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

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**Gendered Complications of Covid-19:
Towards a Feminist Recovery Plan**

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Naomi R. Cahn* and Linda C. McClain**

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

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

ABSTRACT

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

This Article argues that Covid-19 is likely to have complex implications for gender equality and gender equity as state and local governments, the federal government, and private actors focus on recovery plans. The negative impact includes hundreds of thousands of deaths, lingering health complications for many among the several million people who have already contracted the virus, massive economic disruption and loss for individuals, families, and communities and the exacerbation of structural inequalities. The creative policy responses prompted by the devastating impact of Covid-19 provide promise for building a more transformative and equitable future. Indeed, any roadmap to resilience is incomplete without addressing the gender inequities in our social infrastructure. Proposing a feminist recovery plan, this Article focuses on a set of issues relating to gender inequities concerning work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women—particularly, women of color—in providing essential but undervalued care work.

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I. INTRODUCTION

Gendered inequalities are on the frontlines of Covid-19. Globally, the pandemic has made preexisting disparities worse, and preexisting problems within social, political, and economic systems have amplified the pandemic’s impact.¹ In the United States, the pandemic has exposed the limitations in the current economic system on public and private support for gender equity² and the intersecting impact of gender, race, and class in that lack of support.³

The catalogue of Covid-19’s impact covers all aspects of women’s lives: work, family, education, health, reproduction, mental and physical

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

² This Article refers to “gender equity” as fair treatment relative to needs. On this definition of “gender equity” and its role in achieving gender equality, see Breda Pavlic et al., *Gender Equality and Equity: A Summary Review of UNESCO’s Accomplishments Since the Fourth World Conference on Women (Beijing 1995)*, UNESCO (May, 2020), <https://unesdoc.unesco.org/ark:/48223/pf0000121145>; *Gender Equality v. Gender Equity: What’s the Distinction?*, PIPELINE (2020), <https://www.pipelineequity.com/voices-for-equity/gender-equity-vs-gender-equality/> (quoting UNESCO definition and arguing that “if equality is the end goal, equity is the means to get there”); Katica Roy, *Why We Need Gender Equity Now*, FORBES (Sept. 14, 2017), <https://www.forbes.com/sites/ellevate/2017/09/14/why-we-need-gender-equity-now/#7100fa6177a2> (same).

³ See, e.g., Catherine Powell, *Color of Covid and Gender of Covid: Essential Workers, Not Disposable People* (2020) (unpublished manuscript) (on file with authors).

well-being, and leisure.⁴ The unprecedented job losses during the pandemic have hit women harder than men.⁵ Women are a larger percentage of workers in the service-related jobs in which businesses furloughed or laid off employees to ensure social distancing. At the same time, the nature of women's employment also has led to greater vulnerability to exposure to Covid-19. Women are the overwhelming majority of health and home care workers and child care workers, and thus are on the frontlines of providing paid care to both children and the elderly.⁶ More than half of home health care workers are women of color;⁷ one in five workers is a single mother.⁸

These gendered patterns intersect with a “racial justice paradox” that reveals what Catherine Powell calls the “color of COVID”: “people of color [are] overrepresented among both the unemployed and among essential workers” being asked to take risks at work.⁹ Further, the “color of COVID” intersects with “the gender of COVID”: women of color, particularly Black, Latina, and Native American, are at the intersection of the inequities in the emerging stay-at-home economy.¹⁰ They are a

⁴ This Article uses the terms “woman” and “women” broadly to include cisgender women and trans women, as well as people who identify as nonbinary, but are affected by the gendered effects of the pandemic. It also discusses how these gendered effects relate to particular groups of women, for example, women married to men who live in two-parent households or women rearing children in single-parent households. It also recognizes that the pandemic has compounded effects of inequality for the LGBTQ+ community. *See, e.g., Resources: Covid-19*, TRANSGENDER L. CTR., <https://transgenderlawcenter.org/resources/covid19>; Petruce Jean-Charles, *LGBTQ Americans Are Getting Coronavirus, Losing Jobs. Anti-Gay Bias Is Making It Worse For Them*, USA TODAY (May 10, 2020, 3:30 PM), <https://www.usatoday.com/story/news/nation/2020/05/09/discrimination-racism-fuel-covid-19-woes-lgbtq-americans/3070036001/>.

⁵ *See* Sarah Chaney, *Women's Job Losses from Pandemic Aren't Good for Economic Recovery*, WALL ST. J. (June 21, 2020); <https://www.wsj.com/articles/womens-job-losses-from-pandemic-arent-good-for-economic-recovery-11592745164>.

⁶ Women constitute 76% of the essential workers in health care and 73% of those in government and community-based services. Celine McNicholas & Margaret Poydock, *Who Are Essential Workers? A Comprehensive Look at Their Wages, Demographics, And Unionization Rates*, ECONOMIC POL'Y INST. (Mar. 19, 2020, 11:25 AM), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>.

⁷ Joyce Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, CTR. FOR AM. PROGRESS (Apr. 23, 2020, 9:00 AM), <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

⁸ *Advocating for Home Health Workers in the Pandemic*, HOME CARE MAGAZINE (Apr. 2020, 2020), <https://www.homecaremag.com/news/advocating-home-health-workers-coronavirus-pandemic>.

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

¹⁰ *See* Catherine Powell, *The Color and Gender of COVID: Essential Workers, Not Disposable People*, THINK GLOBAL HEALTH (June 4, 2020),

prominent part of the female workforce in low-paid and undervalued frontline jobs – including care work – vital to the economy but who lack the flexibility of being able to work from home and have been disproportionately affected by the so-called “shecession” of pandemic-related job loss.¹¹ At the same time, the pandemic also reveals the protective effects of class for some women: women in professions where working from home is feasible, or who are not essential workers, or who depend upon or benefit from the domestic labor of other women.

When it comes to family responsibilities, mothers have assumed the majority of child care and schoolwork responsibilities for children who can no longer attend day care or whose schools have closed.¹² Although the pace of job loss and the increased amount of child care affecting women are new, the weaknesses in support for gender equity are not. Prior to the pandemic, women faced barriers affecting work, family leave, and child care; they also experienced unequal parenting burdens. Those unequal burdens flowed both from women doing more work in dual-parent heterosexual households and from the fact that almost five times as many children live with a single mother than with a single father.¹³ As with child care, the Covid-19 pandemic has highlighted the care needs of older Americans and of the precarious condition of the undervalued – and predominantly female – workforce that provides elder care.¹⁴

<https://www.thinkglobalhealth.org/article/color-and-gender-covid-19-essential-workers-not-disposable-people>. On the importance of an intersectional analysis, see Kimberle’ Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

¹¹ Powell, *The Color and Gender of COVID*, *supra* note 10; Alisha Hardisanni Gupta, *Why Some Women Call This Recession a ‘Shecession,’* N.Y. TIMES (May 9, 2020), <https://www.nytimes.com/2020/05/09/us/unemployment-coronavirus-women.html>.

¹² Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. TIMES (June 3, 2020),

https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html?campaign_id=154&emc=edit_cb_20200603&instance_id=19067&nl=coronavirus-

[briefing®i_id=34085178&segment_id=30021&te=1&user_id=ebdfd606c9c3133a0aacf56681b93b61](https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html?campaign_id=154&emc=edit_cb_20200603&instance_id=19067&nl=coronavirus-briefing®i_id=34085178&segment_id=30021&te=1&user_id=ebdfd606c9c3133a0aacf56681b93b61).

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

¹⁴ Here, gender intersects both with race and immigration status as healthcare workers providing elder care tend to be immigrants and may lack immigration status. *See, e.g.*, Joey Peters, *In healthcare work, African immigrants feel brunt of COVID-19*, SAHAN JOURNAL (May 27, 2020), <https://sahanjournal.com/health/in-healthcare-work-african-immigrants-feel-brunt-of-covid-19/> (describing pressure on African immigrants to work long hours during COVID-19 pandemic); Shefali Milczarek-Desai, *The other front line: Immigrant workers, nursing homes and COVID-19*, ARIZONA DAILY STAR (Mar. 24, 2020), <https://tucson.com/opinion/local/ua-law-prof-the-other-front-line-immigrant-workers->

The pandemic has also posed challenges for – and exacerbated inequities in – women’s reproductive health. A number of states deemed abortion a nonessential service that could be postponed,¹⁵ while other states explicitly protected access to abortion.¹⁶ Due to the pandemic, “far fewer women want to get pregnant” and seek to delay pregnancy or have fewer children; yet women have reported that it is harder to get birth control. Higher percentages of Black (38%) and Latinx women (43%) than white women (29%) reported such challenges.¹⁷ In the United States and globally, the pandemic has also intensified domestic violence, a form of injury that disproportionately affects women.¹⁸

Even the political response reflects gender patterns. Before the pandemic, women (including white women and women of color) held elected office at a rate significantly below that of men and of women’s percentage of the population, even after the historic gains of the 2018 elections.¹⁹ This continued gender inequity in politics has profoundly affected the pandemic’s consequences. The United States has a dramatically higher proportional number of Covid-19 cases and deaths than its peers around the globe; one evident cause is the toxic masculinity – or “mask-ularity”²⁰ – of President Donald Trump and some of his political allies, which has associated masks and other protective measures with

nursing-homes-and-covid-19/article_01e2d45e-b0e7-5d47-a88b-9ec0e454d5e4.html (describing lack of safety measures and threats of deportation endured by immigrant health care workers during the pandemic).

¹⁵ Sabrina Tavernise, *Texas and Ohio Include Abortion as Medical Procedures That Must Be Delayed*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/us/coronavirus-texas-ohio-abortion.html>; Laura Sobel et al., *State Action to Limit Abortion Access during the COVID-19 Pandemic*, KAISER FAMILY FOUNDATION (June 25, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-action-to-limit-abortion-access-during-the-covid-19-pandemic/>.

¹⁶ Elizabeth Nash et al., *Ten Things State Policymakers Can Do to Protect Access to Reproductive Health Care During the COVID-19 Pandemic*, GUTTMACHER INSTITUTE (May, 18 2020), <https://www.guttmacher.org/article/2020/05/ten-things-state-policymakers-can-do-protect-access-reproductive-health-care-during>.

¹⁷ Sarah McCammon & Maureen Pao, *Survey: Women Are Rethinking Having Kids as They Face Pandemic Challenges*, NPR (June 24, 2020, 7:41 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/06/24/882953643/survey-women-are-rethinking-having-kids-as-they-face-pandemic-challenges>.

¹⁸ See UN, *Policy Brief: The Impact of COVID-19 on Women*, *supra* note 1, at 19.

¹⁹ See *Women in Elective Office 2020*, CTR. FOR AM. WOMEN AND POLITICS, <https://www.cawp.rutgers.edu/women-elective-office-2020>; *Women of Color in Elective Office 2020*, CTR. FOR AM. WOMEN AND POLITICS, <https://www.cawp.rutgers.edu/women-color-elective-office-2020>; *Black Women in American Politics 2019*, CTR. FOR AM. WOMEN AND POLITICS & HIGHER HEIGHTS (2019), <https://cawp.rutgers.edu/sites/default/files/resources/black-women-politics-2019.pdf> (reporting how Black women “made history as nominees and winners” in 2018 elections for Congress, but noting their “persistent underrepresentation” as candidates and officeholders in the Senate and in statewide elected office, including as governors).

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

shame and weakness.²¹ Such toxic masculinity includes both an exaggerated emphasis on toughness and risk-taking, including “reopening” the economy without sufficient regard to how to do so safely in light of protecting workers and public health, as well as an absence or suppression of empathy or caring about the staggering human toll of the pandemic.²² That dangerous performance of masculinity is also evident in Trump’s callous use of George Floyd to tout economic recovery and his “law and order” response to the widespread protests against police brutality and systemic racism spurred by Floyd’s videotaped murder under the knee of Derek Chauvin.²³

Notwithstanding the toxic masculinity of such male leaders, this Article does not assume that female leaders necessarily embrace certain “feminine” values, such as care and empathy. It is striking, however, that surveys of which nations have had the “best responses” to the pandemic disproportionately include countries with women leaders who have communicated “empathy and care.”²⁴ Within the United States, state governors and mayors of large cities praised for their compassionate and

²¹ See Dr. Julia Marcus, *The Dudes Who Don’t Wear Masks*, ATLANTIC (June 23, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/dudes-who-wont-wear-masks/613375/> (noting negative influence of President Trump’s mocking mask wearers as weak and reporting research that, even though men are at higher risk than women for dying from Covid-19, they are especially likely not to wear masks because they view wearing them as “shameful,” “a sign of weakness,” and “not cool”).

²² This Article uses the term “toxic masculinity” to refer to a set of beliefs or behaviors that the person performing them associates with traditional masculinity, or what being a boy or man in a particular society requires, and that have harmful effects, including perpetuating gender inequality, misogyny, racism, and homophobia. One of the first law review articles to define the term explains it as “the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia and wanton violence.” Terry A. Kupers, *The Role of Misogyny and Homophobia in Prison Sexual Abuse*, 18 UCLA WOMEN’S L.J. 107, 112 (2010) (citation omitted); see also Michael Kimmel and Lisa Wade, *Ask A Feminist: Michael Kimmel and Lisa Wade Discuss Toxic Masculinity*, SIGNS (Dec. 12, 2017), <http://signsjournal.org/kimmel-wade-toxic-masculinity/> (conversation held over Skype). Accounts of toxic masculinity typically include the following beliefs and behaviors: (1) “Suppressing emotions or masking distress”; (2) “Maintaining an appearance of hardness”; and (3) “Violence as an indicator of power (think: “tough-guy” behavior)”. Maya Salam, *What Is Toxic Masculinity?*, N.Y. TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/us/toxic-masculinity.html> (observing that a term “once relegated to women’s studies classrooms . . . suddenly seems to be everywhere”). On “toxic masculinity” as a “salient” feature in the responses to the pandemic by President Trump and Brazil’s president, Jair Bolsonaro, see Robin Dembroff, *In this Moment of Crisis, Macho Leaders are a Weakness, Not a Strength*, THE GUARDIAN (Apr. 13, 2020), <https://www.theguardian.com/commentisfree/2020/apr/13/leaders-trump-bolsonaro-coronavirus-toxic-masculinity>.

