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Fix Me Baby One More Time: A Permanent Solution for Day Cares

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FIX ME BABY ONE MORE TIME: A PERMANENT SOLUTION FOR DAY CARES

Introduction

In February 2011, Kenya Mire, an average, middle-class, working mother, started twenty-month old Kendyll at "Jackie's Child Care" (Jackie's), a quaint home day care located on a quiet street in suburban Texas.[1] A home day care was not Kenya's first choice, but, after dozens of calls, she found that the private facilities were either too expensive or were already at max capacity.[2] Kenya was eventually comforted by the owner's self-purported experience, education, and ability to warmly relate to Kendyll.[3] As Kenya drove away from Jackie's, she noticed Kendyll sleepily gazing at the entrance trying her hardest to take in the unfamiliar surroundings.[4] That expression on Kendyll's face is the last memory Kenya has of her daughter because Jackie's was consumed in a fire later that afternoon.[5] As the investigation developed, police learned that the owner left the day care to go shopping and forgot to turn off the stove.[6] Jackie's burned down while the children were left alone, napping.[7]

Jessica Tata, the owner of Jackie's, was a former juvenile delinquent who turned her life around and started a day care operation in 2010.[8] Tata was able to register Jackie's with the State of Texas despite a state regulation forbidding anyone with a criminal history from supervising children and despite the Texas Department of Family and Protective Services (DFPS) forcing her to close a previous day care operation due to improper licensing.[9] Tata never disclosed her record when she registered her day care with the state for the second time, and the computer background check did not uncover her record.[10]

1. Jonathan Cohn, *The Hell of American Day Care: An Investigation into the Barely Regulated Unsafe Business of Looking After Our Children*, New Republic (Apr. 15, 2013), http://www.newrepublic.com/article/112892/hell-american-day-care.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. Tata v. State, 446 S.W.3d 456, 459–60 (Tex. Crim. App. 2014).
7. Cohn, *supra* note 1.
8. *Id.*
9. *Id.*
10. *Id.*

DFPS required Tata to attend an education session, but the law only required providers to show-up; thus, Tata was able to complete her training even though she wandered "in and out of the classroom . . . and spent most of the time texting."[11] Texas, like a majority of states, requires day cares to undergo licensing visits once a year; however, similar to most states, Texas lacks the resources to enforce even the most minimal requirements in the day care market.[12] Kenya's story may sound like a rare and unfortunate exception, but her struggles in 2011 illuminate the struggle that a majority of parents face today while navigating through the inadequacies of the day care market.[13]

The U.S. day care system is barely regulated, unaffordable, and inaccessible to the majority of U.S. citizens, and a "National Day Care Program" is the solution.[14] The United States has never had a "universal, federally financed and regulated, quality child care system," and now is the right time for federal day care legislation.[15] In the last ten years, the United States has seen several shifts that align public opinion and political agenda in a way that makes now the right time for federal day care legislation.[16] First, in 2013, and then again in 2014, 2015, and 2016, President Barack Obama addressed the nation and specifically asked Congress to create a day care program that would be universally accessible.[17] An idea of this magnitude had not

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11. *Id.*

12. *Id.*

13. Cohn, *supra* note 1.

14. *Id.*

15. Nancy L. Cohen, *Why America Never Had Universal Child Care*, NEW REPUBLIC (Apr. 24, 2013), http://www.newrepublic.com/article/113009/child-care-america-was-very-close-universal-day-care.

16. Approximately 40% of day care centers are for-profit enterprises. William Gormley, Jr., *The Silent Crisis in U.S. Child Care: Regulating Child Care Quality*, ANNALS AM. ACAD. POL. & SOC. SCI., May 1999, at 116, 118. Consequentially, federal legislation would have major impacts on those private facilities and their ability to compete. *See* Debbie Kaminer, *The Child Care Crisis and the Work-Family Conflict: A Policy Rationale for Federal Legislation*, 28 BERKELEY J. EMP. & LAB. L. 495, 530–32 (2007). Additionally, day care legislation is costly. Jonathan Cohn, *The Complexities of Obama's Universal Pre-Kindergarten Plan*, NEW REPUBLIC (Feb. 13, 2013), http://www.newrepublic.com/article/112403/state-union-2013-obamas-universal-pre-kindergarten-plan. Some have theorized that the Head Start Program is evidence that national legislation would not work due to the government failing in its attempts to provide a similar service to low-income families. *See, e.g.*, *id.*

17. Address Before a Joint Session of the Congress on the State of the Union, 2016 DAILY COMP. PRES. Doc. 12, at 1 (Jan. 12, 2016) [hereinafter State of the Union 2016] ("In the coming years, we should build . . . pre-K for all . . . ."); Address Before a Joint Session of the Congress on the State of the Union, 2015 DAILY COMP. PRES. Doc. 36, at 3 (Jan. 20, 2015) [hereinafter State of the Union 2015] ("In today's economy, when having both parents in the workforce is an economic necessity for many families, we need affordable, high-quality childcare more than ever."); Address Before a Joint Session of the Congress on the State of the Union, 2014 DAILY COMP. PRES. Doc. 50, at 4 (Jan. 28, 2014) [hereinafter State of the Union 2014] ("Last year, I

been brought before Congress since 1971.[18] Second, a scientific revolution has occurred over the past decade, suggesting that the years before kindergarten are the most critical for developing intellectual and behavioral skills in children.[19] The U.S. early childhood education system has yet to capitalize on this scientific research in a way that is accessible to the majority of citizens.[20] Third, the Executive Branch recently released reports that rated the nation's Head Start Program[21] as failing and found that current day care programs across the nation are increasingly unaccountable.[22] Finally, the landscape of the U.S. workforce is changing, and more than two-thirds of mothers work outside of the home.[23] All of these events and changes have laid a foundation to fix a failing institution with increased federal regulation.[24]

The Patient Protection and Affordable Care Act (ACA),[25] one of the nation's most recent and controversial pieces of health care legislation, makes the solution clear. For years leading up to its enactment, and even today, the ACA was challenged as being unconstitutional,

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asked this Congress to help States make high-quality pre-K available to every 4-year-old. And as a parent as well as a President, I repeat that request tonight."); Address Before a Joint Session of the Congress on the State of the Union, 2013 DAILY COMP. PRES. Doc. 90, at 5 (Feb. 12, 2013) [hereinafter State of the Union 2013] ("[T]onight I propose working with States to make high-quality preschool available to every single child in America. That's something we should be able to do.").

18. Comprehensive Child Development Act of 1971, S.1512, 92nd Cong. (vetoed); Cohn, *supra* note 1.

19. Jonathan Cohn, *The Two Year Window*, NEW REPUBLIC (Nov. 9, 2011), http://www.newrepublic.com/article/economy/magazine/97268/the-two-year-window.

20. *Id.*

21. See *infra* notes 74–79 and accompanying text, for background on the Head Start Program. Although the program has been restricted and amended various times, it is largely regarded as a failure. *See infra* notes 146–49 and accompanying text.

