises; during the pandemic, rates of intimate partner violence (or domestic violence) have increased globally.<sup>157</sup> Indeed, researchers have called this increase in the U.S. a “pandemic within a pandemic.”<sup>158</sup> While the overall incidence of such violence increased twelve percent, it went up twenty percent during working hours.<sup>159</sup> Moreover, the rate of first-time abuse also rose by twenty-three percent during working hours compared to by sixteen percent overall.<sup>160</sup> The increase in unemployment relatedly increased the “frequency and severity of domestic abuse.”<sup>161</sup>

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155. Letter from Rep. Carolyn B. Maloney, Chairwoman, Committee on Oversight and Reform (and ten colleagues) to Dr. Janet Woodcock, Acting Commissioner, FDA, Feb. 9, 2021, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-09.CBM%20Pressley%20et%20al.%2C%20to%20Woodcock-FDA%20re%20Mifepristone%20REMS.pdf>.

156. Caroline Bradbury-Jones & Louise Isham, *The Pandemic Paradox: The Consequences of COVID-19 on Domestic Violence*, 29 J. CLIN. NURS. 2047, 2047-48 (2020).

157. *Id.*

158. Megan L. Evans et al., *A Pandemic within a Pandemic —Intimate Partner Violence during Covid-19*, 383 N. ENGL. J. MED. 2302 (Sept. 16, 2020). <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

159. Sarath Sanga & Justin McCrary, *The Impact of the Coronavirus Lockdown on Domestic Violence*, (May 28, 2020) (manuscript at 1), [https://privpapers.ssrn.com/sol3/papers.cfm?abstract\\_id=3612491&dgcid=ejournal\\_html\\_email\\_family:children%27s:law:ejournal\\_abstractlink](https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=3612491&dgcid=ejournal_html_email_family:children%27s:law:ejournal_abstractlink).

160. *Id.* See also Petula Dvorak, *Domestic Abuse Has Risen During the Pandemic. Groups Like the House of Ruth Are Ready*, WASH. POST (Oct. 1, 2020), [https://www.washingtonpost.com/local/domestic-abuse-has-risen-during-the-pandemic-groups-like-the-house-of-ruth-are-ready/2020/10/01/e46922c8-03ea-11eb-b7ed-141dd88560ea\\_story.html?utm\\_campaign=wp\\_afternoon\\_buzz&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_buzz&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcarln-tr%2F2be398a%2F5f7639299d2fda0efb3afe6b%2F596ad43a9bbc0f403f85c648%2F10%2F57%2F59fe97e6af5b3c7ee7543cd65a644b36](https://www.washingtonpost.com/local/domestic-abuse-has-risen-during-the-pandemic-groups-like-the-house-of-ruth-are-ready/2020/10/01/e46922c8-03ea-11eb-b7ed-141dd88560ea_story.html?utm_campaign=wp_afternoon_buzz&utm_medium=email&utm_source=newsletter&wpisrc=nl_buzz&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcarln-tr%2F2be398a%2F5f7639299d2fda0efb3afe6b%2F596ad43a9bbc0f403f85c648%2F10%2F57%2F59fe97e6af5b3c7ee7543cd65a644b36).

161. Ashley Fetters & Olga Khazan, *The Worst Situation Imaginable for Family Violence*, THE ATLANTIC (May 8, 2020), <https://www.theatlantic.com/family/archive/2020/05/challenge-helping-abuse-victims-during-quarantine/611272/>.



## B. POSITIVE RESPONSES

Amidst the enormous challenges of responding to the pandemic, some responses suggest potentially promising steps forward. Heightened attention to the critical role of child care in economic recovery may pave the way to more robust support for child care. The temporary enactment of modest paid leave as a result of the pandemic might also prove an important first step toward more expansive leave policies. After a seeming stall in moving toward workplace flexibility, the realization that a sizable number of employees could work remotely may lead to more employers allowing employees to work from home—importantly, this may be true even for some low-income workers. Further, in households with a mother, father, and children, the structure of parental caregiving may change if some men’s increased engagement in caregiving begun during the pandemic continues in the “new normal.”<sup>162</sup> In addition, given that the professions oriented towards caring—including teachers, nurses, and home-health-care aides—are overwhelmingly female, the pandemic may bring more attention to the gender pay gap in those positions. This section briefly previews some of the gender-equity-related steps taken during the pandemic, including legislative initiatives relating to child care, unemployment insurance, and family leave, and cultural changes, such as the increased attention to the gendered labor of child care at home and in the workplace, while Part IV will address the need to build on these steps and move towards more fundamental change.

*Support for child care.* One promising response was, at least early in the pandemic, federal attention to child care issues. In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress appropriated \$3.5 billion in emergency funds for the Child Care and Development Block Grant.<sup>163</sup> States were given some flexibility by the federal Administration for Children and Families to mitigate the effects of the pandemic. These measures allowed states to increase health precautions in child-care facilities, prevent permanent closures by paying subsidies, and provide child care to frontline workers not provided paid leave for child care.<sup>164</sup> Washington State, for example, also used federal funds to provide tools for distance learning, develop resources to close the educational opportunity gap, and reduce child-care costs for parents seeking employment.<sup>165</sup> Although the

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162. See Alon, *supra* note 72 (arguing that although women will continue to carry a higher burden of child care during the pandemic, men’s child care hours will also increase, which could lead to a change in norms and more male participation in child care post-pandemic; further, if the workforce opens before schools/daycares, it is more likely that men will be able to telecommute and take care of the kids, while women would have to return to work).

163. OFFICE OF CHILD CARE, ADMINISTRATION FOR CHILDREN AND FAMILIES, SUMMARY OF CHILD CARE PROVISIONS OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT OR “CARES ACT”, <https://www.acf.hhs.gov/occ/resource/summary-of-child-care-provisions-of-cares-act>.

164. Elizabeth Bedrick & Sarah Daily, *States Are Using the CARES Act to Improve Child Care Access During COVID-19*, CHILD TRENDS (June 8, 2020), <https://www.childtrends.org/publications/states-are-using-the-cares-act-to-improve-child-care-access-during-covid-19>.

165. OFFICE OF THE GOVERNOR, *Safe Return to Public Life in Washington State, Policy Brief* (2020), <https://www.governor.wa.gov/sites/default/files/Washington%27s%20Recovery%20Plan%20.pdf>.

House passed subsequent legislation,<sup>166</sup> including an updated version of the HEROES Act (Health and Economic Recovery Omnibus Emergency Solutions Act), which would provide \$57 billion dollars in child-care funding,<sup>167</sup> the Senate did not enact this legislation. Finally, after months of impasse, in late December 2020, Congress passed—and President Trump signed—a \$900 billion stimulus package (“second stimulus package”), which included \$10 billion for grants to child care providers to help stabilize their businesses.<sup>168</sup> However, child care advocates, including some lawmakers, argue that this funding is only a “down payment” on the “significant investment” in infrastructure necessary to (as Representative Katherine Clark (D-Mass) puts it) “make sure that we have a child-care sector that survives the pandemic.”<sup>169</sup>

*Unemployment insurance.* A second promising step relates to unemployment insurance. Although the United States, unlike some European countries, did not provide job protection during the pandemic through the form of salary supplements, it did provide financial support for the unemployed.<sup>170</sup> Because of the combination of bonus checks and enhanced unemployment insurance, the poverty rate remained relatively stable in the first several months of the pandemic.<sup>171</sup> After these checks and unemployment benefits expired, however, the poverty rate increased for all groups; women experienced a higher increase than men, and the rate rose more sharply for Black and Latina women than for white women.<sup>172</sup> Thus, after these additional protections expired, calls to extend them stressed women’s disproportionate poverty rates (particularly women of color) and the need for a broader range of policy proposals—including such insurance—to “narrow gender disparities in poverty” and foster “lasting economic security for

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166. Naomi Jagoda & Juliegrace Brufk, *House Approves Two Child Care Bills Aimed at the Pandemic*, THE HILL (July 29, 2020), <https://thehill.com/policy/finance/509670-house-approves-two-child-care-bills-aimed-at-pandemic>.

167. The HEROES Act: House Democrats’ Updated Legislation Meets the Challenge of the Coronavirus Pandemic, [https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Updated%20Heroes%20Act%20One%20Pager\\_0.pdf](https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Updated%20Heroes%20Act%20One%20Pager_0.pdf). The House of Representatives first introduced the HEROES Act in May, 2020. *Id.* (“one-pager” describing bill); Press Release, House Appropriations Committee, House Passes Updated Heroes Act, (Oct. 1, 2020), available at <https://appropriations.house.gov/news/press-releases/house-passes-updated-heroes-act>.

168. Katie Lobosco & Tami Luhby, *Here’s What’s In the Second Stimulus Package*, CNN POLITICS (Dec. 28, 2020), <https://www.cnn.com/2020/12/20/politics/second-covid-stimulus-package-details/index.html>. Most of the money is for the Child Care & Development Block Grant. *See* H.R. 6800, 116 Cong. § 3 (2020) (allocating funding for the Child Care and Development Block Grant in Division A, Title VI).

169. Megan Leonhardt, *Congress Proposes \$10 Billion in Relief for the Child-Care Industry, but Advocates Say It’s Only a “Down Payment,”* CNBC (Dec. 21, 2020), <https://www.cnbc.com/2020/12/21/covid-relief-child-care-10-billion-dollars.html>.

170. Jim Zarroli, *Europe’s Economy Was Hit Hard Too, But Jobs Didn’t Disappear Like in the U.S.*, NPR (Apr. 23, 2020, 5:01 AM), <https://www.npr.org/2020/04/23/838085670/europes-economy-was-hit-hard-too-but-jobs-didn-t-disappear-like-in-the-u-s>.

171. Jason DeParle, *Vast Federal Aid Has Capped Rise in Poverty, Studies Find*, N.Y. TIMES (June 21, 2020), <https://www.nytimes.com/2020/06/21/us/politics/coronavirus-poverty.html>.

172. Mason, *supra* note 4, at 32-33.

women and their families.”<sup>173</sup> The second stimulus package renewed the federal unemployment benefits that expired in July, but at only half the initial level.<sup>174</sup> It also brought a second round of stimulus checks for individuals, but at half the amount (\$600) of the first stimulus; eligible families got up to \$2000 (with slightly increased funding per child from the first round of stimulus checks).<sup>175</sup>

*Paid family and medical leave.* Third, the initial federal recovery bills provided various short-term forms of paid leave, and a number of states that lacked paid leave laws are considering them.<sup>176</sup> In the Families First Act,<sup>177</sup> the first-ever federal law mandating paid leave rights for private sector employees, Congress temporarily granted both paid sick leave and paid family and medical leave.<sup>178</sup> Some workers could receive two weeks of paid sick leave to care for themselves or another individual, and twelve weeks of emergency child care leave, with ten weeks of pay.<sup>179</sup> While the introduction of short-term paid leave is a critical first step, this mandate contained a number of exclusions.

Businesses with more than 500 employees were exempt from both paid leave provisions.<sup>180</sup> This exemption left out, among others, more than two million workers of large grocery store chains, who were deemed essential workers and whose jobs placed them at risk of contracting the coronavirus.<sup>181</sup> Businesses with fewer than fifty employees could choose not to provide paid child-care leave if it “would jeopardize the viability of the business.”<sup>182</sup>

173. Ctr. for Am. Progress, *supra* note 17.

174. Lobosco & Luhby, *supra* note 168.

175. *Id.* President Trump initially tweeted that he would veto the bill unless Congress increased the stimulus from \$600 to \$2000 per person. Although House Speaker Nancy Pelosi sought to pass such a measure, it did not succeed, and Trump eventually signed the bill. For more details on unemployment relief provisions for different categories of workers, see Tara Siegel Barnard & Ron Lieber, *Your Money: The Stimulus Package Q & A: What's In It For You*, N.Y. TIMES (Jan. 6, 2021), <https://www.nytimes.com/article/stimulus-deal-update.html>.

176. See Jennifer Rubin, *Support for Paid Leave is Smart Politics*, WASH. POST: OPINION (June 16, 2020, 10:30 AM), <https://www.washingtonpost.com/opinions/2020/06/16/support-paid-leave-is-smart-politics/>.

177. Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).