²³ Maegan Vazquez, *Trump Invokes George Floyd’s Name While Taking Economic Victory Lap*, CNN (June 5, 2020, 3:30 PM), <https://www.cnn.com/2020/06/05/politics/donald-trump-george-floyd-rose-garden/index.html>.

²⁴ Avivah Wittenberg-Cox, *What Do Countries with the Best Coronavirus Responses Have in Common? Women Leaders*, FORBES (April 13, 2020), <https://www.forbes.com/sites/avivahwittenbergcox/2020/04/13/what-do-countries-with-the-best-coronavirus-reponses-have-in-common-women-leaders/#1e3251a53dec>.

effective responses include several female leaders, such as Michigan’s governor, Gretchen Whitmer, and Atlanta’s mayor, Keisha Lance Bottoms, as well as some men, like New York’s governor, Andrew Cuomo, who palpably communicate empathy and eschew the reckless disregard for the human costs of reopening the economy too soon.²⁵

This Article argues that Covid-19 is likely to have complex implications for gender equality as state and local governments, the federal government, and private actors focus on recovery plans. The pandemic exposes pre-existing structural inequities in the United States, and the heightened visibility of—and growing public support for—the Black Lives Matter movement in recent months brings these inequities into even sharper relief.²⁶

Responses to the pandemic provide the opportunity to address these inequities and this Article argues that, without addressing them, roadmaps to recovery remain incomplete.²⁷ A feminist recovery plan has the potential to address such inequities in a transformative way, including those evident from the intersection of gender, race, and class in the pandemic’s effects.²⁸

²⁵ On governors, see, e.g., Jonathan Mahler, *A Governor on Her Own, With Everything at Stake*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/magazine/gretchen-whitmer-coronavirus-michigan.html>; Naz Beheshti, *Steady Hand in a Crisis*, FORBES (Apr. 9, 2020), <https://www.forbes.com/sites/nazbeheshti/2020/04/09/steady-hand-in-a-crisis-what-business-leaders-can-learn-from-new-york-governor-andrew-cuomo/#3390aa83037d>. On the prominent role of women (including women of color) mayors fighting the pandemic, see Kelly Dittmar, *Women on the Front Lines in Cities’ Fights Against COVID-19*, CTR. FOR AM. WOMEN AND POLITICS (Apr. 14, 2020), <https://cawp.rutgers.edu/election-analysis/women-mayors-covid-19>; Mattie Kahn, *The Women Leading the Coronavirus Response from City Hall*, GLAMOUR (May 4, 2020), <https://www.glamour.com/story/women-mayors-leading-the-coronavirus-response> (featuring five mayors, including Mayor Bottoms and Mayor Lori Lightfoot, Chicago).

²⁶ See Nate Cohn & Kevub Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> (charting American voters’ growing support for the movement since the death of George Floyd).

²⁷ Cf. Lobel, *supra* note 1, at 552 (“Unpacking the factors that contribute to the persistent gender pay gap is key to understanding the need for multilayered reforms that target the different causes and stages of unequal compensation.”); Ines Smyth and Caroline Sweetman, *Introduction: Gender and Resilience*, 23 GENDER & DEVELOPMENT 405, 405 (2015), <https://www.tandfonline.com/doi/abs/10.1080/13552074.2015.1113769?journalCode=cgde> 20 (arguing for the importance of “development and humanitarian researchers, policymakers and practitioners” approaching resilience “from a gender perspective” and in ways that “support women’s rights and gender equality”).

²⁸ On the need for a *feminist* recovery plan, see, HAWAI’I STATE COMMISSION ON THE STATUS OF WOMEN, BUILDING BRIDGES, NOT WALKING ON BACKS: A FEMINIST ECONOMIC RECOVERY PLAN FOR COVID-19 1 (2020); see also Powell, *The Color and Gender of COVID-19*, *supra* note 10 (arguing that, because “women of color sit at the intersection of race, gender, and economic disparities,” they “must be placed at the center of policy solutions”).

Addressing gender inequities will also build “resilience”—understood as “[t]he ability of people, households, communities, countries, and systems to mitigate, adapt to and recover from shocks and stresses in a manner that reduces chronic vulnerability and facilitates inclusive growth.”²⁹ Indeed, “resilience” is a key concept in plans for economic recovery and preparing for future pandemics.³⁰ A feminist recovery plan, this Article argues, has the potential to address such inequities, including those evident from the intersection of gender, race, and class in the pandemic’s effects. Such a plan would insist that building resilience requires addressing such inequities, and—as Professor Martha Fineman has argued—focusing upon how society and its institutional structures allocate benefits and burdens in ways that mitigate or worsen human vulnerability.³¹ It would reject the toxic masculinity of some current responses, which may be contributing to the pandemic’s particularly ferocious impact in the United States when compared with similar industrial democracies. Further, a feminist economic

²⁹ Smyth & Sweetman, *supra* note 27, at 405 (quoting USAID definition of resilience); see also Ann S. Masten et al., *Resilience in Development: The Importance of Early Childhood*, ENCYCLOPEDIA ON EARLY CHILDHOOD DEVELOPMENT (Oct. 2013), <http://www.child-encyclopedia.com/resilience/according-experts/resilience-development-importance-early-childhood> (defining “resilience” broadly as “the capacity of a dynamic system to withstand or recover from significant challenges that threaten its stability, viability, or development”). As this Article uses the term, building resilience refers both to the resources needed by human beings and the proper design of social systems and institutions. See, e.g., Martha Albertson Fineman, *Vulnerability, Resilience, and LGBT Youth*, 23 TEMP. POL. & C.R.L. REV. 307, 320 (2014) (“[r]esilience is what provides an individual with the means and ability to recover from harm or setbacks,” and “[t]he degree of resilience an individual has is largely dependent on the quality and quantity of resources or assets that he or she has at their disposal to command”). Legal scholar Martha Albertson Fineman enlists the concept of resilience in elaborating the obligation of a responsive state to address the universal human experience of vulnerability and provide mechanisms for building resilience. See Martha Albertson Fineman, *Introduction to PRIVATIZATION, VULNERABILITY, AND SOCIAL RESPONSIBILITY: A COMPARATIVE PERSPECTIVE* 1, 4 (Martha Albertson Fineman et al. eds., 2017).

³⁰ For some examples of state recovery plans referring to resilience, see RESILIENCE ROADMAP, CA.GOV (Aug. 6, 2020), <https://covid19.ca.gov/roadmap/> (California plan); BEYOND RECOVERY: REOPENING HAWAII, https://governor.hawaii.gov/wp-content/uploads/2020/05/Gov_Reopening-Presentation-Slide-Deck_18-May-2020.pdf (Hawai’i plan; referring to “state roadmap to recovery and resilience”). For an example linking resilience and equity, see *NY Forward: A Guide to Reopening New York and Building Back Better*, (May 2020), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopeningGuide.pdf> (referring to opportunity to build back “more resilient, and more equal;” to building back “core parts of our society and our economy to be more resilient to future pandemics,” but also to address systemic issues that have limited progress and opportunity). See also Danielle Allen et al., *Roadmap to Pandemic Resilience: Massive Scale Testing, Tracing, and Supported Isolation (TTSI) as the Path to Pandemic Resilience for a Free Society*, 17 (Edmond J. Safra Center for Ethics at Harvard University, April 20, 2020) (stating that focus should be “not on ‘opening’ the economy but on mobilizing a pandemic-resilient economy”).

³¹ See generally Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L. J. 251, 256 (2010).

recovery plan would build upon the so-called “business case” for gender equality, recognizing that such equality is not only a social but a business “imperative,” because of the positive effects on companies’ performance, and the economy, from greater diversity in leadership and in the workforce.³²

An outpouring of work by feminist scholars and organizations points out how the pandemic has revealed and heightened gender inequities— in areas ranging from domestic violence to reproductive health and justice to the women’s wealth gap— and charts pathways to a more equitable future.³³ This Article builds on that work by focusing on a set of issues relating to gender inequities concerning work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women, particularly women of color, in providing essential but undervalued care work. Although arguments for gender equity – and even many of the proposed solutions – are not new, this Article is the first to show how the pandemic has the potential to create a paradigm shift in gender equity laws.

The Article begins, in Part II, with an overview of persistent, pre-pandemic gender inequity in these areas. Part III then canvasses how Covid-19 has highlighted and exacerbated these unequal patterns of care and work and how gender, race, and class intersect in these effects. Part III also considers how the challenges posed by responding to the pandemic

³² See Bettina C. K. Binder et al., *The Plight of Women in Positions of Corporate Leadership in the United States, the European Union, and Japan: Differing Laws and Cultures, Similar Issues*, 26 MICH. J. GENDER & L. 279, 283 (2019); Shelly Zalis, *Lessons from the World’s Most Gender-Equal Countries*, FORBES (Oct. 30, 2018), <https://www.forbes.com/sites/shelleyzalis/2018/10/30/lessons-from-the-worlds-most-gender-equal-countries/#5db76c567dd8>.

³³ See, e.g., Joan Meier, *#Childrentoo in Family Court: the Culture of Denial* (April 2020). GWU Legal Studies Research Paper No. 2020-24, GWU Law School Public Law Research Paper No. 2020-24, (posted July 22, 2020) <https://ssrn.com/abstract=3589328> (addressing men’s abuse of women and children within the family); *Dorothy Roberts: ‘We Need a Radical Transformation of the Structures that Support Working Families,’* MSNBC (March 28, 2020), <https://www.msnbc.com/ali-velshi/watch/dorothy-roberts-we-need-a-radical-transformation-of-the-structures-that-support-working-families-81332293630>; Jaime Fields Alsbrook, Osub Ahmed & Nora Ellman, *Toward Equitable Treatments For Women’s Health During the Coronavirus and Beyond*, CTR. FOR AM. PROGRESS (July 15, 2020), <https://www.americanprogress.org/issues/women/reports/2020/07/15/487429/toward-equitable-treatments-womens-health-coronavirus-beyond/>; Dominique Derbigny, *On the Margins: Economic Security for Women of Color Through the Coronavirus Crisis and Beyond*, CLOSING THE WOMEN’S WEALTH GAP (Apr. 2020), https://womenswealthgap.org/wp-content/uploads/2020/04/OnTheMargins_April2020_CWWG.pdf; Rachel Rebouche & Mary Ziegler, *COVID-19 Abortion Bans Could Have Alarming Effects Far Beyond This Crisis*, NEWSWEEK (May 13, 2020, 6:00 AM) <https://www.newsweek.com/covid-19-abortion-bans-could-have-alarming-effects-far-beyond-this-crisis-opinion-1503511>; *Feminist Response to COVID-19: Principles*, FEMINIST COVID RESPONSE, <https://www.feministcovidresponse.com/principles>.

suggest potentially promising and constructive steps forward. It considers some of the initial federal and state responses.

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

II. GENDER AS A RISK FACTOR PRE-PANDEMIC

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

A. *The Workplace*

The gender pay gap, or the median annual earnings ratio, for women “of all races” is \$0.82 for every \$1.00 earned by men “of all races.”³⁴ That ratio, however, masks significant differences among women: measured against every \$1.00 white men earn, Asian American women earn \$0.90 and white women, \$0.79, while Black women earn \$0.62, Native American women, \$0.57, and Latinx women, \$0.54.³⁵ The average gender pay gap is also larger between mothers and fathers.³⁶

³⁴ Robin Bleiweis, *Quick Facts about the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Mar. 24, 2020, 9:01 AM), <https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap/>.

³⁵ *Id.*

³⁶ This gap varies by state. The National Women’s Law Center reports that the smallest gap is in Vermont, where mothers are “typically paid 81 cents for every dollar paid to fathers, translating to a typical loss of about \$10,543 in earnings annually.” Amanda Fins, *Effects of Covid-19 Show Us Equal Pay is Critical for Mothers*, NAT’L WOMEN’S L. CTR. 4 (2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/05/Moms-EPD-2020-v2.pdf>. Strikingly, \$0.59 was the average amount that women working full time earned — for every dollar earned by men — in 1963, when Congress passed the Equal Pay Act. *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*, NAT’L COMM. ON PAY EQUITY (2019), <https://www.pay-equity.org/info-time.html#:~:text=Since%20the%20Equal%20Pay, every%20dollar%20earned%20by%20men.&text=That%20means%20that%20the%20wage, half%20a%20cent%20per%20year!>

The gender pay gap is a combination of multiple factors, not just sex discrimination.³⁷ Consider that women are clustered in lower-paying jobs. In the top slice – the top 0.1% – of earners, only one in ten are women.³⁸ Despite comprising less than half the labor force, women account for almost 70% of low-wage workers in jobs that pay under \$10 per hour.³⁹ Jobs traditionally identified as female and which are still held predominantly by women— such as home health and child care workers— typically have lower pay and fewer benefits than jobs traditionally identified with men and which are still held predominantly by men.⁴⁰ Home health aides are among the nation’s most poorly paid workers, with a median yearly income of \$24,060 in 2018.⁴¹ Only in 2015 did the U.S. Department of Labor extend the federal minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) to the two-million-plus home care workers in the United States.⁴² Protections are still lacking at the state level.⁴³ Such caregiving is physically taxing, but the wages are so low that many workers cannot afford health insurance; 46% rely on Medicaid for health coverage.⁴⁴ As elaborated in Part III, this predominantly female workforce is also made up predominantly by women of color and has been at the frontlines in the pandemic.

The gender pay gap also reflects that women have fewer years of work experience and are more likely to work part-time (with lower hourly

³⁶ Jeremy Ashkenas, *Nine New Findings About Inequality in the United States*, N.Y. TIMES (Dec. 16, 2016), <https://www.nytimes.com/interactive/2016/12/16/business/economy/nine-new-findings-about-income-inequality-piketty.html>.

³⁷ E.g., Lobel, *supra* note 1, at 555; Claire Cain Miller, *Women’s Gains in the Work Force Conceal a Problem*, N.Y. TIMES (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/upshot/womens-gains-in-the-work-force-conceal-a-problem.html>.