22. CHILD CARE AWARE OF AMERICA, WE CAN DO BETTER: CHILD CARE AWARE OF AMERICA'S RANKING OF STATE CHILD CARE CENTER REGULATIONS AND OVERSIGHT 76–77 (2013) [hereinafter CCAA, 2013 UPDATE], http://usa.childcareaware.org/wp-content/uploads/2015/10/wecandobetter_2013_final_april_11_0.pdf; OFFICE OF PLANNING, RESEARCH AND EVALUATION ADMIN. FOR CHILDREN AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THIRD GRADE FOLLOW-UP TO THE HEAD START IMPACT STUDY: FINAL REPORT, at xix–xx (2012), https://www.acf.hhs.gov/sites/default/files/opre/head_start_report.pdf; Matt Mackowiak, *Even Government Agrees Head Start Is a Failure*, TOWNHALL (Mar. 23, 2014, 12:01 AM), http://townhall.com/columnists/mattmackowiak/2014/03/23/even-government-agrees-head-start-is-a-failure-n1812639/page/full.

23. Cohn, *supra* note 1. In 2002, it was estimated that 72% of mothers were in the work force. Kaminer, *supra* note 16, at 498.

24. Cohn, *supra* note 1.

25. Patient Protection and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 42 U.S.C.).

causing an antiprivate market, and as being costly.[26] However, on March 23, 2010, the ACA was signed into law.[27] The ACA is a comprehensive health care reform, which expands coverage, controls health care costs, and improves health care delivery systems.[28] The ACA acknowledges that private market competition should not overrule the care and concern for those in the community who cannot care for themselves.[29] This concept is easily translated and applicable in the day care market; just as the ACA unlocked health care for all, a National Day Care Program will unlock child care for all.

This Comment argues that the changing landscape of the U.S. workforce and the shortcomings of the current state-run day care system demands a National Day Care Program, which does for child care what the ACA is doing for health care: provide a program that is accessible to everyone, affordable, and federally regulated.[30] Part II of this Comment provides the background of day care legislation.[31] Part III argues that the time is right for national day care legislation reform and proposes a hybrid solution based on the lessons illustrated from current national and international day care models.[32] Part IV discusses the impact of this legislation on (1) private providers; (2) parent-consumers; (3) the federal government; (4) childhood education; and (5) women's rights.[33] Finally, Part V concludes that the federal government should enact a National Day Care Program.[34]

II. BACKGROUND

An effective analysis of the legal issues surrounding the U.S. day care system begins with understanding the history of U.S. day care programs and legislation as well as current existing models of day care programs worldwide. Accordingly, this Part provides a brief history of how day care and day care legislation was instituted in the United States, introduces the current problems of quality, access, as well as

26. *See generally Defending the Affordable Care Act*, U.S. DEP'T JUST., http://www.justice.gov/healthcare (last visited Jan. 6, 2016).

27. *Id.*

28. *ObamaCare Summary: Obama Health Care Summary*, OBAMACARE FACTS, http://obamacarefacts.com/obamahealthcare-summary.php (last visited Jan. 6, 2016).

29. *Id.* Although the people being protected by the ACA are the sick and elderly, here, the proposed legislation is meant to ultimately protect children. *Id*.

30. Arguably, preschool and day care are two different concepts, but this Comment uses the terms synonymously and interchangeably without regard to the minute differences between the two concepts.

31. *See infra* notes 35–158 and accompanying text.

32. *See infra* notes 159–353 and accompanying text.

33. *See infra* notes 354–438 and accompanying text.

34. *See infra* note 439 and accompanying text.

affordability, and, lastly, reviews a variety of day care programs that exist throughout the world. Finally, this Part summarizes recent events that have propelled the need and ripeness for legislation.

A. The History of Child Care in the United States

Day care legislation is rooted in the welfare of the "poor, minorities, and immigrants" and was created as a welfare institution for mothers who could not afford to stay home with their children.[35] The exact origin of child care in the United States is difficult to pinpoint because there are conflicting theories.[36] One account details the tale of Miss Hanna Biddle who started the first day nursery in Philadelphia in 1863 after a trip to Paris.[37] She modeled her nursery after the charitable La Crèche system in France and was inspired by the many poor children in her city who were left "to wander about the streets without suitable food, and completely demoralized."[38] A different account details the tale of Mrs. Cornelius Du Bois who started the first day care center in New York in 1854 after a late night carriage ride when she thought she heard an infant screaming.[39] When she left her carriage to investigate, she discovered an infant half starved and half dead, and she learned that in this part of the city, many women needed to work to support their families and were forced to leave their children home alone.[40]

Although the details are different, the common thread of these two stories is the wealthy desiring to provide a charitable service to poor children.[41] "[I]t is the day nursery reformer who first define[d] the child's plight as a social problem, devise[d] the solution, and will mete out services in the future."[42] Thus, these two stories perfectly depict the historical dynamic of day care in the United States as: (1) concerned with the welfare of children as opposed to the mother; (2) not based on an arrangement from the actual "wage-earning" mothers; and (3) based on private charity as opposed to political reform.[43]

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35. Sonya Michel, *The History of Child Care in the U.S.*, Social Welfare Hist. Project (2011), http://www.socialwelfarehistory.com/programs/child-care-the-american-history/.

36. Sonya Michel, Children's Interests/Mothers' Rights: The Shaping of America's Child Care Policy 11 (1999).

37. *Id.*

38. *Id.* at 11–12.

39. *Id.* at 12.

40. *Id.*

41. *Id.* at 13.

42. Michel, *supra* note 36, at 13.

43. *Id.* The Lanham Act was enacted, in large part, to resolve problems that arose from World War II. Michel, *supra* note 35. Women became the labor force and thus, funding for day

B. Proposed Solutions to the Day Care Problem

The current state regulated child care system "is really no system at all."[44] The system was created by happenstance, accumulating over sixty years of legislation.[45] Today's system is a confusing collection of funding streams with no uniform goals, standards, or administrative structure.[46] This Section provides a timeline of legislation and public policy initiatives, "which represent[ ] . . . public sentiment about where and how to allocate resources,"[47] and Congress's failed attempts to provide permanent solutions to parents in need of high-quality, affordable, and accessible child care.

Day care regulations grew out of the social dilemma posed by poor mothers forced to work outside of the home and women's social reform that shed light on the need to reform the child care system.[48] In the 1930s, nearly every state provided pensions for mothers to stay at home.[49] The Mother's Pension, a federal program, provided cash to widows and mothers to aid in the care of dependent children at home.[50] The public immediately supported the Mother's Pension because it supported women staying at home, which perpetuated the current gender roles.[51] However, the Mother's Pension was an inadequate solution because: (1) it did not address the total financial struggles of families; (2) it was frequently denied to minorities due to discrimination; and, thus, (3) day nurseries continued to stay open and were barely regulated to provide a charitable service.[52]

The government continued to focus on women staying at home and pushed all allotted federal funds behind women's pensions until 1940.[53] In 1940, most day nurseries shut down because of the Great Depression and declining charitable donations.[54] As part of the New

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care shifted from programs to end unemployment to program supporting the ability of mothers to work. *Id.*

44. Abby J. Cohen, *A Brief History of Federal Financing for Child Care in the United States*, FUTURE OF CHILDREN, Summer/Fall 1996, at 27.

45. *Id.*

46. *Id.*

47. TRINITA LOGUE & MAE HONG, ILL. FACILITIES FUND, A CENTURY OF CARING FOR CHILDREN (2000), http://www.iff.org/resources/content/3/1/documents/century_of_caring.pdf.

