

The Interdependence of Family, State, and Market: Childcare in the Shifting Landscape of the COVID-19 Pandemic

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ABSTRACT

In response to the first wave of the COVID-19 pandemic, the U.S. federal and state governments enacted various supports for childcare, including expanded funding and flexibility for the childcare market, expanded paid leave, more generous and inclusive unemployment insurance, loans available to childcare providers, and tax rebates. In this Article, we trace the distributional consequences of these interventions, focusing on one community in the Boston metropolitan area. We examine whether these interventions support access to childcare through the state, market, and family, in particular considering the make-up of the community's population, which is largely immigrant and of low socio-economic status. Based on observations about how the COVID-era interventions have shifted patterns of childcare access, we offer reflections on welfare capitalism as an analytical framework when considering the distribution of support for care in a Latinx immigrant community. We conclude with suggested interventions to support the women of color whose under-compensated labor underlies systems of care.

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I. INTRODUCTION

The COVID-19 pandemic highlighted what many, particularly low-income families, already knew: the piecemeal childcare system in the United States is broken, leaving families, communities, and other actors in society scrambling to balance work, economic security, and care. When schools and daycares closed in 2020 and 2021, hundreds of thousands of mothers exited the labor force as

childcare became scarce, unsafe, or simply unaffordable.¹ The decision (if available) to remain in the job market or stay home with young children is largely conditioned by the broader political economy of the United States, which offers relatively minimal support to families, workers, and the poor. While mothers of all races disproportionately shoulder the demands of “the second shift,”² mothers of color are more likely to experience the twin pressures of job loss and higher COVID-19 exposure.³ These pressures, coupled with the need to care for young children, are leaving BIPOC communities particularly vulnerable to the economic and health fallout of the pandemic.

In this Article, we analyze how government responses to the COVID-19 crisis have distributed support for the provision of and access to childcare in Chelsea, Massachusetts, a city outside of Boston that is home to a community of undocumented, low-income mothers.⁴ We consider these women in their roles as both mothers and as income-earners. In Chelsea, it is not uncommon for mothers to provide childcare both informally in the context of their families and communities, and more formally, as a means to earn an income outside their communities. However, not all women with children play both roles—particularly in wealthier and whiter communities, some mothers do not earn an income outside the home, and some pay to outsource many childrearing responsibilities—often relying on the labor of women of color.⁵ We are overall interested in how COVID-19 policies impact childcare by supporting some models of caregiving while sanctioning others. Our inquiry is motivated by the central question: how, if at all, have COVID-era policies related to childcare shifted the distribution of support for undocumented women’s childcare labor? We look at this question through the lens of both informal care for their own families and formal care outside of their families.

In answering this question, we are influenced by T.H. Marshall’s concept of social citizenship which argues that the state has a responsibility to guarantee a modicum of economic welfare and security to its citizens so they might live a life

1. Approximately 800,000 women in the U.S. left the workforce in September 2020 alone. Alisha Haridasani Gupta, *Why Did Hundreds of Thousands of Women Drop Out of the Work Force?*, N.Y. TIMES (Oct. 3, 2020), <https://www.nytimes.com/2020/10/03/us/jobs-women-dropping-out-workforce-wage-gap-gender.html>.

2. See generally ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* (Revised ed. 2012).

3. See, e.g., Nicole Bateman & Martha Ross, *Why has COVID-19 Been Especially Harmful for Working Women?*, BROOKINGS (Oct. 2020), <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women/>.

4. In this Article, we often refer to “mothers” rather than parents or caregivers more generally. This choice reflects the fact that it is mothers who perform a disproportionate share of care work. However, we are aware that by focusing on mothers, we run the risk of overlooking care work done by men and others. In response to this concern, we return to ideas about how welfare and labor laws can improve gender inequality in terms of who undertakes care work in the final section.

5. See generally JULIE VOGTMAN, NAT’L WOMEN’S L. CTR., *UNDERVALUED: A BRIEF HISTORY OF WOMEN’S CARE WORK AND CHILD CARE POLICY IN THE UNITED STATES* (2017), https://nwlc.org/wp-content/uploads/2017/12/final_nwlc_Undervalued2017.pdf.

in accordance with the prevailing standards of society.⁶ Through our analysis of the interaction between background conditions and COVID-era laws, we identify access to childcare, including the ability to choose to stay home with one's children, as a key component of social citizenship. We show how access to choice is stratified by immigration status, and we conclude with recommended interventions to enhance the "choice capacity" of the most under-resourced, racialized, class-stratified, and commodified women.

We begin by describing our analytical framework, based on Gøsta Esping-Andersen's tri-partite capitalist welfare state (composed of support provided by the state, market, and family). To enrich this analytical framework, we discuss the history of welfare in the U.S. and its unequal treatment of people based on gender and race, which illuminates the historical devaluing of the care work, particularly that done by women of color, through both labor and social welfare laws. Doing so leads us to question whether this analytical framework adequately supports considering how race and the law interact. Against the backdrop of this analytical framework, we analyze the distributive effects of a set of policies introduced by the federal and Massachusetts governments to support childcare. We focus on the early government response during the first wave of the COVID-19 pandemic in the spring of 2020 (though the government has subsequently introduced additional policies) in the hopes of offering direction for future policy interventions that would build resilience among the most vulnerable caregivers.

II. ANALYTICAL FRAMEWORK: THE WELFARE STATE, CHILDCARE, AND SOCIAL CITIZENSHIP

A. *Childcare Access as an Element of Social Citizenship*

Families in the U.S. can obtain childcare support from three primary sources: the family, typified by a female family member staying home with a child; the market, where a family pays a care provider in exchange for childcare; and the state, which may take the form of a subsidized voucher for use in the childcare market or through free daycare/preschool in the form of a Head Start program.⁷ In terms of market childcare options, there are private centers, non-profit centers, and family daycare. Childcare centers tend to be the largest-scale form of childcare, with multiple classrooms and teachers, a director, and possibly several locations, and may run as a for-profit or a non-profit program. Family daycares serve a small number of children in a residential setting, are generally staffed by two adults, and may or may not be licensed. Both childcare centers and family daycare programs can choose whether to accept vouchers. Additionally, the broader community may provide a source of childcare support in the form of networks of neighbor care, local non-profit support for childcare, and other informal,

6. See generally T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS: AND OTHER ESSAYS* (1950).

7. See *infra* Part IV.B.2 for a description of the Head Start program.

community-based support, sometimes known as family and neighbor care. Generally, family and neighbor care is not regulated or compensated by the state.⁸

A web of state policies influence access to childcare via all four of these sources, often stratified by class and race: low-income families receive residual, work-contingent welfare support to find market care while middle-class families have greater access to social insurance that enables temporary exit from the labor force as well as higher wages to purchase market-based childcare. Because class and race are inextricably linked in the U.S., stratification of childcare by class tends to simultaneously implicate stratification by race.⁹ At the same time, there are important nuances to be found at the intersections of race, class, gender, and immigration status that shape any one person's experiences with childcare. Studying these nuances highlights vulnerabilities that are unique to immigrant women and poor women of color.

Taken together, these social policies matter not just in terms of understanding access to childcare, but also because the right to care and to be cared for is a foundational aspect of social citizenship. Social citizenship encompasses the responsibilities of the state to ensure "the right to a modicum of economic welfare and security."¹⁰ When all citizens in a nation have full access to social citizenship they are able to live at or above a minimum standard of living.¹¹ In today's political economy, where a majority of women work either by choice or economic necessity,¹² state support for childcare must be considered an integral component of social citizenship. Traditional analyses of social citizenship often center the role of the welfare state in supporting poor families. We find, however, with regard to childcare as an element of social citizenship, welfare law and labor law work in tandem to limit full social citizenship for low-income women of color.

We observe that social citizenship is stratified by the state-regulated "private" sphere of labor and employment laws as part of the broader welfare state. The primacy of the market in the liberal state makes work a key access point to social citizenship, and labor and employment laws are key arbiters of what work is recognized and compensated. Labor and employment laws enable the compensation of care labor performed by higher-status workers, including those who can afford to take advantage of family leave. These higher-status workers can access state support for care through labor and employment laws with less waiting and fewer

8. Absent, for example, involvement by the Department of Children and Family.

9. See, e.g., JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* 8–9 (1996).

10. MARSHALL, *supra* note 6, at 11. See generally SONYA MISHLE, *CHILDREN'S INTERESTS/MOTHERS' RIGHTS: THE SHAPING OF AMERICA'S CHILD CARE POLICY* (1999); Ann Shola Orloff, *Gendering the Comparative Analysis of Welfare States: An Unfinished Agenda*, 27 *SOCIO. THEORY* 3 (2009).

11. See generally MARSHALL, *supra* note 6.

12. See *Women in the Workforce: A Databook*, U.S. BUREAU LAB. STAT (Dec. 2019), <https://www.bls.gov/opub/reports/womens-databook/2019/home.htm#:~:text=In%202018%2C%2057.1%20percent%20of,participated%20in%20the%20labor%20force.&text=Women%20also%20have%20become%20more,and%2081%20percent%20in%202018>.

conditions attached. Yet, labor and employment laws reflect and reinforce a continuum where domestic care work is relegated to the domain of what has traditionally been considered women's work.¹³ Care work is written out of labor and employment laws, evidenced by the exclusion of domestic work from New Deal labor and employment laws and the growth of the underground nanny economy supported by undocumented immigrant women today.¹⁴ Thus, ironically, labor and employment laws fail to enable childcare providers to care for themselves and their family, with low wages attached to care work and no federally mandated paid leave. Our study reveals how labor and employment laws act as a vehicle for social welfare and a pillar of social citizenship, and how the legacy of selective exclusion from labor and employment laws' protection stratifies jobs and support for caregiving women of color.

B. Welfare Capitalism and Social Citizenship

In order to more deeply understand how stratification in the labor market influences access to and provision of caregiving, we draw on Gøsta Esping-Andersen's work on welfare capitalism. In his classic *Three Worlds of Welfare Capitalism*, Gøsta Esping-Andersen demonstrates that the redistributive function of the welfare state can only be understood through a relational analysis of support provided by the state, market, and family.¹⁵ The welfare state in the U.S. is characterized by the primacy of the market and the individual, with minimal support provided to the poor, including the poor with children. Esping-Andersen analyzes the redistributive effects of welfare systems along three dimensions: de-stratification across social classes, de-commodification of (mostly male) breadwinners, and defamilialization of traditional caregivers (mostly women). *Stratification* describes how the welfare state shapes social class and class status through the distribution of income and social rights.¹⁶ *De-commodification* indicates whether social rights "permit people to make their living standard independent of pure market forces."¹⁷ Policies that support de-commodification enable a person to exit the labor force as necessary (for example, to care for a child), without risking financial peril. On the other hand, when a person is highly commodified, they must rely on the labor market for economic survival. Esping-Andersen

13. See MICHELE LAMONT, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS AND IMMIGRATION* 26 (2000). See generally LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890–1935* (1994); THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* (1995).

