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BLACK KINSHIP CIRCLES IN THE 21ST CENTURY: SURVEY OF RECENT CHILD WELFARE REFORMS AND HOW IT IMPACTS BLACK KINSHIP CARE FAMILIES

SONIA M. GIPSON RANKIN¹

I. INTRODUCTION

The Black American community has been celebrated for the historical success of kinship care. Children not living with biological parents are enveloped by relatives, friends, and community members in order to create a resilient people often reared in the harshest of American socio-economic conditions. Our federal government, states, and communities are continuously looking for new methods to improve the lives of this unique population. With an eye on the long legal history of attempts to address kinship care families, the federal government created an exploratory program to concentrate on solving the three goals of child welfare.

This paper follows the implementation of the federal government's experimental Title IV-E Waiver Demonstration Projects.

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The Title IV-E Flexible Waiver program of the Social Security Act implemented in 2005 was designed to address the permanency, well-being, and safety of children with the goal of decreasing the number of children in out-of-home care. This program regards kinship care arrangements at the same level of importance to a child as biological parents. In this paper, I argue Title IV-E Flexible Waivers should be used to address the continued health and economic needs of Black children in kinship care settings. Part II describes the role of kinship care in America as it has evolved from a private family arrangement often used by Black families into a structure that is regulated by state child welfare agencies using federal resources. Part III follows the implementation of several Title IV-E Waiver Demonstrations that states have effectuated in an effort to better use federal funds under tightening state budgets. Historically, Title-IV-E funds could only be used towards adoption, guardianship, or foster care. Part IV discusses how in 2005, Title IV-E Waiver Demonstrations Projects using Capped Allocations gave states greater flexibility by allowing federal funds to be used for expanded purposes, with the understanding that these resources have a preset cap. I focus specifically on the impact of capped allocations in Florida and California on reducing the number of children in foster care placements and how this success is directly connected to the use of kinship care families. Although increased health risks of children in foster care are well documented, little is known about the physical and mental health needs of children in kinship care. Part V tells how Title IV-E Flexible Funding waivers could be used to address the continued health and economic needs of Black children in kinship care settings.

II. THE ROLE OF TITLE IV-E WAIVER DEMONSTRATIONS AS IT AFFECTS KINSHIP CARE FAMILIES

A. AMERICAN CHILDREN ARE BEING RAISED BY KIN IN INCREASING NUMBERS

The romanticization of the nuclear family in early 20th century American culture led to its widespread acceptance as the default standard American family form.² This nuclear family structure model

2. Researchers Stephanie Coontz and Judith Stacey suggest that the nuclear family, although presented as fact is more of a goal because of limited historical and social existence. Stephanie Brown et al., *African American Extended Families and Kinship Care: How relevant is the foster care model for kinship care?*, 24 *CHILD. &*

fails to capture the range of different family models in the United States. The kinship family is one of those formats. Kinship care is defined as “any living arrangement in which a relative or someone else emotionally close to the child takes primary responsibility for rearing a child.”³ Kinship care has existed in many forms throughout the United States, even before the establishment of this nation. Kinship care has been commonly divided into two categories: private kinship care⁴ and kinship foster care. Kinship foster care is considered a subset of child welfare foster care services⁵ as the state allows relatives to “act as foster parents for children in State custody.”⁶ In June 2011, The U.S. Department of Health and Human Services reported that approximately 500,000 children were in foster care⁷ and approximately 200,000 of those children are in kinship foster care.⁸ Private kinship care and kinship foster care statistics are impacted by the significant number of Black American families that fall under the umbrella of kinship families.

One of the most studied examples of kinship care is the extended family structure in the Black American community.⁹ Adaptable and

YOUTH SERV. REV. 55, 57 (2002).

3. U.S. DEP’T HEALTH & HUM. SERV., REPORT TO THE CONGRESS ON KINSHIP FOSTER CARE IV (2000).

4. The 2005 US census reports that 2.5 million children are living in some form of relative care, a documented increase of 55% from 15 years prior. David M. Rubin et al., *Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care*, 162 ARCHIVES PEDIATRICS ADOLESCENT MED. 550, 550 (2008).

5. See generally JAMES PATRICK GLEESON & CREASIE FINNEY HAIRSTON, KINSHIP CARE: IMPROVING PRACTICE THROUGH RESEARCH (1999).

6. REPORT TO THE CONGRESS ON KINSHIP FOSTER CARE, *supra* note 3, at 5.

7. U.S. DEP’T HEALTH & HUM. SERV., *National Survey of Child and Adolescent Well-Being: No. 15: Kinship Caregivers in the Child Welfare System* 1 (2007), available at http://www.acf.hhs.gov/sites/default/files/opre/rb_15_2col.pdf; U.S. DEP’T HEALTH & HUM. SERV., *National Survey of Child and Adolescent Well-Being: No. 1: Who Are the Children in Foster Care?* 1 (2007) [hereinafter *National Survey No.1*], available at http://www.acf.hhs.gov/sites/default/files/opre/children_fostercare.pdf. Other reports estimate between 400,000 to 500,000 children are in foster care. U.S. DEP’T HEALTH & HUM. SERV., *The AFCARS Report* (2010) [hereinafter *The AFCARS Report*].

8. REPORT TO THE CONGRESS ON KINSHIP FOSTER CARE *supra* note 3, at 7 (citing a 1997 report); In 2002, approximately 542,000 children were living with kin following child welfare agency intervention. Rubin, *supra* note 4, at 550.

9. Marc Winokur et al., *Kinship Care in the United States: A Systematic Review of Evidence-Based Research*, SOC. WORK RES. CTR. 1, 2 (2005), available at <http://www.ssw.chhs.colostate.edu/research/swrc/files/KinshipCareSystematicReview.pdf>.

responsive family forms are used by families who struggle against societal structures that often impede social and economic growth.¹⁰ These family structures have allowed Black families to adjust deftly to the needs brought on by their social, economic, and political positions and often include a reliance on multiple extended family members who take on multiple roles.¹¹ Although these families often exist outside of the realm of governmental oversight, these life stressors have led to Black children's disproportionate representation in the child welfare system.¹² This family structure has served as a protective shell around Black children throughout history as they have endured structural, systemic, and individual racism within the child welfare system.¹³

10. Brown, *supra* note 2, at 55.

11. *Id.* at 71; The constantly shifting unique dance that must be executed by the family can appear chaotic because they do not reflect culturally "normed" nuclear family structures, although they achieve the same goals with a much smaller set of resources. *Id.* at 76.

12. Carrie Jefferson Smith & Wynetta Devore, *African American children in the child welfare and kinship system: from exclusion to over inclusion*, 26 CHILD. & YOUTH SERV. REV. 427 (2004). In fact, Black children account for approximately 30% of foster care families and also comprise 32% of the kinship foster care system. *The AFCARS Report*, *supra* note 7, at 2; Hispanic children make up 21% of foster care children. *Id.*; See also U.S. GOV'T ACCOUNTABILITY OFFICE, *African American Children in Foster Care: Testimony Before the Subcomm. on Income Security & Family Support, Comm. On Ways & Means, & H. of Rep. 1* (2008) (statement of Kay Brown, Director, Education, Workforce, & Income Security); Of the NSCAW results, 32% of the children on a whole were placed in kinship care, 58% in non-kin foster care. *National Survey No. 1*, *supra* note 7, at 3; Kinship care represented 32% of Black children's placements. *Id.*

13. See Smith & Devore, *supra* note 12; Although the Black American extended family has been the focus of much of the research on extended families, this family form is not exclusive to Black American or simply people of African descent. Historian Stephanie Coontz documents that the nuclear family has never been the predominant family structure in the United States, despite how it has been promoted. Brown, *supra* note 2, at 57-58.

B. GOVERNMENT KINSHIP CARE POLICIES HAVE GINGERLY
MATERIALIZED OVER THE LAST 30 YEARS

1. Black Families Have Had to Operate Outside the Child Welfare
System Because of Ideological, Systemic, and Individual Racism

a. Theoretical Development of Structural Racism in Child
Welfare Policies

Despite representing 15.2% of American youth,¹⁴ Black children accounted for 49% of out-of-home care placements within the child welfare system while white children represented 36%.¹⁵ With the historical, purposeful exclusion of this population from the child welfare system for generations, the current level of inclusion is particularly startling.¹⁶ In order to understand how these numbers came to be, it is important to review the systemic implementation of structurally racist ideology in child welfare policies.

The rights of the family to self-govern are an established American credo. We allow families to meander through this journey without state intervention until they are found to have violated the state's interest as defined by our legal system. At the rise of the 20th century, three legal principles would govern the child welfare system: the colonial poor laws, the principle of *parens patriae*, and the concept of the legal contract.¹⁷ These legal theories would shape the child welfare system taking different approaches on how to intervene in the child-parent-state relationship, but these principles would not serve as the foundation for America's relationship to the Black family structure.¹⁸ Because of ideological racism, there would be a different

14. CHILDREN'S DEFENSE FUND, *The State of America's Children A-1* (2010), available at <http://www.childrensdefense.org/child-research-data-publications/data/state-of-americas-children.pdf>.

15. Smith & Devore, *supra* 12, at 428; Almost 30% of the founded allegations of abuse and neglect and 41% of the child welfare population and approximately 40% of child fatalities associated with child abuse and neglect. Whites "made up approximately 66% of the nation's child population, 57% of founded child abuse and neglect allegations, 46% of the child welfare population and 52% of child abuse fatalities." *Id.*

16. *Id.*

17. Jillian Jimenez, *The history of child protection in the African American community: Implications for current child welfare policies*, 28 CHILD. & YOUTH SERV. REV. 888, 889 (2006).

18. The poor laws would provide for the right of children with indigent parents to be removed from their home. The *parens patriae* doctrine established the state as the

set of guidelines used for Black families.