178. *Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act*, CTR. FOR LAW & SOCIAL POLICY (May 6, 2020), <https://www.clasp.org/publications/fact-sheet/paid-sick-days-and-paid-leave-provisions-ffcra-and-cares-act>; see also Diana Boesch, *The Urgent Case for Paid Permanent Leave*, CTR. FOR AM. PROGRESS (Sept. 1, 2020), <https://www.americanprogress.org/issues/women/reports/2020/09/01/489914/urgent-case-permanent-paid-leave/> (“Congress passed the first national paid leave laws as part of the Families First Coronavirus Response Act (FFCRA) to provide workers with up to two weeks—or 80 hours—of emergency paid sick leave and up to 12 weeks of emergency leave for child care, only 10 weeks of which are paid.”).

179. Boesch, *supra* note 178; see also *Families First Coronavirus Response Act: Employee Paid Leave Rights*, DEP’T OF LABOR, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

180. Dep’t of Labor, *supra* note 179.

181. Sarah Jane Glynn, *Coronavirus Paid Leave Exemptions Exclude Millions of Workers From Coverage*, CTR. FOR AM. PROGRESS (Apr. 17, 2020), <https://www.americanprogress.org/issues/economy/news/2020/04/17/483287/coronavirus-paid-leave-exemptions-exclude-millions-workers-coverage/>.

182. Families First Coronavirus Response Act, Pub. L. No. 116-127 § 110 (2020).

Moreover, in an effort to maintain the essential-worker workforce, the Act excluded health-care providers and emergency responders—and defined both categories broadly.<sup>183</sup> Thus, less than fifty percent of private-sector employees were guaranteed coverage due to the laws' exemptions and overly broad regulations.<sup>184</sup> These exclusions fall disproportionately on Black women and other women of color, who make up the vast majority of home health aides.<sup>185</sup> Between April and June 2020, "caregiver-related calls" to the Center for WorkLife Law hotline over problems of workplace accommodation and family leave increased more than 250% from the prior year; Director Joan Williams concludes that the stories told by these workers—among them many mothers—demonstrate that "Families First is falling short."<sup>186</sup>

The second stimulus package failed to extend the paid family and sick leave mandate (limited as it was).<sup>187</sup> Instead, it included a refundable tax credit (available through March 31, 2021) to employers if they *voluntarily* provided employees the paid leave approved under the Families First Act.<sup>188</sup> This is hardly the long-term legislative response needed to address the acute work/family challenges and health issues made worse by the pandemic.

*Changing work/life balance, workplace "flexibility," and the gendered division of labor.* Another set of potentially positive changes centers on readjusting work/life balance, increasing workplace flexibility, and altering the gendered division of household labor. During the pandemic, the move to working from home (when possible) highlighted and often increased gender inequality in household labor.<sup>189</sup> At the same time, it also created the potential for dialogue about such

183. *Families First Coronavirus Response Act: Questions and Answers*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/pandemic/ffcr-questions#56> (defining health care providers as anyone employed in the healthcare industry, ranging from hospitals to retirement facilities and home health care providers. Emergency responders are defined broadly as any worker who is "necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.").

184. Glynn, *supra* note 181.

185. Poo & Shah, *supra* note 94.

186. Joan C. Williams, *Real Life Horror Stories from the World of Pandemic Motherhood*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/opinion/mothers-discrimination-coronavirus.html>.

187. Jennifer Liu, *New Relief Deal Doesn't Mandate Paid Sick or Family Leave for Covid-19*, CNBC (Dec. 23, 2020), <https://www.cnbc.com/2020/12/23/new-relief-deal-doesnt-mandate-paid-sick-or-family-leave-for-covid-19.html>. For the text of the second stimulus package, see Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020) (enacted).

188. Liu, *supra* note 187. See also Matthew J. Roberts, *Congress Declines to Extend FFCRA Mandate*, HR WATCHDOG (Dec. 30, 2020), <https://hrwatchdog.calchamber.com/2020/12/congress-declines-to-extend-ffcr-mandate/>.

189. See Terry Gross, *Pandemic Makes Evident 'Grotesque' Gender Inequality in Household Work*, NPR (May 21, 2020, 2:26 PM), <https://www.npr.org/2020/05/21/860091230/pandemic-makes-evident-grotesque-gender-inequality-in-household-work>; see also Allison Dunatchik et al., *Gender, Parenting, and the Rise of Remote Work during the Pandemic: Implications for Domestic Inequality*, 35 GENDER & SOC'Y 200 (2021) (finding that "gendered norms appear to protect teleworking fathers, but not mothers, from extra domestic labor as well as from the stress of their children's remote learning, even when fathers are the sole parent working from home").

inequality, as well as for improving work-life balance and allowing more workplace flexibility. There are predictions that the ability to work from home will continue after the pandemic.<sup>190</sup> On the other hand, increased workplace flexibility may reinforce class, race, and gender inequality, as those with jobs most likely to permit working from home are white and higher-income, and, if gendered care-taking patterns continue, male.<sup>191</sup>

Second, staying home made visible to both parents the work of child care. Many men in male–female households certainly believed that they were doing more in the household,<sup>192</sup> although their female partners did not necessarily agree on the amount that the men were doing.<sup>193</sup> While it is true that women continue to do the majority of the work, men’s participation in child care has steadily increased over the last half century.<sup>194</sup> Since the start of the pandemic, “68% of fathers report feeling closer or much closer to their children.”<sup>195</sup> If some men’s increased engagement in caregiving continues into the “new normal,” the norms of parental caregiving may change in a direction supportive of gender equity.<sup>196</sup>

Finally, parents’ challenges (discussed above) in trying to “home school” their children and monitor online learning in the wake of school closures may provide some momentum for improving the working conditions and pay of child care providers and teachers. Indeed, a large majority of parents agree that teachers should be paid more.<sup>197</sup> If this translates into governmental action, it could address the

190. Katherine Guyot & Isabel V. Sawhill, *Telecommuting Will Likely Continue Long After The Pandemic*, BROOKINGS (Apr. 6, 2020), <https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/>.

191. Cohen & Hsu, *supra* note 19.

192. See, e.g., Daniel Carlson et al., *Changes in Parents’ Domestic Labor During the COVID-19 Pandemic*, (May 6, 2020), <https://doi.org/10.31235/osf.io/jy8fn>.

193. *Id.*; Claire Cain Miller, *Nearly Half of Men Say They Do Most of the Homeschooling. 3 Percent of Women Agree*, N.Y. TIMES (May 6, 2020), <https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html>.

194. *Americans’ Time at Paid Work, Housework, Child Care, 1965 to 2011*, PEW RSCH. CTR. (2013), <https://www.pewsocialtrends.org/2013/03/14/chapter-5-americans-time-at-paid-work-housework-child-care-1965-to-2011/>.

195. Richard Weissbourd et al., *How the Pandemic is Strengthening Fathers’ Relationships with Their Children*, HARV. GRADUATE SCH. OF EDUC. (June 2020), <https://static1.squarespace.com/static/5b7c56e255b02c683659fe43/t/5eeceba88f50eb19810153d4/1592585165850/Report+How+the+Pandemic+is+Strengthening+Fathers+Relationships+with+Their+Children+FINAL.pdf>. For one father’s perspective on this, see Clint Edwards, *I’m a Working Dad. I’ve Never Spent So Much Time with My Kids, and It’s Wonderful*, WASH. POST (Dec. 22, 2020), <https://www.washingtonpost.com/lifestyle/2020/12/22/time-with-kids/>.

196. Alon, *supra* note 72; Annalyn Kurtz, *Millions Of Dads Are Stuck At Home — Which Could Be A Game Changer For Working Moms*, CNN BUSINESS (April 24, 2020, 8:15 AM), <https://www.cnn.com/2020/04/03/economy/childcare-gender-equality-coronavirus/index.html>; Elissa Strauss, *Fatherhood and the Pandemic: How Men Are Stepping Up with Child Care*, CNN (June 19, 2020, 8:00 AM), <https://www.cnn.com/2020/06/19/health/fatherhood-child-care-coronavirus-pandemic-wellness/index.html>; *Men and Women Agree: During the COVID-19 Pandemic Men Are Doing More at Home*, COUNCIL ON CONTEMPORARY FAMILIES (May 20, 2020) <https://contemporaryfamilies.org/covid-couples-division-of-labor/>.

197. Janine Puhak, *Coronavirus Homeschooling: 77 Percent of Parents Agree Teachers Should be Paid More After Teaching Their Own Kids*, Study Says, FOX NEWS (Apr. 30, 2020), <https://www.foxnews.com/education/coronavirus-homeschooling-77-percent-parents-agree-teachers-should-be-paid-more>.



chronic problem that society undervalues forms of care vital to human development and human well-being.<sup>198</sup>

### C. POLITICS

Throughout 2020, however, one obstacle to moving forward constructively on COVID-19 was the lack of effective national leadership. Instead, President Donald Trump's style of leadership modelled a toxic masculinity/"mask-unity."<sup>199</sup> This dangerous performance included destructive messages about "toughness" and scoffing at wearing masks.<sup>200</sup> Trump criticized mask mandates even as the Administration's public-health experts advised that mask wearing was a critical step to help minimize the spread of COVID-19. Trump declined to wear a mask himself until mid-July,<sup>201</sup> continued to question their efficacy, and held political rallies and other public events at which supporters put themselves at risk. Trump's failure to model mask wearing and to practice social distancing likely contributed to his contracting COVID-19 in October. He also reinforced the dangerous association—one held particularly by Republican men<sup>202</sup>—of mask-

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foxnews.com/lifestyle/coronavirus-homeschool-parents-agree-teachers-paid-more-kids (77% believe teachers should be paid more).

198. On the need to recognize and support care as a public value and to address injustices of the gendered care economy, see MCCLAIN, *supra* note 6, at 84–114.

199. See *supra* text at nn. 31–35. Accounts of toxic masculinity typically include the following beliefs and behaviors: (1) "Suppressing emotions or masking distress"; (2) "Maintaining an appearance of hardness"; and (3) "Violence as an indicator of power (think: "tough-guy" behavior)". Maya Salam, *What Is Toxic Masculinity?*, N.Y. TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/us/toxic-masculinity.html> (observing that a term "once relegated to women's studies classrooms . . . suddenly seems to be everywhere"). For scholarly accounts, see, for example, Terry A. Kupers, *The Role of Misogyny and Homophobia in Prison Sexual Abuse*, 18 UCLA WOMEN'S L.J. 107, 112 (2010) (explaining it as "the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia and wanton violence." (citation omitted)); Michael Kimmel and Lisa Wade, *Ask A Feminist: Michael Kimmel and Lisa Wade Discuss Toxic Masculinity*, SIGNS (Dec. 12, 2017), <http://signsjournal.org/kimmel-wade-toxic-masculinity/>.

200. Emulating this dangerous approach, some Republican legislators refused to wear masks in the House and Senate, contrary to rules; some refused even when members of Congress had to shelter together in close quarters during the January 6 mob attack on the Capital and the attending physician to Congress as well as Democratic colleagues implored them to wear masks and socially distance. Representative Pramila Jayapal (D-Wash.), one of three Democratic lawmakers to test positive for COVID-19 after January 6, attributed it to this "selfish" refusal and has called for fining members who refuse to wear masks. Bill Chappell, *3<sup>rd</sup> Member of Congress Tests Positive For Coronavirus, Blames Capitol Attack Lockdown*, NPR (Jan. 12, 2021), <https://www.npr.org/sections/insurrection-at-the-capitol/2021/01/12/955976431/rep-jayapal-blames-insurrection-lockdown-after-testing-positive-for-covid-19>.

201. See Maegan Vazquez et al., *Trump Tweets Image of Himself Wearing a Mask and Calls It 'Patriotic'*, CNN (July 20, 2020) <https://www.cnn.com/2020/07/20/politics/donald-trump-mask-tweet/index.html>.