³⁸ Jeremy Ashkenas, *Nine New Findings About Inequality in the United States*, N.Y. TIMES (Dec. 16, 2016), <https://www.nytimes.com/interactive/2016/12/16/business/economy/nine-new-findings-about-income-inequality-piketty.html>.

³⁹ Jasmine Tucker & Kayla Patrick, *Low-Wage Jobs Are Women’s Jobs: The Overrepresentation of Women In Low-Wage Work*, NAT’L WOMEN’S L. CTR. (2017), <https://nwlc.org/wp-content/uploads/2017/08/Low-Wage-Jobs-are-Womens-Jobs.pdf>.

⁴⁰ Eighteen of the 25 lowest paying jobs are predominantly female. Grant Suneson, *What Are The 25 Lowest Paying Jobs in The US? Women Usually Hold Them*, USA TODAY (June 7, 2019, 7:27 AM), <https://www.usatoday.com/story/money/2019/04/04/25-lowest-paying-jobs-in-us-2019-includes-cooking-cleaning/39264277/>.

⁴¹ U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK: HOME HEALTH AIDES AND PERSONAL CARE AIDES, (2019) <https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm> (this is under \$12/hour).

⁴² *The USDOL Home Care Rules: What does good implementation look like?*, NAT’L EMP. L. PROJECT (June 2016), <https://www.nelp.org/wp-content/uploads/Fact-Sheet-USDOL-Home-Care-Rules-Good-Implementation.pdf>.

⁴³ *Home Care Workers Rights in the States*, NAT’L EMP. L. PROJECT (Aug. 2016), https://s27147.pcdn.co/wp-content/uploads/State-chart-on-companionship-regs_revised_August-2016_Final.pdf.

⁴⁴ Soo Oh, *The Future of Work is the Low-Wage Health Care Job*, VOX (July 3, 2017, 10:00 AM), <https://www.vox.com/2017/7/3/15872260/health-direct-care-jobs>.

wages and benefits) than men because of care-based obligations.⁴⁵ Although the dual-earner family is more common today than the family with the husband as sole breadwinner, persisting attitudes about gender roles more strongly associate work – and the financial obligation to provide – with men, and caring for children more strongly with women.⁴⁶ More than 70% of both men and women say it is very important for a man to be able to support a family financially to be considered a good partner, and only a quarter of men say the same for a woman (39% of women think this is important).⁴⁷ When the husband does not work full-time, the divorce risk is almost a third higher than when he is working full-time.⁴⁸

These gender inequities in employment are worse for women of color, who stand at the intersection of multiple barriers. At the very top of earners, under 1% of Fortune 500 CEOs are women of color, and none is Black or Latina.⁴⁹ Based on their share of the overall workforce, Latinas and Native American women are twice as likely to be in the low-paid workforce, while Black women are 1.5 times as likely.⁵⁰ Black women contribute significantly to the financial security of their families, as they are more likely to be the breadwinners in their households – and more likely to be a single head of household. Yet, women of color are overrepresented in low-wage jobs like retail, hospitality, and restaurants.⁵¹

B. Paid and Unpaid Care

Long before the pandemic, references to a “child care crisis” in the United States signaled that the lack of affordable, accessible, and high quality child care was an obstacle to women’s full participation in the

⁴⁵ Bleiweis, *supra* note 34.

⁴⁶ See Gretchen Livingstone & Kim Parker, *8 Facts about American Dads*, PEW RES. CTR. (Jun. 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/fathers-day-facts/>.

⁴⁷ Kim Parker & Renee Stepler, *Americans See Men as the Financial Providers, Even as Women’s Contributions Grow*, PEW RES. CTR. (Sept. 20, 2017), <https://www.pewresearch.org/fact-tank/2017/09/20/americans-see-men-as-the-financial-providers-even-as-womens-contributions-grow/>.

⁴⁸ Belinda Luscombe, *Men Without Full-Time Jobs Are 33% More Likely to Divorce*, TIME (June 27, 2016, 10:36 PM), <https://time.com/4425061/unemployment-divorce-men-women/>.

⁴⁹ Courtney Connley, *The Number of Women Running Fortune 500 Companies Hits A New High*, CNBC (May 19, 2020), <https://www.cnbc.com/2020/05/19/the-number-of-women-running-fortune-500-companies-hits-a-new-high.html#:~:text=There%20are%20also%20just%20three,Fortune%20500%20company%20last%20year.>

⁵⁰ Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, NAT’L WOMEN’S L. CTR. 3 (2020), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.

⁵¹ Naomi Cahn, *COVID-19’s Impact On Women of Color*, FORBES (May 10, 2020), <https://www.forbes.com/sites/naomicahn/2020/05/10/mothers-day-and-covid-19s-impact-on-women-of-color/#61f83be541ac>.

workforce.⁵² With this nationwide shortage of child care, more than half of Americans live in “child care deserts.”⁵³ Ironically, increasing the amounts of federal and state subsidies for child care for low income families since the mid-1990s may have resulted in a decrease in the supply of child care and a rise in cost for the remaining slots – and also negatively impacted women’s workplace participation.⁵⁴

When asked whether finding child care made a difference to their being employed, women were twelve times as likely not to be employed as men if they could not find the care.⁵⁵ Although the problem of finding high quality child care is one that crosses class lines, it also has race and class dimensions. Child care deserts are most likely to be in low- and middle-income and rural communities.⁵⁶ Further, Black women experience more difficulty finding child care than do white women, and lower-income women are less likely to be happy with the quality of the care they have found.⁵⁷

In the informal care sector, women assume the majority of caretaking for children and for elderly parents.⁵⁸ Among married heterosexual couples who have children and where both parents work, wives provide 10.3 hours per week of child care, while husbands provide 7.2 hours of child care, and, where there is a child who is age five or under, married women provide 16.8 hours per week, while married men provide

⁵² Leila Schochet, *The Child Care Crisis Is Keeping Women Out of the Workforce*, CTR. FOR AM. PROGRESS (Mar. 28, 2019, 8:00 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/>.

⁵³ *Id.*; Rasheed Malik et al., *The Coronavirus Will Make Child Care Deserts Worse and Exacerbate Inequality*, CTR. FOR AM. PROGRESS (June 22, 2020, 6:30 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2020/06/22/486433/coronavirus-will-make-child-care-deserts-worse-exacerbate-inequality/>. A “child care desert” is an area “with more than three children under age 5 for every licensed child care slot.” *Id.*

⁵⁴ So Kubota, *The U.S. Child Care Crisis: Facts, Causes, and Policies* (Waseda Institute of Political Economy, Working Paper Series No. E2008, 2020), https://www.waseda.jp/fpse/winpec/assets/uploads/2020/07/E2008_version.pdf (explaining that the subsidies may have driven out home-based care).

⁵⁵ Megan Leonhardt, *U.S. Parents Lost \$35 Billion By Staying Home With Their Kids – The Coronavirus Pandemic Could Make It Worse*, CNBC (May 22, 2020, 1:32 PM), <https://www.cnbc.com/2020/05/22/child-care-indirectly-costs-parents-35-billion-coronavirus-may-increase-that.html>. Twelve percent of women compared to 1% of men were not working because they could not find child care. Schochet, *supra* note 52.

⁵⁶ Malik, *supra* note 53.

⁵⁷ Schochet, *supra* note 52.

⁵⁸ Halley Bondy, *Caregiving, or Career? The Choice No Woman Should Have to Make*, NBC NEWS (Jan. 29, 2020, 1:17 PM), <https://www.nbcnews.com/know-your-value/feature/caregiving-or-career-choice-no-woman-should-have-make-ncna1125616> (60 percent of caregivers are women, but the proportion of men who caregive (40 percent) is rapidly growing).

10.6 hours.⁵⁹ Nearly twenty-five percent of children in the United States live with one parent, typically the mother; such parents experience added time demands in juggling care and work.⁶⁰

The burden of informal caretaking is not only financial but physical and emotional. Here, too, there are intersecting gender and race effects. Research shows that “[h]ealth problems affect 25 percent to 30 percent of informal caregivers, particularly those who are African American, female, unemployed, middle-aged, and who are providing [the] highest levels of care” -- problems that are, “in turn, associated with increased emotional distress and mental health problems.”⁶¹ Further, limited access by immigrants to insurance and healthcare worsens these disparities.⁶²

Pre-pandemic, the United States already stood out as a laggard among comparable nations for its lack of paid leave for workers’ family caregiving responsibilities or for their own health care. In the absence of such policy, however, by 2018, the majority of large private employers had adopted some form of paid leave policies in recognition of workers’ challenges in balancing paid work and their caregiving responsibilities.⁶³ Even so, a sizeable minority of large employers and many smaller employers do not, meaning that workers do not uniformly enjoy this benefit.⁶⁴ The top-earning 25% of workers are at least twice as likely as those in the bottom 25% to have access either to paid family care leave.⁶⁵ Similarly, employers differ with respect to worker access to paid sick leave. While such leave is nearly universally available at the top quartile of wage distribution (for 92% of such workers), barely half of workers in the lowest

⁵⁹ Tito Alon et al., *The impact of Covid-19 on gender equality*, 4 CEPR PRESS 62, 72 (2020), http://faculty.wcas.northwestern.edu/~mdo738/research/Alon_Doeke_Olmstead-Rumsey_Tertilt_COVID_2020.pdf?campaign_id=154&emc=edit_cb_20200603&instance_id=19067&nl=coronavirus-briefing®i_id=34085178&segment_id=30021&te=1&user_id=ebdfd606c9c3133a0aacf56681b93b61.

⁶⁰ See e.g., Kristen Rogers, *Frosted Flakes for Dinner. Hiding in The Laundry Room. This Is Life for Single Moms Right Now*, CNN (May 8, 2020, 4:41 PM), <https://www.cnn.com/2020/05/08/health/single-mom-challenges-mothers-day-coronavirus-wellness/index.html>.

⁶¹ Nancy R. Hooyman, *Social and Health Disparities in Aging: Gender Inequalities in Long-Term Care*, AM. SOC’Y ON AGING, <https://www.asaging.org/blog/social-and-health-disparities-aging-gender-inequities-long-term-care>.

⁶² *Id.*

⁶³ *PL+US 2018 Employer Scorecard*, PL+US (PAID LEAVE FOR THE UNITED STATES), <https://paidleave.us/topemployerpolicies> (noting “tipping point” reached in 2018, with 72% of surveyed companies reported paid leave policies).

⁶⁴ *Id.*; see also Drew Desilver, *Access to Paid Family Leave Varies Widely Across Employers, Industries*, PEW RES. CTR. (Mar. 23, 2017), <https://www.pewresearch.org/fact-tank/2017/03/23/access-to-paid-family-leave-varies-widely-across-employers-industries/>.

⁶⁵ Isabel V. Sawhill, Sarah Nzau, & Katherine Guyot, *A Primer on Access to and Use of Paid Family Leave*, BROOKINGS (Dec. 5, 2019), <https://www.brookings.edu/research/a-primer-on-access-to-and-use-of-paid-family-leave/>.

quartile had access to such leave.⁶⁶ Caretaking thus imposes an extra financial burden on low-income households, and the lack of paid leave is a symptom of the insecure conditions of their work.

At the state level, eight states and the District of Columbia have enacted laws requiring access to paid family leave.⁶⁷ These provisions include progressive wage replacement, expansive legal definitions of who and what makes a family, and job protections regardless of employer size.⁶⁸ Connecticut and Oregon are acclaimed for having adopted the best practices. Both states offer the highest compensation, Connecticut ensuring those who make forty times the state's minimum wage or less will get ninety-five percent of their regular pay while away from work, and Oregon mandating full pay for anyone who makes sixty-five percent or less of the state's average weekly wage.⁶⁹ Additionally, both states include an expansive definition of family when deciding who can take paid family and medical leave. This list includes , spouses, siblings, children, grandchildren, grandparents, parent-in-law, and, in Oregon, registered domestic partners..⁷⁰ Both states include anyone “related by blood or affinity whose close association ... is the equivalent of a family relationship.”⁷¹

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

III. GENDER AS A RISK FACTOR DURING THE PANDEMIC

These patterns of care and work make a difference during the pandemic. Most effects have been negative, but some potentially positive developments suggest possible foundations for an economic recovery more attentive to the inequities that the pandemic brought into sharp focus. In this section, we canvass some of the ways that the pandemic highlighted and made worse existing inequalities and then turn to promising developments, looking at some federal and state recovery plans meant to combat these inequalities. In Part IV, the Article examines the strengths and

⁶⁶ Drew Desilver, *As Coronavirus Spreads, Which U.S. Workers Have Paid Sick Leave, -- and Which Don't?*, PEW RES. CTR. (Mar. 12, 2020), <https://www.pewresearch.org/fact-tank/2020/03/12/as-coronavirus-spreads-which-u-s-workers-have-paid-sick-leave-and-which-dont/>.

⁶⁷ The states are California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. *Overview of Paid Family & Medical Leave Laws in the United States*, A BETTER BALANCE 6 (Jan. 8, 2020), <https://www.abetterbalance.org/wp-content/uploads/2020/01/CombinedPFMLChart-2.pdf>. Hawai'i has a temporary disability insurance program, which affords workers (after a one-week waiting period) up to 26 weeks for a period of “serious off-the-job illness or injury.” *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.*

weaknesses of these plans with respect to constructing a robustly feminist economic recovery.

A. *The Negative*

Almost twice as many working women as men are employed in two industries that have been substantially impacted by the virus: health care and social assistance and the leisure and hospitality industry. Women, however, receive less pay than do men in each of these fields.⁷² They are also sectors in which a high proportion of the workforce is unable to work remotely, and the pandemic has meant that workers, particularly women with young children, were disproportionately likely to become unemployed.⁷³ Studies show that job loss is highest in the United States for immigrants, with non-citizen immigrant women being hit the hardest.⁷⁴

The pandemic has sharply brought into focus the critical role of women of color in the essential, but undervalued, work force, highlighting the intersecting “color” and “gender” of Covid-19 introduced in Part One.⁷⁵ Ai-Jen Poo and Palak Shah, leaders of the National Domestic Workers Alliance, persuasively argue that this work force is the “critical engine of our economy,” both in times of stability and crisis, but is “largely unprotected by our safety net.”⁷⁶

The consequences of this lack of protection are demonstrated by the child care crisis. Approximately one-quarter of child care workers lost their jobs during the first few months of the pandemic.⁷⁷ Almost half of all child

⁷² Jennifer Median & Lisa Lerer, *When Mom’s Zoom Meeting Is the One That Has to Wait*, N.Y. TIMES (June 22, 2020), <https://www.nytimes.com/2020/04/22/us/politics/women-coronavirus-2020.html>.