The Black experience would begin outside of the three principles guiding child welfare. The ‘peculiar institution’ of slavery would serve as the first implementation of child welfare for Black children in the United States, with responsibility and rights legally stripped from the Black parent.¹⁹ Children and adults alike “were held in perpetuity, as property to be used or disposed of at the owners’ will.”²⁰ Children separated from parents, whether orphaned by the death, auction, or even by the emotional separation of parents, would be “absorbed into the slave community by other adult slaves who took over the parenting role in keeping with kinship care patterns familiar in their African cultures.”²¹

After the legal end of slavery, the Freedmen’s Bureau would also be seen as the first federal child welfare agency as they assisted in the development of orphanages to provide protection, care, and education of Black children.²² It would then be another forty to fifty years before the federal government would again use federal child welfare systems to intervene in the lives of Black children through segregated state child welfare agencies.²³

ultimate parent for children when there was no parental oversight available. The third principle of a legal agreement similar to a contract, arose from the Progressive Era idea that children were to be viewed in a linear manner where legal ownership of the child can only be between two parties: the child and a parent, or parent substitute, or the state where only one legal entity is held responsible for the child. This is why the child welfare system would require the termination of parental rights, allowing only one person or unity legally responsible for the child. The principle of *parens patriae* would not apply to African American children until the 1960s and the rise of governmental response to child maltreatment. *Id.* at 890-91.

19. Smith & Devore, *supra* note 12, at 429.

20. *Id.*

21. *Id.*

22. *Id.* (These organizations would still discriminate against Black children.); The Freedmen’s Bureau, established by the Federal government during Reconstruction, would be tasked with providing practical aid to the newly freed Black Americans such education, medical assistance, and managing property, and providing a format for the administration of justice in cases concerning Blacks. *Freedmen’s Bureau*, THE COLUMBIA ELECTRONIC ENCYCLOPEDIA, <http://www.infoplease.com/ce6/history/A0819595.html> (last visited March 7, 2011).

23. As the Freedman’s Bureau was defunded, Black children were forced into settlement houses, charity organizations, mutual aid societies, and in many communities, back into virtual slavery through ‘apprentice programs.’ Smith & Devore, *supra* note 12, at 430; For further information on the legal and economic destruction of Black families, see Richard Paul Fuke, *Planters, Apprenticeship, and Forced Labor: The Black Family Under Pressure in Post-Emancipation Maryland*, 62

Under the New Deal, the Children's Bureau brought the federal government into the business of child welfare for all children, and through the Social Security Act of 1935²⁴, used the Aid to Families with Dependent Children (AFDC) to care for children raised in families by mothers without husbands. This would be a joint effort: the federal government setting the goals of child welfare and states implementing the goals; both would shoulder the financial burden.²⁵ Because of the implementation of individual racism by local administrations and social workers,²⁶ kinship care would continue to serve the Black child as one of the few safe havens they could turn to when state implementation failed their needs.

Though kinship care was once an unregulated way of life for many Americans – particularly Black Americans – the judicial and legislative systems would be forced to address the needs of these families after the Civil Rights era. The combination of the economic, political, and legal changes in the Black community would contribute to the increased representation of Black children in the federal child welfare system in the 1960s and 70s²⁷ and be the first time that those

AGRIC. HIST. 57 (1988); Also, cities such as Philadelphia, Boston, and Chicago would be highly noted for these segregated systems. Smith & Devore, *supra* note 12, at 430.

24. Smith & Devore, *supra* note 12, at 434. American welfare policy would be caught between two competing ideologies: the Christian ethos to help those who could not help themselves verses a belief that heaven helps those who help themselves.

25. *Id.* This legislation on rural areas aided poor Black farmers living under the heavy hand of Jim Crow segregation and sharecropping. *Id.*

26. Using the 'fit parent' standard as their reason for removal of Black children. *Id.* State child welfare agencies are often given extensive authority, such as choosing which child abuse cases to investigate, the power to remove children from their homes without prior court approval, and making placement decisions, so segregated implantation would have a tremendous impact on Black children. See generally, NATIONAL CENTER FOR YOUTH LAW, *BROKEN PROMISES: California's Inadequate and Unequal Treatment of its Abused and Neglected Children 1* (2006) [hereinafter *Broken Promises*], available at http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/2006_broken_promises.pdf. This is implemented at the county level as far as deciding what schools the child can attend, visitation times and formats with the family, and physician and therapist choices. Most importantly, the county can set standards for reunification. *Id.*

27. The three main theories on why the number of Black children would increase in the child welfare agencies are: (1) large numbers of Black families taking part in the Great Migration; (2) the civil rights movement drawing attention and a national push towards integration; and (3) decreased poverty among white children and formalizing the care of poor minority children. *Id.* at 431. This would set the standard as we move into the growth of welfare during the 1960s and 70s. *Id.*; Although they would increase in representation, the view of the Black community would be defined as part of the

early foundational principles used to establish the child welfare system would also apply to Black children.²⁸ Because of the precarious financial status of Black children in the United States, the “poor law” principles, with all of its class-based implications and assumptions, would serve as a guiding force in creating “colorblind” new child welfare practices towards Black children.²⁹ Because of the contract principle underscoring child welfare (only the state or kin can be legally responsible for a child), kinship foster care would not be the first avenue the federal and state governments turned to when determining out-of-home care placement;³⁰ however, financial savings, social welfare policies, and national events would contribute to the expansion of the kinship foster care system.³¹

Federal policies of child welfare and income assistance regulate our modern kinship foster care system. Child welfare changes as it impacts kinship care families would begin to evolve during the 1970s. By 1974, the Child Abuse Prevention and Treatment Act established the federal “guidelines for child abuse and neglect definitions,

deviant American subculture because of poverty. Daniel Patrick Moynihan’s 1965 report *The Negro Family* viewed Black families as incapable of reaching American cultural standards, often because of a mythical Black mother destroying the family unit. Daniel Patrick Moynihan, *The Negro family: The case for national action*, WASHINGTON, DC: OFFICE OF POL’Y PLANNING & RESEARCH, U.S. DEP’T LABOR (March 1965), available at <http://www.dol.gov/oasam/programs/history/webid-moynihan.htm>.

28. Jimenez, *supra* note 17, at 890.

29. *Id.* at 891; A number of new legislation and demonstration projects would attempt to meet the needs of abused and neglected children placed in long-term foster care; Black Americans would receive continued heightened scrutiny. Smith & Devore, *supra* note 12, at 431-32; Some researchers have concluded child welfare agencies are more tolerant of a number of problems in minority families, have harsher assessments and intervention mechanisms, and social biases are contributing to the over-reporting of Black parents for abuse and neglect and the placement in out of home care for these children. *Id.* at 432.

30. Jimenez, *supra* note 17, at 900. “Instead a pluralistic model of child rearing, of shared responsibility, of fluidity of parent child arrangements and resourcefulness of private individuals emerged out of the history and culture of African American communities and in the face of the absence of sustained intervention by public child welfare.” *Id.*

31. *Id.* at 433. TANF payments were once 50% lower than foster care reimbursements which are often tied to licensing regulations. For a discussion on the First White House Conference on Dependent Children in 1909 and the first Mother’s Pension Law in 1911 which would provide funds to poor mothers to care for their children at home. What homes would be considered suitable was unfortunately left to the discretion of the workers and administrators. *Id.*

reporting and policy procedures” for intervention.³² With Moynihan’s *The Negro Family* almost a decade old by this point, solidifying the nation’s views of the pathology of the Black matriarch as the root of all Black families’ ills, those legal principles would propel the national tide removing Black children from their homes and placing them in foster care.

The 1980s would begin with an increased focus on the lives of children of color in the child welfare system because of legislative³³ and judicial decisions,³⁴ and the recommendations would include “more diverse staff, more training for cultural competency, intensive home-based and prevention services, as well as, more flexible funding.”³⁵ Although this preference would be important for kinship care families, strained relationships between the Black community and

32. *Id.* at 435.

33. The first time the government would legally recognize the important role kin plays in the development of a child would be the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963 (1978)). Removal was seen by the Indian community as another aspect of the American policy to destroy their community. B.J. Jones, *The Indian Child Welfare Act: The need for a separate law*, A.B.A GENERAL PRACTICE, SOLO & SMALL FIRM DIVISION (1995), <http://www.abanet.org/genpractice/magazine/1995/fall/indianchildwelfareact.html>; Every day tribal life was being seen by non-Indian judges and social workers was seen as not in the children’s best interests and as many as 25 % – 35% of Indian children were being removed from their homes without the tribes having any say in the removal of their lineage. *Id.*; In the field of kinship care, American Indians would be the ideal group to set the standard by. Because of the Indians special federal relationship where they are seen as a political minority and not solely a “racial” minority, they were able to advocate that their cultural heritage was tantamount to who they were and therefore, could not be cast aside when deciding where children should be placed. The family, tribe, *kin* would have first and final say in where their children were placed when outside of the home care was needed. Smith & Devore, *supra* note 12, at 435; Acts such as the 1819 Civilization Fund Act, boarding school systems and ‘out placing’ and the adoption of Native children were seen as methods to destroy their people. This would serve the social needs of the Indian community keeping their progeny, but was also connected to the political purpose of retaining the future political base that needed its people to retain its political power. *Id.*

34. *Miller v. Youakim*, 440 U.S. 125 (1979); One year after this, relatives would be given preference under the 1980 Adoption Assistance and Child Welfare Act of 1980. *See* Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272 (1980); The US Office of Civil Rights was studying the conditions of children of color in the child welfare system when this Act was established. The least restrictive environment for children would be understood as extended family, and would contribute to kinship placements. Smith & Devore, *supra* note 12, at 435-36.

35. Smith & Devore, *supra* note 12, at 437 (most of the recommendations would be lack-full implementation and receive poor oversight).

the judicial system and distrustful interactions with the community and the child welfare agency would hinder its application.³⁶

As single parent households would increase, employment would shrink in Black communities leading to an increase of families in crisis, needing state intervention mechanisms.³⁷ Kinship foster care would develop under this weighty umbrella by kin who were dealing with new challenges in caring for their relatives and the state would be slow to adapt to these unique challenges even throughout the welfare reform of the late 1990s.³⁸ Families would relinquish their right to self-govern by following state licensing standards and enrolling their kinship care families into state child welfare systems to access federal financial assistance and state guidance to survive the harshest of economic conditions.

Further amendments to the Social Security Act would give the states directives on income assistance and how child placement could be funded.³⁹ Income assistance – under the title of AFDC – regarded relatives as an extension of the family and permitted children under their care to apply for income assistance. But, the nation would move towards studying income assistance and how it affects children in kinship care. Under American conservative ideological notions that welfare undermines work ethic and therefore demanded economic self-sufficiency from poor families, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) would abolish AFDC⁴⁰ and replace it with Temporary Assistance to Needy Families

36. *Id.* at 436 (many reasons would include reluctance to engage with in state involvement, not meeting licensing requirements, and legal records).