14. On exclusions from New Deal policy, see generally IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTY-FIRST CENTURY AMERICA* (2006). On the global political economy of care, see generally Nicola Yeates, *A Global Political Economy of Care*, 4 *SOC. POL'Y & SOC'Y* 227, 227–234 (2005); Mary Romero, *Nanny Diaries and Other Stories: Imagining Immigrant Women's Labor in the Social Reproduction of American Families*, 52 *DEPAUL L. REV.* 809 (2002).

15. See generally GØSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* (1990).

16. *Id.* at 57.

17. *Id.* at 3.

later added a third dimension, *defamilialization*, to his “three worlds” framework to better account for the effect of welfare policies on women and gendered care work.¹⁸ Defamilialization refers to the degree to which welfare policies relax family care responsibilities. Policies that have a defamilializing effect strengthen the bargaining position of traditional caregivers by relaxing their obligation to oversee domestic care responsibilities. Familializing policies, on the other hand, assume that households will manage their care responsibilities without state support.

Esping-Andersen’s framework is a useful start in analyzing the distributive effects of COVID-19 interventions in caregiving.¹⁹ Distributional analysis using the tripartite framework surfaces ways in which families are dependent, to different degrees, on the market, family, or state for childcare support. It also has the potential to reveal the complex relationship between welfare policy and labor and employment policies, particularly as commodification and familialization are considered together.

However, carrying out the analysis of childcare in Chelsea, Massachusetts, where a substantial proportion of the population is of undocumented immigration status and low-income, allows us to critically reflect on how well the welfare state framework captures experiences of work in the market and family for highly racialized, poor women. In particular, we observe that the welfare capitalism framework does not adequately capture the degree to which childcare is a collective rather than individualistic endeavor. This is pronounced in communities of color with fewer financial resources but appears to have become more prominent across a range of communities during the COVID-19 pandemic.

Our study leads us to the view that analyzing the interdependence of individuals within their communities is essential to understanding the distribution of labor, particularly care labor.²⁰ While both employment laws and welfare laws take a largely individualist approach towards protection and support (labor laws have a more collective dimension, but are largely inaccessible to childcare providers who are often not part of unions), our starting point is more attentive to people in their social context, and particularly their communities. The history of childcare in the U.S. demonstrates how care is a collective endeavor.²¹ Even as caregivers make “choices” between providing care within the family or turning to the market for care, their decision is conditioned by their familial, workplace, and community contexts.²²

18. See GØSTA ESPING-ANDERSEN, *SOCIAL FOUNDATIONS OF POSTINDUSTRIAL ECONOMIES* 47–51 (1999). See also Orloff, *supra* note 10, at 319–22.

19. For other works in this tradition, see JANET HALLEY, *Distribution and Decision Assessing Governance Feminism*, in *GOVERNANCE FEMINISM: AN INTRODUCTION* 253 (Janet Halley et al. eds., 2018). See generally Hila Shamir, *The State of Care: Rethinking the Distributive Effects of Familial Care Policy in Liberal Welfare States*, 58 AM. J. COMP. L. 953 (2010).

20. See generally Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J. L. & FEMINISM 7 (1989); Orloff, *supra* note 10. Nedelsky conceives of relationships as constitutive of autonomy, and dependence and interdependence as important parts of how one sees oneself; Orloff focuses on the relationship between gender and support provided by the welfare state.

21. See generally MISHEL, *supra* note 10.

22. Jane Jensen proposed a “welfare diamond,” adding voluntary organizations to Esping-Andersen’s tripartite structure of the state, market and family. See generally Jane Jensen, *Who Cares?*

However, childcare isn't merely a transactional relationship conditioned by the broader context; rather, caregiving itself is a deeply relational endeavor that is constituted by community ties as much as individual autonomy.²³ Therefore, as we analyze the distributive effects of both labor and welfare policies in the COVID-19 era, we are attuned to the community as a site of care support and the role of the state in creating community ties.

C. Racial Projects and Social Citizenship

Race and immigration status are both significant social categories in America. However, the welfare capitalism framework lacks express language and concepts to make race and immigration status legible in perceiving the distribution of resources across social groups.²⁴ We thus draw on Omi and Winant's theory of racial formation, which considers race a social category with tangible consequences while also continually being formed based on the particular social relations and historical context in which people are embedded.²⁵ In a similar vein, the significance of immigration status is constructed based on the inclusion or exclusion of non-citizens in the welfare state.²⁶ Indeed, the labor and social options available to many immigrants are conditioned by both their immigrant status and how they are racialized. For many migrants from the Global South, documented pathways to immigration are unavailable, forcing them to navigate the precarious informal economy in the shadows of the law.²⁷ Not only do many immigrants from the Global South face legal obstacles to full access to social citizenship, they are also likely to face the power imbalances that accompany their racialized identity.

Similar to our observation that the welfare capitalism framework assumes an individualistically-oriented concept of commodification and defamilialization inapposite to understanding care labor, we further observe that the framework marginalizes the distributional consequences of race and immigration status.

Gender and Welfare Regimes, 4 SOC. POL. 2 (1997). While we rely on Esping-Anderson's tripartite framework in this Article, we acknowledge the importance of community organizations. We also want to emphasize the importance of the dynamic, interconnected ties between people in each context.

23. See Nedelsky, *supra* note 20 (discussing caregiving in the context of special needs children as a relational endeavor between parents, students, and schools).

24. See Robert C. Lieberman, *Race and the Limits of Solidarity: American Welfare State Development in Comparative Perspective*, in RACE AND THE POLITICS OF WELFARE REFORM 45 (Sanford F. Schram et al. eds., 2003).

25. See generally MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S (2014); discussion *supra* Introduction and *infra* Part III. The significance of race and immigration status varies between countries, according to the significance of race and citizenship status in the country's laws and policies.

26. See generally CYBELLE FOX, THREE WORLDS OF RELIEF: RACE, IMMIGRATION, AND THE AMERICAN WELFARE STATE FROM THE PROGRESSIVE ERA TO THE NEW DEAL (2012).

27. See, e.g., Juhu Thukral, *Race, Gender, and Immigration in the Informal Economy*, 4 RACE/ETHNICITY: MULTIDISCIPLINARY GLOB. CONTEXTS 65 (2010); M. Anne Visser and Luis E. Guarnizo, *Room for Manoeuvre: Rethinking the Intersections Between Migration and the Informal Economy in Post-Industrial Economies* 23 POPULATION, SPACE & PLACE 2085 (Oct. 2017); Oussama Ben Atta et al., *Immigration, Integration, and the Informal economy in OECD Countries* (Glob. Lab. Org., Discussion Paper No. 1197, 2022).

Studying the care labor of women of color reveals the limits of welfare capitalism as an analytical framework to observe how race and immigration status influence the distribution of care work. As we show, the analytical power of the framework is weakened because of its limited ability to observe how defamilialization is structured by race and immigration status. Specifically, we observe that the concept of defamilialization may be one that is available only to women with greater resources and who can thus afford the choice to care for their own families; in other words, defamilialization is itself stratified by race and class.

III. WELFARE AND WORK LAW: STATE SUPPORT FOR CHILDCARE

When the COVID-19 pandemic hit, parent-workers were pushed in a number of directions. The choices they made were at least partly conditioned by the ways in which the state offers support for direct labor market participation and familial care provision. Some parents worked from home, others were coerced to work in newly “essential” but precarious jobs away from home, and still others exited the labor market to stay home with their children. Exiting the labor force requires financial security from other sources, including savings, a partner’s income, or state welfare support. As such, parents’ ability to choose whether to exit the labor market to care for their children during the public health emergency was (and remains) largely conditioned by race, class, and immigration status. Poor families obviously have less access to savings and a partner’s income; less obvious is the ways in which race and immigration status limited poor families’ access to state welfare support during the pandemic. The history of access to welfare segregated based on race and immigration status, of which a legacy persists today, helps explain this.

A. *Historical Legacy of the Racial Segregation of Welfare*

Historically, “higher status” welfare supports (such as social insurance) went to the male breadwinner and were tied to jobs exclusively available to White men.²⁸ At the same time, “lower status” supports (such as means-tested public assistance) went to widowed mothers, first through Mother’s Pensions and subsequently through the Aid to Dependent Children program.²⁹ Both forms of public assistance used “moral fitness” to exclude Black mothers from benefits, a tradition that would continue even as public assistance expanded beyond widowed mothers.³⁰

As welfare became perceived as a policy that benefitted Black mothers, public assistance moved away from familialization and towards commodification in

28. See, e.g., QUADAGNO, *supra* note 9, at 22–24. See generally IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005).

29. QUADAGNO, *supra* note 9, at 119.

30. *Id.* See generally GORDON, *supra* note 13.

exchange for public assistance.³¹ Whereas White mothers in the Progressive and New Deal eras received aid to stay home with dependent children, Black mothers in the welfare reform era were forced to work in the low-wage economy to receive direct aid. However, jobs in the low-wage economy often came with unpredictable schedules that did not align with the ability to provide childcare.³² This leaves a mismatch between welfare support, childcare needs, and economic security, ultimately precluding poor Black mothers from full social citizenship.

Welfare policies also have stratifying effects along immigration status. Despite being “a nation of immigrants,” U.S. welfare policy has long extended benefits to immigrants in racially differential ways. Early welfare policies served as an assimilationist tool targeting ethnic European immigrants, while New Deal policies excluded Chicano-dominated migrant workers.³³ As the Cold War ended and immigration from Latin America and Asia continued to rise, anti-immigrant sentiment began to coalesce as a strategy to consolidate conservative political power. In 1996, a pair of federal policies, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), created a bright line between social rights afforded to immigrants with lawful status and those without. As IIRIRA blocked pathways to obtain lawful status for people who entered the U.S. without inspection, PRWORA prevented those same immigrants from accessing public assistance while living in the U.S.³⁴ Both policies have a highly commodifying effect on undocumented immigrants: by closing access to the above-ground wage economy, IIRIRA forces undocumented immigrants into the lower-wage and often precarious underground economy; by closing off most welfare benefits, including those that benefit children, PRWORA ensures undocumented immigrants’ dependence on the underground wage market. Ultimately, through these policies the government eschewed its responsibility to provide a modicum of social rights to undocumented immigrants.

The racial impact of these laws is crystalized through the lens of racial projects, or “an interpretation, representation, or explanation of racial dynamics and an effort to reorganize and redistribute resources (economic, political, and

31. For discussion of the racialization of welfare policy in popular discourse, see generally Premilla Nadasen, *From Widow to ‘Welfare Queen’: Welfare and the Politics of Race*, 1 BLACK WOMEN, GENDER & FAMILIES 52 (2007). For analysis on the relationship between fiscal policy, racism, and the limits on universal welfare, see generally MICHAEL K. BROWN, RACE, MONEY, AND THE AMERICAN WELFARE STATE (1999). For a discussion of the racialized trope of the “welfare queen,” see generally JOSH LEVIN, THE QUEEN: THE FORGOTTEN LIFE BEHIND AN AMERICAN MYTH (2019). See also QUADAGNO, *supra* note 9, at 140–146; see generally MICHAEL B. KATZ, THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE (2008).