48. Michel, *supra* note 35.

49. *Id.*

50. *Id.* Although mothers' pensions began as a state-by-state movement, in 1935 the Social Security Act provided federal guidelines and financial support to these agencies. Mark H. Leff, *Consensus for Reform: The Mothers'-Pension Movement in the Progress Era*, 47 SOCIAL SERVICE REVIEW 397, 397 (1973).

51. Michel, *supra* note 35.

52. *Id.*

53. *See id.*

54. *Id.*

Deal, the government created Emergency Nursery Schools, designed to create jobs for unemployed teachers and provide child care for the children of the unemployed.[55] Unlike the Emergency Nursery Schools' predecessor, these were free government schools open to all children for a half day.[56] However, between 1936–1942, nearly 1,000 of these schools were forced to shut down as teachers began to leave these jobs for better pay.[57]

In 1941, Congress passed the Lanham Act,[58] which authorized the building of child care facilities.[59] However, as more women went to work, the government realized that it was ill equipped to provide for the two million children that now needed care.[60] These new facilities were temporary, and soon after Lanham funding shut down, these day care facilities shut down as well.[61] Despite this, as more women went into the workforce, the need for child care was not dissipating; thus, it was time for the federal government to come up with more permanent solutions.[62]

Even after Lanham Act funding was cut, children still needed care while their mothers worked; thus, national organizations, like the Child Welfare League of America, and a number of local groups lobbied for Congress to pass the Maternal and Child Welfare Act of 1946.[63] Senator Claude Pepper, a Democrat from Florida, introduced the bill.[64] The bill provided for approximately "$100 million a year in Federal grants to States to provide maternity care for women and medical care for children . . . and child welfare services."[65] Section 103(a)(3) of the bill provided that "all mothers and children in the State or locality who elect to participate in the benefits of the program" were eligible to participate in the plan, but the bill did not provide a source of means test to limit eligibility.[66]

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55. *Id.*

56. *Id.*

57. Michel, *supra* note 35.

58. Pub. L. No. 76-862, 54 Stat. 1125 (1940). The Committee on Building and Grounds determined that child care facilities were public works that could receive funding under this Act. Cohen, *supra* note 44, at 26, 26, 38 n.26.

59. Michel, *supra* note 35.

60. *Id.* At this time, the government could only support about 130,000 children. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Health Proposals in the 79th Congress*, CQ ALMANAC (1946), https://library.cqpress.com/cqalmanac/document.php?id=cqal46-1410776.

65. *Id*.

66. 2 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY, at 1275–76 (Robert H. Bremner et al. eds., 1971). Section 103 was, arguably, the most controversial part of the bill.

In 1951, the Korean conflict led to a rise in defense-related employment linked to troop deployment to Korea.[67] In response, Congress authorized new funding for child care services under a grant to "community facilities."[68] Although it was a good idea in theory, Congress subsequently refused to appropriate funds for child care under the Act.[69] The appropriated funds were limited to $40 million for community facilities, like water and sewage plants, in critical defense areas.[70]

In 1962, the Social Security Act (SSA) was amended to fund child care services for families receiving Aid to Families with Dependent Children.[71] The SSA was designed to "provide assistance to needy families so that children could be cared for in their own homes or in the homes of relatives."[72] The program was also designed to wean needy families off of government assistance and encourage two-parent households.[73]

Id. Ultimately, this section led to the bill's demise, but other sections of it were codified in the Social Security Act Amendments of 1964. *Id.* at 1276.

67. EMILIE STOLTZFUS, CONG. RESEARCH SERV., RS20615, CHILD CARE: THE FEDERAL ROLE DURING WORLD WAR II (2014), http://congressionalresearch.com/RS20615/document.php.

68. *Id.*; *see also* Exec. Order No. 10296, 3 C.F.R. 826 (1949–1953).

69. *See* STOLTZFUS, *supra* note 67.

70. *Defense Housing*, CQ ALMANAC (1952), http://library.cqpress.com/cqalmanac/document.php?id=cqal52-1380945.

71. Public Welfare Amendment of 1962, Pub. L. No. 87-543, 76 Stat. 172 (1935) (codified as amended at 42 U.S.C. §§ 601–08 (2012)). Title IV-A provides block grants to states for the temporary assistance of families. *Id*.

72. 42 U.S.C. § 601(a)(1).

73. 42 U.S.C. § 601(a)(2), (4). In 1988, the SSA was amended by the Family Support Act of 1988. Pub. L. No. 100-485, 102 Stat. 2343 (codified as amended in scattered sections of 42 U.S.C.). The stated purpose of the Family Support Act was to "emphasize work, child support, and family benefits[,] . . . to encourage and assist needy children and parents[, and] . . . to obtain the education . . . and employment needed to avoid long-term welfare dependence . . . ." *Id.* The Family Support Act recognized a couple of trends at this time in history including that: (1) both parents are responsible for the well-being of their children and (2) the purpose of Aid to Families with Dependent Children was to provide short-term assistance. *See* Univ. of Wisc-Madison Inst. for Research on Poverty, *The Family Support Act of 1988*, FOCUS, Winter 1988–1989, at 15, 15. The Family Support Act was amended and incorporated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.); Samuel V. Schoonmaker, IV, *Consequences and Validity of Family Law Provisions in the "Welfare Reform Act,"* 14 J. AM. ACAD. MATRIM. LAW. 1, 3 (1997). This sparked three distinct turning points for day care legislation: (1) the government recognized how dependent low-income families were on government assistance; (2) the problems of accessibility and quality in the day care system began to hit both low- and moderate-income families harder than ever before; and (3) a new distinction was being made between the deserving and the undeserving poor. ANDREW J. CHERLIN, PUBLIC AND PRIVATE FAMILIES: AN INTRODUCTION 445–47 (6th ed. 2010); *see* Michel, *supra* note 35. Although by 1996 more funds were thrown at the day care system than ever before, the United States was still lagging behind other advanced industrial nations. Michel, supra note 35. In 1990, the block

Subsequently, President Johnson pushed for the Economic Opportunity Act of 1964 (EOA) as a part of the war on poverty.[74] The policy behind the EOA was the "belief that government must provide impoverished people with opportunities to earn a respectable wage and maintain their families in a comfortable setting."[75] One of the core initiatives of the EOA was creating the Head Start Program.[76] The Head Start Program was designed to provide a preschool education to impoverished children as well as other antipoverty services.[77] The EOA presumed that parents were involved in the development of their children; thus, it provided part-time child care programs for low-income families, but this overlooked the reality that most parents work full-time.[78] The program was "a comprehensive child development tool rather than supervisory care for working parents."[79]

The Comprehensive Child Development Act of 1971 (CCDA)[80] was designed to provide child care to all parents on an income-based sliding scale and defined quality standards for the states to follow.[81] The CCDA established a system of federally funded, state-administered child care centers.[82] This bill was the first and only effort to create a true system of early childhood care and education for all working parents.[83] Congress authorized a substantial sum of money for the program, which was "equivalent to five times the 2012 federal budget for Head Start."[84] However, President Nixon vetoed the bill.[85] Nixon's fears were based on the same sentiments surrounding the Cold War, that a communal system of child rearing would weaken the family structure by enticing women to leave home and join the work force.[86]

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grants allocated $825 million to individual states, this number was expanded in 1996 by combining multiple block grants to allow for an expanded childcare system. *Id.*

74. *Economic Opportunity Act*, LAWS, http://business.laws.com/economic-opportunity-act (last visited Jan. 8, 2016).