202. Farhad Manjoo, *Trump Can Still Make a Difference on Masks*, N.Y. TIMES (Sept. 30, 2020), <https://www.nytimes.com/2020/09/30/opinion/sunday/coronavirus-masks.html> (reporting that, by late spring, mask wearing was an "irredeemably partisan issue," and the "primary resisters were Republican men;" "only 43 percent said Trump should wear a mask").



wearing with weakness and shame.<sup>203</sup> Just as masculinity ideology is associated with a rejection of condom use, this same ideology may be at work with respect to “condoms of the face.”<sup>204</sup> Public-health experts note that the rejection of mask-wearing and social-distancing guidelines had a gendered cost: “The virus has infected more men than women and killed far more of them.”<sup>205</sup> Mask resistance also turned violent and even lethal when those attempting to enforce mask-wearing rules—such as grocery store workers, health care workers, and other essential, public-facing employees—are the targets of mask resisters.<sup>206</sup> Further, some mask resisters pointed to President Trump’s example to justify their refusals.<sup>207</sup>

It was, thus, unsurprising but still disturbing that Trump’s first act, on returning to the White House after four days in Walter Reed Hospital being treated for COVID-19, was to remove his face mask on camera and to shove it into his pocket.<sup>208</sup> By contrast, President Joe Biden has consistently worn a mask and followed public-health guidelines, insisting that mask wearing shows leadership, not weakness. After Trump’s diagnosis, Biden reiterated the importance of wearing masks: “It’s not about being a tough guy. It’s about doing your part.”<sup>209</sup> Women as well as men can perpetuate this toxic mask-ularity that associates protecting one’s health with being unmanly: Fox News commentator Tomi Lahren taunted Biden for tweeting a video contrasting his own mask wearing with Trump’s mask removal, saying “might as well carry a purse with that mask, Joe.”<sup>210</sup>

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203. See Marcus, *supra* note 32; Abby Haglage, *Men Less Likely to Wear Masks Because They're 'Not Cool,' Study Finds*, YAHOO (May 15, 2020, 1:29 PM), <https://www.yahoo.com/lifestyle/men-less-likely-to-wear-masks-because-theyre-not-cool-study-finds-sociologists-say-trump-toxic-masculinity-also-play-a-role-172929741.html> (reporting on the observations of one researcher: “Since the office of the president is so tied to hyper-masculinity, Trump and Pence are performing almost a caricature of toxic masculinity by refusing to demonstrate basic safety precautions.”).

204. As *Scientific American* vividly explained, some men “seem to view masks as emasculating face condoms that must be rejected.” Emily Willingham, *The Condoms of the Face: Why Some Men Refuse to Wear Masks*, SCIENTIFIC AMERICAN: OPINION (June 29, 2020), <https://www.scientificamerican.com/article/the-condoms-of-the-face-why-some-men-refuse-to-wear-masks/>.

205. Daniel Victor, *Coronavirus Safety Runs into a Stubborn Barrier: Masculinity*, N.Y. TIMES (Oct. 10, 2020), <https://www.nytimes.com/2020/10/10/us/politics/trump-biden-masks-masculinity.html>.

206. See, e.g., Christina Goldbaum, *When a Bus Driver Told A Rider to Wear a Mask, 'He Knocked Me Out Cold'*, N.Y. TIMES, Sept. 20, 2020, at A6 (recounting attacks on transit officers in New York City and in other U.S. cities).

207. For example, Fiana Tulip recounted on CNN that her mother, a health care professional, died from COVID-19 after a woman who came into the hospital refused to wear a mask, saying, “You know, I don’t have to wear a mask if my president doesn’t.” CNN REPLAY, (Oct. 6, 2020), <https://www.facebook.com/watch/?v=344100576923980>.

208. NBC News, *Trump Removes Mask After Returning To White House From Walter Reed*, YOUTUBE (Oct. 5, 2020), <https://www.youtube.com/watch?v=LuiUk03MUfs>.

209. *After Trump’s COVID-19 Diagnosis, Biden Says Masks Not About Being a ‘Tough Guy’*, CNBC TV18 (Oct. 3, 2020), <https://www.cnbc.tv18.com/politics/after-trumps-covid-19-diagnosis-biden-says-masks-not-about-being-a-tough-guy-7093381.htm>. For more on this contrast between Trump and Biden and on the toll of “toxic masculinity,” see Joanna L. Grossman & Linda C. McClain, “*Might As Well Carry a Purse With That Mask, Joe*”: COVID-19, Toxic Masculinity, and the Sad State of National Politics, JUSTIA (Oct. 9, 2020), <https://verdict.justia.com/2020/10/09/might-as-well-carry-a-purse-with-that-mask-joe>. Some of the analysis in this section draws on this column.

210. See Grossman and McClain, *supra* note 209 (discussing Lahren).

A related aspect of this narcissistic<sup>211</sup> leadership style was an exaggerated emphasis by the Trump Administration and some governors on “reopening” the economy and schools without sufficient regard for how to do so safely to protect public health. This false dichotomy of jobs versus health, touting numbers about jobs and economic recovery while ignoring or minimizing numbers about the human toll of COVID-19, suggests a lack of basic empathy.<sup>212</sup> Essential—and other—workers had to return to work without adequate testing, protective equipment, or social distancing measures in place. The reckless disregard by Trump and some state governors of scientific information from experts *within the Trump Administration*, was a dangerous performance of masculinity at the expense of public health.

Instead of leading Trump to heed public-health guidelines and stop endangering himself and others, the lessons he drew from his own COVID-19 experience—with 24/7 medical care and multiple experimental treatments—were that people should not “fear” it or let it “dominate” their lives; since he “beat” it, they would too.<sup>213</sup> Already identified (before his diagnosis) as the biggest single spreader of misinformation about COVID-19, post-recovery, he continued to spread misinformation, insisting his treatments were a “cure.”<sup>214</sup> Further, statements like Americans are “learning to live with” COVID-19 seemed devoid either of any empathy for the many who lost family or friends to the virus or of any recognition of the disproportionate toll the economic and public-health crises have taken on Black people and other people of color—who are, again, overrepresented among essential workers.<sup>215</sup>

Notably, some state governors and mayors had a more empathic and careful response to the pandemic, heeded public-health experts, and resisted the false dichotomy of public health versus economic recovery. Prominent among them were women (such as Michigan’s governor, Gretchen Whitmer) and—at the level of mayors—women of color, such as Atlanta’s mayor, Keisha Lance Bottoms.<sup>216</sup>

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211. See NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *SHAFTED* (forthcoming 2021).

212. See, e.g., Philip Bump & Ashley Parker, *13 Hours of Trump: The President Fills Briefings with Attacks and Boasts, but Little Empathy*, WASH. POST (April 25, 2020), [https://www.washingtonpost.com/politics/13-hours-of-trump-the-president-fills-briefings-with-attacks-and-boasts-but-little-empathy/2020/04/25/7eec5ab0-8590-11ea-a3eb-e9fc93160703\\_story.html](https://www.washingtonpost.com/politics/13-hours-of-trump-the-president-fills-briefings-with-attacks-and-boasts-but-little-empathy/2020/04/25/7eec5ab0-8590-11ea-a3eb-e9fc93160703_story.html).

213. Bloomberg Politics, *Trump: Don't Let Coronavirus Dominate You*, YOUTUBE, (Oct. 6, 2020), <https://www.youtube.com/watch?v=e55hSFNJOL>.

214. A widely-reported study concluded that “the President of the United States was likely the largest driver of the COVID-19 misinformation “infodemic.” Sarah Evanega et al., *Coronavirus misinformation: Quantifying sources and themes in the COVID-19 ‘infodemic’* CORNELL ALL. FOR SCIENCE (2020), available at <https://int.nyt.com/data/documenttools/evanega-et-al-coronavirus-misinformation-submitted-07-23-20-1/080839ac0c22bca8/full.pdf>. On his treatments as a “cure,” see Katherine J. Wu, *With ‘Cure’ Comment, Trump Exaggerates Known Benefits of Another COVID-19 Therapy*, N.Y. TIMES (Oct. 8, 2020), <https://www.nytimes.com/2020/10/08/technology/trump-covid-cure.html>.

215. Grossman and McClain, *supra* note 209.

216. On Governor Whitmer, see Jonathan Mahler, *A Governor on Her Own, With Everything at Stake*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/magazine/gretchen-whitmer->

They eschewed the Trump Administration's reckless disregard for the human costs of reopening the economy too soon.<sup>217</sup>

Research on gender and political representation in Congress and state legislatures shows that "women in legislatures are more likely than their male colleagues to give priority to issues, such as healthcare and children and families, associated with women's traditional caregiving roles in society, and to issues, such as reproductive health and women's rights, associated with the organized women's movement."<sup>218</sup> While Biden's selection of Senator Kamala Harris as his vice presidential choice and her election victory were both historic, women of various identities continue to face obstacles to running for and being elected to political office, and gender stereotypes about women's "electability" remain barriers to their success.<sup>219</sup>

As mentioned in Part I, globally, nations led by women showed some of the lowest rates of COVID-19 deaths and cases.<sup>220</sup> Studies of the leadership styles of the women heading those countries with better success at battling the pandemic show certain hallmarks, such as listening with humility to other voices and ensuring that people with diverse backgrounds and expertise are at the table.<sup>221</sup> Such qualities are consistent with a feminist methodology of seeking to listen to multiple perspectives and asking not only "the woman question" in assessing law and policy, but also asking other questions about who is included and excluded.<sup>222</sup>

Indeed, it is important to note that an empathetic and effective style of leadership is not limited to women—but that carrying a purse, like wearing a mask, can

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coronavirus-michigan.html. On the prominent role of women (including women of color) mayors fighting the pandemic, see Kelly Dittmar, *Women on the Front Lines in Cities' Fights Against COVID-19*, CTR. FOR AM. WOMEN & POL. (Apr. 14, 2020), <https://cawp.rutgers.edu/election-analysis/women-mayors-covid-19>; Mattie Kahn, *The Women Leading the Coronavirus Response from City Hall*, GLAMOUR (May 4, 2020), <https://www.glamour.com/story/women-mayors-leading-the-coronavirus-response> (featuring five mayors, including Mayor Bottoms and Mayor Lori Lightfoot, Chicago). Governor Cuomo also stands out for his empathetic and careful leadership. Naz Beheshti, *Steady Hand in a Crisis*, FORBES (Apr. 9, 2020), <https://www.forbes.com/sites/nazbeheshti/2020/04/09/steady-hand-in-a-crisis-what-business-leaders-can-learn-from-new-york-governor-andrew-cuomo/#3390aa83037d>.

217. Of course, not all women in politics acted in this same way. Iowa Republican governor Kim Reynolds did not impose a mask mandate until November, 2020. Scott Neuman, *Iowa Governor Reverses Course, Issues Mask Mandate as COVID-19 Cases Rise*, NPR (Nov. 17, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/11/17/935648739/iowa-governor-reverses-course-issues-mask-mandate-as-covid-19-cases-rise>.

218. KELLY DITTMAR, KIRA SANBONMATSU & SUSAN J. CARROLL, A SEAT AT THE TABLE: CONGRESSWOMEN'S PERSPECTIVE ON WHY THEIR PRESENCE MATTERS 144 (2018) (citing literature).

219. See, e.g., Kayla Wolf et al., *The Paradox of Electability: Gender and the 2020 Democratic Nomination*, GENDER POL'Y REP. (Feb. 11, 2020), <https://genderpolicyreport.umn.edu/the-paradox-of-electability-gender-and-the-2020-democratic-nomination/>; *How Outdated Notions about Gender and Leadership are Shaping the 2020 Presidential Leadership Race*, LEAN IN (2020), <https://leanin.org/data-about-gender-bias-and-electability-in-the-2020-election>.

220. See *supra* note 35, and accompanying text.

221. Amanda Taub, *Why Are Women-Led Nations Doing Better with Covid-19?*, N.Y. TIMES (May 15, 2020; updated Aug. 13, 2020), <https://www.nytimes.com/2020/05/15/world/coronavirus-women-leaders.html>.

222. See Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 831 (1990).

be a positive sign of strength. Setting the new tone, one of President Biden's first executive orders requires mask-wearing by federal employees and anyone in or on federal buildings and lands in order "to protect the Federal workforce and individuals interacting with the Federal workforce" and encourages mask-wearing across the United States.<sup>223</sup> Further, President Biden's coronavirus task force (and entire Cabinet) offers a striking and encouraging contrast to that of the Trump Administration in bringing more women and persons of different identities to the table.<sup>224</sup> Further, mirroring the Biden/Harris commitment to grapple with the inequities revealed and made worse by the pandemic, one of its three co-chairs, Dr. Marcella Nunez-Smith, of Yale University, is in the field of health equity research.<sup>225</sup>

#### IV. TOWARD AN INTERSECTIONAL FEMINIST RECOVERY PLAN

While a recovery process might focus on a return to the status quo, the development of a recovery plan also opens up an opportunity to address the intersecting inequities of gender, race, and class made more visible by the pandemic—that is, to go beyond a return to the status quo and instead move forward. Consequently, rather than simply focus on economics, a feminist recovery plan could approach the goals of recovery and "resilience" in a way mindful of such inequities. Such a plan would insist that building resilience requires addressing such inequities and—as Professor Martha Fineman has argued—focusing upon how society and its institutional structures allocate benefits and burdens in ways that mitigate or worsen human vulnerability.<sup>226</sup> It would reject the toxic

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223. Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-the-federal-workforce-and-requiring-mask-wearing>.