32. Maria E. Enchautegui, *Nonstandard Work Schedules and the Well-Being of Low-Income Families, Paper 26*, in LOW-INCOME WORKING FAMILIES 4, 10 (Urb. Inst., July 2013), <https://www.urban.org/sites/default/files/publication/32696/412877-Nonstandard-Work-Schedules-and-the-Well-being-of-Low-Income-Families.PDF>.

33. FOX, *supra* note 26, at 3–16, 189–199.

34. Personal Responsibility & Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, § 401, 110 Stat 2105 (1996) (codified at 8 U.S.C. § 1611).

cultural) along particular racial lines.”³⁵ The ideology of “the welfare queen,”³⁶ along with the emphasis on personal accountability that runs throughout PRWORA and IIRIRA, represent women who need welfare support as irresponsible and untrustworthy. At the same time, PRWORA’s emphasis on work as a condition of aid funnels the care labor of poor women from their own families towards the low-wage labor market. For undocumented women, IIRIRA’s welfare exclusions lead to a more precarious balance between care and labor, as undocumented women must find *all* sources of financial support from the informal economy. Contemporary welfare laws continue to withhold benefits from those who undertake informal labor, in particular poor women of color who do care labor.

B. Contemporary Childcare Support through Welfare and Work Law

The history of welfare in the context of the political economy reveals itself in features of today’s major childcare policies. The centerpiece state-supported welfare childcare programs are funded through two federal programs. Child Care Development Block Grant (CCDBG) allocates funds to states to provide childcare to income-eligible families.³⁷ And Temporary Assistance for Needy Families Grant (TANF), known in Massachusetts as Transitional Aid to Families with Dependent Children (TAFDC), provides monthly cash assistance to low-income families with dependent children.³⁸ Both programs provide means-tested assistance to the lowest-income families conditioned upon employment or educational participation, with few exceptions.³⁹ As such, the principle childcare support available to low-income families, a disproportionate number of which are Black and brown, largely rests on a premise of commodification. These workfare provisions are a direct response to tropes of the “welfare queen” and serve the dual function of ensuring a pool of wage workers for the labor market and preventing the defamilialization of poor women reliant on welfare supports for survival.

The state also provides childcare support mediated by labor market participation. Regulated leave periods are available to families which care for children at home, though the amount and nature of support is stratified by class, race, and immigration status. Until the pandemic, the federal government mandated only unpaid job-protected leave, while Massachusetts law requires paid family leave.

35. OMI & WINANT, *supra* note 25, at 125 (emphasis in original removed).

36. President Ronald Reagan helped entrench the myth of “the welfare queen”— a woman, usually Black, who would abuse the welfare system to take in hundreds of thousands of dollars in tax-free income annually. *See, e.g.*, QUADAGNO, *supra* note 9, at v (explaining that one of President Reagan’s “favorite anecdotes” was the story of a Chicago woman he claimed used “‘80 names, 30 addresses, 12 Social Security cards” to bring in “‘a tax-free income of 150,000”).

37. *See generally* MISHÉL, *supra* note 10.

38. For more information on TAFDC, *see Massachusetts Transitional Aid to Families with Dependent Children*, BENEFITS.GOV, <https://www.benefits.gov/benefit/1281> (last visited Apr. 21, 2023). *See also Apply for TAFDC*, MASS.GOV, <https://www.mass.gov/how-to/apply-for-tafdc> (last visited Apr. 21, 2023).

39. *Id.*; Greater Boston Legal Services, *Child Care Questions and Answers: Children’s Issues Series*, MASS. LEGAL SERVS. (Jan. 26, 2012), <https://www.masslegalservices.org/content/child-care-questions-and-answers-childrens-issues-series>.

However, IIRIRA's foreclosure of the above-ground wage economy for undocumented immigrants forces many into informal work without leave entitlements. Additionally, PROWRA's ongoing exclusion of undocumented individuals from unemployment insurance dissolves a substratum of security that would otherwise be available to support care provision. The motivating ethos of "personal accountability" that strips jobs occupied by low-income and undocumented individuals of security and support for their own care responsibilities leaves women of color without support for care responsibilities in their own families. Looking closely at the experience of mothers and paid care providers in Chelsea, we consider how state support for childcare operates as a racial project that excludes undocumented women from social citizenship.

IV. CHILDCARE IN CHELSEA, MA: A DISTRIBUTIONAL ANALYSIS

In what follows, we describe the ways in which state resources related to childcare fail to support mothers in Chelsea, Massachusetts, a predominantly Latinx and low-income neighborhood in the Boston metropolitan area. We examine the situation before and during the COVID-19 pandemic in order to understand the effects of state policies enacted during the pandemic. Mothers in Chelsea are primarily responsible for caring for their own children and are also more likely to also be employed as caregivers compared to mothers in more affluent and White communities.⁴⁰ As such, we examine childcare both from the childcare labor supply side and the familial demand side. Drawing on the welfare capitalism framework, we examine the potential decommodifying and defamilializing effects of supports for childcare for mothers and paid childcare providers in Chelsea.

In brief, pre-pandemic, Chelsea had few state funded childcare spots and as a result subsidized childcare was not an option for many Chelsea families.⁴¹ Additionally, many Chelsea families, particularly those who are undocumented, were (and remain) priced out of the childcare market due to earning low-wages in the labor market and being excluded from welfare support. Given the limited income available to Chelsea families through both the market and welfare, mothers and others in the Chelsea community built strong informal networks of childcare to relieve intense commodifying and familializing pressures.⁴²

The COVID-19 pandemic provoked the federal and Massachusetts governments to offer more support for both the childcare market and familial childcare through added funding and flexibility for recipients of childcare vouchers, expanded state-funded paid leave, and more generous and inclusive unemployment insurance, as

40. Immigrants account for a substantial portion of Chelsea's population and make up nearly one-fifth of the early childhood education and care workforce. See MAKI PARK ET AL., *MIGRATION POL'Y INST., IMMIGRANT AND REFUGEE WORKERS IN THE EARLY CHILDHOOD FIELD: TAKING A CLOSER LOOK* (Apr. 2015).

41. See *infra* Part IV.B.2.

42. See *infra* Part IV.B.1.

well as loans available to childcare providers and tax rebates.⁴³ However, most support did not reach Chelsea mothers.⁴⁴ This is due to exclusions in the law and entrenched hierarchies of work and care that devalue the labor of women of color.⁴⁵

To understand childcare systems in Chelsea and the impact of the COVID-era childcare policies, it helps to first consider a fuller picture of the community. This includes Chelsea's history; built environment and infrastructure; governance; work, family, and community arrangements; as well as how Chelsea fits into the greater Boston metropolitan region.

A. *A Picture of Chelsea*

Chelsea is a city of 1.9 square miles located near the seacoast of Massachusetts.⁴⁶ It is situated along the Mystic River and Chelsea Creek, which feed into the Massachusetts Bay, and is adjacent to Logan International Airport.⁴⁷ Chelsea is just outside the Boston city limits and is connected via the Tobin Bridge.⁴⁸ The 111 bus runs between Chelsea and Boston and is reportedly crowded and suffers from lengthy delays.⁴⁹ Chelsea has seen several waves of immigration over the decades: first Jewish, then Cuban and Puerto Rican, and now Central American immigrants.⁵⁰ Today, its population is reported to be approximately 38,000 residents.⁵¹ Yet according to community members we spoke with, the population is closer to 70,000.⁵² The dramatic undercount is due to the high number of undocumented immigrants who may not participate in the census primarily due to language barriers and fear of ICE (U.S. Immigration and Customs Enforcement).⁵³ Two-thirds of residents identify as Latinx, approximately one-third are not U.S. citizens, and nearly one-fifth live in poverty.⁵⁴

43. See *infra* Part IV.C., Part V.A.

44. See *id.*

45. See *id.*

46. See generally MARGARET H. CLARKE, *CHELSEA IN THE 20TH CENTURY* (2004) for historical photographs and information about the city.

47. See *id.*

48. See *id.*

49. Interview with Martina Matta, Legis. Aide, GreenRoots (July 15, 2020).

50. See *National Origin in Chelsea Massachusetts*, STAT. ATLAS, <https://statisticalatlas.com/place/Massachusetts/Chelsea/National-Origin> (last visited Apr. 13, 2023).

51. *Household Income in Chelsea, Massachusetts*, STAT. ATLAS, <https://statisticalatlas.com/place/Massachusetts/Chelsea/Household-Income> (last visited Apr. 13, 2023).

52. Interview with Martina Matta, *supra* note 49.

53. See generally FABIAN TORRES-ARDILA ET AL., GASTON INST. PUBL'N, *INCREASING LATINO PARTICIPATION RATES IN THE 2020 CENSUS IN CHELSEA, MA* (2020). See also Editorial Board, *Low-Balling the Chelsea Population Threatens the State's Coronavirus Epicenter*, BOS. GLOBE (June 14, 2020), <https://www.bostonglobe.com/2020/06/14/opinion/an-undercounted-population-threatens-chelsea-states-coronavirus-epicenter/>.

54. *QuickFacts Chelsea City, Massachusetts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/chelseacitymassachusetts/RHI125219> (last visited Apr. 13, 2023).

Chelsea grew as an industrial city in the 1900s, after incorporating as a city in 1857, and welcomed manufacturing plants and businesses in need of water-accessible storage.⁵⁵ Heavy industrialization combined with a small geographic footprint led to extremely dense housing development.⁵⁶ The density left the city vulnerable to the rapid spread of fire, and in 1908 and 1973, devastating fires destroyed significant portions of the city.⁵⁷ After each fire, Chelsea's resources were strained as the city attempted to rebuild to mitigate future fire risk.⁵⁸ The city faced the possibility of being annexed by Boston, but instead, in 1991, the Massachusetts governor appointed a receiver to run the municipal government, eliminating the role of mayor.⁵⁹ Today, Chelsea has a city manager hired by the city counsel whose role is to run the day-to-day operations of the city.⁶⁰

Given its geographic location and history as an industrial center, Chelsea faces pollutants, including bulk jet fuel and salt storage facilities that release toxins into the air and planes flying low into and out of Logan Airport.⁶¹ The Tobin Bridge is another contributor to pollution as the prioritization of naval commerce over city land transport creates major delays and more emissions from commuter traffic.⁶² Pollutants have resulted in a "heat island" with ambient temperatures up to forty degrees greater than the Boston suburbs.⁶³ These environmental vulnerabilities impact care provision. Notably, long-term exposure to air pollution makes people vulnerable to COVID-19.⁶⁴ This was one of the contributing factors that led Chelsea to have a per capita death rate more than three times that of Boston;⁶⁵ Chelsea also had the highest COVID-19 infection rate in Massachusetts.⁶⁶

55. CLARKE, *supra* note 46, at 7–8.

56. *See id.* at 9–30.