75. *Id.*

76. LOGUE & HONG, *supra* note 47.

77. *Id.*

78. *Id.*

79. *Id.*

80. Comprehensive Child Development Act of 1971, S.1512, 92nd Cong. (vetoed).

81. Cohen, *supra* note 44, at 32.

82. *Id.*

83. *Id.* at 32, 36–37.

84. Cohen, *supra* note 15.

85. Kaminer, *supra* note 16, at 505.

86. Cohen, *supra* note 15. Co-sponsors, Minnesota Senator Walter Mondale and Indiana Representative John Brademas, worked to amend the bill. *Id.* They scaled back by changing the title and requiring 90% less in funding. *Id.* Their revised Child and Family Services Act passed the Senate in 1973, but the bill ultimately did not make it through the House due to a grassroots movement in Oklahoma strongly in opposition of communal child rearing. *Id.*

Beginning in 1976, the government established the Child and Dependent Care Tax Credit (Child Care Tax Credit).[87] The credit allows for families to receive money back for work-related expenditures paid for child care cost.[88] In 1976, this credit allowed for up to 20% back of the total expenditures spent on child care.[89] However, when Congress enacted the Economic Recovery Tax Act of 1981,[90] it revised the Child Care Tax Credit.[91] This update allowed taxpayers to collect up to 30% back on child care expenses.[92] Many amendments have been passed since the Child Care Tax Credit's creation in 1976, and, today, taxpayers can receive up to 35% of child care expenses back.[93]

In 1994, the federal government introduced the Early Head Start Program.[94] This program was an expansion of the Head Start Program and was born out of the recognition that the first three years of a child's life are the most critical for child development.[95] In 1995, the first Early Head Start grants were given, and the Head Start Program was approved for full-day services the following year.[96] After not seeing the results the government had expected, the American Recovery and Reinvestment Act of 2009[97] added over 64,000 Early Head Start enrollment slots nationwide.[98]

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87. LOGUE & HONG, *supra* note 47.

88. Kay Bell, *IRS Can Help You Look After the Kids*, BANKRATE, http://www.bankrate.com/finance/money-gides/irs-helps-with-the-kids-1.aspx (last visited Jan. 8, 2016).

89. LOGUE & HONG, *supra* note 47.

90. Pub. L. No. 97-34, 95 Stat. 172 (codified as amended in scattered sections of the I.R.C.).

91. LOGUE & HONG, *supra* note 47.

92. *Id*.

93. Bell, *supra* note 88. However, the tax credit usually ends up only benefitting high-income families. Sarah Jane Glynn, *Child Care: Families Need More Help To Care for Their Children*, CTR. FOR AM. PROGRESS 1, 3 (Aug. 16, 2012), https://www.americanprogress.org/issues/labor/news/2012/08/16/11978/fact-sheet-child-care/. Families that do not owe taxes, such as low- and middle-income families, will never receive this nonrefundable tax credit. *Id.*

94. ELIZABETH HOFFMANN, CLASP, EARLY HEAD START PARTICIPANTS, PROGRAMS, FAMILIES, AND STAFF IN 2009, at 1 (July 2010), http://www.clasp.org/resources-and-publications/publication-1/ehs-pir-2009.pdf.

95. U.S. DEP'T OF HEALTH & HUMAN SERVS., SUPPORTING INFANTS AND TODDLERS IN THE CHILD WELFARE SYSTEM: THE HOPE OF EARLY HEAD START 1–5 (2005), http://eclkc.ohs.acf.hhs.gov/hslc/hs/resources/ECLKC_Bookstore/PDFs/TA9%5B1%5D.pdf. Widespread funding for this age group was a phenomenon already happening in other countries. Jane Weinstein & Ricardo Weinstein, *Before It's Too Late: Neuropsychological Consequences of Child Neglect and Their Implications for Law and Social Policy*, 33 U. MICH. J.L. REF. 561, 562 (2000).

96. *History*, HEAD START, http://eclkc.ohs.acf.hhs.gov/hslc/hs/about/history (last updated Dec. 24, 2015).

97. Pub. L. No. 111-5, 123 Stat. 115 (codified as amended in scattered sections of 1 U.S.C., 6 U.S.C., 15 U.S.C., 19 U.S.C., 20 U.S.C., 29 U.S.C., 38 U.S.C., 42 U.S.C., 47 U.S.C., and the I.R.C.).

98. *Id.*

C. Current Regulatory Framework

The legislative history of day care illustrates sixty years of trial and error. This Section discusses how the current regulatory framework exacerbates the historical problems of quality, accessibility, and affordability instead of fixing them.

Unlike many other regulated industries, the federal government refrains from imposing strict regulatory standards on the child care industry.[99] State governments have control over licensing requirements and the enforcement of child care regulation, state administrators promulgate the rules, and state legislatures oversee and enforce the rules.[100] The federal government's involvement is limited to financial subsidies.[101] Middle-class families are afforded child care tax credits and low-income families receive subsidized child care through both the Child Care and Development Block Grant and the Head Start Program.[102] The federal government grants these funds to the states with minimal conditions regarding quality improvement and parental education, but it has no other regulatory role.[103]

However, the federal government does not oversee all day cares.[104] The primary group of day care providers is for-profit group day care centers, some of which are a part of large chains.[105] A second group of day care providers is affiliated with churches, most of which are exempt from regulation even though they receive taxpayer funding.[106] A third group of day care providers is family day care homes, which are also exempt from regulation in many states.[107] A large portion of home day cares "choose to remain underground, . . . creating a huge

99. Gormley, *supra* note 16, at 117. However, in many other "policy domains," such as environmental policy and healthcare policy, the federal government and local authorities share regulatory responsibility. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *See id.* at 117–18. The federal government does not require background checks, minimum training for child care providers, regular inspections, or minimum safety protections. CCAA, 2013 UPDATE, *supra* note 22, at 12.

104. Gormley, *supra* note 16, at 118.

105. *Id.* In 1990, 35% of group day care centers were for-profit centers and it was estimated to have increased to 40% in 1999. *Id.*

106. *Id.* In 1990, 15% of group day care centers were affiliated with religious institutions. *Id.* These institutions are exempt from regulation in thirteen states and they enjoy a de facto exemption in most other states. *Id.* Consequentially, if a secular day care center is shut down for not complying with health and safety standards, it could technically reopen as a church affiliated institution. *Eliminate Health and Safety Standard Exemptions for Religious Child Care Centers*, SECULAR COAL. FOR AM., https://secular.org/issues/childcare (last visited Jan. 9, 2016) [hereinafter *Religious Child Care Centers*].