⁷³ Dimitris Papanikolaou & Lawrence Schmidt, *Working Remotely and the Supply-side Impact of Covid-19* (July 25, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3615334. Note that, because the pandemic is not a static occurrence, statistics vary depending on when any particular measurement is taken. The overall trends concerning gender, however, are consistent, so the “snapshot” numbers in the article provide a panoramic view.

⁷⁴ Rakesh Kochhar, *Hispanic Women, Immigrants, Young Adults, Those With Less Education Hit Hardest By COVID-19 Job Loss*, PEW RES. CTR. (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses/> (showing a 19% drop for immigrant workers, compared to a 12% drop for U.S. born workers); Edward Orozco Flores & Ana Padilla, *Persisting Joblessness Among Non-Citizens During COVID-19*, CMTY. AND LABOR CTR. AT THE U. OF CAL. MERCED (June 2020), https://ssha.ucmerced.edu/sites/ssha.ucmerced.edu/files/documents/persisting_joblessness.pdf (“Job loss was especially acute among non-citizen immigrant women both in California (36.3%) and in the rest of the US (23.7%).”).

⁷⁵ See Powell, *Color and Gender of COVID*, *supra* note 10.

⁷⁶ Ai-Jen Poo & Palak Shah, *The Future of Work Isn’t What People Think It Is*, N.Y. TIMES, June 24, 2020 (<https://www.nytimes.com/2020/06/24/opinion/sunday/coronavirus-health-workers-nurses.html>).

⁷⁷ U.S. BUREAU OF LABOR STATISTICS, TABLE B-1: EMPLOYEES ON NONFARM PAYROLLS BY INDUSTRY SECTOR AND SELECTED INDUSTRY DETAIL (last checked Aug. 7, 2020),

care centers closed.⁷⁸ Even when they sought to reopen, they were concerned about new Centers for Disease Control guidelines that would be difficult and expensive to implement, especially in light of their thin profit lines.⁷⁹ In addition, with many workers still staying home and because of the safety restrictions, child care centers have fewer children.⁸⁰

As a result, parents have almost doubled the amount of time they spend on education and household tasks, increasing from 30 to 59 hours per week, and, on average, fathers spend 15 less than mothers.⁸¹ Across the board, employed mothers with the ability to stay home struggled to balance work and home schooling. Further, in households with “dual earning, straight married couples,” one study found that mothers “have reduced their work hours four to five times as much as fathers.”⁸² Even before the pandemic, research found that working from home increased not only job-related stress but also family conflict.⁸³ Now, as children continue to “go to

<https://www.bls.gov/news.release/empsit.t17.htm> (more than one million people held such jobs in July 2019 compared to approximately 775,000 in June 2020 (using seasonally adjusted numbers)). See also Dana Goldstein & Julie Bosman, *As Day Care Centers Reopen, Will Parents Send Their Children?*, N.Y. TIMES (May 30, 2020); <https://www.nytimes.com/2020/05/29/us/coronavirus-child-care-centers.html> (reporting on precarious position of many child care centers and that “[t]he coronavirus cost the industry more than 355,000 jobs in March and April”).

⁷⁸ Karen Travers & Janet Weinstein, *Coronavirus is Pushing the US Child Care Industry to The Brink of Collapse*, ABC NEWS (June 22, 2020, 7:10 PM), <https://abcnews.go.com/Politics/coronavirus-pushing-us-child-care-industry-brink-collapse/story?id=71353735>.

⁷⁹ *K-12 Schools and Child Care Programs: FAQs for Administrators, Teachers, and Parents*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools-faq.html>. For concerns over these CDC guidelines, see, e.g., Jen Rose Smith, *Parents and Child Care Providers Are Falling Apart. It Could Get Much Worse*, CNN (June 1, 2020, 7:38 AM), <https://www.cnn.com/2020/06/01/health/preschools-child-care-closing-pandemic-wellness/index.html> (reporting economic difficulties child care centers would face complying with CDC guidelines and one child care provider’s decision to close indefinitely because staying “afloat” economically while following the new CDC guidelines would be “impossible”).

⁸⁰ E.g., Collin Eaton, *Companies Agonize Over Reopening Timetables as Covid-19 Spread*, WALL ST. J. (June 24, 2020, 10:15 PM), https://www.wsj.com/articles/companies-agonize-over-reopening-timetables-after-covid-19-lockdowns-11593036741?mod=djemMoneyBeat_us.

⁸¹ Cohen & Hsu, *supra* note 12.

⁸² Jessica Grose, *They Go to Mommy First*, N.Y. TIMES (Jul. 6, 2020), https://www.nytimes.com/2020/07/15/parenting/working-moms-coronavirus.html?campaign_id=9&emc=edit_nn_20200716&instance_id=20351&nl=the-morning®i_id=57884714&segment_id=33535&te=1&user_id=da7a15d6d1a856cd9bf42b014631b281.

⁸³ Suzanne Edwards & Larry Snyder, *Yes, Balancing Work and Parenting is Impossible. Here’s The Data*, WASH. POST (July 10, 2020, 6:00 AM) https://www.washingtonpost.com/outlook/interruptions-parenting-pandemic-work-home/2020/07/09/599032e6-b4ca-11ea-aca5-ebb63d27e1ff_story.html?fbclid=IwAR2jFG0GDyawBwxNqjD2C1viN6NcGU4Sv24bsxeysYzx4j1hOhzo7_h3M7g.

mommy first” in dual-earner mother-father households, the gender gap in work hours is increasing by 20 to 50 percent.⁸⁴ Further, single mothers report added stress juggling work and parenting during the pandemic, as many shoulder sole responsibility for meeting their children’s needs.⁸⁵

The intersecting gender, race, and class effects on who provides care are also evident in the consequences of the closures of school and summer camp. Low-income, Black, and Latinx families experienced the greatest impact from such closures, when factoring in access to computers, home internet connections, school provided meals, and direct instruction from teachers.⁸⁶ Further, Black families began the pandemic with only one-tenth of the wealth of white families, and, with the loss of jobs and school closings, the pandemic is “worsening the future economic outlook for Black children.”⁸⁷

With respect to reproductive health, prior to the pandemic, the unintended pregnancy rate – the number of women who did not want to be pregnant at the time they became pregnant – was almost 50% for all women; but it was five times higher for low-income women than wealthier

⁸⁴ Grose, *supra* note 82 (reporting that although study done by researchers William Scarborough and Caitlyn Collins did not investigate “why women whose work circumstances were the same as their husbands were doing more of the child care,” they “speculated” that a partial reason may be that “when a child needs help, they go to mommy first,” and “over days and weeks that has a cumulative, undermining effect”); see also Lydia Dishman, *There’s a Massive Pay Gap Between Men and Women Who Work From Home*, FAST CO. (Mar. 31, 2020), <https://www.fastcompany.com/90484420/theres-a-massive-pay-gap-between-men-and-women-who-work-from-home>.

⁸⁵ See Rogers, *supra* note 60; Reggie Wade, Child-Care Needs Weigh on Parents’ Back-to-School Plans: Goldman Sachs, YAHOO!MONEY (Aug. 5, 2020) <https://finance.yahoo.com/news/childcare-needs-weigh-on-parents-backtoschool-plans-goldman-sachs-175554022.html> (reporting on analysis by Goldman Sachs).

⁸⁶ Dana Goldstein, *Research Shows Students Falling Months Behind During Virus Disruptions*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>. An additional issue, globally, is the gendered effects of school closures due to Covid-19 and challenges about reopenings. There is concern that such developments will have lasting effects on girls and reverse progress on increasing the number of girls who attend school, particularly for poor communities where remote learning is not possible, the burden of care falls to girls, and increases in sexual abuse and teen pregnancies. See Robert Jenkins & Rebecca Winthrop, *Education Plus Development: 5 Actions to Bring the most Marginalized Girls Back to School after COVID-19*, BROOKINGS (May 15, 2020), <https://www.brookings.edu/blog/education-plus-development/2020/05/15/5-actions-to-help-bring-the-most-marginalized-girls-back-to-school-after-covid-19/>.

⁸⁷ Kelly Glass, *Black Families Were Hit Hard by the Pandemic. The Effects on Children May Be Lasting*, N.Y. TIMES (June 29, 2020), <https://www.nytimes.com/2020/06/29/parenting/coronavirus-black-children-inequality.html>. The pandemic also exacerbates family wealth disparities. See Cahn, *supra* note 51 (reporting that, while 13% of White respondents have already skipped paying a bill, that is true for 37% of Black/African-American respondents and 39% of Hispanic/Latino respondents).

women, and approximately double for Black women than white women.⁸⁸ During the pandemic, Black and Latinx women were more likely to report challenges in accessing contraception than white women.⁸⁹ Although many family planning clinics remained open during the pandemic, for women seeking telehealth, many online platforms did not accept insurance or Medicaid.⁹⁰

Several states specifically defined abortion as a non-essential or elective health procedure, effectively banning access for the duration of the public health emergency. The majority of these bans were lifted, either by court order or through the expiration of the initial executive order.⁹¹ Except in Arkansas, where a federal court ruled in favor of the requirement that patients have at least “one negative COVID-19 NAAT test within 48 hours prior to the beginning of the procedure.”⁹² Though not a direct denial of services, this requirement assumes access to testing and fast results, which poses a practical obstacles to patients, given test shortages and the time needed to obtain a test result.⁹³ By contrast, some states prioritized access to abortion,⁹⁴ recognizing the significance of the procedure. Indeed, during the pandemic, new research emerged showing that obtaining access to an abortion can benefit not just a woman’s mental health but her care of a subsequent baby.⁹⁵

Finally, in the wake of the Covid-19 quarantine, stay-at-home orders across the United States brought many family members into a heightened amount of daily contact. With workplaces closed and some work shifting to homes, the percentage of people who remained home

⁸⁸ *Unintended Pregnancy in the United States*, GUTTMACHER INSTIT. (Jan. 2019), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states>.

⁸⁹ McCammon & Pao, *supra* note 17. For statistical differences, see *supra* text accompanying note 17.

⁹⁰ Brittini Frederiksen et al., *Contraceptive and STI Services during the COVID-19 Pandemic*, KAISER FAMILY FOUNDATION (Apr. 23, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/a-look-at-online-platforms-for-contraceptive-and-sti-services-during-the-covid-19-pandemic/>.

⁹¹ These abortion restrictions have expired in Alaska, Iowa, Kentucky, West Virginia, Louisiana, Mississippi, and Texas. Federal district courts have blocked abortions restrictions in Alabama, Ohio, Oklahoma, and Tennessee. Laura Sobel et al., *State Action to Limit Abortion Access during the COVID-19 Pandemic*, KAISER FAMILY FOUNDATION (Jun. 25, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-action-to-limit-abortion-access-during-the-covid-19-pandemic/>.

⁹² *Directive on Resuming Elective Procedures*, ARK. DEP’T OF HEALTH (April 27, 2020), <https://www.health.arkansas.gov/images/uploads/pdf/ResumeElectiveSurgeryDirectiveFINAL4.23.20.pdf>.

⁹³ Sobel, *supra* note 91.

⁹⁴ *Id.* (noting New Jersey, Virginia, and Washington).

⁹⁵ See generally DIANA FOSTER GREEN, *THE TURNAWAY STUDY* (2020); see Terry Gross, *Study Examines the Lasting Effects Of Having — Or Being Denied — An Abortion*, NPR (June 16, 2020), <https://www.npr.org/2020/06/16/877846258/study-examines-the-lasting-effects-of-having-or-being-denied-an-abortion> (mental health benefits for women who had abortions lasted six months).

during normal working hours nearly doubled (45 to 85%). While the overall incidence of domestic violence increased 12 percent, it went up 20 percent during working hours.⁹⁶ Moreover, the rate of first-time abuse also rose by 23 percent during working hours compared to 16 percent overall.⁹⁷

B. Positive Responses

Amidst enormous challenges of responding to the pandemic, some responses suggest potentially promising steps forward. Heightened attention to the critical role of child care to economic recovery may pave the way to more robust support for child care. The temporary enactment of modest paid leave as a result of the pandemic might also prove an important first step forward more expansive leave policies. After a seeming stall in moving toward workplace flexibility, the reality that a sizable number of employees could work remotely may lead to more employers allowing employees to work from home – importantly, this may be true even for some low-income workers. Further, in households with a mother, father, and children, the structure of parental caregiving may change if some men’s increased engagement in caregiving begun during the pandemic continues in the “new normal.”⁹⁸ In addition, given that the professions oriented towards caring – whether that includes teachers, nurses, or home health care aides – are overwhelmingly female, the pandemic may cause more attention to the gender pay gap in those positions. This section briefly previews some of the gender-equity-related steps taken during the pandemic, while the next Part addresses the need to build on these steps and move towards more fundamental change.

One promising response is improved (albeit temporary) support for child care. In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress appropriated \$3.5 billion in emergency funds for the Child Care and Development Block Grant.⁹⁹ States were given some flexibility by the federal Administration for Children and Families to mitigate the effects of the pandemic. These measures allowed states to increase health precautions in child care facilities, prevent permanent closures by paying subsidies, and provide child care to frontline workers

⁹⁶ Sarath Sanga & Justin McCrary, *The Impact of the Coronavirus Lockdown on Domestic Violence*, 1 (May 28, 2020),

https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=3612491&dgcid=ejournal_html_mail_family:children%27s:law:ejournal_abstractlink.

⁹⁷ *Id.*

⁹⁸ See Alon, *supra* note 59 (arguing that although women will continue to carry a higher burden of child care during the pandemic, men’s child care hours will also increase, which could lead to a change in norms and more male participation in child care post-pandemic; further, if the workforce opens before schools/daycares, it is more likely that men will be able to telecommute and take care of the kids, while women would have to return to work).