57. *See id.*

58. Robert W. Trott, *Massachusetts Governor Approves Receivership for City of Chelsea*, ASSOCIATED PRESS (Sept. 12, 1991), <https://apnews.com/article/5684e29417774e6c8e7bfd24c13fd201>.

59. *Id.*

60. *FAQs - City Manager*, CITY OF CHELSEA, MASS., https://www.chelseama.gov/how_do_i/view/faqs.php#collapse24213b0 (last visited Apr. 13, 2023).

61. Yvonne Abraham, *In Chelsea, the Deadly Consequences of Air Pollution*, BOS. GLOBE (Apr. 29, 2020), <https://www.bostonglobe.com/2020/04/29/metro/chelsea-deadly-consequences-dirty-air/>.

62. *See generally* OFFICE OF MASSACHUSETTS ATTORNEY GENERAL MAURA HEALEY, *COVID-19'S UNEQUAL EFFECTS IN MASSACHUSETTS: REMEDYING THE LEGACY OF ENVIRONMENTAL INJUSTICE & BUILDING CLIMATE RESILIENCE* (2020).

63. Martha Bebinger, *No Tropical Paradise: Urban 'Heat Islands' Are Hotbeds for Health Problems*, WBUR (July 7, 2017), <https://www.wbur.org/news/2017/07/05/greater-boston-heat-islands>.

64. Xiao Wu et al., *Exposure to Air Pollution and COVID-19 Mortality in the United States*, 6 SCI. ADVANCES 1, 1 (2020).

65. Thomas D. Sequist, *The Disproportionate Impact of COVID-19 on Communities of Color*, NEJM CATALYST (July 16, 2020), <https://catalyst.nejm.org/doi/full/10.1056/CAT.20.0370>.

66. Alexi Cohan, *Massachusetts Coronavirus Numbers by City and Town: Chelsea, Everett and Lynn Have Highest Positive Rates*, BOS. HERALD (June 24, 2020), <https://www.bostonherald.com/2020/06/24/massachusetts-coronavirus-numbers-by-city-and-town-chelsea-everett-and-lynn-have-highest-test-positive-rates/>.

Today, the median household income in Chelsea is \$49,600,⁶⁷ well below the median in Boston of approximately \$81,000.⁶⁸ Nearly one-fifth of Chelsea residents live in poverty.⁶⁹ Take-home wages may be even lower due to wage theft as immigrants are more often targeted and are also less likely to report it.⁷⁰ Latinx households, like Black households, also have significantly fewer assets than White households in Boston; some Latinx households have a median wealth of close to zero.⁷¹

Many Chelsea residents live in multigenerational households.⁷² Housing density has increased as rent has become increasingly expensive with skyrocketing rents in nearby Boston.⁷³ Gentrification has reduced the supply of affordable housing, leaving long waitlists for public housing.⁷⁴ Of all households with children under 18, 46.7% are married (similar to the 48.9% average in Boston), 36.8% are single moms (somewhat lower than the 43.8% average in Boston) and 16.5% are single dads (more than double the 7.3% average in Boston).⁷⁵

B. *Childcare in Chelsea Pre-Pandemic*

Childcare in Chelsea is bound up in informal networks of families and neighbors providing care, unpaid or underpaid.⁷⁶ These informal networks of care have flourished in Chelsea in large part due to the absence of welfare support to state-subsidized childcare centers, the void of state support to enable providing care to their own children, and the lack of financial resources to purchase childcare in the private market.⁷⁷ At the same time, these informal care networks face a constant shortage of resources and are unable to fully meet the demand for their services as a result of meager state support.

67. *Household Income in Chelsea*, *supra* note 51.

68. *QuickFacts: Boston City, Massachusetts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/bostoncitymassachusetts/INC110219> (last visited Apr. 13, 2023).

69. *QuickFacts Chelsea City, Massachusetts*, *supra* note 54.

70. Joe Yerardi & Susan Ferriss, *Wage Theft Hits Immigrants – Hard*, CTR FOR PUB. INTEGRITY (Oct 14, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/garment-immigrant-workers-wage-theft/>.

71. ANA PATRICIA MUÑOZ ET AL., *FED. RESRV. BANK OF BOS., THE COLOR OF WEALTH IN BOSTON 1*, at 2, 18–20 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2630261.

72. *See* Sequist, *supra* note 65.

73. Katharine Robb, *Further Inspection: Leveraging Housing Inspectors and City Data to Improve Public Health in Chelsea, MA* (2019) (Ph.D. dissertation, Harvard T.H. Chan School of Public Health), <https://dash.harvard.edu/handle/1/40976724>.

74. *See generally* MUÑOZ ET AL., *supra* note 71.

75. *Household Types in Chelsea Massachusetts*, STAT. ATLAS, <https://statisticalatlas.com/place/Massachusetts/Chelsea/National-Origin> (last visited Apr. 13, 2023).

Evidently, fathers do a significant amount of care work in Chelsea too.

76. *See generally* GUADALUPE GARCIA ET AL., *UNDERSTANDING FAMILY, FRIEND AND NEIGHBOR CARE IN MASSACHUSETTS* (May 2019), <https://carethatworks.org/wp-content/uploads/2020/06/field-2019-understanding-family-1.pdf>.

77. *Id.*

1. A Strong Fabric of Informal Care

In Chelsea, care often takes place in intergenerational households and among other family members and neighbors.⁷⁸ Women of color tend to supply this care labor, either unpaid or underpaid. These networks give Chelsea mothers access to care at a low or no cost, including for long periods of time and at irregular hours, which many in Chelsea work. The state is generally not involved in funding, or monitoring, friend, family and neighbor care. Although in theory, voucher payouts can be used to compensate family and neighbor care, the payout for such care is only \$9.76 to \$20 per day.⁷⁹ In practice, many Chelsea families may not have the resources to navigate the requirements to obtain these minimal vouchers for family and neighbor care. Or, they may be discouraged from doing so by the public charge rule,⁸⁰ which has a chilling effect that discourages undocumented individuals from dealing with the state. In place of the state, community organizations with close ties to Chelsea residents have helped reinforce informal networks of care.⁸¹ Such strong networks of family and neighbor care have grown by necessity due to the inaccessibility of state-supported and market childcare options.

2. A “Desert” of State-Subsidized Childcare

Chelsea is an “extreme desert” when it comes to state-subsidized childcare.⁸² Demand for subsidized daycare spots far exceeds supply. Out of approximately 3,500 children under five in Chelsea, 1,931 children needed a daycare spot but could not access one, while only 855 licensed childcare spots in Chelsea received state subsidies.⁸³ However, many more families *would* be eligible for childcare vouchers, given that the average family income is below the 50% of the state median income eligibility threshold for CCDBG.⁸⁴ In Massachusetts, undocumented

78. See generally Interviews with community members of Chelsea, MA (conducted by authors during the summer and fall of 2020) (on file with the authors).

79. See Mass. Dep’t of Early Ed. & Care, *Reimbursement Rates for Fiscal Year 2021, Daily Reimbursement Rate for Early Education and Care Programs* (Oct. 31, 2020), <https://www.mass.gov/service-details/daily-reimbursement-rate-for-early-education-and-care-programs>.

80. The public charge rule makes non-citizens ineligible to become lawful permanent residents if they have accessed certain government benefits. See *Public Charge Resources*, U.S. CITIZENSHIP AND IMMIGR. SERV. (Dec. 19, 2022), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>.

81. For example, organizations such as La Colaborativa. LA COLABORATIVA, <https://la-colaborativa.org> (last visited Apr. 13, 2023).

82. ERIN HARDY ET AL., INST. FOR CHILD, YOUTH, & FAM. POL’Y, SUBSIDIZED CHILD CARE IN MASSACHUSETTS: EXPLORING GEOGRAPHY, ACCESS, AND EQUITY (Dec. 28, 2020), <http://www.diversitydatakids.org/sites/default/files/file/geoofsubsidizedcarefullreport.pdf>.

83. *Mapping the Gap in Massachusetts: Child Care Supply & Demand*, CHILDCARE AWARE, <https://cacao.maps.arcgis.com/apps/MapSeries/index.html?appid=6df9ec3e264c4255b4b69d7888dec979> (last visited Apr. 13, 2023); *QuickFacts Chelsea City, Massachusetts*, *supra* note 54.

84. Families with children who have a documented disability or a special need, must have an income at or below 85% of the state-median income. See Greater Boston Legal Services, *supra* note 39.

individuals are eligible for childcare vouchers.⁸⁵ In contrast, elsewhere in the U. S., undocumented individuals are not eligible because in PROWRA the federal government's limited eligibility to CCDBG and TANF block grants, considered "federal public benefits," to citizens and "qualified immigrants," including lawful permanent residents and refugees.⁸⁶ As a result, parents with undocumented status are formally ineligible for TANF grants, while children with undocumented status are formally ineligible for CCDBG grants.⁸⁷ Still, in Massachusetts, the public charge rule may have a chilling effect that discourages undocumented Chelsea residents from applying for subsidies.

A similar problem exists with the Head Start program—a program established by activists in the mid-1960s to provide preschool education to children in low-income families that emphasizes the child's cognitive, social and emotional development, and family empowerment.⁸⁸ The program is funded by a separate, and more inclusive, federal funding stream which provides the program with more latitude to make independent decisions.⁸⁹ Head Start is not considered a "federal public benefit," and so children may be enrolled without regard to their citizenship or immigration status or that of their parents.⁹⁰ However, the public charge rule may again have a chilling effect on undocumented parents' applying for their children. And in any event, Chelsea has only one Head Start program (to serve the approximately 3,500 children under five in Chelsea), meaning that this well-regarded program would be unable to meet demand if parents were widely accessing it.⁹¹

85. See MASS. LEGAL SERVS., DESK GUIDE TO NON-CITIZEN ELIGIBILITY FOR CHILD CARE FINANCIAL ASSISTANCE, 1–3 (Aug. 1, 2010), <https://www.masslegalservices.org/system/files/library/Desk%20Guide%20to%20Noncitizen%20Eligibility%208-10.pdf>.

86. HANNAH MATTHEWS, IMMIGRANT ELIGIBILITY FOR FEDERAL CHILD CARE AND EARLY EDUCATION PROGRAMS, CLASP (Apr. 2017), <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Immigrant-Eligibility-for-ECE-Programs.pdf>.

87. Under TANF, the adult is considered to be the beneficiary, as childcare support is in service of the adult being able to earn wages in the labor market. The beneficiaries of CCDBG, on the other hand, are the children, since one purpose of the policy is to expand access to quality childcare.