37. Societal shifts would also contribute to the changing look of foster care. Numbers of Black children in the child welfare system would climb steadily because of drugs, crime, and HIV/AIDS epidemics devastating communities of color nationwide. Smith & Devore, *supra* note 12, at 436. Conversely, the numbers of foster homes for all children were diminishing as child welfare agencies were unprepared for the catastrophic and overwhelming caseloads caused by this largely underprepared workforce and continuing legal pressures to deliver better care to this defenseless population; these children were increasingly children of color. *Id.*

38. *Id.*

39. *Id.* at 434. “The 1961 amendments to the Social Security Act authorized the use of federal funds for foster care payments for AFDC eligible children,” which would apply to children identified as abused and neglected and placed in foster care. The amounts would be higher than AFDC payments to parents or blood relatives; even if those relatives were fully licensed by the state to serve as foster parents. Relatives licensed by the state would part of a dual system of payments. *Id.*

40. This includes AFDC Administration; JOBS (Job Opportunities and Basic Skills Training) program, and The Emergency Assistance Program

(TANF).⁴¹ TANF would end federal entitlements to assistance for all AFDC recipients, including relatives, by providing states with the federal funds to develop their own welfare programs,⁴² providing block grants to the states, which provided each state with a fixed amount of funds as long as the state met certain stipulations. States who decided to increase welfare spending because of an increase need would no longer receive an automatic increase in the amount of federal dollars.⁴³ PRWORA would address kinship foster care by ushering in a 'Relatives First' placement strategy that would "'consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant states child protection standards.'"⁴⁴

The next ten years would see PRWORA expanded to understand the role of relatives in children's lives.⁴⁵ States almost universally recognize the unique role relatives play in the lives of children and are developing policies that generally use them towards achieving the goals of safety, permanency, and the well-being of children in the

41. Z. Fareen Parvez, *Women, Poverty, and Welfare Assistance* 1 (2009), http://www.socwomen.org/web/images/stories/resources/fact_sheets/fact_00-2009-welfare.pdf; See also, Jerry Watts & Nan Marie Astone, *The End of Work and the End of Welfare*, 26 CONTEMP. SOC. 409, 413 (1997). The term welfare in America would generally refer to the cash assistance program known as TANF.

42. Parvez, *supra* note 41, at 1. This would include work in exchange for assistance and a 5-year lifetime limit on assistance. *Id.* New work requirements and time limits for TANF recipients would impact some kinship caregivers, also.

43. Watts & Astone, *supra* note 41, at 413.

44. Smith & Devore, *supra* note 12, at 436; The Act would require states to file for the termination of parental rights to achieve permanency for all children who have been in foster care for 15 out of the last 22 months, but this termination would not be required if the child is placed with relatives. *Id.* By the end of this reform period, the number of children in foster care would grow to its current level, a 25% increase from 1990 and over 2.14 million children would live in relatives' homes without either parent present. *Id.* at 437. 1.4 million of these children were living with grandparents and kinship placements would constitute the largest growth. *Id.*

45. The Adoption and Safe Families Act of 1997, 42 U.S.C. §1305 (1997) (the first Federal legislation to overtly state child welfare agencies should look for children to be placed with a relative first before looking to use non-relative placements); The Fostering Connections to Success and Increasing Adoptions Act of 2008 P.L. 110-351, 122 Stat. 3949 (2008) (requires states to exercise due diligence locating relatives when a child is placed, affording them the option to take in their relative); All but 1 state gives relatives preference over non-relatives in placement and nationally as of late 2006, 24% of children in care have been placed with kin. See Andrew Zinn, *A typology of kinship foster families: Latent class and exploratory analyses of kinship family structure and household composition*, 32 CHILD. & YOUTH SERV. REV. 325, 325 (2010).

state's care.

C. THE EVOLUTION OF THE FEDERAL GOVERNMENT'S ROLE IN STATE FOSTER CARE ADMINISTRATION

I. Federal and State Child Welfare Policies Have Complemented, Contradicted, and Constrained Each Other

The theoretical models of child welfare and our state and federal legislators have long been trying to find effective tools to balance the goals of child welfare with the rights and needs of the family. State child welfare agencies were once seen as “rescue” agents in the best scenario – “baby snatchers” in the worst - as the only tools they were given required that maltreated children be removed from the home to ensure safety.⁴⁶ While this did meet the federally established goal of safety, it did not address the needs of all parties: children who were torn from their loving, but struggling families; cries for help from the parents who wanted to keep their children; community members who wanted to save the families in their neighborhoods from decimation; and social workers who knew removal was not always improving the whole life of the children.⁴⁷ The federal government provided states with new measures to ensure the safety of children, and it involves changing the family instead of removing the child. Department of Child and Family Services (DCFS)⁴⁸ have gravitated from removing children from at-risk homes to a model of using community-based services tailored to each family's needs.⁴⁹ When a child must be removed, DCFS develops faster paths to permanency, primarily through reunification with parents or placement with relatives other extended family members, or through adoption or guardianship.⁵⁰ In 2000, the U.S. Department of Health and Human Services would create a first ever Report to Congress on Kinship Foster Care, acknowledging the benefits and needs of kinship foster families.⁵¹ Before PROWRA,

46. Joanne Edgar, *Stories of Practice Change: What Flexible Funding Means to the Children and Families of Los Angeles County*, CASEY FAM. PROGRAMS 4 (Feb. 2009), available at <http://www.casey.org/Resources/Publications/pdf/WhatFlexibleFundingMeans.pdf>.

47. *Id.*

48. DCFS is referred to by varying terms across the United States. *Id.*

49. *Id.* at 5.

50. *Id.*

51. REPORT TO THE CONGRESS ON KINSHIP FOSTER CARE, *supra* note 3, at 10-11, 35-37 (discussing the role and history of African Americans in private kinship care and

federal child welfare policies had had required states to assist kin through income assistance programs, keeping them out of the child welfare system. And if states were to use relatives as foster parents, they were required to use federal foster care licensing standards – standards designed for non-kin foster parents.⁵² States have been creating a kinship foster care system ad hoc because of limited federal standards and guidance, which has led to the diversity in payments for public kinship caregivers, licensing standards, and even the definition of *kin*.⁵³ Title IV-E waivers would lift some of these restrictions to allow states new methods in addressing child welfare needs.

2. Block Grants and the Role of Title IV-E Waivers

The most established child welfare block grants are TANF funding which was set at \$16.5 million for the length of the original authorization in PRWORA.⁵⁴ Social Services Block Grants were created with the goal of focusing on, among other things, preventing unnecessary institutional care.⁵⁵ Block grants to states require states to match federal funding. With these grants, states would be given liberty in designing financial appropriations. States have been financing kinship care through a cobbling of sources such as foster care payments, TANF grants, and public assistance.

a. States and Title IV-E Flexible Funding Waivers

In 2009, Under Title IV-E, \$7.2 billion dollars of the US Administration for Children and Families' funds were budgeted to states through out-of-home care, subsidized guardianship, or adoption.

kinship foster care).

52. *Id.* at 10.

53. The reasons for these discrepancies have been based in the ideology that parents will abandon their children to relatives to get higher cash assistance and that there was no desire to encourage private kinship caregivers to join the public child welfare system. *Id.* at 21. In 1996 Maryland, a foster caregiver would receive approximately \$540 a month for care while a “welfare-assisted relative would have received \$165 a month in a basic child-only grant.” *Id.* The difference is exponential since multiple siblings warrant a prorated welfare payment on a declining scale and foster care payments remain constant regardless of children in the household. *Id.*

54. See generally ALAN WEIL & KENNETH FINEGOLD, WELFARE REFORM: THE NEXT ACT (Urban Institute Press 2002); National Association of Social Workers, *Recommendations for the Reauthorization of the Personal Responsibility and Work Opportunity Reconciliation Act*, NAT'L ASS'N SOCIAL WORKERS 10 (2001), available at <http://www.socialworkers.org/advocacy/welfare/legislation/recommend.pdf>.

55. *Id.*

These funds could not be directed to preventative and family support programs⁵⁶ despite proven success in these efforts towards the three goals of child welfare: permanency, safety, and well-being.⁵⁷ Title IV-B of the Social Security Act and the Social Services Block Grant did fund some preventative services, but their budget was approximately ten percent of the federal budget for foster care and adoptions.⁵⁸ Though states may have longed for a different method in serving children and their families, there was little financial incentive to focus on alternative means of ensuring safety, well-being, and permanency for children because the state would not be able to supplement the care with federal funding.⁵⁹

Under §1130 of the Social Security Act, in 1994, Congress authorized Title IV-E waivers in which eligible states were permitted to use Title IV-E funds to carry out waiver demonstrations which could use alternative methods to effectuate real change in child welfare.⁶⁰ The purpose of the IV-E Waiver evaluation was to spur innovation into the foster care system that would address permanency, safety, and the well-being of children while reducing administrative costs.⁶¹ Because of the state-wide success, the Fostering Connections to Success and

56. *Child welfare improvements in California: Frequently Asked Questions*, CAL. DEP'T SOC. SERV. 1, 3 (2004), <http://www.cdss.ca.gov/cdssweb/res/pdf/FAQs.pdf>.

57. See generally Madelyn Freundlich, *Time for reform: investing in prevention, keeping children safe at home*, CHILDREN'S HOME SOCIETY OF WASHINGTON (2007), available at http://www.preventchildabuse.org/about_us/media_releases/pew_kaw_prevention_report_final.pdf.

58. *Id.* at 1; Other research will note that Title IV funds account for approximately 50% of federal child welfare funding and Title IV-B accounts for 5%. U.S. GOV'T ACCOUNTABILITY OFFICE, *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care 14* (2007) [hereinafter *Additional HHS Assistance*], available at <http://www.gao.gov/new.items/d07816.pdf>.

59. Freundlich, *supra* note 57, at 1; See also *Ensuring Safe, Nurturing and Permanent Families for Children: The Need to Reauthorize and Expand Title IV-E Waivers*, CASEY FAMILY PROGRAMS (May 2010), available at <http://www.casey.org/Resources/Publications/pdf/NeedForWaivers.pdf>.