107. Gormley, *supra* note 16, at 118.

black market" for child care.[108] The diversity of providers leads to consumer confusion and makes it difficult for parents to know what to expect from their day care providers.[109]

Additionally, each state has the power to regulate day care and each does so differently.[110] Therefore, the quality of service varies from state to state.[111] For example, as concerning the background checks of providers and their staff: only thirty-one states require a fingerprint check against FBI databases, only twenty-three require a check against the sex offender registry, and only thirteen states conduct a comprehensive background check.[112] As concerning training requirements: eight states require three or less out of the twelve essential child safety and development topics, and three states require less than three and allow teachers to have less than a high school diploma.[113] As concerning inspection requirements: thirty states require child care centers to be inspected two or more times per year; however, nine states do not require any type of inspection.[114]

The cost of services also varies from state to state. The average cost is $11,666 per year.[115] However, a family in Mississippi may pay $5,496 per year while a family in Massachusetts will spend $16,549 per year.[116] And, those numbers only account for a family with one child. Although some families may qualify for some form of government subsidy, U.S. parents assume close to 60% of the cost of child care.[117] Thus, although day care is a necessity, the cost makes participation nearly impossible for some parent-consumers.[118]

In a recent report on all state day care programs, which rated day care providers on the basic minimum criteria of "doing no harm," the

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108. *Id.* Experts estimate that 82–90% of family day care centers are exempt from regulation, whether legally or illegally. *Id.*

109. *See Religious Child Care Centers*, *supra* note 106.

110. *See* CCAA, 2013 UPDATE, *supra* note 22. See *infra* Part III.A.I. for a fictitious example of how this diversity of regulation could play out for a U.S. family.

111. *Id.* at 73.

112. *Id.* at 10. "A comprehensive background check includes a fingerprint check against state and federal records, a check of the child abuse registry and a check of the sex offender registry." *Id.*

113. *Id.* at 11. "Low education requirements combined with minimal training requirements potentially place the safety and healthy development of children at risk." *Id.*

114. *Id.*

115. *How Much You'll Spend on Childcare*, BABYCENTER, http://www.babycenter.com/0_how-much-youll-spend-on-childcare_1199776.bc (last visited Mar. 26, 2016).

116. CHILD CARE AWARE OF AMERICA, CHILD CARE IN AMERICA: 2015 STATE FACT SHEETS 2 [hereinafter CCAA, 2015 STATE FACT SHEETS], http://cca.worksmartsuite.com/GetThumbnail.aspx?assetid=675.

117. *Id.*

118. Cohn, *supra* note 1.

average score per state was ninety-two (92) points out of a possible 150 points, which equates to 61%: a grade of D.[119] This report revealed that few states had regulations in place to actually promote the healthy development of children.[120]

D. Day Care Legislation Outside of the U.S. State-Run Model

The day care system used in the United States is one of the many alternatives used around the world. This Section provides a brief description of three other day care models, but each model's costs and benefits are further discussed in Part III.[121] Although no one model is absolutely perfect, each takes a different approach to combating the problems of quality, affordability, and accessibility.

The first model is that built by the U.S. Department of Defense (DoD).[122] The DoD's child development program has been recognized as the "best of its kind."[123] However, this system did not spring up overnight but, rather, was started in 1989 and continues to be improved today.[124] The Military Child Care Act of 1989 authorized funding for child development centers, set fees based on family income, and set up subsidies for family child care.[125] The DoD tied caregivers' wages to training requirements and established an "accreditation initiative, inspection regime and child abuse prevention and safety procedures."[126] Today, the Military Child Development Program "links child care centers, family child care homes, . . . after-school programs, and resource and referral services" into one compre-

119. CCAA, 2013 UPDATE, *supra* note 22, at 17, 59.

120. *Id.* at 73. The report also outlines key points for Congress and the states to consider in addressing the problem of quality in the day care system. *Id.* at 74–77.

121. *See infra* notes 300–22 and accompanying text.

122. Although, the DoD is technically a system in the United States, it is not included in the definition of a "state-run model." The DoD has had flexibility to create a program outside of the regulation imposed on the states, so, for purposes of this Comment, this model is really distinct from one of the state-run models. *See generally* NANCY DUFF CAMPBELL ET AL., NAT'L WOMEN'S L. CTR., BE ALL THAT WE CAN BE: LESSON FROM THE MILITARY FOR IMPROVING OUR NATION'S CHILD CARE SYSTEM (2000) (discussing how the DoD's program became "a model for the nation").

123. Linda D. Kozaryn, *Military Child Care: The Best Is Yet To Come*, U.S. DEP'T OF DEF. (May 18, 2000), http://www.defense.gov/News-Article-View/Article.

124. CAMPBELL ET AL., *supra* note 122, at 9. Before 1989, the military's childcare program was deemed a "disaster," and the "ghetto" of U.S. childcare. *Id.* at 1. *(*quoting Ann Crittenden, *Fighting for Kids*, GOV'T EXEC. (Dec. 1, 1997), http://www.govexec.com/magazine/1997/12/fighting-for-kids/5880/); Linda D. Kozaryn, *DoD Child Care: A Model for the Nation*, U.S. DEP'T OF DEF. (Apr. 25, 1997), http://archive.defense.gov/news/newsarticle.aspx?id=40948.

125. Military Child Act of 1989, Pub. L. No. 101-189, Title XV, 103 Stat. 1352, 1589–94 (codified as amended at 10 U.S.C. §§ 1791–1798 (2012)).

126. Kozaryn, *supra* note 123.

hensive program.[127] "What was once an underfunded, loosely organized effort is now a top military priority . . . . Military and congressional leaders acknowledge the link between childcare and operational readiness."[128] The DoD credits its success to: (1) strengthening standards, enforcement, and parental involvement; (2) supporting accreditation; (3) increasing staff training; (4) improving staff compensation; (5) expanding subsidies to parents; (6) increasing the amount of day care facilities; and (7) making a public financial investment.[129]

In other major industrial countries, like France, day care is a government priority.[130] The French model is a "government-run system" that experts hail as "exemplary."[131] Infants and toddlers attend a day care system, "crèche," which is part of the overall public health system.[132] All crèche teachers must have "special post-college training" and one-half of them must have specialized collegiate degrees in child care or psychology to insure that French children are receiving care from educated providers.[133] Additionally, crèche ensures that pediatricians and psychologists are available on-campus for consultations.[134] Further, parents who choose to care for their children at home receive generous tax breaks, similar to the motherhood pension once present in the United States.[135] So, unsurprisingly, 80% of French women work outside of the home while 40% of U.S. women choose to stay home.[136]

In 2013, Germany enacted a new law that guarantees every child age twelve months or older, a slot at a day care facility.[137] The law

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127. CAMPBELL, ET AL., *supra* note 122, at 2.

128. Kozaryn, *supra* note 123.

129. CAMPBELL ET AL., *supra* note 122, at *passim*.

130. Cohn, *supra* note 1.

131. *Id.*

132. *Id.* However, preschoolers attend "école maternelle," which is part of the public education system. *Id.*

133. *Id.*

134. *Id.*

135. Cohn, *supra* note 1; *see supra* notes 49–53 and accompanying text.

136. Cohn, *supra* note 1.

> France spends more on care per child than the United States—a lot more, in the case of infants and toddlers. But most French families pay far less out of pocket, because the government subsidizes child care with tax dollars and sets fees according to a sliding scale based on income. Overall, the government devotes about 1 percent of France's gross domestic product to child care, more than twice as much as the United States does.

Id.