88. Denise Urias Levy & Sonya Michel, *More Can be Less: Child Care and Welfare Reform in the United States*, in CHILD CARE POLICY AT THE CROSSROADS: GENDER AND WELFARE STATE RESTRUCTURING 239, 255 (Rianne Mahon and Sonya Michel eds., 2002). To be eligible, families' income must be below the federal poverty guidelines. Children from families who receive TANF or Supplemental Security Income, as well as children in foster care or homeless, are eligible for Head Start regardless of income. *Head Start*, BENEFITS.GOV, <https://www.benefits.gov/benefit/1917> (last visited Apr. 21, 2023). Head Start programs may enroll up to 10% of children from families that have incomes above the Poverty Guidelines, as well as an additional 35% of children from families whose incomes are above the Poverty Guidelines, but below 130% of the poverty line if certain conditions are met.

89. *Head Start Program Facts: Fiscal Year 2021*, U.S. DEP'T HEALTH & HUM. SERVS., <https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-program-facts-fiscal-year-2021> (last visited Apr. 13, 2023).

90. MATTHEWS, *supra* note 86.

91. *Head Start Locator*, U.S. DEP'T HEALTH & HUM. SERVS. ADMIN. FOR CHILD. & FAMS., <https://eclkc.ohs.acf.hhs.gov/center-locator?latitude=42.392&longitude=-71.033&city=Chelsea&zip=02150&county=Suffolk%20County&state=MA&expanded=true&radius=50> (last visited Apr. 13, 2023).

3. Curtailed State Support For Leave Periods to Care For One's Own Children

Job-protected guaranteed leave periods are another vehicle through which the state supports childcare—in this instance, support for caring for one's own children (and other family members) rather than having someone else do so. Yet, paid leave is unavailable to the many Chelsea mothers who participate in the informal labor market, and even those who work in the formal labor market are more susceptible to employment standards violations such that they are denied leave.⁹² The federal Family and Medical Leave Act (FMLA) entitles employees to 12 weeks of unpaid, job-protected leave (with health insurance coverage) to care for a newborn child or a spouse, child, or parent who is seriously ill.⁹³ In Massachusetts, employees have entitlements above the unpaid federal minimum: 40 hours of job-protected sick leave per year to care for themselves and certain family members,⁹⁴ and an additional 26 weeks of paid leave under the Paid Family and Medical Leave Act (PFML).⁹⁵ However, labor market vulnerability pushes many undocumented individuals into the informal labor market where such leave is unavailable. And while undocumented individuals in the formal labor market are entitled to paid leave under Massachusetts law, in practice, employers may try to evade this responsibility. As a result, Chelsea mothers are less likely to avail themselves of the potential defamilializing support of leave periods.

4. Priced Out of the Childcare Market

Paying for daycare out-of-pocket is not an option for most Chelsea residents. The average annual cost of private childcare for an infant in Massachusetts is \$20,880 for center care or \$13,184 for family daycare.⁹⁶ This is between one-quarter and one-half of the median average annual income in Chelsea of \$49,600.⁹⁷ Chelsea families tend to be in low-wage jobs due to their disadvantage in the labor market. Language and educational barriers make it difficult to secure a job with better pay and working conditions. Undocumented status further exacerbates vulnerability in the labor market and makes Chelsea residents vulnerable

92. See generally LEAH VOSKO & THE CLOSING THE ENFORCEMENT GAP RESEARCH GROUP, *CLOSING THE ENFORCEMENT GAP: IMPROVING EMPLOYMENT STANDARDS FOR PEOPLE IN PRECARIOUS JOBS* (2020).

93. 29 U.S.C. § 2612.

94. *Earned Sick Time*, COMMONWEALTH OF MASS., OFF. OF THE ATT'Y GEN., <https://www.mass.gov/info-details/earned-sick-time#overview-> (last visited Apr. 13, 2023). Employers with 11 or more employees must provide paid sick time, and employers with fewer than 11 employees must provide earned sick time, but it does not need to be paid. Independent contractors are excluded from paid leave.

95. The PFML was recently enacted, in January 2021. *Paid Family and Medical Leave (PFML) Fact Sheet*, DEP'T OF FAM. & MED. LEAVE, <https://www.mass.gov/info-details/paid-family-and-medical-leave-pfml-fact-sheet> (last visited Apr. 13, 2023).

96. *Price of Child Care in Massachusetts*, CHILDCARE AWARE (2019), <https://info.childcareaware.org/hubfs/2019%20Price%20of%20Care%20State%20Sheets/Massachusetts.pdf>.

97. *Household Income in Chelsea, Massachusetts*, *supra* note 51. Paying childcare out-of-pocket is even more prohibitive for single parents, namely, the 36.8% of single moms in Chelsea and 16.5% of single dads. *Id.* at 20.

to exploitation, including wage theft and violations of employment standards, thus potentially leaving Chelsea residents with even less income.

Undocumented individuals are excluded from another potential source of income support—unemployment insurance. Unemployment insurance generally provides for 26 weeks of support at an average rate of about half of their previous wages to those with recent labor market ties.⁹⁸ The categorical exclusion of undocumented individuals from unemployment insurance undermines their economic security—yet another factor that makes out-of-pocket childcare unrealistic for many Chelsea mothers. Without a welfare security net, paid labor becomes the only means of bringing in an income, which deepens the commodification of Chelsea mothers.

The limited state-subsidized childcare spots, combined with the unavailability of paid leave to informal workers or the denial to undocumented individuals, and the unaffordability of market care means that the only reliable source of care for Chelsea mothers is from those they know—family members and neighbors. This is the legacy of the IIRIRA limiting access to formal employment for undocumented immigrants and PROWRA's ongoing exclusion of undocumented individuals from unemployment insurance. Chelsea mothers raise children with less state support than professional White families or even American-born poor mothers. Childcare thus continues to operate as a racial project that excludes undocumented women from social citizenship and asks them to care for one another's children, while trying to eke out an income, without the state's support.⁹⁹

C. COVID-Era Policies' Impact on Chelsea Families

The COVID pandemic shook the state into recognizing that childcare is foundational to women's labor market participation. It provoked a multi-prong set of state supports for childcare.¹⁰⁰ Yet these supports are largely unavailable to Chelsea mothers. First, increased flexibility and funding for subsidized childcare programs did not help Chelsea mothers without access to a state-subsidized childcare spot for their children. Second, expanded paid leave failed to reach Chelsea mothers who work in the informal labor market or who could not afford any reduction in income by taking the partially-paid federal leave. Third, undocumented

98. Chad Stone and William Chen, *Introduction to Unemployment Insurance*, CTR. ON BUDGET & POL'Y PRIORITIES (July 30, 2014), <https://www.cbpp.org/research/introduction-to-unemployment-insurance>.

99. It is important to remember that immigrants from the Global South are disproportionately burdened by immigration restrictions. It is the intersection of racially-motivated immigration quotas that foreclose citizenship pathways for migrants from the Global South with punitive sanctions on those who do cross the U.S. border without documentation that leads to the racial projects we have discussed. Furthermore, the United States government is often a cause of the conditions giving rise to migration from the Global South, and particularly Central America, raising ethical questions about our obligation to expand, not contract, services available to migrants.

100. See *infra* Part IV.C.2., 3, and 4 for a discussion of the Coronavirus Aid Relief, and Economic Security Act (CARES), Families First Coronavirus Response Act (FFCRA), Pandemic Unemployment Assistance (PUA), Pandemic Unemployment Assistance (PUA), Exempt Emergency Child Care Program (EECCP).

Chelsea mothers remained excluded from expanded unemployment insurance and other state funds that were distributed. Amidst these COVID-era policies, the changing dynamics of the labor market during the pandemic maintained the commodification of Chelsea mothers while also providing some upward mobility to those employed as childcare providers. Crucially, Chelsea's networks of care have proved resilient in the face of shifts in the labor market and state welfare, even as high COVID-19 infection rates have taken their toll.

1. Increased Strain and Resilience in Care Networks

High COVID-19 infection rates strained informal care systems during the pandemic—during the first wave of the pandemic, COVID-19 infection rates in Chelsea reached six times the state average.¹⁰¹ Chelsea mothers continued to rely on care from family and neighbors, perhaps to an even greater extent than before. It is clear that the increased reliance on informal care networks directly implicates the labor and health of other women of color. For Chelsea mothers who had to continue to work outside the home for economic survival, informal care provided a safety net, although it did not release intense commodifying pressures. Rather, informal care networks simultaneously served as a defamilializing force, enabling mothers to take time away from caring for their own children, and a force that intensifies familializing pressures by placing additional care responsibilities on Chelsea mothers to care for children (and the elderly and the sick) in their community. In this way, familialization does not operate as a unidirectional force, but rather redistributes support for care in multiple directions in ways not anticipated by a tripartite framework that contemplates the market, state, and family.

As the toll of the COVID-19 pandemic threatened the ability of friends and neighbors to provide care as people in Chelsea fell ill, grassroots efforts also sprung up to help sustain networks of care. Notably, local organizations, including La Colaborativa, quickly organized to help meet families' needs, and GreenRoots helped coordinate channels for neighbors to check in on neighbors.¹⁰² These organizations also supported the material and emotional needs of Chelsea families by offering pop-up food pantries and delivering food to those unable to leave their homes.¹⁰³

These informal community connections, far broader than the nuclear family, are not neatly captured by Esping-Anderson's category of "family," yet they are clearly a major player in the distribution of care labor in Chelsea.¹⁰⁴ In contrast to middle-class White families where mothers left their jobs to care for children, or

101. *Count and Rate (per 100,000) of Confirmed COVID-10 Cases in MA by City/Town, January 1, 2020 – April 22, 2020*, MASS. DEP'T OF PUB. HEALTH, <https://www.mass.gov/doc/confirmed-covid-19-cases-in-ma-by-citytown-january-1-2020-april-22-2020-pdf/download> (last visited Apr. 13, 2023).

102. Interview with GreenRoots. For more info on GreenRoots, see <http://www.greenrootschelsea.org/>.

103. *Health*, LA COLABORATIVA (April 29, 2021), <https://la-colaborativa.org/programs/health/>.

104. Networks of community care are better captured by Jane Jensen's idea of a "welfare diamond," adding voluntary organizations to Esping-Andersen's tripartite structure of the state, market, and family. See Jensen, *supra* note 22.

hired nannies, Chelsea families did not isolate themselves as family units during the pandemic. Instead, they reached out to others. A face of community support, Gladys Vega, the head of La Colaborativa, exemplified how some women in Chelsea did not shut themselves up at home; rather, they tried to meet community members' needs and fill the gaps left by the state.

In the face of *de jure* or *de facto* exclusion from state policies, such as expanded support for state-subsidized childcare, paid leave, and employment insurance, the Chelsea community reinforced its own resilient, flexible, and supportive networks of care.