60. Freundlich, *supra* note 57, at 1.

61. M.I. Armstrong et. al., *Evaluation Summary Brief, FLORIDA'S IV-E WAIVER DEMONSTRATION PROJECT 1*, (2012), available at <http://centerforchildwelfare2.fmhi.usf.edu/kb/LegislativeMandatedRpts/IV-EEvalSummaryBrief5-30-12.pdf>; U.S. DEP'T HEALTH & HUM. SERV., *Summary of the Title IV-E Child Welfare Demonstrations 7* (2012) [hereinafter *Summary of the Title IV-E Child Welfare Demonstrations*], available at http://www.acf.hhs.gov/sites/default/files/cb/summary_demo2012.pdf.

Increasing Adoptions Act of 2008 would allot Title IV-E funds for subsidized guardianship and adoption support in addition to foster care⁶² and provide continued examples of implementation nationwide.⁶³ Out of fifty states, seventeen would implement waivers targeted at distinct child welfare populations, while five would look into flexible funding formats.⁶⁴

Flexible funding waivers would represent a new method of accomplishing child welfare goals through alternative means. These waivers allocated “fixed amounts of title IV-E dollars to local public and private child welfare agencies in an effort to provide new or expanded services that prevent out-of-home placement and/or facilitate permanency.”⁶⁵ A Title IV-E waiver demonstration project is based on the assumption that front-end services to a family will offset the cost of out-of-home placement and would be cost neutral and not exceed the federal reimbursement for Title IV-B or IV-E.⁶⁶

Though the flexible funding demonstrations would be different in scope, purpose, structure, and payment methods, the core concept would remain of fixed funds being allocated to prevent out-of-home placement and/or facilitate permanency.⁶⁷ The basic belief is that flexible funding waiver costs will be offset by the savings gained from not using out-of-home placement.⁶⁸ States could create new or expand existing programs using federal funds to include measures such as:

62. Freundlich, *supra* note 57, at 2.

63. *Id.* at 21 (stating that subsidized guardianship would be born under this era of demonstrations (as were other targeted waivers) and these projects would continue to be supported under the 1997 Adoption and Safe Families Act of 1997 at the rate of ten new waiver projects each year); *See generally*, U.S. DEP'T HEALTH & HUM. SERV., ADMIN. ON CHILD., YOUTH & FAM., CHILD. BUREAU, *Title IV-E Plan Amendment – Guardianship Assistance Program* (2010) (describing implementation of the Title IV-E option under § 471(a) (28) of the Act providing for kinship guardianship assistance payments).

64. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 7. Some of the service strategies would include: subsidized guardianship/kinship permanence; managed care payment systems; services for caregivers with substance use disorders; enhanced training for child welfare staff; and flexible funding and capped IV-E allocations to local agencies. *Id.*

65. *Id.*

66. *Id.* Research shows that front-end services can help: decrease the incidences of abuse and neglect, reduce the childhood trauma of removal, and lessen need to remove children and shorten the amount of out-of-home care, and lower the cost of care per child. *Id.*

67. *Id.*

68. *Id.*

early intervention, crisis intervention, one-time payments for good and services (rent, utilities, etc.), substance abuse assistance, legal assistance, and enhanced visitation services.⁶⁹ Several states would find success with their flexible funding demonstrations and received five-year extensions.⁷⁰

D. TITLE IV-E CHILD WELFARE DEMONSTRATIONS USING CAPPED ALLOCATIONS

The federal government would then pose a unique quest to the states: if federal restrictions were lifted, what new ideas could you implement to reduce the number of children in foster care, knowing you would lose access to additional federal funds if the number of children in foster care rose? Only two states would take on the challenge and have shown great success in stewardship over the funds *and* the children.⁷¹

1. Alameda and Los Angeles Counties IV-E Waiver Demonstration Project Through Capped Allocations

Child welfare in California was large, complicated, and disproportionate on the national child welfare stage. California is structured under a nationally funded, state supervised, county administered child welfare system.⁷² In 2004, The National Center for Youth Law reported California reported on average more than 100 children removed from their homes and placed in foster care a day.⁷³ Though California was 11% of the nation's population, it was home to 20% of the nation's foster care population.⁷⁴

69. *Id.*

70. *Id.* (North Carolina would terminate its waiver extension because of problems maintaining cost neutrality). California and Florida would operate under their original waiver until 2011 and 2012, respectively, using IV-E Capped allocations. *Id.*

71. Indiana differs from this model in that they distribute a certain number of flexible funding slots to each county instead of a lump-sum allocation. *Id.*

72. *Id.* Children entering the child welfare system would also interact with other state and county agencies such as the California Department of Mental Health, the California Department of Alcohol and Drug Programs, and the Judicial Council of California and the juvenile dependency court. *Id.*

73. *Broken Promises*, *supra* note 26, at 1. California reported 100,000 child victims of abuse or neglect in 2004. *Id.*

74. *Id.* California is responsible for approximately 82,000 foster children, accounting for 20 percent of all foster children and is the largest foster care population in the United States. *Id.*

California applied for and received a five-year waiver from federal government spending restrictions.⁷⁵ Though not given new money, the waiver, a capped allocation of federal and state funds with a two percent increase each year, would give the two counties that chose to participate – Los Angeles and Alameda – the freedom in how they allocated funds.⁷⁶ The Capped Allocation Program (CAP) gave counties a limited fund with limitless possibilities in usage to the goal of reducing out-of-home care while not sacrificing safety or well-being. Not only did these counties have flexibility in how the funds were allocated, they were also able to reinvest any savings into child welfare services, thus allowing the funds to accumulate towards other new innovations.⁷⁷ Despite the national and state economic meltdown, the Department of Children and Family Services (“DCFS”) was able to continue safely reducing the number of children in out of home care and reinvest some of the funds.⁷⁸

The first year of the waiver, DCFS was able to funnel waiver money to three previously proven strategies. In particular, they focused on (1) expanding up-front assessments and intensive home-based services so the children would no longer need to be removed from their homes, (2) a specialized Youth Permanency Unit to focus on finding and engaging relatives to serve as kinship caregivers, and (3) using family Team Decision-Making (TDM) conferences which bring together family members and others connected to the family to help the social workers and service providers come up with a best way to help the children in need.⁷⁹

a. Up-Front Assessments and Services

Using up-front assessments intensive home-based services works simply enough. Based on the home conditions of a newly identified child, an emergency response worker decides if an assessment is

75. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 7; See also University of California, Berkeley, CALIFORNIA'S TITLE IV-E CHILD WELFARE WAIVER DEMONSTRATION PROJECT: OVERVIEW OF PROJECT AND SUMMARY OF FINAL REPORT (2004).

76. Edgar, *supra* note 46, at 5.

77. *Id.*

78. *Id.* By January 2009, there were 16,429 children in care down from 18,304 from the waiver beginning in July 2007. It must be noted that this number is down from almost 50,000 from about 10 years before. *Id.*

79. *Id.* at 6.

warranted.⁸⁰ All assessments are voluntary and parents who volunteer meet with a trained clinician from a community-service organization within 48 hours of the referral.⁸¹ The assessment is thorough and all-encompassing of the seven major areas of functioning: physical health, mental health, substance abuse, educational and occupational functioning, social relationships, domestic violence/domestic relationships, and criminal activity.⁸² The assessors do not make recommendations about placement, but talk to the family and to CDSS about the results and recommendations for services, leaving CDSS with the authority to determine services, removal, or both.⁸³

The Casey Family Project sees this approach as a “win/win/win situation for DCFS..., the families, and the community.”⁸⁴ Case managers feel empowered with more accurate information about the needs of the family. Trained, concerned community organizations are proving able to connect to family and ensures the community is involved in the process. Families in crisis are now able to ask for help without fear of having their children removed.⁸⁵ This process also left authority with DCFS to make the final decision on placement and serves as an over-all time and manpower saver.⁸⁶

b. Youth Permanency Units and Team Decision Making

Youth Permanency Units were created with kinship care families in mind because DCFS is using flexible funding to find family members of youth who have been placed in the child welfare system.⁸⁷ The funding allowed the county to look realistically at this unique group of foster children. They were typically high-need youths who were preparing to age out of the system; few to no family connections; and a history of substance abuse, psychiatric hospitalization, or a

80. *Id.* at 7. All safety issues or unfounded hotline allegations do not receive an assessment. *Id.* Safety issues are addressed immediately. *Id.*

81. *Id.*

82. *Id.* The responses are processed through a Behavioral Severity Assessment Program (BSAP) and looks at strengths as well as the needs of the family. *Id.*

83. *Id.* at 8. Because of the strengths of the assessor used, services can often begin right away. TDM meetings will often take place soon after the assessment so that a support system is implemented to help the family determine a plan of action and implement changes. *Id.*

84. *Id.* at 9.

85. *Id.* at 9-10.

86. *Id.* at 10.

87. *Id.* at 13.

history of running away.⁸⁸ These children required highly attentive available case managers and the flexible funding allowed DCFS to create smaller caseloads to allow case managers to better serve these children.⁸⁹ The goal of the program was to find close to forty-five family connections for each youth, help them transition to emancipation with at least one stable committed adult, and to even explore reunification with birth parents (given the reality that many youth go home when they age out of the system).⁹⁰ This system helped youths in group homes realize a sense of familial permanency even at this later point in their childhood. While children living in foster care may age out of the system, children cannot age out of a family. There is no date on the calendar, nor birthday that stops familial connections, and by creating a network of approximately forty-five people, the children are able to know that they have options and are not alone. TDMs are still used to help children and their network address the needs of these children.⁹¹ Because of the uniquely challenging needs of this population, success is hard to measure, but each victory is sweeter because of what these children have survived. Locations using this model saw a reduction in children in group homes, as children were connected to siblings, family members, returned home, moved in with relatives, or shifted to lower levels of care because of the connections made.⁹² Relatives would not only serve as distant resources, as many would become legal guardians when reunification was not appropriate.⁹³

2. Florida's IV-E Waiver Demonstration Project Through Capped Allocations

In 1996, the Florida Legislature mandated outsourcing child welfare services to organizations (known as lead agencies) with the intent of using communities to support “reunification of families and

88. *Id.*

89. *Id.* at 13, 15.

90. *Id.* at 14. The final option is tricky because parental rights have been terminated for a reason. But, what many youths discover is a different parent when they age out of the system as opposed to when the parent was battling addiction or was guilty of abuse or neglect.

91. *Id.* at 15.

92. *Id.* at 17.