137. Friederike Heine, *A Place for Everyone: Germany Promises Daycare for all Parents*, ABC NEWS (Aug. 4, 2013), http://abcnews.go.com/International/place-germany-promises-daycare-parents/story?id=19847116. Previously, the law only applied to children ages three and

seeks to improve the plight of working parents.[138] The law also provides any parent whose child is denied a slot in a day care facility with a legal cause of action to challenge the decision; however, families have noted that this is an expensive process with limited impact when there are no other day care options available in a community.[139] Germany is heavily committed to improving the problem of accessibility.[140] In fact, Kristina Schröder, the former German Family Minister, pledged that Germany would build enough new child care facilities to provide 800,000 additional spots for children.[141] However, unlike France, Germany has yet to fully address how it will keep up quality while mass producing so many facilities all at once.[142]

E. Recent Events Supporting the Need and Foundation for Legislation

Recent events and findings in the United States have opened up the discourse about day care policy. This Section provides a brief description of the current events that support the need for legislation of this magnitude or provide a platform for changing the public opinion on day care.

In 2010, the ACA was signed into law. The ACA aims to expand access to health coverage for uninsured U.S. citizens, creating a nationwide insurance program to ensure the creation of minimal standards for insurance companies, increase nationwide coverage, and ensure that as U.S. citizens age, health care bills are covered.[143] At its core, the ACA regulates a national private market.[144] Arguably then,

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under. *Id.* In an effort to meet the demands of this new system, the government is steadily building new centers and improvising when possible. *Id.*

138. Friederike Heine, *Birth Rate Boon? Germany Promises Daycare for All*, SPIEGELONLINE INT'L. (Aug. 1, 2013, 10:07 PM), http://www.spiegel.de/international/germany/law-goes-into-effect-requiring-child-care-for-most-german-children-a-914320.html. In the past, parents in Germany were attempting to "outbid" each other for nursery spots or even bribe nursery facilities. *Id.* Some parents were either forced to go to a day care located in an inconvenient spot or simply stay home with the children. *Id.*

139. Heine, *supra* note 137.

140. *Id.*

141. *Id.*

142. *Id.* In 2013, Germany launched "Kita-Plus," a program that ended in December 2015. *Kita-Plus—A more for Particularly Stressed Kitas*, HAMBURG.DE (Sept. 29, 2015), http://www.hamburg.de/basfi/pressemeldungen/nofl/4608928/2015-09-29-basfi-kita-plus/. The program was relaunched in 2016 and resulted in a 12% increase in staffing and additional funding for a select group of Kitas. *Id.* The program is approved to run through 2019, at which time it will be reevaluated. *Id.*

143. 42 U.S.C. § 18001 (2012).

144. Alan Maynard, Opinion, *The Private Healthcare Market Isn't Working*, GUARDIAN (Aug. 29, 2013, 10:00 AM), http://www.theguardian.com/commentisfree/2013/aug/29/private-healthcare-market-competition-commission.

the ACA recognizes that private market competition should not overrule the care and concern for those in the community who cannot care for themselves. Additionally, it introduces the communal belief that health care is important to all citizens at some point.[145]

Moreover, in 2011, the federal government commissioned a study to examine the impact of the Head Start Program.[146] The study concluded that the Head Start Program had minimal impact on children after kindergarten.[147] The report was updated in 2012 and the findings were more of the same.[148] Mary Ham, a conservative blog writer, noted: "The theme of this evaluation is 'no statistically measurable effect,' and what tiny positive effects there are among subgroups in behavioral and parental improvements are outweighed by statistically measurable *harmful* impacts in others. This is not a wise way to spend billions of dollars."[149]

In his 2013, 2014, 2015, and 2016 State of the Union Addresses, President Obama called for the creation of a universal pre-kindergarten program.[150] The program would ensure that a reliable day care is provided to all families, including the thriving middle class.[151] This idea was vetoed the last time it was presented before a President in 1971.[152] Little is known about how the policy would translate into actual legislation, but some assume the project would look similar to a proposal from the Center for American Progress (CAP).[153] The CAP programs ensure that every child is eligible to receive two years of quality preschool education,[154] and preschool is free for income-eligi-

145. *See* Nat'l Fed'n Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012).

146. Mackowiak, *supra* note 22.

147. *Id.* Specifically, the report notes that: (1) there are only a few statistically significant differences between children that attended the Head Start Program and those that did not; (2) there is a positive impact on children during preschool; and (3) there are scattered impacts after kindergarten. *Id.*

148. Mary Katherine Ham, *HHS Study: Yep, Head Start Doesn't Work*, HOT AIR (Jan. 11, 2013, 6:51 PM), http://hotair.com/archives/2013/01/11/hhs-study-yep-head-start-doesnt-work/.

149. *Id.*

150. *See* State of the Union 2016, *supra* note 17, State of the Union 2015, *supra* note 17; State of the Union 2014, *supra* note 17; State of the Union 2013, *supra* note 17; *see also* Cohn, *supra* note 1.

151. *See* State of the Union 2016, *supra* note 17, State of the Union 2015, *supra* note 17; State of the Union 2014, *supra* note 17; State of the Union 2013, *supra* note 17.

152. Kaminer, *supra* note 16, at 505.

153. *See* Cohn, *supra* note 1.

154. Katie Peters, *Release: CAP Proposes Universal Access to High-Quality Preschool and Expanded Access to Child Care for Infants*, CTR. FOR AM. PROGRESS (Feb. 7, 2013), https://www.americanprogress.org/press/release/2013/02/07/52188/release-cap-proposes-universal-access-to-high-quality-preschool-and-expanded-access-to-child-care-for-infants/.

ble families under the CAP design.[155] "This plan [would increase] federal funding $10.5 billion per year above current levels . . . ."[156]

The United Stated needs a nationwide model for day care because our current child care system is really no system at all.[157] Congress has made several failed attempts to provide a solution, but, really, this process of trial and error has only exacerbated the problems within the current regulatory system.[158] The U.S. day care system still needs a permanent solution.

III. Analysis

Although national day care legislation was a taboo issue in 1971, today's social and political landscapes have changed the issue into one that is ripe for federal legislation. Now is the right time for federal legislation because: (1) the current framework fails to provide high-quality, affordable, accessible day care; (2) the public image of day care is changing; (3) the government's image of day care is changing; (4) society is more open to socialist concepts; and (5) gender equality demands a change.[159] Although, none of the current models are capable of expanding into a national model, the best model for national legislation would learn from the lessons and failures of current day care models and address the issues of quality, affordability, and accessibility.[160]

A. Now Is the Right Time for National Legislation

The political and social landscapes of the United States have changed.[161] For example, the values that bound society in the 1950s are much different from what is valued in 2016.[162] The challenge of lawmakers is to take notice of the shifts in social and moral values and use these shifts to enact new laws that better reflect the landscape of

155. *Id.* Nonincome-eligible families could expect to pay anywhere from 30% for incomes 200% above the poverty line and 95% for incomes 400% above the poverty line. *Id.*

156. Cynthia G. Brown et al., *Investing in Our Children: A Plan To Expand Access to Preschool and Child Care*, Ctr. for Am. Progress (Feb. 7, 2013), https://www.americanprogress.org/issues/education/report/2013/02/07/52071/investing-in-our-children/.

157. *See supra* notes 44–98 and accompanying text (discussing the legislative history of day care in the United States).

158. *See supra* notes 99–120 and accompanying text (discussing how the current regulatory framework).

159. *See infra* notes 161–299 and accompanying text.

160. *See infra* notes 300–53 and accompanying text.

161. Joy Wilke & Lydia Saad, *Older Americans' Moral Attitudes Changing*, Gallup (June 3, 2013), http://www.gallup.com/poll/162881/older-americans-moral-attitudes-changing.aspx.