224. Lev Facher, *Biden Transition Team Reveals Members of Covid-19 Task Force*, STAT NEWS (Nov. 9, 2020), <https://www.statnews.com/2020/11/09/biden-transition-team-unveils-members-of-covid-19-task-force>. By comparison, when the White House announced formation of President Trump's Coronavirus Task Force, it consisted of twelve men, eleven of whom are white. See *Statement from the Press Secretary Regarding the President's Coronavirus Task Force*, THE WHITE HOUSE (Jan. 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/> [<https://web.archive.org/web/20200130150010/https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>]. The White House subsequently added two women, Dr. Debra L. Birx and Seema Verma. See *Who's on the Coronavirus Task Force*, N.Y. TIMES (Feb. 29, 2020), <https://www.nytimes.com/2020/02/29/health/Trump-coronavirus-taskforce.html>.

225. Facher, *supra* note 224.

226. See generally Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L. J. 251, 256 (2010). As this Article uses the term, building resilience refers both to the resources needed by human beings and the proper design of social systems and institutions. See, e.g., Martha Albertson Fineman, *Vulnerability, Resilience, and LGBT Youth*, 23 TEMP. POL. & CIV. RTS. L. REV. 307, 320 (2014) ("[r]esilience is what provides an individual with the means and ability to recover from harm or setbacks," and "[t]he degree of resilience an individual has is largely dependent on the quality and quantity of resources or assets that he or she has at their disposal or command."). Legal scholar Martha Albertson Fineman enlists the concept of resilience in elaborating the obligation of a responsive state to address the universal human experience of vulnerability and provide mechanisms for building resilience. See Fineman, *supra* note 39, at 4.

masculinity of the Trump Administration's responses, which may have contributed to the pandemic's particularly ferocious impact in the United States when compared with similar industrial democracies.

What form would a feminist economic recovery plan attentive to the intersectional issues of gender equity discussed throughout this Article take? This Part suggests some contours, using as a point of departure enacted and proposed federal legislative responses, some state recovery plans, and feminist commitments to equality. It takes inspiration from the report of the Hawai'i's State Commission on the Status of Women ("Hawai'i Commission"), which explicitly labels its work a "feminist economic recovery plan for COVID-19."<sup>227</sup> It also points out ways in which the President Biden/Vice President Harris Administration's commitment to "Build Back Better" could help to advance such goals. They campaigned on a plan that speaks of structural "inequalities" revealed by the pandemic and calls for imagining and building an economy that advances gender and racial equity and working families.<sup>228</sup> In the first days of his Administration, President Biden proposed a \$1.9 trillion package, the American Rescue Plan, reiterating these commitments and proposing (among numerous other measures) strengthened unemployment benefits, paid leave for workers and enhanced support for the costs of child care.<sup>229</sup> Significantly, beyond the specific context of the pandemic, the Biden Administration announced a policy of "a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."<sup>230</sup> The Administration also announced a new White House Gender Policy Council aimed at ensuring that, in President Biden's words, "we build our nation back better by getting closer to equality for women and to the full inclusion of women in our economy and our society."<sup>231</sup> It is principles like these that provide the basis for a feminist recovery plan that will lead to long-term change.

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227. See HAW. STATE COMM'N ON THE STATUS OF WOMEN, *supra* note 41, at i.

228. *Build Back Better: Joe Biden's Jobs and Economic Recovery Plan for Working Families*, BIDENHARRIS, <https://joebiden.com/build-back-better/#> (last visited January 15, 2021).

229. Jim Tankersley & Michael Crowley, *Biden Outlines \$1.9 Trillion Spending Package to Combat Virus and Downturn*, N.Y. TIMES (Jan. 14, 2021), <https://www.nytimes.com/2021/01/14/business/economy/biden-economy.html>. See President-elect Biden Announces American Rescue Plan, [https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID\\_Relief-Package-Fact-Sheet.pdf](https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID_Relief-Package-Fact-Sheet.pdf).

230. See Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

231. Aris Folley, *Biden, Harris Announce Formation of White House Gender Policy Council*, THE HILL (Jan. 19, 2020), <https://thehill.com/homenews/administration/534893-biden-and-harris-announce-formation-of-white-house-gender-policy?rl=1>.



## A. A BEGINNING? GOVERNMENTAL RESPONSES AND AN INSPIRATION

While gender equity was not explicitly identified as an aim of federal relief bills, some of the provisions addressed relevant matters such as child care and paid leave.<sup>232</sup> Nonetheless, the federal legislative responses showed gaps not only in coverage, but also in content. The House of Representatives has tried to fill in the gaps, such as passing the updated HEROES Act, which included specific relief for women and minority-owned businesses, funding for child care, expansions of paid sick, family, and medical leave, relief for currently unprotected immigrants, and additional funding directed toward domestic violence prevention.<sup>233</sup> But efforts stalled in the Senate. As discussed in Part III, negotiations between Speaker Nancy Pelosi and the White House finally yielded the second stimulus package, which includes much-needed aid but does not go far enough to help individuals and families and to foster economic recovery.

While many states developed their own recovery plans, these plans rarely included specific references to the needs of women (including women of color) or marginalized communities. A few, however, stand out for their use of an “equity lens.”<sup>234</sup> For example, Washington’s “Safe Return to Public Life” plan commits to use such a lens to support the recovery of “all people and communities,” and to pay “particular attention to those who have been disproportionately impacted by COVID-19, including communities of color, individuals experiencing homelessness, individuals with disabilities, as well as those experiencing unemployment, poverty, and food insecurity.”<sup>235</sup> The plan calls for reducing child care costs for unemployed parents, assisting individuals with finding temporary and permanent housing, and ensuring public access to protective supplies.<sup>236</sup> Massachusetts’s economic recovery plan commits to “funding more affordable housing, . . . stabilizing neighborhoods, and supporting minority-owned businesses with record levels of funding.”<sup>237</sup> New York’s plan proposes to build back “more resilient, and more equal.”<sup>238</sup> The reopening guide speaks of the opportunity not only to build back “core parts of our society and our economy to be more resilient to future pandemics,” but also to address “systemic issues” that have limited progress and opportunity.<sup>239</sup>

A more robust commitment to gender equality permeates the “feminist economic recovery plan” proposed by the Hawai’i Commission on the Status of

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232. See *supra* Part III.B. for discussion of the CARES and Families First Acts.

233. Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 6800, 116th Cong. (2020). See *supra* Part III.B. for discussion.

234. *Safe Return to Public Life in Washington State*, *supra* note 165, at 1.

235. *Id.*

236. *Id.* at 3, 5.

237. Press Release, Office of Governor Charlie Baker and Lt. Governor Karyn Polito, Baker-Polito Administration Unveils \$275M COVID-19 Economic Relief Package to Promote Equity and Economic Growth (June 26, 2020), <https://www.mass.gov/news/baker-polito-administration-unveils-275m-covid-19-economic-relief-package-to-promote-equity>.

238. NY FORWARD, *supra* note 40, at 11.

239. *Id.* at 84.

Women in April 2020. The plan emphasizes economic empowerment and robust social services as crucial tools to this systemic change. It is explicitly intersectional in its aims, as signaled by its title: “Building Bridges, Not Walking on Backs,” which may allude to pioneering feminists Cheryl Moraga and Gloria Anzaldúa’s classic collection of writings by women of color, *This Bridge Called My Back*.<sup>240</sup>

The plan calls for centering “marginalized people and communities to build back better” because they are the hardest hit by COVID-19 due to the “combined effects of sexism, racism, classism” and other systems of oppression.<sup>241</sup> In this respect, the plan is specific to the needs of Hawai’i, both in terms of the particular structures of inequality that different populations of women in Hawai’i face and how certain features of the Hawai’i economy contribute to that inequality. At the same time, the plan offers some principles and specific policy recommendations that could usefully inform other recovery plans. For example, the plan calls for supporting “women’s economic independence” and for “the redistribution of unpaid care work.”<sup>242</sup> Second, it takes an inclusive approach, using the term “women+” to embrace cisgendered women and girls as well as trans women and people who identify as nonbinary.<sup>243</sup> Third, it identifies women’s political representation as a recommended principle and practice for a “gender- and socially-responsive recovery,” stating that “women+” should be included “in all levels of consultation, decision-making and communication outreach.”<sup>244</sup> The Hawai’i Commission approvingly points to international recognition that governments should “put women and girls at the centre of their efforts to recover from COVID-19,” and that this starts “with women as leaders, with equal representation and decision-making power.”<sup>245</sup> While simply adding diverse voices and stirring will not necessarily make a difference, it is critical to ensure that care-taking—which has typically been associated with women—and that work on the ground in essential industries—often performed by women of color—are central to any future planning.

This plan, along with the most constructive elements of some state plans and blueprints from organizations dedicated to building a more just economy with better economic security for women (particularly women of color),<sup>246</sup> holds

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240. HAW. STATE COMM’N ON THE STATUS OF WOMEN, *supra* note 41, at 1–20; *see also* THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cheryl Moraga & Gloria Anzaldúa, eds. 4<sup>th</sup> ed. 2015).

241. HAW. STATE COMM’N ON THE STATUS OF WOMEN, *supra* note 41, at 5.

242. *Id.* at 16.

243. *Id.* at 18 (explaining that “references to women+ within [the plan] refer to women, girls, and people who identify as women, including trans women, and who identity as femme, nonbinary and/or genderfluid”).

244. *Id.* at 15–16.

245. *Id.* at 6 (quoting Antonio Guterres, UN Secretary-General, April 9, 2020).

246. *See, e.g.,* Dominique Derbigny, *On the Margins: Economic Security for Women of Color Through the Coronavirus Crisis and Beyond*, CLOSING THE WOMEN’S WEALTH GAP, 5-6(2020), <https://>

promise for transformative change.<sup>247</sup> Because the pandemic has so clearly revealed major gaps in the social safety net and in gender equity, recovery provides the possibility for addressing those gaps.<sup>248</sup> To be clear, creative and transformative responses will need to address a broad array of gender inequities revealed and heightened by the pandemic, and will face the same challenges to implementation that such programs confronted prior to the pandemic. This Part focuses particularly on responding to the gender inequities discussed above relating to work and family and the disproportionate role of women—particularly, women of color—in providing essential but undervalued care work.

## B. CRUCIAL ELEMENTS: ADDRESSING GENDER INEQUITIES IN THE WORKPLACE AND SOCIAL SERVICES

A feminist economic recovery plan needs to address a cluster of workplace issues, including mandated paid leave, closing the gender pay gap, and supporting the care economy. Such a plan must also ensure access to social services that are integral to gendered aspects of family and work, such as reproductive health care and domestic violence resources.

Moreover, concerns about workplace flexibility, both in terms of managing a work-from-home economy and acknowledging that such a form of work is less available for women in lower-paid jobs, must also inform any feminist economy recovery plan. Thus, for example, supporting child care supports working mothers, regardless of whether they must work at a workplace (such as a hospital or nursing home) or are able to work from home.

### 1. Paid Leave

While Congress took some tentative first steps towards paid family leave during the early days of the pandemic (as discussed in Part III), that legislation was incomplete. Providing paid family and medical leave for all workers, regardless of whether they work at small businesses or are deemed “essential,” has been a longstanding priority for feminist organizations, and Congress has considered such legislation during the pandemic, but without taking action.<sup>249</sup>

Individual states should also make paid leave a priority in their recovery plans. Particularly in the absence of federal legislation beyond the CARES Act, the role of states is critical. Some states already had paid family and/or sick leave policies

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womenswealthgap.org/wp-content/uploads/2020/04/OnTheMargins\_April2020\_CWWG.pdf; Mason, *supra* note 4, at 6 (offering a “blueprint for a gender-equitable recovery”).

247. As Ai-jen Poo and Palak Shah, directors of the National Domestic Workers Alliance, powerfully urge: “We are at a critical juncture. The future of work will be decided by how we respond to this moment.” Poo & Shah, *supra* note 94, at 2.

248. In the words of the Hawai’i Commission: “This is our moment to build a system that is capable of delivering gender equality.” HAW. STATE COMM’N ON THE STATUS OF WOMEN, *supra* note 41, at 1.