93. *A Case Study: California and Flexible Funding*, CASEY FAMILY PROGRAMS 2 (2009), available at <http://www.casey.org/Resources/Publications/pdf/CaliforniaFlexibleFunding.pdf>.

care of children and their families.”⁹⁴ It would be ten years before The Title IV-E Waiver Demonstration Using Capped Allocations would be authorized and implemented through the state.⁹⁵ Florida would distribute funds to private and non-profit community-based agencies and local government units.⁹⁶ The state agency would focus on expanding diversion services, intensive in-home services, enhanced relative searches, and family team meetings to promote child safety, prevent placement in out of home care, and accelerate permanency.⁹⁷ In fact, the vast majority of its agencies would report creation or growth of new placement prevention and diversion services focusing on behavior management, intervention services, camps for children, parent education, and crisis intervention.⁹⁸ The lead agencies would implement a Family Team Conferencing (FTC) model which would: encourage families to use community services, offer domestic violence victims counseling and resources, serve as court liaisons to assist the dependency court process and implement the *Family Finding* program to increase the availability of family contacts and potential permanency options for children.⁹⁹

94. M.I. Armstrong et. al., *Evaluation brief on the status, activities and findings related to Florida's IV-E wavier demonstration project: Two years post implementation*, FLORIDA'S IV-E WAIVER DEMONSTRATION PROJECT 1 (2010) available at <http://centerforchildwelfare2.fmhi.usf.edu/kb/LegislativeMandatedRpts/CBC%20Brief2January2010.pdf>; Anne L. Strozier & Kerry Krisman, *Capturing Caregiver Data: An Examination of Kinship Care Custodial Arrangements*, 29 CHILD. & YOUTH SERV. REV. 226, 228 (2007) (“In 1998, the Florida Relative Caregiver Program...established...financial assistance to kinship care families”). The criteria for acceptance would require: relative to the fifth degree of relationship to the child has full-time care, child is a dependent by the state due to child abuse, neglect, or abandonment, and the relative has a dependency court order and has a home study approved by the state. *Id.*

95. Armstrong, *supra* note 61, at 1.

96. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 7.

97. *Id.* at 1.

98. *Id.* at 7-8; Intensive in-home services that would use a wraparound approach would provide unique “support to families at risk including housekeeping, parenting skills, child development education, community resource referrals, and budgeting.” Armstrong, *supra* note 61, at 4.

99. Armstrong, *supra* note 61, at 4; Florida would also target two at risk populations by offering *Parenting with Love and Limits* intervention strategies to the families caring for children between ten and eighteen with extreme emotional and behavior problems and for families that had a teenager connected to the juvenile justice system. *Id.* at 5.

3. Impact of Capped Allocations for the Child Welfare System

Capped Allocation Programs (CAP) are revolutionary in that funds are apportioned to follow the *child* and not the *placement* of the child. California and Florida would use CAP to serve children from beginning to end. On the front end, investigations in preventing child abuse and neglect strengthen families and communities, allowing children to remain safe at home whenever possible. The states have injected new approaches to finding safe, loving, permanent homes for children while using resources in a more specifically targeted fashion.¹⁰⁰ These approaches are directed at treating the cause of abuse and neglect instead of the outcome of needing out-of-home placement.

a. Out-of-Home Placement Prevention and Permanency

It can be difficult to prove effectiveness sometimes; economic political, and sociocultural reform through systems change is linked and overlapping, ;unique to each particular case., But, there are signs that *something* has changed in Compton. As of 2009, Compton is almost 35% Black American and 62% of the people identify as Hispanic or Latino.¹⁰¹ Compton had one of the highest removal rates in the county,¹⁰² and since implementation of CAP, the city of Compton in Los Angeles County has seen a 52 percent reduction in out-of-home placements since fiscal year 2002; and – by using waiver funds – realized cost savings (from not using out-of-home placements) that the county reinvested for the next family in need.¹⁰³ In fact, after approximately 2,700 assessments over the years, there have been less than fifty removals, equating to approximately 5,000 children that have not only stayed in their homes¹⁰⁴ (which is an important fact), but stayed in homes that were now beneficiaries of counseling and resources that they did not have before. Florida would maintain a rate

100. Only Indiana would evaluate the well-being outcomes of the children in its flexible funding waiver. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 9.

101. *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (last visited Mar. 6, 2011).

102. Compton's high removal rate is attributed to the problems in the community and family. Edgar, *supra* note 46, at 11.

103. *Id.* at 9; Indiana would see positive trends in out-of-home placement prevention reported during its two waivers. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 12.

104. Edgar, *supra* note 46, at 12.

of children being placed in out-of-home care after being served at home; placement rates remained stable around 20% from 2006 to 2009.¹⁰⁵

All states who engaged in using flexible funding would also see a strong increase in the number of children who would be reunified with their biological families and shorter periods of exiting to permanency through reunification, adoption, or guardianship.¹⁰⁶ In Florida, the children in out-of-home care who would be reunited with their families grew 8% between 2001 and 2008.¹⁰⁷ There would also be a decrease in the number of children served both in-home and out-of-home by 29% and reduce children in out-of-home care by 27.6% since implementation of the waiver in FY 2006-2007.¹⁰⁸ 64.8% of children would be placed with relatives or original caregivers (birth parents OR relatives) representing a significant increase and 9.6% of children would re-enter out-of-home care within twelve months.¹⁰⁹ California would see 3.6 times as many children were reunified with their families within a year from FY 2005 to FY 2008.¹¹⁰

b. Safety

The safety of children using flexible funding waivers was studied the US Department of Health and Human Services. Indiana would see

105. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 9; Results showed that younger children, girls, white children, children from a single-parent female household, children with physical health problems and children whose parents had substance abuse problems were more likely to enter out-of-home care after receiving in-home services. Armstrong, *supra* note 61, at 3.

106. Indiana and North Carolina, Ohio, and Oregon saw great progress. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 9. More data needs to be gathered as the definition of "family" in these reunifications to see if kinship care is equated the same.

107. The University of South Florida would analyze the results from a programmatic outcome analysis, implementation analysis, family assessment and services analysis, child welfare practice analysis, and cost analysis. *Id.* at 2.

108. *Id.*

109. *Id.*

110. The year before Up-front assessments and services was implemented, 20 percent of children removed were reunited with families within a year, and after the first year, 67% of children removed were returned home within a year. Edgar, *supra* note 46, at 12; Los Angeles County has seen a slight up-tick of re-entry cases, but in cases related to non-offending parent and relative placement. They are focusing on staying better involved and helping the new caregivers in the process of sudden parenting. *Id.* at 27; *See also Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 5.

greater delays in new substantiated reports after original cases were closed as did Ohio.¹¹¹ Foster care re-entry rates would have similar positive effects in Indiana, Oregon, and North Carolina.¹¹² Florida would see a decline in maltreatment reoccurrences in six months by three percent and California has also reported low reoccurrence rates.¹¹³

c. Cost-Neutral

If the sheer number of children, families, and by extension communities positively impacted by these changes is not enough, there has been an estimated \$5 million saved in California.¹¹⁴ The economic benefits of these practice changes are startling. Though there is more up-front time involved in implementing these new methods, case workers have learned to work smarter instead of harder, knowing they're "taking the right kids, as opposed to just taking kids."¹¹⁵ Doing business differently has cost less money and has proven to be a way to bank re-investable funds.¹¹⁶ Los Angeles DCFS generated \$28.9 million in re-investable funds in the first year of the federal flexible funding waiver.¹¹⁷ As California and the nation faced an economic downturn, ways to protect the funds became an important question.¹¹⁸

111. *Summary of the Title IV-E Child Welfare Demonstrations*, *supra* note 61, at 5.

112. The results of the experiment in North Carolina would produce very varied results with no clear indication on why they did not experience the same results as the other flexible funding projects. *Id.*

113. In Alameda County, the percentage of children with no recurrence of maltreatment rose to 93.7 percent 18 months after implementation; Los Angeles County would remain steady at 93.5 percent during the first 18 months of the waiver. HEALTH & HUM. SERV., Profiles of the Title IV-E Child Welfare Waiver Demonstration Projects 14, 15 (2012), available at http://www.acf.hhs.gov/sites/default/files/cb/profiles_demo2012.pdf.

114. Up-front assessments have been part of the county-wide decrease in placement rates, but the community feels assessments and services made a major difference. *Id.*

115. Edgar, *supra* 46, at 11 (It has also helped them to see where the gaps are in the system such as having a Spanish version of the BSAP assessment tool and knowing which communities do not have high-level trained assessors. This becomes an obvious economic business opportunity.)

116. Edgar, *supra* 46, at 25 (Each assessment costs approximately \$350 for the staff time, and a one-time licensing fee covers the tool). The money to pay community organizations is funded through DCFS, Department of Mental Health, the Department of Alcohol and Drug Abuse, and grants. *Id.*

117. Edgar, *supra* note 46, at 12, 26; Group homes cost over \$80,000 a year and foster care costs more than \$21,000. Foster care per child provides \$1,802 per month, or \$21,624 a year for out of home placement. *Id.* at 12, 25.

118. As of January 2009, the seasonally adjusted unemployment rate was at 10.5

But, the waiver protects the money from being usurped by other state agencies by specifying that the savings must be reinvested in child welfare services, forestalling counties from moving these savings to other agencies during challenging economic times.¹¹⁹

Front-end services can be initially more costly, but in the long term have had a tremendous impact in Florida. Front-end services costs increased from \$15 million two years before the waiver was implemented to nearly \$46 million in fiscal year 2010-2011.¹²⁰ The correlation of out-of-home care dollars spent per dollar for front-end services fell dramatically during the Waiver implementation from \$10.93 in fiscal year 2004-2005 to \$2.93 in fiscal year 2010-2011).¹²¹

III. USING TITLE IV-E FLEXIBLE FUNDING WAIVERS TO CHANGE HEALTH AND ECONOMIC NEEDS OF BLACK CHILDREN IN KINSHIP CARE

A. KINSHIP CARE HAS BEEN A SAFE HAVEN FOR BLACK FAMILIES

1. Black Kinship Care is Achieving the Three Goals of Child Welfare

The Black community has used kinship family structures to actuate survival, endurance, and excellence in children often living through the harshest of surroundings. “Role flexibility within the family and extended family support networks protect children from the disruption caused by employment instability, marital instability, and instability in housing.”¹²² By using extended family structures, Black families could depend on each other to accumulate resources while dealing with generational poverty and few chances for a family to change its economic trajectory. Family members not only served as economic support, but were able to assist in the social and cultural aspects of creating a home by helping with child rearing and societal regulation.¹²³

percent and California faced a \$42 billion deficit. *Id.* at 26.