2. No Access to Enhanced State-Subsidized Childcare

The cornerstone package of COVID-era support for childcare was the Coronavirus Aid Relief, and Economic Security Act (the CARES Act),¹⁰⁵ introduced in March 2020, where the federal government authorized additional funding for welfare-based childcare programs. Yet the \$3.5 billion for the CCDBG and \$750 million for Head Start largely did not reach Chelsea. Nor did Chelsea mothers benefit from the decision by the Massachusetts Department of Early Education and Care (EEC) to temporarily increase flexibility for subsidy-receiving childcare programs in order to avoid terminating families' benefits during the pandemic. The changes included extending the one-year subsidy term by six months, lengthening the job search period, and waiving the absence policy to allow for unlimited absences without losing the subsidy.¹⁰⁶

While most Chelsea families did not benefit from the enhanced support, for those families with access to one of the 855 licensed daycare spots in Chelsea,¹⁰⁷ the EEC's relaxed rules regarding attendance and parental contribution requirements provided flexibility for families who preferred (and were able) to keep their children at home without losing a future childcare spot with their center. The relaxed work and educational requirements were significant in view of high unemployment rates in Massachusetts and in Chelsea in particular.¹⁰⁸ Thus, for parents with access to a state-subsidized childcare spot, the increased funding and flexibility had both a defamilizing effect, lightening the burden on household

105. Coronavirus Aid Relief, and Economic Security Act (CARES Act), 15 U.S.C. Ch. 116; CARES Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281, 493–94 (2020) (codified at 15 U.S.C. § 9058).

106. *Massachusetts Emergency COVID-19 Child Care*, MASS. DEP'T OF EARLY EDUC. & CARE (2020), https://web.archive.org/web/20201029133320/https://eeclead.force.com/apex/EEC_ChildCareEmergencyProcedure.

107. *Mapping the Gap in Massachusetts: Child Care Supply & Demand*, *supra* note 83; *QuickFacts Chelsea City, Massachusetts*, *supra* note 54.

108. From July 2019 to July 2020, Massachusetts saw the largest unemployment rate increase in the U.S (an increase of 13.2%). *Unemployment Rate 16.1 percent in Massachusetts, 4.5 Percent in Utah, in July 2020*, U.S. BUREAU LAB. STATS. (Aug. 27, 2020), https://www.bls.gov/opub/ted/2020/unemployment-rate-16-point-1-percent-in-massachusetts-4-point-5-percent-in-utah-in-july-2020.htm?view_full. In Chelsea, the unemployment rate in October 2020 was 24.5%. *The Impact of COVID-19 on Underserved Communities: Chelsea, MA and Healthy Chelsea*, MASS. GEN. HOSP. (Oct. 15, 2020), <https://www.massgeneral.org/news/coronavirus/covid-19-impact-underserved-communities-part-1>.

childcare labor, and a decommodifying effect, facilitating a temporary step back from labor market participation. Yet many more Chelsea families did not experience the defamilializing or decommodifying potential of increased support for subsidized childcare because of the limited supply of state childcare spots available to them.

3. Left Out of Expanded Leave Periods

Another prong of the state's COVID-19 response, was the federal government enactment, for the first time, of *paid* family and medical leave. Under the umbrella of the Families First Coronavirus Response Act (FFCRA), employees were entitled to paid leave for up to twelve weeks.¹⁰⁹ Congress paid for leave by way of a tax credit to the employer or self-employed individual¹¹⁰ and enacted the leave through two pieces of legislation.

First, the Emergency Paid Sick Leave Act required covered employers to provide job-protected paid sick leave up to 80 hours (approximately two weeks) for full-time employees.¹¹¹ Leave was available to an employee unable to work or telework if the employee met one of six conditions, including to care for a child whose school or place of care was unavailable due to COVID-19.¹¹² Depending on the reason for taking leave, employees could receive their regular pay, two-thirds of their pay, or two-thirds of the applicable minimum wage.¹¹³ Second, the Emergency Family and Medical Leave Expansion Act provided ten weeks of paid emergency family leave to employees unable to work because they had to care for a dependent child due to COVID-19; the first ten days of leave could be unpaid,¹¹⁴ following which employees were entitled to ten weeks of job-protected leave paid at the higher of two-thirds of their regular wages or two-thirds of the applicable minimum wage.¹¹⁵

For both leave entitlements, extended leave was only available at the higher of two-thirds of employees' pay or of the applicable minimum wage. For Chelsea mothers, this pay cut may not be enough to meet their basic needs for food and shelter. Having little savings makes it even more difficult to take a temporary pay cut.¹¹⁶ In addition, the FFCRA paid leave had numerous exclusions that left out certain workers. Private employers with 500 or more employees are exempt,¹¹⁷ so, for example, Chelsea residents who work at a large supermarket or hotel chain would not benefit. Moreover, small businesses with fewer than 50 employees could

109. See Families First Coronavirus Response Act, H.R. 6201, 116th Cong. (2020) (enacted).

110. *Id.* §§ 7003(a), 7004(a) (2019–2020).

111. *Id.* §§ 5102(b)(2)(A), 5104(1).

112. *Id.* §§ 5102, 5110(2), 5102(a).

113. U.S. Dep't of Labor, Wage & Hour Div., *Families First Coronavirus Response Act: Employee Paid Leave Rights* (Oct. 31, 2020), <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

114. Emergency Paid Sick Leave Act, 29 U.S.C.A. § 2620(B)(1) (West).

115. See H.R. 6201 § 3102(b) (adding Family and Medical Leave Act § 110(b)(2)). See *id.* § 3102(a)(2)–(b). Formally, it is an expansion of the Family and Medical Leave Act.

116. See generally MUÑOZ ET AL., *supra* note 71.

117. H.R. 6201, §§ 110(a)(B), 5110(2)(B)(i)(I)(aa).

be exempt when imposing the requirement would “jeopardize the viability of the business,”¹¹⁸ and thus Chelsea residents who work in small business may also be exempt. Chelsea residents were more likely to be denied paid leave, as undocumented individuals became even more vulnerable to exploitation in the face of a weakened labor market and lax federal enforcement of labor standards.¹¹⁹

4. Limited Welfare Entrenches Commodification and Retrenches Access to the Childcare Market

One of the most significant aspects of the CARES Act was the expansion of unemployment insurance (UI). This expanded entitlement to previously ineligible workers, including childcare providers,¹²⁰ and increased the amount and duration of coverage for all recipients. However, because these programs were funded by the federal government through reimbursements to the states, undocumented individuals were entirely excluded.

The federal government expanded unemployment insurance through three programs. First, Pandemic Unemployment Assistance (PUA) was available to families who had to leave work to care for their child, including childcare providers who had to leave their paid work to care for their own child.¹²¹ Second, Pandemic Unemployment Assistance (PUA) provided workers an additional \$600 per week to the UI benefit for all workers, regardless of prior earning or benefit level for the duration of the worker’s eligibility.¹²² Third, Pandemic Emergency Unemployment Compensation (PEUC) extended the duration of benefits for up to 13 weeks for individuals who exhausted their regular unemployment compensation and who were actively seeking work.¹²³ Massachusetts provided up to 26 weeks of unemployment benefits while the federal extensions were in place, and after the federal extensions expired, Massachusetts provided unemployment benefits up to 30 weeks.

118. FFCRA § 5111(2).

119. Editorial, *Under Trump, OSHA’s COVID-19 Response is Failing Workers*, N.Y. TIMES (Sept. 14, 2020), <https://www.nytimes.com/2020/09/14/opinion/trump-covid-osha-workers.html>.

120. See CARES Act § 2102.

121. CARES Act § 2102. To be eligible, a worker must have lost their job or experienced reduced hours through no fault of their own, not be able to telework, and be able and available to work, as defined by state law, but for a COVID-19-related reason that has made them unable to work. Among the specified COVID-19-related reasons was caring for a child whose school or care facility is closed as a result of COVID-19. Other reasons include the worker or a member of their household has been diagnosed with COVID-19, the worker is providing care for a family or household member diagnosed with COVID-19, the worker has been advised by a healthcare provider to self-quarantine due to COVID-19 concerns, the worker’s scheduled start date at work has been delayed or canceled due to COVID-19, the worker has become the primary breadwinner due to the death of the head of household as a result of COVID-19, or the individual’s workplace is closed due to COVID-19. See also Sylvia Bokyung St. Clair et al., *Expanded Unemployment Insurance Access and Benefits: 4 Key Takeaways From the CARES Act*, NAT’L L. R. (April 7, 2020), <https://www.natlawreview.com/article/expanded-unemployment-insurance-access-and-benefits-4-key-takeaways-cares-act>.

122. CARES Act § 2104. For some lower-wage employees, this caused their unemployment benefits to be greater than their normal weekly wages.

123. CARES Act § 2107.

Highly significant for Chelsea is that undocumented individuals remained excluded from UI. Even for those eligible, language barriers may have erected another hurdle to applying for expanded UI. The absence of welfare support deepened the commodification of Chelsea mothers, as undocumented Chelsea residents had to find ways to meet their basic needs through labor market participation and/or by relying on food pantries and temporary moratoria on evictions.¹²⁴ Massachusetts directed CARES Act funding to a pop-up shelter in Chelsea, which had many people line up for hours waiting for a meal, with the accompanying risk of COVID-19 exposure.¹²⁵ Massachusetts also put CARES Act funds toward local housing authorities and shelters facing increased pandemic-related costs,¹²⁶ yet the extreme shortage of affordable housing in Chelsea meant the funds had little impact there.¹²⁷

In terms of other income support, undocumented individuals were also excluded from the federal government tax rebate of \$1,200 per person and \$500 for children because they lack a social security number.¹²⁸ Needless to say, amidst struggling to meet basic needs, undocumented Chelsea families did not have income to direct toward childcare, and the lack of funds directed toward undocumented individuals deepened their commodification.

The CARES Act also offered support to the Exempt Emergency Child Care Program (EECCP),¹²⁹ a highly residual, short-term program of no cost to families intended to serve essential workers and vulnerable families with no other safe childcare options. Under the EECCP, licensed providers could apply for authorization to provide care during COVID-19 closures.¹³⁰ However, only one emergency childcare center opened in Chelsea.¹³¹ This is likely due in part to a complicated application process and low payouts. The funds were meant to provide emergency childcare to frontline workers and sustain the economic viability

124. Chris Van Buskirk, *Baker Assures 'Programs in Place' as Federal Government's Eviction Moratorium Ends*, TELEGRAM & GAZETTE (July 31, 2021), <https://www.telegram.com/story/news/2021/07/31/gov-charlie-baker-federal-government-eviction-moratorium-ending-pandemic-covid-19-massachusetts/5442015001/>.

125. From interviews with Chelsea, MA community members during summer of 2020.

126. 2020 MASS. ACTS., H.R. H.4808, 193rd Leg., (Mass. 2020), <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter124>.

127. BOSTON UNIV. METROBRIDGE, *EXPLORING HOMELESSNESS AND HOUSING INSECURITY IN CHELSEA, MA* 11 (2019), https://www.bu.edu/ioc/files/2019/03/Boston-University-MetroBridge-Report_Exploring-Homelessness-and-Housing-Insecurity-in-Chelsea-MA_Fall-2018.pdf.