249. See Providing Americans Insured Days of Leave Act, S. 3513, 116th Cong. (2020) (introduced by Senator Patty Murray).

prior to the pandemic (as discussed in Part II).<sup>250</sup> Since then, numerous state and local governments have considered—and in some instances, enacted—additional leave laws in light of the pandemic. These proposals generally: (1) expand existing requirements for sick and family leave (e.g., as in New York); (2) include protections for workers who have been infected or need to quarantine (e.g., as in Colorado); or (3) propose entirely new legislation on paid sick leave.<sup>251</sup>

In addition to encouraging state leave policies, a feminist recovery plan would entail the U.S. finally ending its outlier status and enacting national family and sick paid leave legislation. Such leave policy should include provisions to make it more likely that men (and not only women) provide caregiving, such as a “use it or lose it” period of paid paternal (or second parent) leave.<sup>252</sup> Such initiatives would help address the needs of the many workers who (as discussed earlier) do not have adequate leave through their employers.<sup>253</sup> Perhaps the U.S. may finally take that step. The 2020 Democratic Party Platform recognized the U.S.’s outlier status, declaring that it is “alone among advanced economies in guaranteeing neither paid sick leave nor paid family leave for all workers.”<sup>254</sup> President Biden’s American Rescue Plan, as proposed, focuses on paid leave as part of the

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250. See *supra* note 83 for discussion of Connecticut and Oregon. Washington, for example, offers up to eighteen weeks of paid leave (provided a worker has worked at least 820 hours in a year) to care for a new child, a qualifying family member, or family member on leave from the military; employees may receive up to ninety percent of their salary. See generally Shelbie Watts, *Paid Leave Laws 2020: What’s new?*, HOMEBASE (July 2, 2020), <https://joinhomebase.com/blog/paid-leave-laws-2020-whats-changing/#:~:text=As%20of%20July%201%2C%202020%2C%20all%20private%20employers%20must%20provide,their%20own%20serious%20health%20condition> (describing aspects of state paid leave laws).

251. See Chai R. Feldblum et al., *State and Local Leave Initiatives and Response to the COVID-19 Pandemic*, MORGAN LEWIS (Mar. 19, 2020), <https://www.morganlewis.com/pubs/state-and-local-leave-initiatives-and-responses-to-the-covid-19-pandemic>; see also Katharine Marshall & Catherine Stamm, *States, Cities Tackle Covid-19 Paid Leave*, MERCER (last updated Dec. 16, 2020), <https://www.mercer.com/content/dam/mercer/attachments/global/law-and-policy/gl-2020-states-cites-tackle-covid-19-paid-leave.pdf?upd>.

252. This type of policy resembles the so-called “daddy quota” or “daddy month” in the leave policies of several Scandinavian countries. See Nathaniel Popper, *Paternity Leave Has Long-Lasting Benefits. So Why Don’t More American Men Take It?*, N.Y. TIMES (April 17, 2020), <https://www.nytimes.com/2020/04/17/parenting/paternity-leave.html>. This policy aims at greater equity in the division of caregiving in a two-parent family. For a proposal aimed at providing extended paid leave to sole-parent families, see Deborah Widiss, *Equalizing Parental Leave*, 105 MINN. L. REV. 1, 51-54 (forthcoming 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3587979](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587979).

253. As the organization Closing the Women’s Wealth Gap (CWWG) details: “Three in four Latinx workers . . . and three in five Black workers . . . report not having access to any paid or partially paid parental leave through their employers.” Derbigny, *supra* note 246, at 12. CWWG explains how the absence of such leave contributes to the gendered wealth gap: “Given that women are more likely to take on caregiving roles, the absence of a paid leave policy means that they must take unpaid time out of the workplace, forego the accumulation of social security or retirement benefits, and spend down savings or take on debt when a child or loved one requires care.” *Id.* at 13.

254. 2020 Democratic Party Platform, DEMOCRATIC NAT’L COMM. 1.4 (July 31, 2020), <https://democrats.org/where-we-stand/party-platform/building-a-stronger-fairer-economy/>. The Platform proposed at least 12 twelve weeks of paid family and medical leave for all workers and family units “to enable new parents to recover from childbirth and bond with their newborns, foster or adopted children, and allow all workers to take extended time off to care for themselves or ailing loved ones.” *Id.*

economic and pandemic recovery.<sup>255</sup> Important provisions include renewing the CARES Act emergency paid leave requirement, but “eliminate[ing] the exemptions for employers with more than 500 and less than 50 employees” and expanding the leave to “over 14 weeks” in various circumstances, including “to help parents with additional caregiving responsibilities when a child or loved one’s school or care center is closed.”<sup>256</sup> These are promising steps to support working families—and their children.

It is critical, however, that paid leave laws work in tandem with a broader set of policies and cultural commitments that create gender equity around work and family roles of the sort previewed in Part III.B. Otherwise, they may have unintended consequences. For example, when California enacted its first paid leave law, which provided up to six weeks of partial paid leave funded by a payroll tax on employees, research showed “employment rates for first-time mothers using the paid leave dropped 7% over a decade while their yearly wages dropped 8%,” while employment rates and yearly wages did not likewise drop for men who took the leave.<sup>257</sup> Over ten years, “women who took the leave lost an estimated \$24,000 . . . compared to women who didn’t.”<sup>258</sup> Economists theorized about different explanations for this unintended consequence, including discrimination by employers against women who took the leave once they returned to work, but concluded the more likely explanation was women’s decision to invest more in their children and either to reduce their work hours to leave the workforce.<sup>259</sup> The study does not undermine the value of paid leave, but emphasizes the need for additional policy changes in areas like subsidizing child care and social changes around gendered caregiving.<sup>260</sup>

The takeaway, then, is not that paid leave is a necessity only in a global pandemic, but rather that paid leave—with other related reforms—is a necessity for a growing an equitable economy that ensures participation of both men and women in work and care, and that protects children.<sup>261</sup> The “business case” for paid leave

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255. President-elect Biden Announces American Rescue Plan, *supra* note 44, at 7–8.

256. *Id.*

257. See Andrew Keshner, *California’s paid leave law has cost new mothers an estimated \$24,000 over a decade, research shows*, MARKETWATCH (Oct. 29, 2019, 12:56 PM), <https://www.marketwatch.com/story/californias-paid-leave-law-has-cost-new-mothers-an-estimated-24000-over-a-decade-whats-driving-the-lost-earnings-2019-10-29>.

258. *Id.*

259. *Id.*

260. *Id.*; see Elisabeth Jacobs, *Can women’s “sagging middle” help explain the fall in U.S. labor force participation rates?*, WASH. CTR. FOR EQUITABLE GROWTH 1, 4 (Feb. 16, 2017), <https://equitablegrowth.org/can-womens-sagging-middle-help-explain-the-fall-in-u-s-labor-force-participation-rates/> (“[T]he lower cost and higher quality of childcare might be the more important of [paid leave or child care] for making a noteworthy difference in women’s labor force participation over the course of a lifetime.”).

261. Paid leave “improves worker retention, which saves employers money through reduced turnover costs; . . . increases worker productivity; . . . improves employee loyalty and morale; . . . allows smaller businesses to compete better with larger businesses;” and “heightens American businesses’ competitiveness in the global economy.” *Paid Family and Medical Leave: Good for Business*, NAT’L



is also strong: such leave increases employee “loyalty and morale, thus reducing employee turnover;” “allows smaller businesses to compete better with larger businesses;” and “heightens American businesses’ competitiveness in the global economy.”<sup>262</sup> The takeaway should be that we cannot afford to leave anyone behind.

## 2. Equal Pay and Investing in Women as Business Owners

The pandemic has helped to highlight women’s performance of essential tasks with high health risks, and how such work is devalued. This devaluing can be measured monetarily, as discussed throughout this Article, by the gender pay gap and gender overrepresentation in low-wage jobs. As an Institute for Women’s Policy Research report explains, “The gender wage gap compounds women’s economic vulnerability during times of economic downturns.” Because they are paid less, women may experience “additional financial hardship because they have fewer savings to cover emergencies or basic expenses” in the face of unexpected loss of employment or income.<sup>263</sup> Though the pandemic has exacerbated women’s economic insecurity in these areas, federal and state relief have offered little in addressing the problem directly. A feminist recovery plan would target that economic insecurity through tackling the gender wage gap, raising the minimum wage, and supporting women as business owners;<sup>264</sup> a feminist recovery plan would not just focus on women but on improving the economic security of all genders.

The gender pay gap inequities persist, more than half a century after the Equal Pay Act of 1963. Numerous factors contribute to this persistent pay gap, including, as the National Partnership for Women and Families observes, “gender and racial discrimination, workplace harassment, job segregation and a lack of workplace policies that support family caregiving, which is most often performed by women.”<sup>265</sup> Combating these workplace inequities will require investment in women’s economic empowerment. In part, this means raising the minimum wage and supporting fair scheduling practices and pay transparency by adopting mandatory public reporting on wage gaps.<sup>266</sup> Encouragingly, President Biden and

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P’SHIP FOR WOMEN & FAMILIES 1, 2 (Sept. 2018), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-good-for-business.pdf>.

262. *Id.*

263. Mason, *supra* note 4, at 23.

264. It would also ensure that public welfare programs do not impose punitive work requirements. See Naomi Cahn & June Carbone, *Uncoupling*, \_\_ ARIZ. ST. L.J. \_\_ (forthcoming 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3742979](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3742979). Indeed, Congress suspended the work requirement for the Supplemental Nutritional Assistant Program (SNAP) during the pandemic. Andrew Hammond et al., *How the Covid-19 Pandemic Has and Should Reshape the American Safety Net*, 105 MINN. L. REV. HEADNOTES 154, 169 (2020).

265. See *America’s Women and the Wage Gap*, NAT’L P’SHIP FOR WOMEN & FAM.S, 1, 1 (Sept. 2020), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/americas-women-and-the-wage-gap.pdf>.

266. Sarah Jane Glynn et al., *7 Actions that Could Shrink the Gender Wage Gap*, CTR. FOR AM. PROGRESS, 1, 2-3 (Sept. 18, 2014, 12:58 PM), <https://www.americanprogress.org/issues/women/reports/2014/09/18/97421/7-actions-that-could-shrink-the-gender-wage-gap/>.

Vice President Harris support raising the federal minimum wage to \$15; Biden has expressed hope that the new Democratic control of the House and Senate will “raise the odds of prompt action” on this increase.<sup>267</sup>

Other necessary measures to address the gender pay gap include more robust investment in early childhood education and “affordable, high quality child care” (discussed below).<sup>268</sup> Advocacy for such reforms pre-existed the pandemic, but the pandemic provides a potential opening to implement them.

Hawai’i’s *Building Bridges, Not Walking on Backs* specifically calls for raising the minimum wage as well as for programs that will enhance women’s access to capital outside the low-wage and commercial sector. The plan’s proposals include funds for retraining and professional mobility, supporting social entrepreneurship approaches, and promoting gender and racial equity programs within male dominated industries.<sup>269</sup>

Entrepreneurship in the form of business ownership is an important avenue toward women’s economic empowerment and closing the wealth gap. To that end, businesses owned by “women and minorit[ies]”—and, particularly, by Black women—were on the rise before the pandemic, but the pandemic had a devastating impact on many of those businesses.<sup>270</sup> On the one hand, federal relief through the CARES Act prioritized support through business loans and grants for “socially and economically disadvantaged individuals, women . . . and businesses in operation for less than 2 years.”<sup>271</sup> On the other, reports of who actually received these loans and grants indicate that while seventy-nine percent of Black business owners applied for Paycheck Protection Program money (PPE), only forty percent had such applications approved, compared with fifty-two percent overall.<sup>272</sup> The program also “f[e]ll short of supporting many women of color,” for example, since “less than 7% of businesses owned by women of color have employees.”<sup>273</sup> Notably, the second stimulus package renewed the PPE program, and also specifically designated \$12 billion for minority-owned businesses.<sup>274</sup>

At the state level, economic recovery has included the prioritization of women- and minority-owned businesses. The Massachusetts economic recovery plan commits to “funding more affordable housing, implementing critical zoning reform, stabilizing neighborhoods, and supporting minority-owned businesses

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267. Brittany De Lea, *Biden Says Workers ‘Entitled’ to \$15 Minimum Wage*, FOX BUS. 1, 1 (Jan. 8, 2021), <https://www.foxbusiness.com/economy/biden-15-minimum-wage>.

268. *Id.*

269. HAW. STATE COMM’N ON THE STATUS OF WOMEN, *supra* note 41, at 7–14.

270. Ali Vitelli and Molly Roecker, *The She-cession: Black Women Owned Businesses Were Thriving, then the Pandemic Struck*, MSNBC 1, 2 (Sept. 14, 2020), <https://www.nbcnews.com/news/us-news/black-women-business-owners-fight-against-wave-closures-n1240018>.

271. Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. Title I, § 1102, 134 Stat. 293 (2020) (enacted).