119. *Id.* at 25-26.

120. C. Sowell and N. Jordan, *Florida's IV-E Waiver Demonstration Project Prevention and Diversion Services: Expenditures, Practice Expansion and Innovations*, FLORIDA'S IV-E WAIVER DEMONSTRATION PROJECT 1 (2012), available at http://cfs.cbcs.usf.edu/_docs/materials/FLIVEWaiverTP3_PreventionDiversion0712.pdf.

121. *Id.*

122. Brown, *supra* note 2, at 55.

123. *Id.* at 55-56 (Evidence is also pointing that with contemporary social factors that

It must be noted; black children did not create, cause, nor facilitate the economic conditions of their families. These children did not create, cause, nor expedite the instability in their familial unit, but, they are the ones who suffer the most from the breakdown of the family. When the “traditional” family structure can no longer serve the permanency, well-being, or ensure the safety of Black children, they must be removed temporarily or permanently. Despite causation, many of these children will consider themselves the reason for the familial volatility. Kinship care lessens the trauma children feel when they are removed from home.¹²⁴ Kin are simply that: *kin*. Most have been known individually, collectively, and uniquely by the children for the majority of their lives. The prevalence of this arrangement, the ease of transition, and the way the children are received show that the situation is neither “unusual nor stigmatized in this community.”¹²⁵

An argument has been made that kinship foster care children are more at risk of repeated child maltreatment because of access to abusive parents.¹²⁶ This argument also seems to presuppose that kin are likely to purposefully place the children in dangerous situations. The foster care model is nestled in *parens patriae* that a child must be removed from an unstable, unsafe, nonproductive family and relocated to a completely different family structure to achieve child welfare goals. Kinship care simply shifts the primary caregiver within the same family structure from one weakened tree limb to a more secure branch on the same family tree, allowing the fragile tree limb an opportunity to heal before it can reclaim its fruit. A recent survey showed that kinship foster care children had better three-year behavioral outcomes

are impacting all families, such as marital instability and divorce, many extended families are providing the socialization, nurturance and other family functions that are necessary for continued societal growth).

124. *Id.* at 59.

125. *Id.* at 61; This ease with extended family households leads many children to find these arrangements neither “novel nor disruptive.” *Id.* at 53.

126. A major reason of modern day kinship care is drug abuse and incarceration rates in Black communities. There are unique circumstances surrounding the assumption of care of this generation, and much of it has to do with drug abuse. In a recent study, the majority of the youth who were living in kinship foster care as a result of child abuse/neglect charges against the parent were related to parental drug abuse or mental illness. *Id.* at 62. Out of 30 cases, “25 cases involved drug abuse problems in one or both parents, 10 involved psychiatric problems in one or more parents, 7 cases involved parental homelessness, and 5 involved parental incarceration.” Brown, *supra* note 2, at 62.

than those placed in non-kin foster care.¹²⁷

Some fear that kinship foster care children will face additional hardships because their caregivers are typically older, poorer, and have more mental health problems than traditional foster caregivers.¹²⁸ But, this is a short-sighted argument because it presumes that these caregivers do not have informal network resources they rely upon for assistance.¹²⁹ Most families use every available family member towards a child's development and kinship families are no different. For example, an uncle is the resource for how to repair a car; a college educated cousin helps prepare for the SATs; a family friend may have an employment lead in the community, and a godmother serves as an outlet for learning socialization.

However, when placed with kin, children are less likely to reach *permanency* as often defined by the foster care system, and they are less likely to draw on mental health services available to them. The term "relative *foster care*" – which implies a derivation on the traditional foster care model – contributes to this "failure" of permanency.¹³⁰ Permanence is achieved as many children have already experienced life in the caregiver's home before official placement. Research shows pre-kinship *foster care* relationships (when it was simply private kinship care) stay in place after formal placements and continue to aid in the child's development.¹³¹ In some instances,

127. Marlene Busko, *Maltreated Children Placed in Kinship vs Foster Care May Have Fewer Behavioural Problems*, MEDSCAPE.COM, <http://www.medscape.com/viewarticle/5755687> 1 (last visited July 7, 2010). (This data came from a sample of 1309 maltreated children placed into kinship and foster care and participated in the National Survey of Child and Adolescent Well-Being.); See Winokur, *supra* note 9, at 32 (Research shows that children living in kinship care obtain improved results in the areas of behavior problems, reentry to the custodial parents, the ability to adapt, family relations, and mental health over children in non-kin foster care); Busko, *supra* note 127, at 2 (The cautions promoted from the study placed their biased assumptions into the ideology of the family caregivers who reported the data. The group had a small sample size, believed caregivers were not reporting the behavioral problems of the children in their care, and the people who participated were not randomized.).

128. Busko, *supra* note 127, at 1.

129. Brown, *supra* note 2, at 73 (the extended family network helps to alleviate some of the burden of child rearing).

130. Winokur, *supra* note 9, at 70-71.

131. See, *Id.* at 71 (Increased federal and state recognition of kinship care has scholars studying the implications of kinship care on children who are involved in the public child welfare system. Kinship foster family arrangements are described as more stable and afford children greater access to family and community than non-kinship

kinship foster placement simply formalizes a lifestyle that was already in place.¹³² Social welfare policies must redefine the definition of the goals so those most in need will not be systematically denied.¹³³

The familial arrangement of a nuclear family carried cultural and ideological virtues in America, but is not grounded in the reality of the experiences of people of every cultural and ethnicity. There is disagreement in the child welfare community on the right practices to promote the best outcome for children and whether those determinations should include specific sub goals for minority families.¹³⁴ However, the more these families are treated as *others*, the more services will continue to not be properly tailored to fit their needs.¹³⁵ Capped allocations allow states to redefine goals without risking the care of the children.

B. NEXUS BETWEEN THE NEEDS OF BLACK KINSHIP CARE FAMILIES AND TITLE IV-E WAIVERS

In 2007, The Government Accountability Office (GAO) would suggest that Congress amend current laws to focus on legal guardianships and allow states the opportunity to use child welfare funding for this purpose as they would also provide direct funding to the states to help in addressing disproportionality.¹³⁶ At that point, they did not have the results of the success of the Title IV-E Waivers using capped allocations as the basis of their decision. They surely would have acknowledged that there was something unique happening in

foster families).

132. *Id.* at 59; Brown, *supra* note 2, at 53, 66; *Id.* at 65-68 (Youth who have been interviewed and researched on this topic have documented that the presence of relatives helped them cope with the maltreatment they suffered at the hands of their parents. And although the children are intimately aware of the problems that led to the abuse/neglect charges against their parents, their very next thought is that a relative was actively involved in caring for them. Research does show some children suffer from resentment towards parents and split loyalties between parents and caregivers.).

133. *Id.* at 76.

134. Janess Sheets et al., *Evidence-Based Practice in Family Group Decision-Making for Anglo, African American and Hispanic families*, 31 *CHILD. & YOUTH SERV. REV.* 1187 (2009).

135. Brown, *supra* note 2, at 73; See generally Ann Schwartz, "Caught" versus "Taught": Ethnic Identity and the Ethnic Socialization Experiences of African American Adolescents in Kinship and Non-Kinship Foster Placements, 29 *CHILD. & YOUTH SERV. REV.* 1201 (2007) (discussing issues on ethnic identity and ethnic socialization as addressed by kinship foster placements).

136. *Additional HHS Assistance*, *supra* note 58, at 6.

foster care at the unearthing of the national economic crisis.

The question then comes, what are the unique needs of black kinship foster families and how can Title IV-E waivers aid these families? This section will address the unique needs of Black kinship care families based on access to resources and how waivers can be crafted to address those needs.

1. Black Kinship Families Are Not Broken; Simply Underserved

a. Quality of Care for Kinship Care Has Been Dependent in a Large Part to Access to Economic Resources

Changes to the standards of child welfare systems will not be enough; structural changes to the system are needed. In complex social systems, most elements will rarely have the opportunity to exercise equal influence or power and smaller institutions will be beholden to the drive of the larger system which is heavily invested in maintaining the current "hierarchy of privilege."¹³⁷ Black families have long been divested of exercising equal influence and allowing states and community groups to work together in redefining the system will make a difference. Achieving permanency, safety, and well-being for children of color is essential. But, if the government does not give the people access to the basic tools to accomplish this, they are setting them up for failure. Whether the American welfare system is the total or part cause of the structural inequality, system change will be the only way to effectuate real change.¹³⁸

In many families of color, the extended family buffers children from the hard economic and social adversities the family faces "by providing attachment and stability when residence and employment" are unstable."¹³⁹ Formal kinship foster placement can provide "needed economic and social support" for the caretaker,¹⁴⁰ without changing where the youth completes his homework every day or where she lays her head every night. Kinship foster care families are dealing with

137. Smith & Devore, *supra* note 12, at 438-39.

138. John H. McHorter, *Focus: White Do-Gooders Did For Black America*, N.Y. TIMES (Sept. 11, 2005), <http://www.manhattan-institute.org/html/miarticle.htm?id=2939#.USf0gUKVuo8> (arguing that Black poverty exists from misguided welfare rather than racism).

139. Brown, *supra* note 2, at 71.

140. *Id.* at 60 (Formal placement may change who else can stay in the home, such as the removal of the youth's parent from the homes of the extended family member where the youth lives).

access to resources that hamper their ability to care for their families, often more than just a paycheck, but opportunities for real economic advancement.

b. Rate of Maltreatment Often Causally Related to Poverty More Than Simply Race.

It is negligent to say maltreatment is higher in black homes because they are black. Scholar Mary Smith Arnold advocated not discussing particular types of families and “risks” as interchangeable.¹⁴¹ It is thoughtless to equate children who have suffered maltreatment as a condition of their race and not noting that these are often conditions of poverty. The United States Government Accountability Office reported to that a “higher rate of poverty is among several factors contributing to the higher proportion of African American children entering and remaining in foster care.”¹⁴² Childhood poverty estimated to cost the US approximately \$500 billion dollars a year.¹⁴³ In 2006, the U.S. Department of Agriculture 35.5 million people lived in households with have food insecurity issues, and 12.6 million of those were children.¹⁴⁴ Childhood poverty and childhood

141. *Id.* at 73.

142. *Additional HHS Assistance*, *supra* note 58, at 1 (revealing that bias and distrust between child welfare agencies and families would also be viewed as additional reasons for the high rates).