128. CARES Act § 6428. The full amounts are available to individuals with income at or below \$75,000 (\$112,500 for heads of household) and couples with income at or below \$150,000, and the tax rebate amount will be reduced by \$5 for each \$100 of income that exceeds the income limits. *Id.*

129. Colin Jones, *FAQ: Status of the Mass. Early Educator Sector During and Beyond the Coronavirus Outbreak*, MASS. BUDGET & POL'Y CTR. (May 8, 2020), <https://massbudget.org/2020/05/08/faq-status-of-the-mass-early-education-sector-during-and-beyond-the-coronavirus-outbreak/>.

130. MASS. DEP'T OF EARLY EDUC. & CARE, *TEMPORARY POLICY: OPENING AN EXEMPT CHILDCARE EMERGENCY PROGRAM DURING COVID-19 STATE OF EMERGENCY* (2020), https://eeclead.force.com/resource/1587682874000/Opening_an_EECCP.

131. *Massachusetts Resources*, CHILD CARE AWARE, <https://www.childcareaware.org/state/massachusetts/> (last visited Apr. 13, 2023).

of the childcare market.¹³² In effect, the availability of state supported childcare conditions a person's choice on whether to withdraw their labor from the market. For low-wage workers, the availability of childcare nudges them to continue going to work, including frontline jobs during the pandemic. In this way, the expansion of welfare-based childcare, while only limitedly available to Chelsea residents, reveals a link more broadly between keeping the childcare market afloat and ensuring a supply of low-wage workers.

D. COVID-Era Policies' Impact on Childcare Workers

Women in Chelsea were likely to experience the impact of the pandemic on childcare not only as mothers, but as childcare workers too. Childcare workers are disproportionately women of color and immigrants,¹³³ in part due to educational and language barriers, which restrict labor market options. Census data suggests that only 3.5% of Chelsea residents work in "personal care,"¹³⁴ but it is reasonable to estimate that a larger number of Chelsea residents work in childcare informally. Childcare work is poorly compensated; the hourly median wage for a childcare worker in Massachusetts in 2018 was \$12.74, barely above the state minimum wage of \$12 per hour.¹³⁵ Moreover, childcare workers rarely receive health insurance or a pension plan from their job, and many live below the poverty line.¹³⁶

Significantly, the expansion of unemployment insurance under the CARES Act during the pandemic offered substantial economic gains for some childcare workers. Care providers who were previously excluded on the basis that they were self-employed became eligible.¹³⁷ Moreover, the additional UI funds exceeded what many childcare workers were earning prior to the pandemic.¹³⁸ However, the categorical exclusion of undocumented individuals from UI meant undocumented

132. Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, 134 Stat. 281, <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>.

133. Elise Gould, *Child Care Workers Aren't Paid Enough to Make Ends Meet*, ECON. POL. INST. (Nov. 5, 2015), <https://www.epi.org/publication/child-care-workers-arent-paid-enough-to-make-ends-meet/>; Maki Park et al., IMMIGRANT AND REFUGEE WORKERS IN THE EARLY CHILDHOOD FIELD: TAKING A CLOSER LOOK, MIGRATION POL. INST. 1 (2015), <https://www.migrationpolicy.org/research/immigrant-and-refugee-workers-early-childhood-field-taking-closer-look>.

134. *Occupations in Chelsea, Massachusetts*, STAT. ATLAS, <https://statisticalatlas.com/place/Massachusetts/Chelsea/Occupations> (last visited Apr. 13, 2023).

135. MARCY WHITEBOOK ET AL., THE EARLY CHILDHOOD WORKFORCE INDEX 2018, CTR. FOR THE STUDY OF CHILD CARE EMP. 47 (June 27, 2018), <https://csce.berkeley.edu/wp-content/uploads/2022/04/Early-Childhood-Workforce-Index-2018.pdf>.

136. Gould, *supra* note 133.

137. Coronavirus Economic Stabilization Act (CARES) Act, 15 U.S.C § 9021.

138. In May 2019, the mean annual wage for childcare workers was \$25,510, or approximately \$490 per week, which is less than the additional \$600 per week childcare workers could have received from pandemic unemployment compensation. *Occupational Employment and Wages, May 2019*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/oes/2019/may/oes399011.htm> (last modified July 6, 2020).

childcare workers did not benefit from the UI expansion.¹³⁹ As was the case among other undocumented Chelsea residents, the result was that childcare workers continued working with heightened risk of COVID-19 infection.¹⁴⁰ Thus, the additional UI funds offered only some Chelsea childcare workers a viable decommodifying option, enabling them to temporarily step back from labor market participation.

Eligible childcare workers may not have received UI if their center stayed open, unless one of the other COVID-19-related reasons applies to their situation, such as being subject to a quarantine order or caring for an infected family member.¹⁴¹ The federal government's Small Business Administration Paycheck Protection Program (PPP) offered loans to incentivize small businesses to keep workers on payroll and sustain the childcare market.¹⁴² The loans could be forgiven if the business used at least 60% of the loan on payroll costs and maintaining employee compensation levels.¹⁴³ Larger centers were more likely to have stayed open during the pandemic due to their institutional capacity to apply for loans and grants, including PPP loans. Some of the larger daycare centers in the Boston metro area are located outside Chelsea, in a nearby majority Black, working-class community called Roxbury.¹⁴⁴ Roxbury has several non-profit centers run by larger community organizations, including the Roxbury YMCA and the Dimock Center, as well as a good network of Head Start programs.¹⁴⁵

The financial stability of larger non-profit organizations and Head Start programs allowed them to stay open, providing some security for families' childcare needs, and enabling parents in those families to continue participating in the labor market. In contrast, family providers, common in Chelsea, were less likely to receive PPP loans to support their centers remaining open. Without formal banking relationships and due to being located in low-income communities, family providers faced barriers to access loans. Additionally, language barriers erected hurdles for family daycare providers who had difficulty navigating the EEC's requirements for reopening reportedly due to delays in making forms

139. See, e.g., *Covid-19 Resources Available to Immigrants and Refugees*, COMMONWEALTH OF MASS. OFF OF THE ATT'Y GEN, <https://www.mass.gov/service-details/covid-19-resources-available-to-immigrants-and-refugees> (last visited Apr. 13, 2023) (stating that "persons who are undocumented should not file for unemployment benefits").

140. Simón Rios, *Frontline Coronavirus Workers Need Emergency Child Care. Hundreds of Providers Are Stepping Up*, WBUR (Mar. 22, 2020), <https://www.wbur.org/news/2020/03/22/coronavirus-child-care-massachusetts>.

141. Bokyoung St. Clair et al., *supra* note 121.

142. SAMANTHA AIGNER-TREWORY, MASS. DEP'T OF EARLY EDUC. & CARE, GUIDANCE FOR SUBSIDY PROVIDERS RECEIVING PAYCHECK PROTECTION PROGRAM LOANS, CARES ACT STIMULUS FUNDS, & GENERAL SUBSIDY 2 (July 7, 2020), https://eeclead.force.com/resource/1594852377000/Guidance_For_SubsidyProviders.

143. *Id.*

144. See, e.g., *Roxbury, MA Child Care Centers*, CHILDCARECENTER.US, https://childcarecenter.us/massachusetts/roxbury_ma_childcare (last visited Apr. 14, 2023).

145. *Id.*

available in Spanish and other languages spoken by family providers.¹⁴⁶ Chelsea childcare providers thus had diminished access to state support to keep the childcare market running.

In terms of paid leave, small businesses with fewer than 50 employees could be exempt from the paid leave requirement when imposing the requirement would “jeopardize the viability of the business as a going concern.”¹⁴⁷ This meant childcare workers at smaller centers in Chelsea faced a higher chance of being disentitled from paid leave. While paid leave is funded by the state, and thus is not an immediate expense for employers, some employers were unwilling to provide leave given the climate of instability in the childcare market. Moreover, like others in Chelsea, childcare workers may not have been able to access ten-week family leave at two-thirds salary, even if eligible, due to the unaffordability of foregoing any wages. As such, the defamilializing and temporarily decommodifying potential of paid leave was less available to childcare workers working in Chelsea and those from Chelsea working in other communities.

With little support to provide care to their own children, providers had to seek childcare where available such as a discounted spot at the center where they worked, a subsidized spot at a center, if available, or often relying on family and neighbors. The limited state support through state welfare and through their participation in the market left childcare workers with considerably less freedom to make choices about their own childcare arrangements. However, changes in the childcare market may have enhanced their power to choose among a range of employment options in childcare.

E. The Bargaining Position of Workers in the Changing Childcare Market

While childcare work remained low-paid and particularly risky during the pandemic, employment opportunities expanded for childcare workers, in particular as family daycare providers and nannies. Family daycare is traditionally at the bottom of the care hierarchy and low paid even relative to other care settings. Yet, during the pandemic, family daycare providers have experienced perhaps the greatest gains relative to other providers.¹⁴⁸ Family daycare was already common in Chelsea, and during the pandemic grew in popularity in other communities due to its affordability, flexible hours to accommodate parents’ schedules, and small group size, which was particularly appealing during the pandemic as it carried a lower risk of infection.¹⁴⁹ Family daycares saw increased use rates during the COVID-19 pandemic at almost twice the rate as centers.¹⁵⁰ The increased demand

146. See generally SARAH JIMENEZ, SIX PROPOSALS FOR CHILD CARE EQUITY AND A JUST RECOVERY (2020) https://www.massclu.org/wp-content/uploads/2020/06/clu_carethatworks_one-pager_pf15.pdf.

147. Families First Coronavirus Response Act of 2020 (FFCRA), Pub. L. No. 116-127, § 5111(2).

148. *Preparing for Reopening: Meeting of the Board*, MASS. DEP’T EARLY EDUC. & CARE 4 (2020) <https://www.mass.gov/doc/eec-board-meeting-preparing-for-reopening/download>.

149. *Id.* at 4–5.

150. *Id.* at 5.

placed family daycare providers in a stronger bargaining position relative to prior to the pandemic, yet they remained poorly compensated, as the state reimburses family providers at lower rates than providers in childcare centers.¹⁵¹

Expanded employment opportunities in nanny work presents a different set of benefits and drawbacks. During the pandemic, families increasingly sought out nannies because of the health risks that came to be associated with group care.¹⁵² Reliance on nannies was particularly strong in families where professional mothers required external help to maintain their workforce participation.¹⁵³ Nanny work has benefits compared to work in a center: a nanny does not need work authorization, can command a higher wage, and generally works with fewer children at a time. However, the informal nature of the nanny-family relationship can expose nannies to exploitative family relationships and violations of labor standards.¹⁵⁴ Moreover, the informal contract created between the family (often White and middle/upper class) and a nanny (often an immigrant lower-income woman of color)¹⁵⁵ is bargained for in the shadow of a weak welfare state and labor market that offer little economic security to would-be nannies.