162. *E.g.*, *id.*

the nation.[163] Currently, day care legislation in the United States, or lack thereof, is based on an outdated and irrelevant value system and, therefore, does not adequately serve the needs of the people.[164]

1. The Current Framework Fails To Provide High-Quality, Affordable, Accessible Day Care

The current regulatory framework of the child care industry is diverse.[165] Many facilities are not regulated at all, and even facilities that states do regulate fail to comply with minimum requirements.[166] This structure opens the door for black-market providers, incentivizes fraud, and creates consumer confusion.[167] Further, standards are different state to state, which burdens the consumer with the task of exhaustive research.[168] However, even exhausted parent-consumers will have a difficult time finding a facility that will "do no harm" to children.[169] The following subsections analyze the effects of the current regulatory framework on quality, affordability, and accessibility through the lens of a family making a major life decision.

Consider the story of the Oakey family.[170] Amber and Charlie Oakey are married, and they are a dual income family with two children ages one and four. Currently, they live in Phoenix, Arizona; however, Amber has been offered a promotion that will require the family to move to Chicago, Illinois in three months' time. The household currently nets $95,000, and the promotion will raise the net annual income of the household to $100,000.[171] Although this is great news, the family is nervous about finding child care in the Windy City. Specifically, they want to make sure that they find a facility with high-

163. *What Is Law Reform*, LAWGOVPOL, http://lawgovpol.com/what-is-law-reform/ (last visited Mar. 22, 2016).

164. Brigid Schulte, *The U.S. Ranks Last in Every Measure When It Comes to Family Policy, in 10 Charts*, WASH. POST, June 30, 2014, http://www.washingtonpost.com/blogs/she-the-people/wp/2014/06/23/global-view-how-u-s-policies-to-help-working-families-rank-in-the-world/.

165. *Id.*

166. *See* CCAA, 2013 UPDATE, *supra* note 22, at 48, 50, 73.

167. *See supra* notes 99–120 and accompanying text (discussing how the current regulatory framework creates these problems).

168. *See supra* notes 110–20 and accompanying text (discussing the differences in each state regulatory framework).

169. CCAA, 2013 UPDATE, *supra* note 22, at 73 (concluding that facilities do not meet the current minimum standard of "do no harm").

170. Amber and Charlie Oakey are fictitious characters. Their story is comprised of multiple stories the author has encountered during playdates, parent groups, touring child care facilities, and doing research for this Comment.

171. These salary figures are not completely arbitrary. The average salary in Arizona is about $47,000 and the fact pattern assumes that Amber's promotion will offer her just over a 10% raise. *See generally Average Salary for State: Arizona*, PAYSCALE, http://www.payscale.com/research/US/State=Arizona/Salary (last updated Mar. 19, 2016).

quality child care that they can afford. Let's help Amber and Charlie research what this move will mean for their family under the current regulatory framework.

a. Effects of the Regulatory Framework: Quality

The quality of day care has fallen due to the diversity of care and ineffective state day care regulation.[172] High-quality child care matters because of its meaningful effect on children.[173] Although the definition of quality child care is constantly evolving, experts agree that some characteristics that enrich childhood environments include: child-to-teacher ratios, small group size, professional development opportunities for the workforce, positive provider-to-child interactions, accreditation or high licensing standards, age appropriate activities, family engagement, and good health and safety practices.[174] However, considerable variation exists in meeting these quality indicators among the states,[175] and, unfortunately, the majority of day care facilities are not complying with these minimum requirements.[176] For example, currently only one state is following recommended guidelines for staff-to-child ratios and no state is meeting the recommendation for group size limits.[177] While arguably a variety of factors affect the quality of a learning environment, certainly the ability to interact with the children is a main component, and not meeting staff-to-child ratios makes this essential interaction effectively impossible.[178] "Ensuring all children have access to high quality . . . childhood programs is essential; however, in *every* state, this type of care can be hard to find . . . ."[179]

Amber and Charlie must consider that in Arizona, only 6% of the 2,023 child care centers are nationally accredited,[180] and these centers are currently scored at 64% based on the requirements and oversight

172. CCAA, 2013 UPDATE, *supra* note 22, at 18.

173. DEBORAH VANDELL & BARBARA WOLFE, INST. FOR RESEARCH ON POVERTY, SPECIAL REPORT NO. 78, CHILD CARE QUALITY: DOES IT MATTER AND DOES IT NEED TO BE IMPROVED? 66 (2000), http://www.irp.wisc.edu/publications/sr/pdfs/sr78.pdf. Specifically, the quality of childcare during the first three years is directly related to school readiness and language skills. *Id.* at iii.

174. CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 3.

175. *See Child Care in America State Fact Sheets and Licensing Information*, NAT'L ASS'N OF CHILD CARE RES. & REFERRAL AGENCIES, http://naccrrapps.naccrra.org/map/ (last visited Jan. 21, 2016).

176. CCAA, 2013 UPDATE, *supra* note 22, at 10–12.

177. *Id.* at 48, 50, 73.

178. *Id.* at 73.

179. CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 4.

180. *Id.* at 9.

of the state licensing policies.[181] Although providers are required to offer activities to address all developmental stages, the background checks of these providers are not run against the sex offender registry.[182] Further, although centers address ten out of ten basic safety standards, both group size and staff to child ratio requirements do not meet the national standard.[183] On the other hand, in Illinois, 8% of the 5,455 centers are nationally accredited[184] and are currently scored at a 72% based on state licensing policies.[185] Unlike Arizona, providers in Illinois are required to undergo a comprehensive background check, which includes a check against the sex offender registry.[186] Further, although Illinois also does not fully comply with the national group size requirements, the state is able to at least partially meet the national staff-to-child ratio requirements.[187] At first glance, it seems that the upcoming move will allow the Oakey family to receive higher quality child care, but can they afford it?

b. Effects of the Regulatory Framework: Affordability

After declining for several decades, the percentage of stay-at-home mothers has started to rise once again.[188] One likely reason is the rising cost of child care.[189] Currently, mothers who work are paying more than ever before for child care.[190] Reports estimate that some low-income families pay 39.6% of their family incomes to child care and middle-class families pay an average of 6.7%.[191]

The cost and scarcity of day care has created what sociologist Joya Misra calls "the motherhood penalty."[192] While women without children are closer to pay equity with men, women with children are lag-

181. CCAA, 2013 UPDATE, *supra* note 22, at 84.

182. *Id.* at 85.

183. *Id.*

184. CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 31.

185. CCAA, 2013 UPDATE, *supra* note 22, at 108.

186. *Id.* at 109.

187. *Id.* at 108–09.

188. Drew DeSilver, *Rising Cost of Child Care May Help Explain Recent Increase in Stay-at-Home Moms*, PEW RES. CTR. (Apr. 8, 2014), http://www.pewresearch.org/fact-tank/2014/04/08/rising-cost-of-child-care-may-help-explain-increase-in-stay-at-home-moms/.

189. *Id.* "In the United States, parents assume almost 60 percent of the cost of child care, and the percentage is even higher for middle income families." CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 2.

190. Alissa Quart, Opinion, *Crushed by the Cost of Child Care*, N.Y. TIMES: BLOG (Aug. 17, 2013, 2:30 PM), http://opinionator.blogs.nytimes.com/2013/08/17/crushed-by-the-cost-of-child-care/?_r=1.