⁹⁹ OFFICE OF CHILD CARE ADMINISTRATION FOR CHILDREN AND FAMILIES, SUMMARY OF CHILD CARE PROVISIONS OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT OR “CARES ACT”, <https://www.acf.hhs.gov/occ/resource/summary-of-child-care-provisions-of-cares-act>.

not provided paid leave for childcare.¹⁰⁰ Additionally, Washington State used federal funds to provide tools for distance learning, develop resources to close the educational opportunity gap, and reduce child care costs for parents seeking employment.¹⁰¹

A second promising step relates to unemployment insurance. Although the United States, unlike some European countries, did not provide job protection during the pandemic through the form of salary supplements, it did provide financial support for the unemployed.¹⁰² Because of the combination of bonus checks and enhanced unemployment insurance, the poverty rate remained relatively stable in the first several months of the pandemic.¹⁰³

Third, the federal recovery bills provided various short-term forms of paid leave, and a number of states that lacked paid leave laws are considering them.¹⁰⁴ In the Families First Act,¹⁰⁵ the first-ever federal law mandating paid leave rights for private sector employees, Congress temporarily granted paid sick leave and paid family and medical leave.¹⁰⁶ Some workers could receive two weeks of paid sick leave to care for themselves or another individual, and twelve weeks of emergency child care leave, with ten weeks of pay.¹⁰⁷ While the introduction of short-term paid leave is a critical first step, this mandate contains a number of exclusions.

¹⁰⁰ Elizabeth Bedrick & Sarah Daily, *States Are Using the CARES Act to Improve Child Care Access during COVID-19*, CHILD TRENDS (June 8, 2020), <https://www.childtrends.org/publications/states-are-using-the-cares-act-to-improve-child-care-access-during-covid-19>.

¹⁰¹ Office of the Governor, *Safe Return to Public Life in Washington State, Policy Brief* (2020), <https://www.governor.wa.gov/sites/default/files/Washington%27s%20Recovery%20Plan%20.pdf>.

¹⁰² Jim Zarroli, *Europe's Economy Was Hit Hard Too, But Jobs Didn't Disappear Like in The U.S.*, NPR (Apr. 23, 2020, 5:01 AM), <https://www.npr.org/2020/04/23/838085670/europes-economy-was-hit-hard-too-but-jobs-didn-t-disappear-like-in-the-u-s>.

¹⁰³ Jason DeParle, *Vast Federal Aid Has Capped Rise in Poverty, Studies Find*, N.Y. TIMES (June 21, 2020), <https://www.nytimes.com/2020/06/21/us/politics/coronavirus-poverty.html>.

¹⁰⁴ Jennifer Rubin, *Support for Paid Leave is Smart Politics*, WASH. POST: OPINION (June 16, 2020, 10:30 AM), <https://www.washingtonpost.com/opinions/2020/06/16/support-paid-leave-is-smart-politics/>.

¹⁰⁵ Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).

¹⁰⁶ *Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act*, CTR. FOR LAW & SOCIAL POLICY (May 6, 2020), <https://www.clasp.org/publications/fact-sheet/paid-sick-days-and-paid-leave-provisions-ffcra-and-cares-act>.

¹⁰⁷ *Id.*; see also U.S. Dep't of Labor, Wage and Hour Division, *Families First Coronavirus Response Act: Employee Paid Leave Rights*, DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

Businesses with more than 500 employees are exempt from both paid leave provisions.¹⁰⁸ This exemption leaves out, among others, more than 2 million workers of large grocery store chains, who are deemed essential workers and whose jobs place them at risk of contracting the coronavirus.¹⁰⁹ Businesses with fewer than 50 employees may choose not to provide paid child care leave if it “would jeopardize the viability of the business.”¹¹⁰

Moreover, in an effort to maintain the essential worker workforce, the Act excludes health care providers and emergency responders and defines both categories broadly.¹¹¹ Thus, less than 50% of private sector employees are guaranteed coverage due to the laws’ exemptions and overly broad regulations.¹¹² These exclusions fall disproportionately on Black women and other women of color, who make up the vast majority of home health aides.¹¹³ Between April and June 2020, “caregiver-related calls” to the Center for WorkLife Law hotline over problems of workplace accommodation and family leave increased more than 250% from the prior year; director Joan Williams concludes that the stories told by these workers—among them many mothers—demonstrate that “Families First is falling short.”¹¹⁴

Fourth, the move to working from home, while highlighting gender inequality in household labor,¹¹⁵ also creates the potential for dialogue about such inequality, as well as for improving work-life balance and allowing more workplace flexibility. There are predictions that the ability

¹⁰⁸ *Id.*

¹⁰⁹ U.S. CENSUS BUREAU, 2017 SUSB ANNUAL DATA TABLES BY ESTABLISHMENT INDUSTRY (2020), <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

¹¹⁰ Families First Coronavirus Response Act, Pub. L. No. 116-127 Sec. 110, 116th Cong. (2020).

¹¹¹ U.S. DEP’T OF LABOR, FAMILIES FIRST CORONAVIRUS RESPONSE ACT: QUESTIONS AND ANSWERS, <https://www.dol.gov/agencies/whd/pandemic/ffcr-questions#56> (defining health care providers as anyone employed in the health care industry, ranging from hospitals to retirement facilities and home health care providers. Emergency responders are defined broadly as any worker who is “necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.”).

¹¹² Sarah Jane Glynn, *Coronavirus Paid Leave Exemptions Excludes Millions of Workers From Coverage*, CTR. FOR AM. PROGRESS (April 17, 2020, 5:00 AM), <https://www.americanprogress.org/issues/economy/news/2020/04/17/483287/coronavirus-paid-leave-exemptions-exclude-millions-workers-coverage/>.

¹¹³ Poo & Shah, *supra* note 76.

¹¹⁴ Joan C. Williams, *Real Life Horror Stories from the World of Pandemic Motherhood*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/opinion/mothers-discrimination-coronavirus.html>.

¹¹⁵ Terry Gross, *Pandemic Makes Evident ‘Grotesque’ Gender Inequality in Household Work*, NPR (May 21, 2020, 2:26 PM), <https://www.npr.org/2020/05/21/860091230/pandemic-makes-evident-grotesque-gender-inequality-in-household-work>.

to work from home will continue after the pandemic.¹¹⁶ On the other hand, it may reinforce class, race, and gender inequality, as those with jobs most likely to permit working from home are white and higher-income, and, if gendered caretaking patterns continue, male.¹¹⁷

Fifth, staying home made visible to both parents the work of child care. Many men in male-female households certainly believed that they were doing more in the household,¹¹⁸ although their female partners do not necessarily agree on the amount that the men are doing.¹¹⁹ While it is true women continue to do the majority of the work, men's participation in child care has steadily increased over the last half century.¹²⁰ Since the start of the pandemic, "68% of fathers report feeling closer or much closer to their children."¹²¹ If some men's increased engagement in caregiving continues into the "new normal," the norms of parental caregiving may change.¹²²

Finally, parents' experience trying to "home school" their children and monitor online learning in the wake of school closures may provide some momentum for improving the working conditions and pay of child care providers and teachers. Indeed, a large majority of parents agree that teachers should be paid more.¹²³ If this translates into governmental action,

¹¹⁶ Katherine Guyot & Isabel V. Sawhill, *Telecommuting Will Likely Continue Long After The Pandemic*, BROOKINGS (Apr. 6, 2020), <https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/>.

¹¹⁷ Cohen & Hsu, *supra* note 12.

¹¹⁸ E.g., Daniel Carlson et al., *US Couples' Divisions of Housework and Childcare During COVID-19 Pandemic* (May 19, 2020), <https://doi.org/10.31235/osf.io/jy8fn>.

¹¹⁹ *Id.*; Claire Cain Miller, *Nearly Half of Men Say They Do Most of the Homeschooling. 3 Percent of Women Agree*, N.Y. TIMES (May 6, 2020), <https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html>.

¹²⁰ *Americans' Time at Paid Work, Housework, Child Care, 1965 to 2011*, PEW RES. CTR. (2013), <https://www.pewsocialtrends.org/2013/03/14/chapter-5-americans-time-at-paid-work-housework-child-care-1965-to-2011/>.

¹²¹ Richard Weissbourd et al., *How the Pandemic is Strengthening Fathers' Relationships with Their Children*, HARV. GRADUATE SCHOOL OF EDUCATION (June 2020), <https://static1.squarespace.com/static/5b7c56e255b02c683659fe43/t/5eeceba88f50eb19810153d4/1592585165850/Report+How+the+Pandemic+is+Strengthening+Fathers+Relationships+with+Their+Children+FINAL.pdf>.

¹²² Alon, *supra* note 59; Annalyn Kurtz, *Millions Of Dads Are Stuck At Home — Which Could Be A Game Changer For Working Moms*, CNN BUSINESS (April 24, 2020, 8:15 AM), <https://www.cnn.com/2020/04/03/economy/childcare-gender-equality-coronavirus/index.html>;

Elissa Strauss, *Fatherhood and the Pandemic: How Men Are Stepping Up with Child Care*, CNN (June 19, 2020, 8:00 AM), <https://www.cnn.com/2020/06/19/health/fatherhood-child-care-coronavirus-pandemic-wellness/index.html>; *Men and Women Agree: During the COVID-19 Pandemic Men Are Doing More at Home*, COUNCIL ON CONTEMPORARY FAMILIES (May 20, 2020) <https://contemporaryfamilies.org/covid-couples-division-of-labor/>.

¹²³ Janine Puhak, *Coronavirus Homeschooling: 77 Percent of Parents Agree Teachers Should be Paid More After Teaching Their Own Kids, Study Says*, FOX NEWS (Apr. 30, 2020), <https://www.foxnews.com/lifestyle/coronavirus-homeschool-parents-agree-teachers-paid-more-kids> (77%).

it could address the chronic problem that society undervalues forms of care vital to human development and human well-being.¹²⁴

One obstacle, however, to moving forward constructively in the United States on Covid-19 is Donald Trump's toxic masculinity, which takes the form of destructive messages about "toughness" (he scoffed at wearing masks and declined to wear one himself until mid- July)¹²⁵ and direct violations of his Administration's own public health guidelines by holding political rallies at which supporters put themselves at risk. Further, another consequence is an exaggerated emphasis by the Trump Administration and some governors on "reopening" the economy and schools without sufficient regard to how to do safely in light of protecting public health, and failure to give the public basic health information. This false dichotomy between jobs versus health, touting numbers about jobs and economic recovery while ignoring or minimizing numbers about the human toll of Covid-19, suggests a lack of basic empathy.¹²⁶ Essential – and other – workers have had to return to work without adequate testing, protective equipment, and social distancing measures in place.

The reckless disregard by Trump and some state governors of scientific information from experts *within the Trump Administration* indicates a dangerous performance of masculinity at the expense of public health. Indeed, men seem to be less likely to wear a mask because they view masks as symbols of weakness and shame.¹²⁷ Just as masculinity ideology is associated with a rejection of condom use, this same ideology may be at work with respect to "condoms of the face."¹²⁸

¹²⁴ On the need to recognize and support care as a public value and to address injustices of the gendered care economy, see LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 84-114 (2006).

¹²⁵ See Maegan Vazquez et al., *Trump Tweets Image of Himself Wearing a Mask and Calls it 'Patriotic'*, CNN (July 20, 2020) <https://www.cnn.com/2020/07/20/politics/donald-trump-mask-tweet/index.html>.

¹²⁶ E.g., Philip Bump & Ashley Parker, *13 Hours of Trump: The President Fills Briefings with Attacks and Boasts, but Little Empathy*, WASH. POST (April 25, 2020), https://www.washingtonpost.com/politics/13-hours-of-trump-the-president-fills-briefings-with-attacks-and-boasts-but-little-empathy/2020/04/25/7eec5ab0-8590-11ea-a3eb-e9fc93160703_story.html.

¹²⁷ See Marcus, *supra* note 21; Abby Haglage, *Men Less Likely to Wear Masks Because They're 'Not Cool,' Study Finds*, YAHOO (May 15, 2020, 1:29 PM), <https://www.yahoo.com/lifestyle/men-less-likely-to-wear-masks-because-theyre-not-cool-study-finds-sociologists-say-trump-toxic-masculinity-also-play-a-role-172929741.html>.

The Article reports on the observations of one researcher: "Since the office of the president is so tied to hyper-masculinity, Trump and Pence are performing almost a caricature of toxic masculinity by refusing to demonstrate basic safety precautions."

¹²⁸ As *Scientific American* vividly explained, some men "seem to view masks as emasculating face condoms that must be rejected." Emily Willingham, *The Condoms of the Face: Why Some Men Refuse to Wear Masks*, SCIENTIFIC AMERICAN: OPINION (June 29, 2020), <https://www.scientificamerican.com/article/the-condoms-of-the-face-why-some-men-refuse-to-wear-masks/>.

Notably, some state governors and mayors have resisted this false dichotomy of public health versus economic recovery in their more empathic and careful response to the pandemic. Prominent among them have been women and – at the level of mayors – women of color.¹²⁹ By comparison, when the White House announced formation of the President’s Coronavirus Task Force, it consisted of twelve men, eleven of whom are white.¹³⁰ Given that women are disproportionately affected by the pandemic, this exclusion is problematic, and is counterbalanced – although not sufficiently – by the legislative efforts of Speaker Nancy Pelosi and her colleagues. Research on gender and political representation in Congress and state legislatures shows that “women in legislatures are more likely than their male colleagues to give priority to issues, such as healthcare and children and families, associated with women’s traditional caregiving roles in society, and to issues, such as reproductive health and women’s rights, associated with the organized women’s movement.”¹³¹ While Biden’s selection of Senator Kamala Harris as his vice presidential choice is historic, in the United States, women of various identities continue to face obstacles to running for and being elected to political office, and gender stereotypes play a role.¹³²

IV. TOWARD AN INTERSECTIONAL FEMINIST RECOVERY PLAN

While a recovery process might focus on a return to the status quo, the development of a recovery plan also opens up an opportunity to address the intersecting inequities of gender, race, and class made more visible by the pandemic, that is, to go beyond the status quo. Consequently, rather than simply focus on economics, a feminist recovery plan could approach the goals of recovery and “resilience” in a way mindful of such inequities.