143. See Brett Drake & Mark R. Rank, *The Racial Divide Among American Children in Poverty: Reassessing the Importance of Neighborhood*, 31 CHILD & YOUTH SERV. REV. 1264 (2009); See also U.S. Dep’t. of Com., *Income, Poverty, and Health Insurance Coverage in the United States* (2009), www.census.gov/prod/2009pubs/p60-238.pdf.

144. ManSoo Yu et al., *Food Stamp Program Participation, Informal Supports, Household Food Security and Child Food Security: A Comparison of African American and Caucasian Households in Poverty*, 32 CHILD. & YOUTH SERV. REV. 767 (2010) (As food insecurity is discussed, there is little known about the role informal/community food assistance networks (food pantries, meals on wheels, soup kitchens, kinship circles) play in reducing food insecurity for children in poor households. These networks serve people who live below AND above the federal poverty threshold when government assistance is not enough to feed the family. The research conducted noted racial disparity in the food stamp take-up. Black households reported more use of informal food supports. Despite both formal and informal food assistance programs, a gap persists in getting food into the hands of hungry children); See also Jessica E. Todd et al., *Changing Participation in Food Assistance Programs Among Low-Income Children After Welfare Reform*, U.S. DEP’T AGRIC. (2010), [available at http://www.ers.usda.gov/media/136459/err92_reportsummary_1_.pdf](http://www.ers.usda.gov/media/136459/err92_reportsummary_1_.pdf) (for a discussion on the changing usage of food assistance programs in the United States and potential

food insecurity is particularly troubling because childhood years are connected to health, economic, and social problems in later years, such as “impaired physical and mental growth, lower academic achievement, and a greater propensity towards psychological and social maladjustment.”¹⁴⁵ Black children have rates of poverty two to three times greater than white children in the United States, which explains the high risk of social and economic consequences associated with poverty.¹⁴⁶

Childhood poverty and the community poverty cannot be parsed, particularly when it comes to minority children. Black children will often have the triple disadvantage of being victims of familial poverty, residing in poverty stricken communities, which are constructed primarily with other poverty-stricken minorities.¹⁴⁷ Though this sounds harsh, history and economics explains why this can be so detrimental. Poverty must be construed in terms of the neighborhood’s economic viability, and economically healthy communities are signs of physically healthier community members. Researchers have discovered that even after controls implemented for individual income and race, high poverty neighborhoods impact the well-being of children who live on those streets.¹⁴⁸ The research shows that children growing up in high poverty neighborhoods suffer from the disadvantages of depressed economic communities often created from long established patterns of racial segregation.¹⁴⁹ The communities where many of these families live have a considerable amount of households that live below the poverty line. About five out of six poor white children avoid living in the double burden of being impoverished as are their communities.¹⁵⁰

What is worse than being born and reared in an impoverished

gaps for the neediest of children with the changes of PWORA).

145. Drake, *supra* note 143, at 1264-65 (it is essential to remember that these conditions are brought on by environment, not because of the nature of the people).

146. *Id.*

147. *Id.*

148. *Id.* at 1265; The researchers discovered that a neighborhood’s poverty rate rises, so too does the likelihood of negative behavior among young children, of being expelled from school, of negative school engagement, of lack of involvement in activities, of not being read to or taken on outings, of living in a family with no full-time workers, and of having a caretaker who is aggravated or in poor mental health.

Id.

149. *Id.*

150. *Id.* at 1267 (the image of poor Black children as urban and poor white children as rural is not correct).

community is the slim opportunity for mobility out of these neighborhoods. “72% of black children who grew up in the poorest quarter of American neighborhoods remained in the poorest quarter of neighborhoods as adults.”¹⁵¹ These neighborhoods need an economic revolution in terms of jobs, community resources, and a commitment of political and social opportunities. Until that can occur, the long lasting effects of neighborhood poverty on children of color will be prolonged and detrimental. These children will more likely encounter environmental health hazards such as toxic pollutants, be exposed to crime and violence, have higher arrest rates, and an increased risk of substance abuse,¹⁵² and, yes, an increased likelihood of maltreatment.

- c. Answer is not to remove Black children from Black kinship care situations, but to address the problems of poverty that are causing distress in the kinship care families. Capped Allocations can work towards this solution, if carefully monitored.

Drawing on data gathered and interpreted from the National Survey of Child and Adolescent Well-Being (NSCAW) commissioned in 1997, the U.S. Department of Health and Human Services would learn about the unique experiences of Black children involved in the child welfare system. Though race/ethnicity would not be seen as a significant predictor as to whether children would receive services while remaining at home, nor whether children would be placed in out-of-home care, race was seen as an issue in respect to reunification with parents and caregivers and the services *they* received.¹⁵³ Black children in the early stages of childhood were less likely to receive developmental services and more likely to be removed following the investigation of the case.¹⁵⁴ Black children would use more mental

151. *Id.* at 1268.

152. *Id.* (The education system will often be unable to serve as a means out of the poverty cycle because many public schools are funded by local property tax revenues, with poorer districts having a smaller tax base and less of a likelihood that parents will have more disposable income to contribute to increasing the academic environment).

153. Richard P. Barth et al., *Racial Disproportionality, Race Disparity, and Other Race-Related Findings in Published Works Derived from the National Survey of Child and Adolescent Well-Being*, 1-2 (2008), <http://www.aecf.org/~media/Pubs/Topics/Child%20Welfare%20Permanence/Other/RacialDisproportionalityRaceDisparityandOther/Dunbar%20Barth%20Racial%20Disparity%20report%2012808.pdf>.

154. *Id.* at 2.

health and substance abuse treatments, though they would not show an elevated need as a group.¹⁵⁵

American child welfare reform ideology has traditionally required middle-class parenting in communities without middle-class resources. In 2001, the National Association of Social Workers noted that PRWORA could positively impact families receiving child welfare by “(1) reducing the number of families living in poverty; (2) improving assistance to recipients with multiple barriers to self-sufficiency; and (3) enhancing the capacity of the welfare system infrastructure.”¹⁵⁶ They argued one method to reduce poverty rates would be to create TANF in order to reduce child and family poverty instead of a goal of reducing the number of people on welfare rolls.¹⁵⁷ Welfare caseloads did decrease, employment did rise, but the numbers would not tell the full story of mostly women moving from welfare payments and benefits to low-paying jobs with few to no benefits.¹⁵⁸ Black women would find it even more challenging to escape from poverty during this time.¹⁵⁹

The foster care system has been well-served in acknowledging the adaptable and flexible nature of the modern American family and acknowledging that this flexibility undergirds many families when social and economic troubles rise.¹⁶⁰ Although many of the black children associated with kinship foster care suffered a number of stressors and the challenges such as poverty, drug addiction, homelessness, mental illness, and incarceration, you cannot make the illogical leap to assume the cause of these stressors and challenges are the structure of the families. Many researchers have worked diligently to break the lingering, but illogical pathology that parental failure stems from family network failure.¹⁶¹ Blaming the family is a “tired and futile way to avoid facing the real issues of institutionalized

155. *Id.* (6-10 year old age group of Black children would show that there was a significant need that was not being met).

156. NAT'L ASS'N OF SOC. WORKERS, *Recommendations for the Reauthorization of the Personal Responsibility and Work Opportunity Reconciliation Act 2* (Nov. 30, 2001), <http://www.socialworkers.org/advocacy/welfare/legislation/recommend.pdf>.

157. *Id.* at 3.

158. Parvez, *supra* note 41, at 1.

159. *Id.* at 2 (minority women would increase on the welfare recipient lists and would more often leave welfare under threat of full family sanctions instead of an increase in income).

160. Brown, *supra* note 2, at 53.

161. *Id.* at 72-73.

poverty, racism, and unequal opportunity” and what generations of these practices can have on the economic, political, and social trajectory of a family.¹⁶² And Florida has redefined the way they describe permanency. Kinship care positively impacts behavior, family relations and mental health of children, but did not have an impact on permanency rates or service utilization.¹⁶³ This continues to show the differences in how “permanency” is defined on kinship care communities and that access to resources continues to be the driving issue of concern. Under Title IV-E Waivers, Florida has defined success as placing children with relatives or original caregivers within 12 months of their removal.¹⁶⁴ What is most significant for kinship care families is the legal recognition that kinship caregivers were equated with birth parents in terms of significance in the life of the children and achieving *permanence*. More decisions like this will help give kinship care families the recognition and support that they need.

Children of all races experience emotional, psychological, and social ramifications of being maltreated.¹⁶⁵ Though these ramifications are internalized, we often focus on the external behaviors and not the root causes.¹⁶⁶ Research must continue to unpack instances in which reactions to maltreatment connected to social and environmental stimuli are seen with an element of “otherness” that would give the idea that the reaction is out of acceptable cultural norms.¹⁶⁷ Black children are particularly at risk for this classification. Service providers and the children’s guardians (whether kinship caregivers or even biological parents) can be trained to better understand each other’s cultural framework and to find better ways to make better positive

162. *Id.* at 72 n.11 (quoting Berrick et al, *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, 16 *CHILD. & YOUTH SERV. REV.* 33 (1994)).

163. Winkour, *supra* note 9, at iv.

164. Armstrong, *supra* note 61, at 3.

165. Schnavia Smith Hatcher et al., *Exploring the Impact of Racial and Ethnic Differences in the Emotional and Behavioral Responses of Maltreated Youth: Implications for Culturally Competent Services*, 31 *CHILD. & YOUTH SERV. REV.* 1042, 1042 (2009).

166. *Id.* (these behaviors can mimic delinquent acts if they are not properly assessed and can result in the children being misjudged and at risk for the criminal justice system); *Id.* at 1043 (researchers have reported mixed results on the relationship between race and emotional and behavioral response to child maltreatment).

167. *Id.* at 1047 (this will help professional and service providers to find ways to counter environmental and social strains through home, school and community resources).

connections between caregivers and service providers.¹⁶⁸ Capped allocations can be used to carefully tailor solutions for this population.