272. Vitelli & Roecker, *supra* note 270, at 2.

273. Derbigny, *supra* note 246, at 17.

274. Lobosco & Luhby, *supra* note 168, at 2.

with record levels of funding.”<sup>275</sup> For “[w]omen, minority, veteran, and immigrant small business owners [who] face disproportionate challenges to accessing capital to grow their enterprises” the plan recommends a \$25 million increase in funding for Community Development Financial Institutions.<sup>276</sup>

### 3. Child Care and Support for Remote Learning

Access to high-quality, affordable child care is key to economic recovery and building resilience, as it enables parents and other adult caregivers to work, and lack of such access poses a major obstacle to such resilience.<sup>277</sup> The problem with the current caregiving system in the U.S. is one of the many “cracks in our systems the pandemic exposed and exacerbated,” and creating a better approach to child care can help achieve gender equality.<sup>278</sup>

During the pandemic, the “Essential Workers Bill of Rights,” sponsored by Senator Elizabeth Warren and Representative Ro Khanna, included “robust funding” to help child care providers and ensure access by essential workers to such care.<sup>279</sup> While the CARES Act provided some support in the short term,<sup>280</sup> child care “deserts” predate the pandemic and show the need for additional funding and broader recognition of the interrelationship between economic sustainability and carework. But the second stimulus package included only \$10 billion, a “down payment” (as discussed in Part III) on the broader investment needed in the infrastructure of the child care system.

While immediate funding was necessary to keep the child care industry and families afloat during the pandemic, additional underlying structural changes are also necessary to stabilize the future of the child care system in the United States,

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275. Press Release, Baker-Polito Administration Unveils \$275M COVID-19 Economic Relief Package to Promote Equity and Economic Growth, *supra* note 237, at 2.

276. *Id.*

277. See Eliza Shapiro & Patrick McGeehan, *Big New Obstacle for Economic Recovery: Child Care Crisis*, N.Y. TIMES (July 10, 2020) <https://www.nytimes.com/2020/07/10/nyregion/nyc-school-daycare-reopening.html> (reporting that New York City’s announced plan to reopen its school system on a part-time basis in September could lead to a “new child care crisis” threatening economic recovery if parents could not go back to work because of need to watch their children); Rebecca Ullrich et al., *Child Care is Key to Our Economic Recovery*, NAT’L WOMEN’S L. CTR. (Apr. 2020), <https://nwlc-ci49tixgw5lhab.stackpathdns.com/wp-content/uploads/2020/04/CCKeytoEconomicRecoveryNWLC.pdf>; *Improving and Expanding Child Care Assistance to Stabilize Our Economy*, NAT’L WOMEN’S L. CTR. (2020), <https://nwlc-ci49tixgw5lhab.stackpathdns.com/wp-content/uploads/2020/04/Improving-and-Expanding-Child-Care-Assistance-to-Stabilize-Our-Economy-1-2.pdf>.

278. Marianne Schnall, *Interview with Melinda Gates: How Revolutionizing Our Caregiving System is “The Key to Reopening the Economy,”* FORBES, (May 11, 2020), <https://www.forbes.com/sites/marianneschnall/2020/05/11/interview-with-melinda-gates-how-revolutionizing-our-caretaking-system-is-the-key-to-reopening-the-economy/#2a4f9b734447>.

279. Press Release, Elizabeth Warren and Ro Khanna Unveil Essential Workers Bill of Rights (April 13, 2020), <https://www.warren.senate.gov/newsroom/press-releases/elizabeth-warren-and-ro-khanna-unveil-essential-workers-bill-of-rights>.

280. See CARES Act, *supra* note 163.

as well as the economy.<sup>281</sup> By investing in this tool, children receive the continuity of care critical for healthy growth and development,<sup>282</sup> while parents—particularly low-paid workers, of which a majority of are women—are able to re-enter the workforce and increase the demand for goods with the money they are now able and willing to spend.<sup>283</sup> For these reasons, child care should be recognized as a “public good,” rather than simply a “private obligation for families.”<sup>284</sup>

Further, the majority of child care providers are small businesses owned by women, and supporting the child care system will allow such facilities to remain in business with the means to pay living wages to their employees.<sup>285</sup> Indeed, while the child care system cannot function without its workers, those workers make “an average of \$10.72 per hour,” with some workers earning below the federal minimum wage.<sup>286</sup> The majority of these low-wage care workers are women of color.<sup>287</sup>

Thus, a gender-equitable recovery must include a “national care system” that is “able to meet the needs of all families, raise wages for workers, and provide high-quality child care regardless of race, ethnicity, or geographic location.”<sup>288</sup> Building such a care infrastructure should begin with state and federal child care policies that will increase access, affordability, and quality.<sup>289</sup> Two examples of proposed federal legislation that would accomplish these aims of access, affordability, and quality are the Child Care for Working Families Act (proposed by Senator Patty Murray and Representative Bobby Scott) and the Universal Child Care and Early Learning Act (proposed by Senator Elizabeth Warren). Both bills propose sliding scale payment options so that families would only pay what they could afford, investment in workforce training and compensation, and incentives to increase the number and quality of child care centers.<sup>290</sup>

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281. As the National Women’s Law Center (NWLC) explains: “A well-resourced, equitable child care system can be an effective tool at helping families weather and rebound from an impending recession.” *Improving and Expanding Child Care Assistance to Stabilize Our Economy*, *supra* note 277, at 2.

282. *Id.*

283. *Id.*

284. Mason, *supra* note 4, at 20. *See also* Julie Kashen et al., *How COVID-19 Sent Women’s Workforce Progress Backward*, CTR. FOR AM. PROGRESS (Oct. 2020), <https://production-tcf.imgix.net/app/uploads/2020/10/29161832/Womens-Labor-Force-Participation-2.pdf>. (“Congress must declare child care a public good and pass legislation to ensure all families can access safe, affordable, high-quality, and convenient child care in their own homes, family care homes, or child care centers.”)

285. *Improving and Expanding Child Care Assistance to Stabilize Our Economy*, *supra* note 277, at 2.

286. Mason, *supra* note 4, at 19.

287. *Id.*

288. *Id.* at 8.

289. *See Principles for Child Care: A Vision for Investing in High-Quality, Affordable Child Care*, NAT’L WOMEN’S L. CTR. (2019), <https://nwlc-ciww49tixgw5lbbab.stackpathdns.com/wp-content/uploads/2019/10/Child-Care-Principles-2.pdf>.

290. Child Care for Working Families Act of 2019, H.R. 1368, 116th Cong. (2019); Universal Child Care and Early Learning Act, H.R. 3315, 116th Cong. (2019).

Though these proposals predated the COVID-19 crisis, the necessity of immediate and lasting relief for this industry gained new attention through the 2020 presidential campaign. As a candidate, Joe Biden announced his plan for a “caregiving economy,” necessitated by the fact that “we’re trapped in a caregiving crisis within an economic crisis within a health care crisis.”<sup>291</sup> The plan includes tax credits and subsidies to help make early childhood education more affordable and a business credit for construction costs to build more child care facilities; free pre-kindergarten for three and four year-olds and access to after-school, weekend and summer care; and increased pay for childcare educators and caregivers.<sup>292</sup> Biden’s subsequent American Rescue Plan reiterates the imperative of “expand [ing] access to high-quality, affordable child care” through such measures.<sup>293</sup> In calling for action to hold child care centers open and stay open safely, the plan recognized the gendered care economy—“early childcare providers are almost entirely women, among whom 40 percent are people of color,” so that closing such centers “could devastate engines of opportunity for minority- and women-owned businesses.”<sup>294</sup> Some jurisdictions already offer free preschool, and the results of the 2020 election brought more attention to this initiative.<sup>295</sup> If the U.S. moves forward with a new “caregiving economy,” the principles elaborated above should help to shape it.

Access to child care for very young children is not the only means for supporting children and their parents. As discussed above, school closures brought a shift to remote learning. Among parents, mothers disproportionately took on the additional labor school closures brought, and differences in race and class influenced how parents coped with these challenges and the extent to which they could employ others or try innovative solutions. If remote learning remains part of the future of education while the U.S. faces a second wave or future pandemics, it is critical to generate policies to support parents and other caregivers who must juggle paid work and parenting.

Another hurdle for families is access to technology and internet necessary to participate in remote learning. According to a report compiled by the National Center for Education Statistics, in 2017, approximately fourteen percent of

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291. Eric Bradner & Sarah Mucha, *Biden Unveils “Caregiving Economy” Plan for Expanded Child Care and Home Care*, CNN (July 21, 2020, 3:15 PM), <https://www.cnn.com/2020/07/21/politics/joe-biden-caregiving-plan/index.html>.

292. *Id.* By comparison, the Republican-proposed Health, Economic Assistance, Liability Protection and Schools (HEALS) Act offered \$15 billion to aid in safe reopenings and tuition payments, which child-care advocates said falls far short. Megan Leonhardt, *Republicans’ Relief Plan Includes \$15 Billion Bailout of the Child-Care Industry—But It Falls Short of What’s Needed, Advocates Say*, CNBC (July 28, 2020, 9:49 AM), <https://www.cnbc.com/2020/07/28/republicans-15-billion-bailout-of-child-care-industry-falls-short.html>.

293. President-elect Biden Announces American Rescue Plan, *supra* note 44.

294. *Id.* at 13.

295. See Anna North, *What this Oregon County’s “Preschool for All” Victory Means for Child Care in America*, VOX (Nov. 4, 2020), <https://www.vox.com/2020/11/4/21536615/oregon-measure-26-214-preschool-results-portland-multnomah>.



children ages three to eighteen lacked internet access at home.<sup>296</sup> That general figure masks disparities: thirty-seven percent of American Indian and Alaska Native children, nineteen percent of Black children, and seventeen percent of Hispanic children lack access, as compared to twelve percent of white and Asian children.<sup>297</sup> “Pandemia: Latinos in Crisis,” a CBS News special, highlighted the consequences of this digital divide with stories of children sitting outside McDonald’s parking lots to access Wi-Fi to receive and submit assignments.<sup>298</sup> The special noted the additional dilemma faced by older students whose parents are essential workers, who cannot focus on their own work when tasked with taking care of younger siblings.<sup>299</sup>

While some school systems opted to make schoolwork optional, others (e.g., in Atlanta, Los Angeles, and New York City) formed partnerships with businesses to provide adequate technology. These included working with Apple, T-Mobile, and Verizon to provide tablets, internet access, and online teaching training to children in need.<sup>300</sup> At the federal level, the digital divide was not specifically addressed in legislation, though the CARES Act included \$30.75 billion for states to use in support of K-12 and higher education.<sup>301</sup> Additionally, the Federal Communications Commission implemented the Keep Americans Connected Pledge, requesting broadband and telephone service providers not to terminate services, but instead waive late fees and open up Wi-Fi hotspots to those affected by the pandemic.<sup>302</sup> Though more than 800 companies signed the pledge, it ended June 30, 2020. Longer term, a feminist recovery plan would highlight the underappreciated role of educators (including early childhood educators) and also encourage innovative approaches that address the inequities in the current educational system.<sup>303</sup> It is encouraging, for example, that Florida invested \$500 million of the budget towards increases in K-12 and preschool teacher pay,

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296. Nat’l. Ctr. For Educ. Statistics, *The Condition of Education 2019*, 144 U.S. DEP’T OF EDUC. xxi (2019), <https://nces.ed.gov/pubs2019/2019144.pdf>.

297. *Id.*

298. Maria Elena Salinas, *Without Wi-Fi, Low-Income Latino Students Resorted to Doing Homework in Parking Lots to Access Public Hotspots*, CBS NEWS (July 17, 2020, 6:58 AM), [https://www.cbsnews.com/news/low-income-latino-communities-digital-divide-coronavirus-pandemic/?fbclid=IwAR27lugiO35hNqRoZuhayb2eBmDXKQb8yH\\_UBeHg-ns866BnuTHVZtb59W4](https://www.cbsnews.com/news/low-income-latino-communities-digital-divide-coronavirus-pandemic/?fbclid=IwAR27lugiO35hNqRoZuhayb2eBmDXKQb8yH_UBeHg-ns866BnuTHVZtb59W4).

299. *Id.*

300. Lauren Camera, *Disconnected and Disadvantaged: Schools Race to Give Students Access*, U.S. NEWS (Apr. 1, 2020), <https://www.usnews.com/news/education-news/Articles/2020-04-01/schools-rush-to-get-students-internet-access-during-coronavirus-pandemic>.

301. Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. 134 Stat 281, 564-570 (2020) (enacted).