¹²⁹ See Mahler, *supra* note 25; Beheshti, *supra* note 25; Dittmar, *supra* note 25; Kahn, *supra* note 25; Almsy & Meilhan, *supra* note 25.

¹³⁰ See *Statement from the Press Secretary Regarding the President’s Coronavirus Task Force*, THE WHITE HOUSE (Jan. 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>. In late February, the White House added two women, Dr. Debra L. Birx and Seema Verma. See *Who’s on the Coronavirus Task Force*, N.Y. TIMES (Feb. 29, 2020), <https://www.nytimes.com/2020/02/29/health/Trump-coronavirus-taskforce.html>.

¹³¹ KELLY DITTMAR, KIRA SANBONMATSU & SUSAN J. CARROLL, A SEAT AT THE TABLE: CONGRESSWOMEN’S PERSPECTIVE ON WHY THEIR PRESENCE MATTERS 144 (2018) (citing literature).

¹³² See, e.g., Kayla Wolf et al., *The Paradox of Electability: Gender and the 2020 Democratic Nomination*, GENDER POLICY REPORT (Feb. 11, 2020), <https://genderpolicyreport.umn.edu/the-paradox-of-electability-gender-and-the-2020-democratic-nomination/>; *How Outdated Notions about Gender and Leadership are Shaping the 2020 Presidential Leadership Race*, LEAN IN (2020), <https://leanin.org/data-about-gender-bias-and-electability-in-the-2020-election>. See also Kelly Dittmar, *Advancing Women’s Political Power in the Next Century*, 100 B.U. L. REV. (forthcoming Oct. 2020) (arguing that “the underrepresentation of women, and more specifically, women of color, within our formal political institutions should top the agenda as we contemplate the next one hundred years of work to advance gender equality in political power”).

What form would a feminist economic recovery plan attentive to the intersectional issues of gender equity discussed throughout this Article take? This Part suggests some contours, using as a point of departure enacted and proposed federal legislative responses and some state recovery plans. It takes inspiration from the Hawai'i's State Commission on the Status of Women ("Commission"), which explicitly labels its work a "feminist economic recovery plan for COVID-19."¹³³

A. *A Beginning? Governmental Responses and an Inspiration*

While gender equity was not explicitly identified as an aim of federal relief bills, some of the provisions addressed relevant matters such as child care and paid leave.¹³⁴ Nonetheless, the federal legislative responses have gaps not only in coverage, but also in content. The House of Representatives has tried to fill in the gaps, such as through the still-pending (as of this writing) Health and Economic Recovery Omnibus Emergency Solutions Act ("HEROES Act"), which includes specific relief for women and minority-owned businesses, expansions to paid sick, family, and medical leave, relief for currently unprotected immigrants, and additional funding towards domestic violence prevention.¹³⁵ The proposed Moving Forward Act would invest in the nation's infrastructure, with an emphasis on the much needed funding to make schools and childcare facilities safe.¹³⁶ But the House and the Senate have found it difficult to agree on what legislative measures are necessary to help individuals and families and to foster economic recovery.

While many states have developed their own recovery plans, the plans rarely include specific references to the needs of women (including women of color) or marginalized communities. A few, however, stand out for their use of an "equity lens."¹³⁷ For example, Washington's economic recovery plan calls for reducing child care costs for unemployed parents, assisting individuals with finding temporary and permanent housing, and ensuring public access to protective supplies.¹³⁸ Massachusetts's economic recovery plan commits to "funding more affordable housing, . . . stabilizing neighborhoods, and supporting minority-owned businesses with record levels of funding."¹³⁹ New York's plan proposes to to build back

¹³³ See BUILDING BRIDGES, NOT WALKING ON BACKS, *supra* note 28.

¹³⁴ See *supra* discussion of the CARES and Families First Acts.

¹³⁵ Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 6800, 116th Cong. (2020).

¹³⁶ Moving Forward Act, H.R. 2, 116th Cong. (2020).

¹³⁷ *Safe Return to Public Life in Washington State*, *supra* note 101.

¹³⁸ *Id.*

¹³⁹ Press Release, Office of Governor Charlie Baker and Lt. Governor Karyn Polito, Baker-Polito Administration Unveils \$275M COVID-19 Economic Relief Package to Promote Equity and Economic Growth (June 26, 2020), <https://www.mass.gov/news/baker-polito-administration-unveils-275m-covid-19-economic-relief-package-to-promote-equity>.

“more resilient, and more equal.”¹⁴⁰ The reopening guide speaks of the opportunity not only to build back “core parts of our society and our economy to be more resilient to future pandemics,” but also to address “systemic issues” that have limited progress and opportunity.¹⁴¹

A more robust commitment to gender equality permeates the “feminist economic recovery plan” proposed by the Commission in April 2020. The plan emphasizes economic empowerment and robust social services as crucial tools to this systemic change. It is explicitly intersectional in its aims, as signaled by its title: “Building Bridges, Not Walking on Backs,” which may allude to pioneering feminists Cheryl Moraga and Gloria Anzaldúa’s classic collection of writings by women of color, *This Bridge Called My Back*.¹⁴²

The plan calls for centering “marginalized people and communities to build back better” because they are the hardest hit by Covid-19 due to the “combined effects of sexism, racism, classism”, and other systems of oppression.¹⁴³ In this respect, the plan is specific to the needs of Hawai’i, both in terms of the particular structures of inequality that different populations of women in Hawai’i face and how certain features of the Hawai’i economy contribute to that inequality. At the same time, the plan offers some principles and specific policy recommendations that could usefully inform other recovery plans. For example, the plan calls for supporting “women’s economic independence” and for “the redistribution of unpaid care work.”¹⁴⁴ Second, it takes an inclusive approach, using the term “women+” to embrace cisgendered women and girls as well as trans women and people who identify as nonbinary.¹⁴⁵ Third, it identifies women’s political representation as a recommended principle and practice for a “gender-and socially-responsive recovery,” stating that “women+” should be included “in all levels of consultation, decision-making and communication outreach.”¹⁴⁶ The Commission approvingly points to international recognition that governments should “put women and girls at the centre of their efforts to recover from COVID-19,” and that this starts “with women as leaders, with equal representation and decision-making

¹⁴⁰ *NY Forward*, *supra* note 30.

¹⁴¹ *Id.*

¹⁴² BUILDING BRIDGES NOT WALKING ON BACKS, *supra* note **Error! Bookmark not defined.**. See

THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cheryl Moraga & Gloria Anzaldúa, eds. 4th ed. 2015).

¹⁴³ BUILDING BRIDGES, NOT WALKING ON BACKS, *supra* note **Error! Bookmark not defined.**, at 5.

¹⁴⁴ *Id.* at 16.

¹⁴⁵ *Id.* at 18 (explaining that “references to women+ within [the plan] refer to women, girls, and people who identify as women, including trans women, and who identity as femme, nonbinary and/or genderfluid”).

¹⁴⁶ *Id.* at 15-16.

power.”¹⁴⁷ While adding diverse voices and stirring will not necessarily make a difference, it is critical to ensure that caretaking – which has typically been associated with women – and that work on the ground in essential industries – often performed by women of color – is central to any future planning.

This plan, put in conversation with the most constructive elements of some state plans and blueprints of some organizations dedicated to building a more just economy, holds promise for transformative change. The need for such transformation is critical.¹⁴⁸ In the words of the Commission: “This is our moment to build a system that is capable of delivering gender equality.”¹⁴⁹ To be clear: creative and transformative responses will need to address a broad array of gender inequities revealed and heightened by the pandemic. This Part focuses particularly on the gender inequities discussed above relating to work and family and the disproportionate role of women—particularly, women of color— in providing essential but undervalued care work.

B. Crucial Elements: Addressing Gender Inequities in the Workplace and Social Services

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

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

1. Paid Leave

While Congress took some tentative first steps towards paid family leave during the early days of the pandemic (as discussed in Part III), that legislation was incomplete. Providing paid family and medical leave for all workers, regardless of whether they work at small businesses or are deemed

¹⁴⁷ *Id.* at 6 (quoting Antonio Guterres, UN Secretary-General, April 9, 2020).

¹⁴⁸ As Ai-Jen Poo and Palak Shah, leaders of the National Domestic Workers Alliance, powerfully urge: “We are at a critical juncture. The future of work will be decided by how we respond to this moment.” Poo & Shah, *supra* note 76.

¹⁴⁹ BUILDING BRIDGES, NOT WALKING ON BACKS, *supra* note **Error! Bookmark not defined.**, at 1.

“essential,” has been a longstanding priority for feminist organizations, and Congress has considered such legislation during the pandemic.¹⁵⁰

Individual states should also make paid leave a priority in their recovery plans. Eight states already had paid leave policies prior to the pandemic (as discussed in Part III). Since then, numerous states and local governments have proposed, and in a few cases enacted, additional leave laws that would also benefit impacted workers. These proposals generally: (1) expand currently existing sick and family leave (e.g., as in New York; (2) add protections for infected or quarantined employees (e.g., as in Colorado); or (3) propose entirely new and permanent paid sick leave laws (e.g., as in pending legislation in Kentucky and Pennsylvania).¹⁵¹

It is critical, however, that paid leave laws work in tandem with a broader set of policies and cultural commitments that create gender equity around work and family. Otherwise, they may have unintended consequences. For example, when California enacted its first paid leave law, which provided up to six weeks of partial paid leave funded by a payroll tax on employees, research showed “employment rates for first-time mothers using the paid leave dropped 7% over a decade while their yearly wages dropped 8%.” Employment rates and yearly wages did not likewise drop for men.¹⁵² This unintended consequence was attributed to the high cost of child care motivating women to reduce their job hours or leave the workforce.¹⁵³ The study concluded that this consequence did not outweigh the value of paid leave, but rather emphasized the need for additional policy changes in areas like child care, and social changes around gendered caregiving.¹⁵⁴

The takeaway, then, is not that paid leave is a necessity only in a global pandemic, but rather that paid leave – with other related reforms – is a necessity for a growing and equitable economy. According to the National Partnership for Women and Families, paid leave “improves worker retention, which saves employers money through reduced turnover costs; . . . increases worker productivity; . . . improves employee loyalty

¹⁵⁰ See Providing Americans Insured Days of Leave Act, S. 3513, 116th Cong. (2020) (introduced by Senator Patty Murray).

¹⁵¹ Chai R. Feldblum et al., *State and Local Leave Initiatives and Response to the COVID-19 Pandemic*, MORGAN LEWIS (Mar. 19, 2020), <https://www.morganlewis.com/pubs/state-and-local-leave-initiatives-and-responses-to-the-covid-19-pandemic>.

¹⁵² Andrew Keshner, *California’s paid leave law has cost new mothers an estimated \$24,000 over a decade, research shows*, MARKETWATCH (Oct. 2019, 12:56 PM), <https://www.marketwatch.com/story/californias-paid-leave-law-has-cost-new-mothers-an-estimated-24000-over-a-decade-whats-driving-the-lost-earnings-2019-10-29>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*; see Elisabeth Jacobs, *Can women’s “sagging middle” help explain the fall in U.S. labor force participation rates?*, WASHINGTON CENTER FOR EQUITABLE GROWTH (Feb. 16, 2017), <https://equitablegrowth.org/can-womens-sagging-middle-help-explain-the-fall-in-u-s-labor-force-participation-rates/> (“the lower cost and higher quality of childcare might be the more important of [paid leave or child care] for making a noteworthy difference in women’s labor force participation over the course of a lifetime.”).

and morale; . . . allows smaller businesses to compete better with larger businesses;” and “heightens American businesses’ competitiveness in the global economy.”¹⁵⁵ The takeaway should be that we cannot afford to leave anyone behind.

2. Equal Pay and Investing in Women as Business Owners

In the current economic crisis, as society depends upon women to perform essential tasks with high health risks, this work should not be devalued. This devaluing can be measured monetarily, as discussed throughout this Article, by the gender pay gap and gender overrepresentation in low-wage jobs. Though the pandemic has exacerbated women’s economic insecurity in these areas, federal and state relief have offered little in addressing the problem directly.

These inequities persist, more than half a century after the Equal Pay Act of 1963. Numerous factors contribute to this persistent gap, including women’s concentration in lower-paying jobs, sexual harassment, unfair compensation, racial discrimination, and losing seniority and money because of pregnancy, childcare and other family responsibilities.¹⁵⁶ Combatting these workplace inequities will require investment in women’s economic empowerment. In part, this means improving access to high quality jobs, raising the minimum wage, supporting fair scheduling practices, and adopting mandatory public reporting on wage gaps.¹⁵⁷

Building Bridges, Not Walking on Backs specifically calls for raising the minimum wage as well as for programs that will enhance women’s access to capital outside the low-wage and commercial sector. These includes funds for retraining and professional mobility, support social entrepreneurship approaches, and gender and racial equity programs within male dominated industries.¹⁵⁸

Federal relief through the CARES Act prioritized support through business loans and grants for “socially and economically disadvantaged individuals, women . . . and businesses in operation for less than 2 years.”¹⁵⁹ Similarly, at the state level, economic recovery has included the prioritization of women and minority owned businesses. In June 2020,

¹⁵⁵ *Paid Family and Medical Leave: Good for Business*, NAT’L P’SHIP FOR WOMEN & FAMILIES (Sept. 2018), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-good-for-business.pdf>.

¹⁵⁶ *What’s The Wage Gap in the States?*, NAT’L P’SHIP FOR WOMEN & FAMILIES, <https://www.nationalpartnership.org/our-work/economic-justice/wage-gap/>.

¹⁵⁷ Sarah Jane Glyn et al., *7 Actions that Could Shrink the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Sept. 18, 2014, 12:58 PM), <https://www.americanprogress.org/issues/women/reports/2014/09/18/97421/7-actions-that-could-shrink-the-gender-wage-gap/>.