2. Potential Impact of Capped Allocations on Kinship Care for Black Families

a. Addressing the Goals of Child Welfare with the Needs of Black Kinship Families

Capped allocations might give the federal government an opportunity to start a new national conversation on the goals of child welfare.¹⁶⁹ The goals of child welfare are the desires of black kinship families: for the system to understand that doing what is *right* (helping improve the home life) requires a different commitment to the family than doing what is *best* (removing a child is short-term solution with limitations). A potentially new question might emerge as we look at innovative new ways to address child welfare: when looking at established child welfare goals, should the federal government remove services to speed reunification and aid permanency with biological parents? The rise of adaptive and diverse family structure models (such as open adoptions, joint legal custody, artificial insemination, and extremely blended families) portrays that the concept of the legal contract¹⁷⁰ might give way to shared custody between the child welfare system, biological parents, *and* kinship caregivers.¹⁷¹ Of course this model cannot always be used in every setting, but with the increased use of family meetings and collaborative effort to alleviate the traumatic life changes in the lives of children of divorce, legally acknowledging a way to keep families whole makes a difference.¹⁷²

168. *Id.* (community organizations such as Girls/Boys Club, sororities, fraternities, places of worship, community schools, and other public service organizations can be used to make these connections).

169. Capped allocations address the three goals of child welfare by using up-front funds to address household conditions with new and innovative measures. The children either stay at home or live with kin (permanency as defined by Florida), the parents are given new tools to raise their children (safety), and by extension, the children's well-being is improved.

170. Only two parties involved in shared custody – the state and biological parents/foster parent/kinship caregiver.

171. To allow children to understand that their biological parent will always have a welcome place in the child's life, while kin stands ready to ensure the daily safety and well-being of the child.

172. See Randi J. O'Donnell, Note, *A Second Chance for Children and Families: A Model Statute to Reinstate Parental Rights After Termination*, 48 FAM. CT. REV. 362

Title IV-E Waivers using capped allocations must also be carefully construed to ensure they reflect economic realities across the country. Welfare reform changed not only welfare policy, but the relationship “among national, state, and local governments and among public and private organizations at each of these levels.”¹⁷³ States would be given increased flexibility in deciding who they would assist, creating their own criteria, and use non-cash supports. But, with all of this attention on state’s rights and limited federal government mandates, why would only two traditionally liberal-leaning states take on the challenge on capped allocations knowing they might leave their citizens precariously without recourse if they ran out of federal financial support? With the many advantages, there are some disadvantages and possibly long term ramifications on our theoretical basis of child welfare that not all are prepared to unravel.

The waivers are financially tied to block grant funding methods. Some child welfare stakeholders feared federal block grants in income assistance would ultimately harm children at risk or place states and counties in financial ruin if they were not able to keep foster care placement numbers down. Capped allocations can lead to an increased chance of even greater disparities in services being provided.¹⁷⁴ PRWORA in 1996 would change the lives of many people, showing the way to gainful employment for many who had not been previously given the resources, education, and training beforehand to make the transition.¹⁷⁵ A major concern about PRWORA when it was established was that the \$16.4 billion annual spending cap was linked to a set time in history – fiscal year 1994 – immune from economic recessions or growing national or state poverty rates and trends.¹⁷⁶ Many would

(2010) (for more information on the idea of reinstating parental rights after termination).

173. WEIL & FINEGOLD, *supra* note 54, at xviii.

174. *Id.* at xix; A darwinesque-style ‘survival of the fittest’ mentality was first championed by President Richard Nixon with the workfare model alternative to conventional social welfare systems. *See generally* JAMIE PECK, *WORKFARE STATES* (Guilford Press, 2001); The concept would first be introduced by civil rights era leader, James Charles Evers in 1968. *Id.* at 90; *See generally*, Michael Wiseman, *Workfare and Welfare Policy*, 9 UNIV. WIS. MADISON INST. FOR RES. ON POVERTY FOCUS 1, 1 (1986), available at <http://www.irp.wisc.edu/publications/focus/pdfs/foc93a.pdf>.

175. Richard Wolf, *How Welfare Reform Changed America*, USA TODAY (Jul. 18, 2006), http://www.usatoday.com/news/nation/2006-07-17-welfare-reform-cover_x.htm.

176. *See* Watts & Astone, *supra* note 41, at 413 (for the totality of the six year implementation); PRWORA also eliminated a state’s entitlement to federal money for

herald PRWORA for reducing people on the welfare roll, only to discover later that the most vulnerable in the nation (poor children at large, minority in particular) would bear the brunt of the change. These people would lose welfare resources, but not the life of poverty.¹⁷⁷ Although the numbers receiving welfare would diminish greatly¹⁷⁸ and former welfare recipients would become employed, the “face” of the welfare recipient would shift to proportionately less white recipients, and increasingly Black and Hispanic in representation.¹⁷⁹ People in the most desperate of living conditions returned to fending for their families using a by-any-means-necessary mentality, and continue relying on networks of kin and neighbors to provide the barest of needs.¹⁸⁰

But, just as Welfare Reform block grants have allowed states to

programs that provided cash assistance to poverty stricken parents. See Andrew Cherlin et al., *Welfare Reform in the Mid-2000s: How African American and Hispanic Families in Three Cities Are Faring*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 178 (2009) (for a further study into the current experiences of Black families in cities).

177. See generally Linda Burnham, *Welfare Reform, Family Hardship, and Women of Color*, 38 ANNALS AM. ACAD. POL. & SOC. SCI. 38 (2001); Peter Edelman, *Welfare and the Politics of Race: Same Tune, New Lyrics?*, 11 GEO. J. POVERTY L. & POL’Y 389 (2004); Lucie E. White, *Closing the Care Gap That Welfare Reform Left Behind*, 577 ANNALS AM. ACAD. POL. & SOC. SCI. 131 (2001); See generally Rachel Dunifon, *Welfare Reform and Intergenerational Mobility*, ECONOMIC MOBILITY PROJECT (2010) (for a discussion on the impact of retaining welfare benefits on household incomes for mothers).

178. Wolf, *supra* note 175 (America has gone from a caseload peak of 5.1 million families in 1994, to 1.9 million families in 2006 receiving cash benefits with one-third of them receiving aid for children only).

179. Henry Miller, *Characteristics of AFDC Families*, 39 SOC. SERV. REV. 399, 400 (1965) (In 1996, the year “change” came; these numbers would shift to approximately whites totaling 40%, Blacks representing 35% and Hispanics accounting for 20%. In 2006, almost a decade after reform, those numbers would move to 38% Black, 33% white, and 24% Hispanic. In 1965, roughly 55 percent of welfare recipients were white and 45% were non-white); Wolf, *supra* note 175 (in terms of sheer numbers, most welfare recipients are still white).

180. See generally Wolf, *supra* note 175 (experts believe more than half of eligible people no longer attempt to apply for assistance and those who receive it remain in low-paying, unskilled employment); WEIL & FINEGOLD, *supra* note 54, at xvii (With PRWORA, states have paid great attention to promoting work and reducing the welfare rolls, but the question does arise if they have put as much effort into the other goals of the “welfare reform’s family structure goals—encouraging marriage, reducing the number of births outside of marriage, and keeping children in their own homes or the homes of relatives”). Capped Allocations could make great leaps for many, but create even further disparity for a few. The question comes, as a nation, are we alright with any of our citizens being swept under the rug?

distribute a larger pot of funds to a shrinking welfare population in a time of low unemployment and economic growth across the spectrum,¹⁸¹ the recession has shown just how precarious the Black communities' economic growth has been; rising incomes, but not accompanied by the wealth creation that changes the economic destiny of a community.¹⁸²

These new systems, with their initial positive results will need to be nurtured and monitored through their fragile growth periods until we know if they were truly successful. This will require federal policies to remain stable, allowing states to continue developing 21st kinship foster care systems. Also, since the federal government has primary control over the many other safety nets that kinship care families rely on, such as the Food Stamp program, Social Security Insurance SSI, EITC, WIC, and Medicaid, it must ensure that these programs continue to function effectively and reach their intended populations who will be using the Title IV-E waivers *in absentia* of other traditional means of support.¹⁸³

H.R. 6156 would have renewed authorization for the Secretary of Health and Human Services to approve likely ten IV-E waiver demonstrations each fiscal year between 2011 and 2016.¹⁸⁴ Knowing the benefits and cautions of this system as it affects kinship care families; states should prepare to take advantage of the waiver options.

IV. CONCLUSION: WHAT AMERICA GAINS BY CULTIVATING BLACK KINSHIP FAMILIES IN THE 21ST CENTURY

Title IV-E waivers are cause for great optimism in the world of kinship care families. It provides creativity in combining state and local control with new policy mechanisms; innovation into how to best reach the three goals of child-welfare policies. There has also been a shift towards changing the home life of the child and not the physical home to better serve the child. This new lens has a multitude of

181. WEIL & FINEGOLD, *supra* note 54, at xxiii.

182. See generally Ben Rooney, *Recession Worsens Racial Wealth Gap*, CNN MONEY (July 26, 2011), http://money/cnn.com/2011/07/26/news/economy/wealth_gap_white_black_hispanic/index.htm; Tim Grant, *Study Finds Median Wealth for Single Black Women at \$5*, PITTSBURGH POST-GAZETTE (Mar 9, 2010), <http://www.post-gazette.com/stories/news/us/study-finds-medain-wealth-for-single-black-women-at-5-236905/>.

183. WEIL & FINEGOLD, *supra* note 54, at xxvii.

184. Social Security Act, 42 U.S.C. § 1302.

implications on how we define families in the United States and the resources we are willing to provide to serve that definition. Helping parents and kinship caregivers to take GED classes, substance abuse counseling, or even pay an electricity bill will allow kinship families learn how to remove economic barriers.

Black families have created a generational wealth that does not involve money. The resources of the black extended family cannot be calculated in dollars and cents, wealth and assets. It involves something richer than food for the belly; it is nourishment for the soul. No date on the calendar will end the relationship between child and kinship caregiver. No birthday will signify that one must pack their belongings and head into the world without a place you can always call "home." Limitations to economic resources does not make the exchanges that take place in the Black extended family any less rich nor essential for the whole development of the child. And knowing that these places can and do exist for children who cannot go home, it is essential for the government to undergird this relationship. The penalty of allowing this to fail will continue to put these families on downward economic trajectories that will forever impact that familial line across all major socioeconomic indices. It is encouraging to note that State and Federal entities are working in concert to effect change in the lives of this group and continued stable federal funding commitment, and states developing new relationships with for-profit and nonprofit sectors to creatively solve the problems of the home. The Freedman's Bureau would be defunded before change could be stabilized in the Black community; federal and state governments must be sure to not remove resources from the Black kinship care population as they take advantage of these new resources.