302. FED. COMM’NS COMM’N, KEEP AMERICANS CONNECTED, <https://www.fcc.gov/keep-americans-connected>.

303. See, e.g., Mason, *supra* note 4, at 8 (identifying as priorities in a “gender-equitable recovery” and “increased compensation for early care educators to attract and retain skilled educators and caregivers”).

moving the state to the top five for highest starting teacher salary.<sup>304</sup> Though proposed before the pandemic, the news release in June 2020 focused on the underappreciated essential services teachers provide.<sup>305</sup> As schools reopen for in-person learning, increased aid is crucial, particularly in helping children left behind by the pandemic close the education gap, such as through extended school days, after-school programs, and intensive tutoring.<sup>306</sup>

In addition, school closures highlighted a problem “hidden in plain sight”: the food insecurity, or hunger, in the United States experienced by millions of Americans.<sup>307</sup> Many families were faced with the sudden need to provide additional meals for their school-aged children. Indeed, the pandemic resulted in a doubling of households “with children who are food insecure.”<sup>308</sup> Recognition of this problem prompted some positive action.<sup>309</sup>

With the threat of approximately thirty million students (or more than half of children who are school age) who regularly depended on school breakfasts and lunches going hungry,<sup>310</sup> the U.S. Department of Agriculture began approving

304. Press Release, Governor Ron DeSantis Signs Historic Teacher Pay Increases into Law (June 24, 2020), <https://www.flgov.com/2020/06/24/governor-ron-desantis-signs-historic-teacher-pay-increases-into-law/>.

305. See Andrew Atterbury, *DeSantis Kills Online Learning Program Amid Virus Resurgence*, POLITICO FLORIDA (June 30, 2020, 2:02 PM), <https://www.politico.com/states/florida/story/2020/06/30/desantis-kills-online-learning-program-amid-virus-resurgence-1296178>; Greg Allen, *Florida Teachers Sue to Block School Coronavirus Reopening Mandate*, NPR (July 20, 2020, 4:57 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/07/20/893232710/florida-teachers-sue-to-block-school-coronavirus-reopening-mandate>.

306. See June Carbone et al., *Failure to Shore Up State Budgets May Hit Women's Wallets Especially Hard*, THE CONVERSATION (Sept. 29, 2020), <https://theconversation.com/failure-to-shore-up-state-budgets-may-hit-womens-wallets-especially-hard-145524>; Laura Meckler & Hannah Natanson, “A Lost Generation”: Surge of Research Reveals Students Sliding Backward, Most Vulnerable Worst Affected, WASH. POST, (Dec. 6, 2020), [https://www.washingtonpost.com/education/students-falling-behind/2020/12/06/88d7157a-3665-11eb-8d38-6aea1adb3839\\_story.html](https://www.washingtonpost.com/education/students-falling-behind/2020/12/06/88d7157a-3665-11eb-8d38-6aea1adb3839_story.html); Emma Dorn et al., *COVID-19 and Learning Loss – Disparities Grow and Students Need Help*, MCKINSEY & CO. (Dec. 8, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help#>.

307. See Adrian Nicole LeBlanc & Brenda Ann Kenneally, *America at Hunger's Edge*, N.Y. TIMES MAG., (Sept. 6, 2020), <https://www.nytimes.com/interactive/2020/09/02/magazine/food-insecurity-hunger-us.html> (special magazine issue documenting how the pandemic is revealing food insecurity in America).

308. Sara Bleich et al., *Why Partisan Politics Keeps 14 Million Hungry Children From Getting the Food They Need*, USA TODAY (Oct. 28, 2020), <https://www.usatoday.com/story/opinion/2020/10/28/how-politics-keeps-14-million-american-kids-getting-enough-food-column/6051427002/>.

309. See Lauren Bauer & Jana Parsons, *Why Extend Pandemic EBT? When Schools are Closed, Many Fewer Eligible Children Receive Meals*, BROOKINGS INST. (Sept. 21, 2020), <https://www.brookings.edu/blog/up-front/2020/09/21/why-extend-pandemic-ebt-when-schools-are-closed-many-fewer-eligible-children-receive-meals/> (“[S]chool meal programs are the frontline in combating child hunger in the United States”).

310. See Bleich et al., *supra* note 308; Kara Billings & Randy Aussenberg, CONG. RSCH. SERV., R43783, SCHOOL MEALS PROGRAMS AND OTHER USDA CHILD NUTRITION PROGRAMS: A PRIMER, 5–6 (2019) (reporting that the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program serve, respectively, 30 million, 14.7 million, and 6.1 million children a day).

state requests to serve meals during school closures.<sup>311</sup> Individual school systems used this approval to commit to serving food for the remainder of the schools' closures.<sup>312</sup> At the federal level, the Families First Act included similar measures to maintain access to student lunches. The provision simplified the approval process for states that requested meal program waivers, including waivers that allowed lunches to be served outside of school and care settings.<sup>313</sup> Additionally, the increase in funding for the Supplemental Nutrition Assistance Program helped address this area of food insecurity.<sup>314</sup> A feminist recovery plan should reckon with the deeper, systemic inequities that contribute to food insecurity in America (as well as continue to work to eliminate this insecurity itself).<sup>315</sup>

#### 4. Elder Care

As with child care, the COVID-19 pandemic highlighted the care needs of older Americans and the precarious condition of the undervalued workforce that provides elder care. This spotlight on elder care is due in part to the fact that older people, especially those in nursing homes and facilities for the elderly, have been one visible face of the at-risk community.

Women are disproportionately likely to live in nursing homes.<sup>316</sup> And the workforce that provides their care, disproportionately comprised of women of color, is one of the nation's most poorly paid and unprotected.<sup>317</sup> A feminist economic recovery plan must address both the inequities experienced by this workforce<sup>318</sup> and the economic and emotional burden on families who require this care.

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311. See, e.g., Press Release, U.S. Dep't of Agric., *USDA Makes It Easier, Safer to Feed Children in California Amid Coronavirus Outbreak*, Release No. 0176.20 (Mar. 7, 2020), <https://www.usda.gov/media/press-releases/2020/03/07/usda-makes-it-easier-safer-feed-children-california-amid>; Press Release, U.S. Dep't of Agric., *USDA Makes It Easier, Safer to Feed Children Amid Washington State Coronavirus Outbreak*, Release No. 0175.20 (Mar. 6, 2020), <https://www.usda.gov/media/press-releases/2020/03/06/usda-makes-it-easier-safer-feed-children-amid-washington-state>.

312. Abigail Hess, *Widespread School Closures Mean 30 Million Kids Might Go Without Meals*, CNBC (Mar. 14 2020, 8:31 AM), <https://www.cnn.com/2020/03/14/widespread-school-closures-mean-30-million-kids-might-go-without-meals.html>. Similarly, Seattle provided drive-through meal programs for families.

313. Families First Coronavirus Response Act, Pub. L. No. 116-127, 116th Cong. § 2202 (2020).

314. *Id.* at § 2301-2302.

315. See generally LeBlanc, *supra* note 307, at 6, 10–11 (arguing that “our treatment of hunger as an emergency, rather than a symptom of systemic inequities, has long informed our response to it, and as a result, government programs have been designed to alleviate each peak rather than to address the factors that produce them;” “even before the pandemic, food insecurity was entangled with unaffordable housing, health care, costs, unreliable transportation”).

316. See NAOMI CAHN & NINA KOHN, *AGING WHILE FEMALE IN AMERICA* (forthcoming 2022).

317. See PARAPROFESSIONAL HEALTHCARE INSTITUTE, *THE DIRECT CARE WORKFORCE: YEAR IN REVIEW 3* (2018), <https://phinational.org/wp-content/uploads/2018/12/Direct-Care-Workforce-Year-in-Review-2018-PHL.pdf> (87 percent of the workforce is women, and 60 percent of those women are women of color).

318. Such a plan should also address the inequities experienced by the many immigrant healthcare workers among this population. See generally Peters, *supra* note 23; see also *Immigrant Healthcare Workers Are Critical in the Fight Against COVID-19*, NEW AM. ECON. RSCH. FUND (Apr. 9, 2020),

As this older population continues to grow, the number of people involved in formal and informal caregiving of older adults is also expected to rise. Because more adults are expressing a desire to receive this care from home, this heightens the demand for personal care and home health aides.<sup>319</sup> Lack of Medicare support for such services hinders individuals' ability to pay for at-home and facility-based care, often leaving family and friends to provide informal care. Family caregivers "provided an estimated 34 billion hours of care in 2017," which was valued at \$470 billion.<sup>320</sup>

In recent years, a number of federal and state initiatives have implemented innovative ways to support caregiving and caregivers. The National Family Caregiver Support Program funds access to information services and respite services for family caregivers who provide care for adults over sixty, adults with disabilities, or children.<sup>321</sup> Hawai'i's Kupuna Caregivers Program provides up to \$70 per day of supplemental services for unpaid caregivers—around seventy-five percent of whom are women—who work more than thirty hours a week. The money can be used for expenses relating to senior care, such as the costs of adult day care or meals to be delivered to the care recipient.<sup>322</sup> Washington State enacted "the nation's first social insurance program for long-term care," which will reimburse beneficiaries for the cost of long-term services and supports services up to a lifetime cap of \$36,500.<sup>323</sup>

Federal relief plans have provided funding for aging and disability services programs and nursing workforce development, while many state recovery plans specify guidance for older adults. Even so, federal and state officials have debated the place of elder-care guidelines in economic recovery plans. Notoriously, Texas's Lieutenant Governor Dan Patrick went so far as to proclaim that economic recovery should override protecting the lives of parents and grandparents.<sup>324</sup> Conversely, as a candidate, Joe Biden's caregiving plan included \$450

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<https://research.newamericaneconomy.org/report/covid-19-immigrant-healthcare-workers/> (noting that in New York State "more than 400,000 immigrants made up at least one in three healthcare workers in 2018").

319. Joanne Binnett & Kerri Vasold, *2018 Home and Community Preferences: A National Survey of Adults Ages 18-Plus*, AARP (July 2019), <https://www.aarp.org/research/topics/community/info-2018/2018-home-community-preference.html>.

320. Susan C. Reinhard et al., *Valuing the Invaluable: 2019 Update*, AARP PUB. POL'Y INST. (Nov. 2019), <https://www.aarp.org/content/dam/aarp/ppi/2019/11/valuing-the-invaluable-2019-update-charting-a-path-forward.doi.10.26419-2Fppi.00082.001.pdf>.

321. *National Family Caregiver Support Program*, ADMIN. FOR CMTY. LIVING, <https://acl.gov/programs/support-caregivers/national-family-caregiver-support-program> (last visited Oct. 27, 2020).

322. Press Release, State of Hawaii Executive Office on Aging, State Launches Landmark Kupuna Caregivers Program to Help Working Caregivers Pay for Support Services for Older Adults (December 13, 2017), <https://health.hawaii.gov/news/files/2017/12/17-104-State-launches-landmark-Kupuna-Caregivers-Program.pdf>.

323. Bryce Covert, *Washington State Has Created the Nation's First Social-Insurance Program for Long-Term Care*, THE NATION (May 13, 2019), <https://www.thenation.com/article/archive/long-term-care-insurance-washington-elderly/>.

324. Adrianna Rodriguez, *Texas' lieutenant governor suggests grandparents are willing to die for US economy*, USA TODAY (Mar. 24, 2020, 11:50 AM), <https://www.usatoday.com/story/news/nation/2020/03/24/covid-19-texas-official-suggests-elderly-willing-die-economy/2905990001/> ("No one

billion to boost senior care. The funds would be used to increase state Medicaid funding, create innovative models for long-term care outside of traditional nursing homes, support more at-home alternatives, and provide further support to industry workers while increasing jobs.<sup>325</sup> One economic analysis of Biden's plan predicts that such "ambitious" public investment in elder care—combined with Biden's proposed investment in child care—would create millions of new jobs, provide support for women to remain in the labor force, make both child care and elder care more affordable for families, and also improve the wages and training of "the care workforce."<sup>326</sup> This sweeping proposal demonstrates the concept of redefining recovery to include moving forward, rather than moving back to the same place. This instructive forward-looking approach—evident in the Biden/Harris campaign theme, "Build Back Better"—insists that the "unacceptable truths" revealed by the pandemic about "structural weakness and inequalities" call for imagining and building an economy that advances gender and racial equity and working families.<sup>327</sup> Biden's plan for elder care is part of a larger, more comprehensive package that, Ai-jen Poo explained, "approaches the care economy in a holistic way, across the age spectrum."<sup>328</sup>

## 5. Other Crucial Components: Health Care and Protection Against Intimate Partner Violence

Gender equity also entails components such as affordable and good quality health care, including for sexual and reproductive health, and freedom from intimate partner violence. These areas of inequity affect women both in the workplace and the home. Access to health care is as necessary now as it was before the pandemic, only now there is the added barrier of a strained healthcare system. At a time when the social imbalances of gender, race, and wealth are exacerbated, ensuring access to health care must shape federal and state pandemic immediate responses, as well as ensure future protections.