¹⁵⁸ BUILDING BRIDGES, NOT WALKING ON BACKS, *supra* note 28, at 7-14.

¹⁵⁹ Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. (2020) (enacted).

Massachusetts announced an economic recovery plan that commits to “funding more affordable housing, implementing critical zoning reform, stabilizing neighborhoods, and supporting minority-owned businesses with record levels of funding.”¹⁶⁰ For “[w]omen, minority, veteran, and immigrant small business owners [who] face disproportionate challenges to accessing capital to grow their enterprises” the plan recommends a \$25 million increase in funding for Community Development Financial Institutions.¹⁶¹

3. Child Care and Support for Remote Learning

There is increasing recognition that access to high-quality, affordable child care is key to economic recovery, enabling parents and other adult caregivers to return to work, and that lack of such access to such child care poses a major obstacle to such recovery.¹⁶² The “Essential Workers Bill of Rights,” sponsored by Senator Elizabeth Warren and Ro Khanna, includes “robust funding” for child care to help child care providers and ensure access by essential workers to such care.¹⁶³ While the CARES Act has provided much needed support in the short term,¹⁶⁴ concerns remain around the viability of the child care industry and safety of returning to K-12 schools as states move to reopen and federal funds run short.

Though daycare facilities mostly or entirely funded by Head Start have guaranteed funding for the rest of the year, the majority of the child care system remains at risk because they rely upon tuition payments that are no longer available. Such at-risk providers include “private child care centers, preschools or nursery schools, family child care homes, and family, friend, and neighbor caregivers.”¹⁶⁵ According to child care advocates, if

¹⁶⁰ Press Release, Baker-Polito Administration Unveils \$275M COVID-19 Economic Relief Package to Promote Equity and Economic Growth, *supra* note 139.

¹⁶¹ *Id.*

¹⁶² See Eliza Shaprio & Patrick McGeehan, *Big New Obstacle for Economic Recovery: Child Care Crisis*, N.Y. TIMES (July 10, 2020) <https://www.nytimes.com/2020/07/10/nyregion/nyc-school-daycare-reopening.html> (reporting that New York City’s announced plan to reopen its school system on a part-time basis in September could lead to a “new child care crisis” threatening economic recovery if parents could not go back to work because of need to watch their children); Rebecca Ullrich et al., *Child Care is Key to Our Economic Recovery*, NAT’L WOMEN’S L. CTR. (Apr. 2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/CCKeytoEconomicRecoveryNWLC.pdf>; *Improving and Expanding Child Care Assistance to Stabilize Our Economy*, NAT’L WOMEN’S L. CTR. (2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Improving-and-Expanding-Child-Care-Assistance-to-Stabilize-Our-Economy-1-2.pdf>.

¹⁶³ Press Release, Elizabeth Warren and Ro Khanna Unveil Essential Workers Bill of Rights (April 13, 2020) <https://www.warren.senate.gov/newsroom/press-releases/elizabeth-warren-and-ro-khanna-unveil-essential-workers-bill-of-rights>.

¹⁶⁴ See *supra* discussion of the CARES Act.

¹⁶⁵ *Child Care is Key to Our Economic Recovery*, *supra* note 162.

the child care industry is going to survive, an additional \$50 billion in funding is necessary for only six months of relief and emergency care.¹⁶⁶ This funding would help cover lost revenue during stay-at-home orders, guarantee the health and safety measures required for reopening, and increase affordability for essential workers and others returning to the workforce¹⁶⁷

Immediate funding is necessary to keep the child care industry and families afloat during the pandemic, but additional underlying structural changes are also necessary to stabilize the future of the child care system in the United States, as well as the economy. As the National Women’s Law Center (NWLC) explains: “A well-resourced, equitable child care system can be an effective tool at helping families weather and rebound from an impending recession.”¹⁶⁸ By investing in this tool, children receive the continuity of care critical for healthy growth and development.¹⁶⁹ There are significant gender equity issues at stake, as well. Parents—particularly low-paid workers, of which a majority of are women— are able to re-enter the workforce and increase the demand for goods with the money they are now able and willing to spend.¹⁷⁰ The majority of child care providers are small businesses owned by women, and supporting the child care system will allow such facilities to remain in business with the means to pay living wages to their employees.¹⁷¹ This should begin with state and federal child care policies that will increase access, affordability, and quality.¹⁷²

Two examples of proposed federal legislation that would accomplish these aims of access, affordability, and quality are the Child Care for Working Families Act (proposed by Senators Patty Murray and Bobby Scott) and the Universal Child Care and Early Learning Act (proposed by Senator Elizabeth Warren). Both bills propose sliding scale payment options so that families would only pay what they could afford,

¹⁶⁶ See Letter from Child Care Aware, to Nancy Pelosi, Speaker of the House of Representatives (May 13, 2020), <https://info.childcareaware.org/hubfs/HEROES%20ACT%20Child%20Care%20Letter%2005-13-20%20FINAL.pdf>; Stephanie Schmit, *Why We Need \$50 Billion in Pandemic Child Care Relief: A State-by-State Estimate*, CLASP (May 2020), https://www.clasp.org/sites/default/files/publications/2020/05/2020_50billionpandemicchildcare_0.pdf.

¹⁶⁷ *Child Care is Key to Our Economic Recovery*, *supra* note 162.

¹⁶⁸ *Improving and Expanding Child Care Assistance to Stabilize Our Economy*, *supra* note 162, at 2.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² See *Principles for Child Care: A Vision for Investing in High-Quality, Affordable Child Care*, NAT’L WOMEN’S L. CTR. (2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/10/Child-Care-Principles-2.pdf>.

investment in workforce training and compensation, and incentives to increase the number and quality of child care centers.¹⁷³

Though these proposals predated the Covid-19 crisis, the necessity of immediate and lasting relief for this industry gained new attention through the 2020 presidential campaign. On July 21, 2020, Democratic presidential candidate Joe Biden announced his plan for a “caregiving economy,” fueled by the fact that “we’re trapped in a caregiving crisis within an economic crisis within a health care crisis.”¹⁷⁴ The plan includes tax credits and subsidies to help make early childhood education more affordable and a business credit for construction costs to build more child care facilities; free pre-kindergarten for 3 and 4 year-olds and access to after-school, weekend and summer care; and increased pay for childcare educators and caregivers.¹⁷⁵

Access to child care for very young children is not the only area plaguing parents and the U.S. economy. As the debate about safely reopening K-12 schools wages on the national scale, from full to partial to no reopening, parents fear being left with the decision to return to work or remain home with their children.¹⁷⁶

The pandemic brought the inequities in the nation’s education system into full display, as schools closed and summer camps were cancelled in the spring of 2020. As detailed in Part III.A, parents, particularly mothers, experienced increased distraction as they juggled working from home and homeschooling. In addition, many families were faced with the sudden need to provide additional meals, access to technology and internet, and child care for their school-aged children. School closures highlighted the problem of food insecurity experienced by many families.

With the threat of 50.8 million students who regularly depended on school breakfasts and lunches going hungry,¹⁷⁷ the U.S. Department of

¹⁷³ Child Care for Working Families Act of 2019, H.R. 1368, 116th Cong., (2019); Universal Child Care and Early Learning Act, H.R. 3315, 116th Cong., (2019).

¹⁷⁴ Eric Bradner & Sarah Mucha, *Biden Unveils 'Caregiving Economy' Plan for Expanded Child Care and Home Care*, CNN (July 21, 2020, 3:15 PM), <https://www.cnn.com/2020/07/21/politics/joe-biden-caregiving-plan/index.html>.

¹⁷⁵ *Id.* By comparison, the Republican-proposed Health, Economic Assistance, Liability Protection and Schools (HEALS) Act offers \$15 billion to aid in safe reopenings and tuition payments, which child-care advocates say falls far short. Megan Leonhardt, *Republicans' relief plan includes \$15 billion bailout of the child-care industry—but it falls short of what's needed, advocates say*, CNBC (July 28, 2020, 9:49 AM), <https://www.cnbc.com/2020/07/28/republicans-15-billion-bailout-of-child-care-industry-falls-short.html>.

¹⁷⁶ Shaprio & McGeehan, *supra* note 162 (reporting parental concern after New York City announced plan to reopening school system on a part-time basis in September).

¹⁷⁷ See KARA BILLINGS & RANDY AUSSENBERG, CONG. RSCH. SERV., R43783, SCHOOL MEALS PROGRAMS AND OTHER USDA CHILD NUTRITION PROGRAMS: A PRIMER, 5-6 (2019) (reporting that the National School Lunch Program, School Breakfast Program, and

Agriculture began approving state requests to serve meals during school closures.¹⁷⁸ Individual school systems used this approval to commit to serving food for the remainder of the schools' closures, such as the Los Angeles Unified School District and the San Diego Unified School District.¹⁷⁹ Similarly, Seattle provided drive-through meal programs for families.¹⁸⁰ At the federal level, the Families First Act included similar measures to maintain access to student lunches. The provision simplified the approval process for states requested meal program waivers, including waivers that increase federal costs during a school closures and allow lunches to be served outside of school and care settings.¹⁸¹ Additionally, the increase in funding for the Supplemental Nutrition Assistance Program helps address this area of food insecurity.¹⁸²

Another hurdle for families is access to technology and internet necessary to participate in remote learning. According to a report compiled by the National Center for Education Statistics, in 2017, approximately 14% of children ages 3-18 lacked internet access at home.¹⁸³ That general figure masks disparities: 37% of American Indian and Alaska Native children, 19% of Black children, and 17% of Hispanic children lack access, as compared to 12% of white and Asian children.¹⁸⁴ "Pandemia: Latinos in Crisis," a CBS News special, highlights the consequences of this digital divide with stories of children sitting outside McDonald's parking lots to access Wi-Fi to receive and submit assignments.¹⁸⁵ The special mentions the additional dilemma faced by older students whose parents are essential

Child and Adult Care Food Program serve, respectively, 30 million, 14.7 million, and 6.1 million children a day).

¹⁷⁸ Press Release, U.S. Dep't of Agric., USDA Makes It Easier, Safer to Feed Children in California Amid Coronavirus Outbreak, Release No. 0176.20 (Mar. 7, 2020), <https://www.usda.gov/media/press-releases/2020/03/07/usda-makes-it-easier-safer-feed-children-california-amid>; Press Release, U.S. Dep't of Agric., *USDA Makes It Easier, Safer to Feed Children Amid Washington State Coronavirus Outbreak*, Release No. 0175.20 (Mar. 6, 2020), <https://www.usda.gov/media/press-releases/2020/03/06/usda-makes-it-easier-safer-feed-children-amid-washington-state>.

¹⁷⁹ Abigail Hess, *Widespread school closures mean 30 million kids might go without meals*, CNBC (Mar. 14 2020, 8:31 AM), <https://www.cnbc.com/2020/03/14/widespread-school-closures-mean-30-million-kids-might-go-without-meals.html>

¹⁸⁰ *Id.*

¹⁸¹ Families First Coronavirus Response Act, Pub. L. No. 116-127, 116th Cong. (2020).

¹⁸² *Id.*

¹⁸³ National Center for Education Statistics, *The Condition of Education 2019*, 144 U.S. DEP'T OF EDUC. xxi (2019), <https://nces.ed.gov/pubs2019/2019144.pdf>.

¹⁸⁴ *Id.*

¹⁸⁵ Maria Elena Salina, *Without Wi-Fi, Low-Income Latino Students Resorted to Doing Homework in Parking Lots to Access Public Hotspots*, CBS NEWS (July 17, 2020, 6:58 AM), https://www.cbsnews.com/news/low-income-latino-communities-digital-divide-coronavirus-pandemic/?fbclid=IwAR27lugiO35hNqRoZuhayb2eBmDXKQb8yH_UBeHg-ns866BnuTHVZtb59W4.

workers, who cannot focus on their own work when tasked with taking care of younger siblings.¹⁸⁶

While some school systems opted to make schoolwork optional, others (e.g., in Atlanta, Los Angeles, and New York City) formed partnerships with businesses to provide adequate technology. These included working with Apple, T-Mobile, and Verizon to provide tablets, internet access, and online teaching training to children in need.¹⁸⁷ At the federal level, the digital divide was not specifically addressed in legislation, though \$31 billion was included in the CARES Act for states to use in support of K-12 and higher education.¹⁸⁸ Additionally, the Federal Communications Commission implemented the Keep Americans Connected Pledge, requesting broadband and telephone service providers not to terminate services, waive late fees, and open up Wi-Fi hotspots to those affected by the pandemic.¹⁸⁹ Though more than 800 companies signed the pledge, it ended June 30th, 2020.

With inadequate federal support, and the Fall school term fast approaching, the debate about reopening schools has remained complicated. Individual states are announcing various plans, from California's decision to remain fully remote, to New York's partial reopening, to Florida's full reopening. Florida recently invested \$500 million of the budget towards increases in K-12 and preschool teacher pay, moving the state to the top five for highest starting teacher salary.¹⁹⁰ Though proposed before the pandemic, the news release in June focused on the underappreciated essential services teachers provide. This decision, however, was made at the same time that Governor DeSantis eliminated support for the online learning program and declared that schools must reopen in the fall.¹⁹¹ No matter the decision, federal aid is crucial in the implementation of these plans, from protecting the health and safety of the students required to return, to closing the digital divide for those who remain remote.

¹⁸⁶ *Id.*

¹⁸⁷ Lauren Camera, *Disconnected and Disadvantaged: Schools Race to Give Students Access*, U.S. NEWS (Apr. 1, 2020), <https://www.usnews.com/news/education-news/Articles/2020-04-01/schools-rush-to-get-students-internet-access-during-coronavirus-pandemic>.

¹⁸⁸ Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. (2020) (enacted).

¹⁸⁹ FEDERAL COMMUNICATIONS COMMISSION, KEEP AMERICANS CONNECTED, <https://www.fcc.gov/keep-americans-connected>.

¹⁹⁰ Press Release, Governor Ron DeSantis Signs Historic Teacher Pay Increases into Law, *supra* note 124.