Ultimately, higher-income mothers may have the economic power to choose whether to exit or remain in the formal labor market and to tailor their childcare arrangements accordingly, supported by informal care labor such as nannies or learning pods facilitated by a tutor. Crucially, the choice available to certain families relies on and implicates the labor, health, and care needs of low-income women of color.

V. CONCLUSION: SUPPORTING CHILDCARE AS INTEGRAL TO SOCIAL CITIZENSHIP

A. *The Stratifying Effects of COVID-19 Childcare Policies*

The above analysis paints a picture of how COVID-19 interventions have exacerbated the pre-existing childcare gap in Chelsea and highlights how many Chelsea women carried responsibilities as mothers, informal care providers in their community, and childcare workers. The picture is necessarily messier than described above, as policies interact with the lives of mothers and childcare providers. By and large, the state's COVID-19 interventions act as layer of policies

151. *Daily Reimbursement Rates: Fiscal Year 2023*, MASS. DEP'T EARLY EDUC. & CARE (Feb. 1, 2023), <https://www.mass.gov/service-details/daily-reimbursement-rate-for-early-education-and-care-programs>.

152. Emily Peck, *More Parents Hiring Nannies Amid Big Shift in Child Care*, AXIOS (Sept. 26, 2022), <https://www.axios.com/2022/09/26/more-parents-hiring-nannies-amid-big-shift-in-child-care>.

153. The median hourly wage of childcare workers is reported to be \$12.40. *Occupational Employment and Wages, May 2021: 39-9011 Childcare Workers*, U.S. BUREAU LAB. STATS. (May 2021), <https://www.bls.gov/oes/current/oes399011.htm>. In comparison, the national average pay rate for nannies is reported to be \$17.35. Desiree Leung, *2023 Nanny Pay Rates: How Much Should I Pay My Nanny?*, CARE (Nov. 30, 2022), <https://www.care.com/hp/nanny-pay-rates-how-much-should-i-pay-my-nanny?>

154. Ruth Milkman, *Stratification Among In-Home Care Workers in the United States*, 49 CRITICAL SOCIO. 11, 12 (2022).

155. *Id.* at 13 (discussing the vulnerability of immigrants and unauthorized immigrants as in-home domestic workers).

on top of an already-broken political economy where state supports remain unavailable to women of color, especially those who are undocumented. The COVID-19 interventions have focused on keeping the childcare market afloat, with some temporary leave support offered to parents—neither of which form of support is substantially available to Chelsea mothers.

As a result, these measures have little decommodifying or defamilializing effect on Chelsea mothers, and virtually no mitigating effect on class or race stratification. This is due to the failure of COVID-19 interventions to disrupt the political economy of childcare: welfare assistance remains tethered to participation in the formal labor market, from which Chelsea mothers are largely excluded. This keeps both first-rate leave policies and second-rate public assistance out of reach for Chelsea mothers. The expansion of subsidized childcare, with more funding for childcare programs and greater flexibility for parents, is directed to ensuring the viability of the childcare market. By extension, this enables the continued commodification of working class mothers, most visible in communities of color where low-wages entrench commodification. Even the more favorable leave policies are underpinned by flawed assumptions about “women’s work.” Working mothers cannot access paid leave if they can do their jobs remotely, which tends to impact professional-class women.

The policy falsely assumes that one can complete one’s job responsibilities while simultaneously caring for children (and teaching, while schooling is online). Working class mothers are less likely to be able to work remotely, and still cannot access paid leave due to the two-thirds salary reduction that accompanies the extended ten-week. Such a pay cut may simply render leave unaffordable for low-income mothers. In communities of different class and race make-ups, childcare remains devalued, whether through low wages and difficult work conditions or the failure to recognize informal childcare. Ultimately, the COVID-19 interventions assume, and rely on, meager compensation for family daycare and meager or no compensation whatsoever for family and neighbor care.

In recognition of the inadequacy of the childcare sector, mothers and caregivers alike are exiting the formal system. For mothers, exit has deeply stratifying effects by class, race, and immigration status. For White, middle-class mothers, exit generally takes one of two forms: staying at home with children or hiring informal family and neighbor care. Both are possible because of wealth or high income, and both routes implicate different risks. A flood of stay-at-home mothers have the possibility to stunt generations of gender progress in the workforce. On the other hand, when White middle-class women hire care, often low-income, immigrant women of color, they reinforce the commodification of women unable to exit the workforce themselves.

Without meaningful opportunities to exit the low-wage economy, low-income mothers of color in Chelsea are more concerned about survival than career advancement. By adding flexibility to voucher requirements, the state has facilitated (temporary) exit from the childcare system for families that receive vouchers. Pandemic unemployment insurance, when available, also facilitated this exit,

providing a brief window where low-income mothers could care for their children while receiving income up to double their normal meager wages. However, the unavailability of UI to undocumented women has deepened their commodification, which, in the context of the pandemic, poses a risk to their health and lives. Without confidence in or access to the formal childcare market or defamilializing state support for leave, low-income mothers from Chelsea turn to their community for childcare support, finding sources of resilience there and in their interdependence with family, friends, and neighbors.

The pandemic has also hastened the pre-existing trend where care providers prioritize work in public preschools, as private nannies, or outside of the care sector entirely over work in a childcare center or family daycare. The CARES Act seeks to keep the childcare industry afloat, but prior to the pandemic it was barely treading water. To develop systems of childcare in a more sustainable way, legal reform must improve work conditions for caregivers, especially those in family and community care.

B. Expanding Social Citizenship through Investment in Childcare

Legal reform can prioritize the needs of both mothers and caregivers (themselves often mothers) through shifts that confer greater recognition upon and support for caregiving. The informal networks of care in Chelsea that have sustained childcare show the need for increased state support for family and neighbor care providers. A meaningful state response during the pandemic that would actually support families in Chelsea would begin by seeking to fortify these existing grassroots and informal systems of care. Chelsea mothers, grandmothers, aunts, cousins, and other family and community members have already developed flexible and resilient systems of care, despite neglect by the welfare state. The state could provide funding for grassroots organizations and subsidize family and neighbor care at adequate rates, to be ascertained in consultation with care providers. State investment in the existing systems of care formed by Chelsea women could enable mothers to make care choices that match their needs and their families' needs, and ensure that care providers receive the economic support that would provide a modicum of economic security. In effect, supporting existing systems of care would provide a pathway to extend social citizenship to mothers and other caregivers in Chelsea.

Adequately supporting childcare labor means correcting the false assumption that childcare labor does not involve real work—an assumption that disserves women of different classes and races and discourages male caregiving. Supporting caregiving among men can help shift this norm (and in turn shifting this norm may encourage male caregiving) as well as improve gender equality.¹⁵⁶ Employer reluctance to accommodate workers with care responsibilities suggests that state-supported care options may be a more fruitful path to encourage male caregiving.

156. See Orloff, *supra* note 10, at 329.

Recognizing the work involved in childcare would not only provide compensation to women of color, but would also recognize professional women's need for childcare if they are to be able to focus on their jobs. Thus, improving the work conditions of the lower-income women of color who serve as care providers would have a decommodifying effect on care providers as well as a defamilializing effect on middle-class mothers. Ameliorating the work of care providers through higher wages and dignified work conditions could make the childcare sector a more desirable sector, thereby expanding care options for women of all classes. It would also likely improve the quality of care for recipients.

Also important is state investment in market-based childcare in a manner that provides flexibility and economic resilience to families. The Head Start program is a good example. During the pandemic, the federal Office of Head Start has given center leaders the discretion to make decisions appropriate to their community of families and staff. As well, the Office authorized programs to continue to pay wages and provide benefits for staff unable to work when centers were closed due to COVID-19, offering some economic security and stability to providers to care for themselves and their families in the midst of changes to their workplace and the new risks of frontline childcare.¹⁵⁷ Such an approach serves as a model for state-funded market childcare options.

Additionally, policies aimed at expanding labor law protections could be made a meaningful resource to Chelsea families if they were to offer full compensation during periods of leave. This would give poor mothers the option of temporarily exiting the labor market. As well, redressing the exclusion of undocumented individuals from unemployment insurance is necessary to provide a means for undocumented individuals to decommodify when circumstances call for it, as they have during the pandemic. Collectively empowering a wider range of caregivers through voice and work protections are key steps towards ameliorating conditions for care labor and moving from the exceptional realm of informal women's work towards the broader realm of legitimized labor. Hand in hand with recognizing how childcare underlies women's labor market participation must come a recognition that access to childcare is a cornerstone of social citizenship.

Finally, certain universal state-funded programs have begun to crop up in Chelsea and surrounding neighborhoods. In the spring of 2021, Chelsea was selected for a guaranteed income program where 2,000 families received \$400 per month per family, from a combination of sources, including local government, federal coronavirus relief, and nonprofit organizations.¹⁵⁸ A proposal for expanded public support for childcare in Massachusetts is also on the table,

157. Office of Head Start, *Questions and Answers on Wages and Benefits*, U.S. DEP'T HEALTH & HUM. SERV.: EARLY CHILD. LEARNING & KNOWLEDGE CTR. (Sept. 28, 2020), <https://hendall.createsend1.com/t/ViewEmail/j/3AD8B8BB52B2F8902540EF23F30FEDED/5187586EB70C1896E89F0E32AAAFB68BF> (last visited Apr. 14, 2023).

158. Rich Barlow, *The Guaranteed Income Program in Chelsea, Mass. Should Be a National Model*, WBUR (May 24, 2021), <https://www.wbur.org/cognoscenti/2021/05/24/covid-19-chelsea-guaranteed-income-rich-barlow>.

motivated by high childcare costs in Massachusetts and the shifting dynamics in the childcare market during the pandemic.¹⁵⁹ A similar proposal is being considered at the federal level.¹⁶⁰ Such programs have the potential to support childcare among families and childcare providers in Chelsea and beyond, and perhaps support redistribution in the long term.¹⁶¹ Indeed, the value of care labor, done largely by women of color, has become more visible during the pandemic, and so too has the need for the state to support access to childcare in more equitable ways.

159. Adam Reilly, *Mass Senate Advances Sweeping Plan to Revamp Early Childhood Education and Care*, GBH (July 7, 2022), <https://www.wgbh.org/news/politics/2022/07/07/mass-senate-advances-sweeping-plan-to-revamp-early-childhood-education-and-care>; H.605, 192nd Sess. (Mass. 2021).

160. Michael P. Norton, *Warren Pitches a Plan for \$10-a-day Child Care*, WBUR (Feb. 8, 2023), <https://www.wbur.org/news/2023/02/08/elizabeth-warren-10-dollar-child-care>.

161. See generally Gillian Lester, *Can Joe the Plumber Support Redistribution? Law, Social Preferences, and Sustainable Policy Design*, 64 TAX L. REV. 313 (2011).