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reached out to me and said, 'as a senior citizen, are you willing to take a chance on your survival in exchange for keeping the America that all America loves for your children and grandchildren?' . . . And if that's the exchange, I'm all in.").

325. Robert Holly, *Biden Announces \$775B Plan to Boost the Caregiver Economy, Support In-Home Care Providers*, HOME HEALTH CARE NEWS (July 21, 2020), <https://homehealthcarenews.com/2020/07/biden-announces-775b-plan-to-boost-the-caregiver-economy-support-in-home-care-providers/>.

326. Josh Bivens, *Ambitious Investments In Child And Elder Care Could Boost Labor Supply Enough To Support 3 Million New Jobs*, ECON. POL'Y INST. (July 21, 2020, 10:49 AM), <https://www.epi.org/blog/ambitious-investments-in-child-and-elder-care-could-boost-labor-supply-enough-to-support-3-million-new-jobs/>; see generally Jerome De Henau & Diane Perrons, *Investing in the Care Economy to Boost Employment and Gender Equality*, WOMEN'S BUDGET GRP. (Mar. 2016), <http://www.lse.ac.uk/gender/assets/documents/news/Investing-in-the-Care-economy.pdf> (noting the positive benefits of investment in child and elder care).

327. *Build Back Better: Joe Biden's Jobs and Economic Recovery Plan for Working Families*, BIDENHARRIS, <https://joebiden.com/build-back-better/#> (last visited January 15, 2021).

328. Paula Span, *Biden's Plan for Seniors is Not Just a Plan for Seniors*, N.Y. TIMES (Nov. 27, 2020), <https://www.nytimes.com/2020/11/27/health/biden-senior-citizens.html>.



*Health care.* According to the Center for American Progress, almost 68 million women and girls in the United States have a pre-existing condition affecting their health.<sup>329</sup> Before the Affordable Care Act (ACA) was enacted, such pre-existing conditions—including pregnancy, childbirth-related procedures, and reproductive cancers—were regularly a basis for denying coverage or charging higher rates.<sup>330</sup> The ACA changed that. Correspondingly, transgender status is no longer a pre-existing condition that allowed denial of coverage.<sup>331</sup>

Moreover, amidst the pandemic, contraceptives, abortions, and routine services have been mischaracterized as non-essential or elective. Additionally, the Trump Administration made two leveraged attacks against the Affordable Care Act. On June 12, 2020, the Department of Health and Human Services released a final rule reinterpreting “sex,” for purposes of discrimination in health care under the ACA, as referring only to “male or female and as determined by biology.”<sup>332</sup> On June 25, 2020, the Trump Administration filed a brief urging the Supreme Court to strike down the Affordable Care Act, arguing against the insurance reforms designed to protect people with pre-existing conditions.<sup>333</sup>

By contrast, even pre-pandemic, several states provided a blueprint for expanding access to health care. Such strategies included additional state-funding for premiums, easier enrollment, year-round enrollment, and requiring states to offer residents a public option.<sup>334</sup> Effective January 1, 2020, for example, California became the first state “to offer premium subsidies for marketplace enrollees with family incomes between 400 and 600 percent” of the federal poverty level, a part of the middle class “ineligible for federal premium assistance under the ACA.”<sup>335</sup>

329. Jamille Fields Allsbroke & Sarah Coombs, *Moving Backward: Efforts to Strike Down the Affordable Care Act Puts Millions of Women and Girls at Risk*, CTR. FOR AM. PROGRESS (Nov. 4, 2019) <https://www.americanprogress.org/issues/women/news/2019/11/04/476643/moving-backward-2/>.

330. Craig Palosky, *Nearly 54 Million Americans Have Pre-Existing Conditions That Would Make Them Uninsurable in the Individual Market without the ACA*, KAISER FAM. FOUND. (Oct. 4, 2019), <https://www.kff.org/health-reform/press-release/nearly-54-million-americans-have-pre-existing-conditions-that-would-make-them-uninsurable-in-the-individual-market-without-the-aca/>; Dania Palanker & Karen Davenport, *Women’s Health Coverage Since the ACA: Improvements for Most, But Insurer Exclusions Put Many at Risk*, THE COMMONWEALTH FUND (Aug. 2, 2016), <https://www.commonwealthfund.org/publications/issue-briefs/2016/aug/womens-health-coverage-aca-improvements-most-insurer-exclusions>.

331. Mul K. Kim, *Being a Transgender Person is No Longer a Pre-existing Condition*, NAT’L CTR. FOR TRANSGENDER EQUALITY (Mar. 29, 2010), <https://transequality.org/blog/being-a-transgender-person-is-no-longer-a-pre-existing-condition>.

332. Press Release, U.S. Dep’t of Health and Hum. Servs., HHS Finalizes Rule on Section 1557 Protecting Civil Rights in Healthcare, Restoring the Rule of Law, and Relieving Americans of Billions in Excessive Costs (June 12, 2020), <https://www.hhs.gov/about/news/2020/06/12/hhs-finalizes-rule-section-1557-protecting-civil-rights-healthcare.html>.

333. Brief for the Federal Respondents at 37, 44, and 19 A, California, et al. v. Texas, et al., (No. 19-840 and No. 19-1019), [https://www.supremecourt.gov/DocketPDF/19/19-840/146406/20200625205555069\\_19-840bsUnitedStates.pdf](https://www.supremecourt.gov/DocketPDF/19/19-840/146406/20200625205555069_19-840bsUnitedStates.pdf).

334. Jesse Nadel, *How States Are Combating Trump’s ACA Sabotage*, CTR. FOR AM. PROGRESS (Aug. 1, 2019, 9:00 AM), <https://www.americanprogress.org/issues/healthcare/news/2019/08/01/472615/states-combating-trumps-aca-sabotage/>.

335. *Id.*

As another example, Governor Jay Inslee signed a law that, by 2021, will provide residents of Washington with a public option for low-cost insurance—the first state to do so.<sup>336</sup>

*Gender-based violence.* As discussed in Part III.A, since the outbreak of COVID-19, the rate and severity of intimate partner violence have both increased around the world.<sup>337</sup> The CARES Act responded to this increase by providing funding to hotlines and for temporary housing, as well as eviction protections for housing programs.<sup>338</sup> While necessary, this relief is inadequate for improving the existing survivor support infrastructure. Instead, advocates argue policymakers must “increas[e] access to paid safe days and unemployment insurance for survivors seeking help; ensur[e] resources for Native American women and other communities at higher risk; and ensur[e] that domestic violence shelters and programs that provide direct support to survivors are deemed essential businesses and receive significant funding.”<sup>339</sup> The updated HEROES Act, passed in the House in October, but not acted on by the Senate, included additional emergency appropriations for state and local programs on the prevention and prosecution of violence against women programs, family violence prevention services, and a national domestic violence hotline.<sup>340</sup> In an encouraging first step, President Biden’s American Rescue Plan recognizes that COVID-19’s exacerbation of domestic violence and sexual assault has created a “shadow pandemic” for “many women and girls who are largely confined to their home with their abuser and facing economic insecurity that makes escape more difficult.”<sup>341</sup> The plan calls for “at least \$800 million in supplemental funding for key federal programs that protect survivors.”<sup>342</sup>

Addressing gender-based violence during the pandemic and in the “long-term recovery” is an element in the Hawai’i Commission’s feminist plan.<sup>343</sup> Focusing both on domestic violence and sex trafficking, the plan diagnoses an “acute

336. *Id.* at 4–5.

337. See *supra* Part III.A.4 for discussion of domestic violence.

338. Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281, 492-94 (2020) (describing eviction moratorium); *id.* at 559 (providing funding for domestic violence hotline and temporary housing); see Robin Bleiweis & Osub Ahmed, *Ensuring Domestic Violence Survivors’ Safety*, CTR. FOR AM. PROGRESS (Aug. 10, 2020, 9:01 AM), <https://www.americanprogress.org/issues/women/reports/2020/08/10/489068/ensuring-domestic-violence-survivors-safety/> (discussing funding for the hotline and temporary housing).

339. Shilpa Phadke et al., *What Women Need: An Agenda to Move Women and Families Forward*, CTR. FOR AM. PROGRESS, 40 (June 8, 2020), <https://cdn.americanprogress.org/content/uploads/2020/06/05133219/WhatWomenNeed-COVID.pdf>.

340. H.R. 925, 116th Cong. Div. A Title VIII (as passed by the House Oct. 1, 2020) (dedicating \$2 million to the National Domestic Violence Hotline); *Blog: Don’t Let Congress Ignore Survivors! Senate Action Needed Now*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/blog/posts/action-alert-dont-let-congress-ignore-survivors-senate-action-needed-now> (describing updated HEROES Act as better than original for domestic violence survivors).

341. American Rescue Plan, *supra* note 44, at 16.

342. *Id.*

343. HAWAI’I STATE COMMISSION ON THE STATUS OF WOMEN, *supra* note 41, at 15.

shortage in public interest lawyers, social workers and advocates, housing, and programming to assist victims,” and calls for legislation to address these problems by enacting “loan forgiveness for public interest lawyers,” increasing funding for victim-assistance programs, and creating “a comprehensive campaign” to address gender-based violence.”<sup>344</sup>

States began to offer domestic violence response plans with an emphasis on quick implementation and cultural competency. For example, New York launched a Domestic Violence Task Force to address the pandemic upsurge in domestic violence cases, and it released a list of recommendations to help the state “adapt to the new normal and to transform its approach to domestic violence.”<sup>345</sup> The list includes using new technologies to reach more survivors, providing flexible funding to meet the diverse needs of survivors, providing more housing navigation services, and addressing the specific needs of Black, indigenous, and survivors of color.<sup>346</sup> State recovery plans would do well to adopt and implement such recommendations.

## V. CONCLUSION

As the pandemic passes its first anniversary, gender has “proved to be an enduring cleavage in pandemic experiences.”<sup>347</sup> The gendered effects are evident both in tallies of the pandemic’s numerous costs for women and of warnings of the crisis faced by mothers—in particular—because of the systemic problems the pandemic has laid bare and made worse.<sup>348</sup> The pandemic has reinforced gendered expectations of roles at home, while also reinforcing the gendered wage gap and the gendered and raced nature of paid care work. Paradoxically and tragically, the pandemic’s illumination and exacerbation of such inequalities generates opportunities to center gender in short-term recovery and long-term economic resilience efforts in an intersectional way that reflects race, class, and other identity dimensions.<sup>349</sup>

Moving forward to address these inequalities creates the possibilities for a feminist recovery plan. Such a plan means providing paid family and sick leave, improved child care and public education, and protection from violence. It also means implementing policies relating to workplace flexibility, equal pay, and freedom from employment discrimination, as well as barriers to remote learning,

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344. *Id.*

345. The N.Y. State Council on Women and Girls COVID-19 Domestic Violence Task Force, *COVID-19 Domestic Violence Task Force Recommendations*, 1 (2020), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/DVTF-Report-FINAL.pdf>.

346. *Id.* at 2–4.

347. Dunatchik et al., *supra* note 189.

348. See *What the Pandemic Has Cost Women*, N.Y. TIMES, Feb. 7, 2021, at 12–13 (Special Section: America’s Mothers are in Crisis: Is Anyone Listening to Them?); Jessica Grose, *They’re Tired as Hell and Can’t Take It Anymore*, N.Y. TIMES, Feb. 7, 2021, at 3 (calling condition of mothers “a primal scream”).

349. See *Issues, Agendas*, NAT’L CTR. FOR TRANSGENDER EQUAL. (last visited Oct. 19, 2020), <https://transequality.org/issues/agendas>.

and greater recognition of—and better working conditions for—essential workers.

This article was begun during the summer of 2020, as we witnessed the cracking of the already inadequate care infrastructure during the first several months of the COVID-19 pandemic. Encouragingly, when President Joe Biden and Vice-President Kamala Harris took office, they prioritized building a new care infrastructure that delivered basic income to families with children, increased support for child care, and support for jobs. These are crucial steps towards the more comprehensive feminist recovery plan we envision in this article.