¹⁹¹ Andrew Atterbury, *DeSantis Kills Online Learning Program Amid Virus Resurgence*, POLITICO FLORIDA (June 30, 2020, 2:02 PM) <https://www.politico.com/states/florida/story/2020/06/30/desantis-kills-online-learning-program-amid-virus-resurgence-1296178>; Greg Allen, *Florida Teachers Sue to Block School Coronavirus Reopening Mandate*, NPR (July 20, 2020, 4:57 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/07/20/893232710/florida-teachers-sue-to-block-school-coronavirus-reopening-mandate>.

3. Elder Care

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

Women are disproportionately likely to live in nursing homes.¹⁹² And the workforce that provides their care, disproportionately comprised of women of color, is one of the nation's most poorly paid and unprotected.¹⁹³ A feminist economic recovery plan must address both the inequities experienced by this workforce,¹⁹⁴ and the economic and emotional burden on families who require this care.

As this older population continues to grow, the number of people involved in formal and informal caregiving of older adults is also expected to rise. Because more adults are expressing a desire to receive this care from home, this heightens the demand for personal care and home health aides.¹⁹⁵ Lack of Medicaid support for such services hinders individuals' ability to pay for at-home and facility-based care, often leaving family and friends to provide informal care. Family caregivers "provided an estimated 34 billion hours of care in 2017," which was valued at \$470 billion.¹⁹⁶

In recent years, a number of federal and state initiatives have implemented innovative ways to support caregiving and caregivers. The National Family Caregiver Support Program funds access to information services and respite services for family caregivers who provide care for

¹⁹² See NAOMI CAHN & NINA KOHN, *Aging while Female in America* (forthcoming 2022).

¹⁹³ U.S. BUREAU OF LABOR STATISTICS, HOME HEALTH AIDES AND PERSONAL CARE AIDES, *supra* note 41; The Direct Care Workforce: Year in Review, 3 (2018) <https://phinational.org/wp-content/uploads/2018/12/Direct-Care-Workforce-Year-in-Review-2018-PHI.pdf> (87 percent of the workforce is women, 60 percent of those women are women of color).

¹⁹⁴ Such a plan should also address the inequities experienced by the many immigrant health care workers among this population. See Peters, *supra* note 14; see also *Immigrant Healthcare Workers Are Critical in the Fight Against Covid-19*, NEW AMERICAN ECONOMY RESEARCH FUND (Apr. 9, 2020), <https://research.newamericaneconomy.org/report/covid-19-immigrant-healthcare-workers/> (noting that "more than 400,000 immigrants made up at least one in three healthcare workers in 2018").

¹⁹⁵ Joanne Binnett & Kerri Vasold, *2018 Home and Community Preferences: A National Survey of Adults Ages 18-Plus*, AARP (2019), <https://www.aarp.org/research/topics/community/info-2018/2018-home-community-preference.html>.

¹⁹⁶ Susan C. Reinhard et al., *Valuing the Invaluable: 2019 Update*, AARP Public Policy Institute (Nov. 2019), <https://www.aarp.org/content/dam/aarp/ppi/2019/11/valuing-the-invaluable-2019-update-charting-a-path-forward.doi.10.26419-2Fppi.00082.001.pdf>.

adults over sixty, adults with disabilities, or children.¹⁹⁷ Hawai'i's Kupuna Caregivers Program provides up to \$70 per day of supplemental services for unpaid caregivers—around 75 percent of whom are women—who work more than 30 hours a week. The money can be used for expenses relating to senior care, such as the costs of adult day care or meals to be delivered to the care recipient.¹⁹⁸ Washington state recently passed “the nation’s first social insurance program for long-term care,” which will reimburse beneficiaries for the cost of long-term services and supports services up to a lifetime cap of \$36,500.¹⁹⁹

Federal relief plans have provided funding for aging and disability services programs and nursing workforce development, while many state recovery plans specify guidance for older adults. Even so, federal and state officials debate the place of elder care guidelines in economic recovery plans. Notoriously, Texas’s Lieutenant Governor Dan Patrick went so far as to proclaim that economic recovery should override protecting the lives of parents and grandparents.²⁰⁰ Conversely, Presidential candidate Joe Biden’s caregiving plan includes \$450 billion to boost senior care. The funds would be used to increase state Medicaid funding, create innovative models for long-term care outside of traditional nursing homes, support more at-home alternatives, and provide further support to industry workers while increasing jobs.²⁰¹ One economic analysis of Biden’s plan predicts that such “ambitious” public investment in elder care—combined with Biden’s proposed investment in child care – would create millions of new jobs, provide support for women to remain in the labor force, make both child care and elder care more affordable for families, and also improve the wages and training of “the care workforce.”²⁰² This sweeping proposal—

¹⁹⁷ *National Family Caregiver Support Program*, ADMIN. FOR COMTY. LIVING, <https://acl.gov/programs/support-caregivers/national-family-caregiver-support-program>.

¹⁹⁸ *Kupuna Caregivers Program*, AGING AND DISABILITY RESOURCE CTR., https://Hawai'iadrc.org/Portals/_AgencySite/KCG%20Info%20sheet%20071117_FINAL.pdf.

¹⁹⁹ Bryce Covert, *Washington State Has Created the Nation’s First Social-Insurance Program for Long-Term Care*, THE NATION (May 13, 2019), <https://www.thenation.com/article/archive/long-term-care-insurance-washington-elderly/>.

²⁰⁰ Adrianna Rodriguez, *Texas' lieutenant governor suggests grandparents are willing to die for US economy*, USA TODAY (Mar. 24, 2020, 9:14 AM), <https://www.usatoday.com/story/news/nation/2020/03/24/covid-19-texas-official-suggests-elderly-willing-die-economy/2905990001/> (“No one reached out to me and said, ‘as a senior citizen, are you willing to take a chance on your survival in exchange for keeping the America that all America loves for your children and grandchildren?’ And if that’s the exchange, I’m all in.”).

²⁰¹ Robert Holly, *Biden Announces \$775B Plan to Boost the Caregiver Economy, Support In-Home Care Providers*, HOME HEALTH CARE NEWS (July 21, 2020), <https://homehealthcarenews.com/2020/07/biden-announces-775b-plan-to-boost-the-caregiver-economy-support-in-home-care-providers/>.

²⁰² Josh Bivens, *Ambitious Investments In Child And Elder Care Could Boost Labor Supply Enough To Support 3 Million New Jobs*, ECONOMIC POLICY INST. (July 21, 2020, 10:49 AM), <https://www.epi.org/blog/ambitious-investments-in-child-and-elder-care-could-boost-labor-supply-enough-to-support-3-million-new-jobs/>. On the positive benefits

shows that the concept of redefining recovery to include moving forward, rather than moving back to the same place. This instructive forward-looking approach – evident in the Biden/Harris campaign theme, “Build Back Better”—insists that the “unacceptable truths” revealed by the pandemic about “structural weakness and inequalities” call for a imagining and building an economy that advances gender and racial equity and working families.²⁰³

4. *Other Crucial Components: Health Care and Protection Against Domestic Violence*

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

a. **Health Care:** According to the Center for American Progress, almost 68 million women and girls in the United States have a preexisting condition affecting their health.²⁰⁴ Before the Affordable Care Act (ACA) was enacted, such preexisting conditions – including pregnancy, childbirth-related procedures, and reproductive cancers – were regularly a basis for denying coverage or charging higher rates.²⁰⁵ The ACA changed that. Correspondingly, transgender status is no longer a preexisting condition that allowed denial of coverage, though the ACA did not guarantee

of investment in child and elder care, see generally Jerome De Henau & Diane Perrons, *Investing in the Care Economy to Boost Employment and Gender Equality*, WOMEN’S BUDGET GROUP (Mar. 2016), <http://www.lse.ac.uk/gender/assets/documents/news/Investing-in-the-Care-economy.pdf>.

²⁰³ *Build Back Better: Joe Biden’s Jobs and Economic Recovery Plan for Working Families*, BIDENHARRIS, <https://joebiden.com/build-back-better/#>.

²⁰⁴ Jamille Fields Allsbroke & Sarah Coombs, *Moving Backward: Efforts to Strike Down the Affordable Care Act Puts Millions of Women and Girls at Risk*, CTR. FOR AM. PROGRESS (Nov. 4, 2019), <https://www.americanprogress.org/issues/women/news/2019/11/04/476643/moving-backward-2/>.

²⁰⁵ Craig Palosky, *Nearly 54 Million Americans Have Pre-Existing Conditions That Would Make Them Uninsurable in the Individual Market without the ACA*, KAISER FAMILY FOUND. (Oct. 4, 2019), <https://www.kff.org/health-reform/press-release/nearly-54-million-americans-have-pre-existing-conditions-that-would-make-them-uninsurable-in-the-individual-market-without-the-aca/>; Dania Palanker & Karen Davenport, *Women’s Health Coverage Since the ACA: Improvements for Most, But Insurer Exclusions Put Many at Risk*, THE COMMONWEALTH FUND (Aug. 2, 2016), <https://www.commonwealthfund.org/publications/issue-briefs/2016/aug/womens-health-coverage-aca-improvements-most-insurer-exclusions>.

coverage for gender-affirming care.²⁰⁶ Today, with tens of millions of Americans laid off from work, the ACA provides a critical safety net.

Yet, amidst the pandemic, contraceptives, abortions, and routine services have been mischaracterized as non-essential or elective. And, the Trump administration made two leveraged attacks against the Affordable Care Act. On June 12, 2020, the Department of Health and Human Services released a final rule reinterpreting “sex,” for purposes of discrimination in health care under ACA, as referring only to “male or female and as determined by biology.”²⁰⁷ On June 25, 2020, the Trump administration filed a brief urging the Supreme Court to strike down the Affordable Care Act, arguing against the insurance reforms designed to protect people with preexisting conditions.²⁰⁸

By contrast, even pre-pandemic, several states provided a blueprint for expanding access to health care. Such strategies included additional state-funding for premiums, easier enrollment, and the state-mandated creation of a plan.²⁰⁹

b. Gender-based Violence: As discussed in Part IIIA, since the outbreak of Covid-19, the rate and severity of domestic violence have increased around the world.²¹⁰ The CARES Act responded to this increase by providing funding to hotlines and for temporary housing, as well as eviction protections for housing programs.²¹¹ While necessary, this relief is inadequate for improving the existing survivor support infrastructure. Instead, advocates argue policymakers must “increas[e] access to paid safe days and unemployment insurance for survivors seeking help; ensur[e] resources for Native American women and other communities at higher risk; and ensur[e] that domestic violence shelters and programs that provide direct support to survivors are deemed essential businesses and receive

²⁰⁶ Mul K. Kim, *Being a Transgender Person is No Longer a Pre-existing Condition*, NAT’L CTR. FOR TRANSGENDER EQUALITY (Mar. 29, 2010), <https://transequality.org/blog/being-a-transgender-person-is-no-longer-a-pre-existing-condition>.

²⁰⁷ Press Release, HHS Finalizes Rule on Section 1557 Protecting Civil Rights in Healthcare, Restoring the Rule of Law, and Relieving Americans of Billions in Excessive Costs, U.S. Dep’t of Health and Human Services (June 12, 2020), <https://www.hhs.gov/about/news/2020/06/12/hhs-finalizes-rule-section-1557-protecting-civil-rights-healthcare.html>.

²⁰⁸ Brief for the Federal Respondents, California, et al. v. Texas, et al., (No. 19-840 and No. 19-1019), https://www.supremecourt.gov/DocketPDF/19/19-840/146406/20200625205555069_19-840bsUnitedStates.pdf.

²⁰⁹ Jesse Nadel, *How States Are Combating Trump’s ACA Sabotage*, CTR. FOR AM. PROGRESS (Aug. 1, 2019, 9:00 AM), <https://www.americanprogress.org/issues/healthcare/news/2019/08/01/472615/states-combating-trumps-aca-sabotage/>.

²¹⁰ See *supra* discussion of domestic violence.

²¹¹ Coronavirus Aid, Relief, And Economic Security Act, Pub. L. No. 116-136, 116th Cong. (2020).

significant funding.”²¹² If passed by Congress, the HEROES Act would move in this direction, with additional emergency appropriations for state and local programs on the prevention and prosecution of violence against women programs, family violence prevention services, and a national domestic violence hotline.²¹³

Without the guarantee of federal assistance, it is up to the states to offer domestic violence response plans with an emphasis on quick implementation and cultural competency. For example, New York launched a Domestic Violence Task Force to address the pandemic upsurge in domestic violence cases, and it released a list of recommendations to help the state “adapt to the new normal and to transform its approach to domestic violence.”²¹⁴ The list includes using new technologies to reach more survivors, providing flexible funding to meet the diverse needs of survivors, providing more housing navigation services, and addressing the specific needs of Black, indigenous, and people of color survivors.²¹⁵ State recovery plans would do well to adopt, and implement, such recommendations.

V. CONCLUSION

The pandemic has reinforced gendered expectations of roles at home, while also reinforcing the gendered wage gap and the gendered and raced nature of paid care work. Paradoxically and tragically, the pandemic’s illumination and exacerbation of such inequalities generates opportunities to center gender in an intersectional way that reflects race, class, and other identity dimensions²¹⁶ in plans for economic recovery.

Moving forward to address these inequalities creates the possibilities for a feminist recovery plan. Such a plan means providing paid family and sick leave, improved child care, and protection from violence. It also means implementing policies relating to workplace flexibility, equal pay, and freedom from employment discrimination, as well as familial barriers to remote learning, and greater recognition of—and better working conditions for—essential workers.

²¹² Shilpa Phadke et al., *What Women Need*, CTR. FOR AM. PROGRESS, 40 (June 8, 2020), <https://cdn.americanprogress.org/content/uploads/2020/06/05133219/WhatWomenNeed-COVID.pdf>.

²¹³ Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 6800, 116th Cong. (2020).

²¹⁴ The New York State Council on Women and Girls Covid-19 Domestic Violence Task Force, *Covid-19 Domestic Violence Task Force Recommendations*, 1 (May 2020), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/DVTF-Report-FINAL.pdf>.

²¹⁵ *Id.* at 2-3.

²¹⁶ See *Issues/Agendas*, NAT’L CTR. FOR TRANSGENDER IDENTITY (2020), <https://transequality.org/issues/agendas>.