191. DeSilver, *supra* note 188. Child care costs vary widely depending on age, geography, and the number of children. *Id.*

192. Quart, *supra* note 190.

ging behind because they find that working does not always make sense after considering the cost of child care.[193] Also, women earning less money than their partners are more likely to take time off when a baby is born, and "if they do so for two years or more, they may not be able to get back in at anything approaching their prior job or earnings."[194] The cost of caring for a child outside of the home is now so expensive that many women will not make a decent income after taxes and child care costs.[195]

Most states subsidize child care, but the subsidies suffer from three major weaknesses: (1) the subsidies "cover only a minor fraction of the eligible population"; (2) the government money is cut off without notice if a family begins to make more money and, consequently, falls into a separate income bracket; and (3) "the reimbursement rates to providers that the programs allow are not based on quality considerations."[196] Some states have provided day care to all income-eligible families to address these concerns.[197] For example, Iowa, although a conservative state, defines affordability in reference to the poverty line.[198] The Iowa plan requires families to make copayments for child care equal to "about 30 percent" of the difference between their income and the poverty line.[199] If "Iowa-level benefits" were provided to all income-eligible families throughout the entire country, it would cost an estimated $20 billion a year.[200]

For Amber and Charlie's big move, they must consider that in Arizona, they likely pay almost $9,500 in annual fees for their one-year old to have full-time care and an additional almost $7,500 for their

193. Claire Cain Miller, *The Motherhood Penalty vs. The Fatherhood Bonus*, N.Y. TIMES, Sept. 6, 2014, http://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html?abt=0002&abg=0; *see also* Quart, *supra* note 190.

194. Quart, *supra* note 190.

195. *Id.*

196. Barbara R. Bergman, *Making Child Care "Affordable" in the United States*, ANNALS AM. ACAD. POL. & SOC. SCI., May 1999, at 208, 211.

197. *Id.* at 214.

198. *Id.* However, the problem with the poverty line is that it is an antiquated measure of which citizens are the most in need of help. Matthew Green, *Poverty Line Problems: The History of an Outdated Measurement (Infographic)*, KQED NEWS (Oct. 25, 2013), http://ww2.kqed.org/lowdown/poverty_line/. The system dates back to 1955 when the U.S. Department of Agriculture determined how much a family in poverty spent on food, which was approximately one third of its income. *Id.* So, in 1963 when the Social Security Administration reported on poverty, it multiplied that number by three and called the number the poverty line. *Id.* The problem is, things have changed since 1963: (1) food is cheaper as a whole; (2) now, more income goes toward childcare, transportation, and healthcare; and (3) food is more expensive depending on which state a person lives in. *Id.* However, the poverty line does not take these factors into account and has not changed. *Id.*

199. Bergman, *supra* note 196, at 210.

200. *Id.* at 213.

four-year old.[201] Arizona estimates that the average married couple pays 13% of their annual income to day care.[202] Based on their current net income of $95,000, Amber and Charlie pay almost 18% of their annual income to cover child care, which is three percentage points over the high end of the national average, 15%.[203] On the other hand, in Illinois the family would pay almost $13,000 to provide care for their one-year old and an additional $9,500 for their four-year old.[204] Illinois estimates that the average married couple pays 15% of their annual income to day care.[205] If Amber and Charlie make the move, based on their new net income of $100,000, they would pay over 22% of their annual income to cover child care, which is seven percentage points over the high end of the national average[206] and, more importantly, 4% more than they paid in Arizona. Of course, the couple may qualify for a state subsidy, but looking at their income versus expenses without even considering that moving to Illinois will involve a considerable cost-of-living adjustment,[207] the family will essentially take home less money. Thus, the Oakey family will find that child care will be more expensive. But, assuming that the cost is not prohibitive, will they will be able to secure some form of child care in their three-month window?

201. CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 10.

202. *Id.*

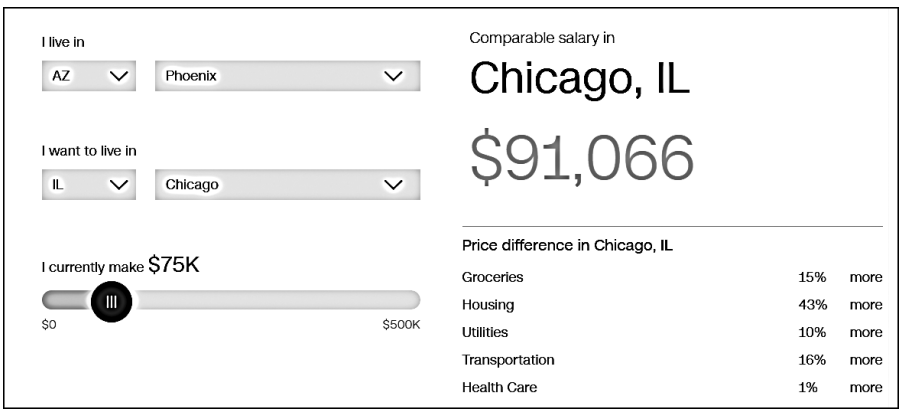
203. *Id.*

204. *Id.* at 32.

205. *Id.*

206. *Id.*

207. *Cost of Living: How Far Will My Salary Go In Another City?*, CNN: MONEY (Dec. 2015), http://money.cnn.com/calculator/pf/cost-of-living/.



c. Effects of the Regulatory Framework: Accessibility

Although the percentage of stay-at-home mothers is rising, the public demand for child care outweighs the supply of day care facilities,[208] which can lead to absurdly long waiting lists lasting for over a year.[209] The scarcity problem is exacerbated for parents who do not work the standard 9:00 AM to 5:00 PM.[210] These families must navigate the waters of finding day care centers that stay open past 5:00 PM or that are open before the parents need to start work.[211] Additionally, the cost of day care, on its own, is often prohibitively expensive, which further exacerbates the problem of accessibility.[212] Often times, parents are left between two impossible choices: (1) low-quality care or (2) foregoing a stable paycheck and caring for the child themselves.[213]

For Amber and Charlie's move, they must consider that, in Arizona, 304,017 children under age six potentially need child care.[214] However, the state estimates that there are only 225,456 available slots.[215] This means that in Arizona, the family had almost a 35% chance of being placed on a waiting list if they found a high-quality center that they could afford. On the other hand, in Illinois, 637,444 children under age six potentially need child care, and the state estimates that there are only 481,053 available slots.[216] Thus, the family has almost a 32% change of being waitlisted.

What we can glean from Amber and Charlie is that, as expected, the couple will likely need to choose whether the big move makes "cents." Their chances of finding a high-quality center are better with their move to Illinois, but there is also a high chance that they will either be waitlisted at a center or not be able to afford the facility that provides

208. Kaminer, *supra* note 16, at 502.

209. Quart, *supra* note 190. One mother reported that she signed up for day care when she was newly pregnant, and her daughter, now five-years-old, is still on the waiting list. *Id.*

210. *See* Kaminer, *supra* note 16, at 503.

211. *Id.* at 510, 536–37. Although institutional day care centers are open from 6:00 AM to 6:00 PM, day care corporations or those that partner with educational institutions have operating hours closer to 8:00 AM to 5:30 PM. Robin McClure, *12 Questions To Ask a Potential Day Care Center*, ABOUT PARENTING, http://childcare.about.com/od/daycarequicktips/qt/provider.htm (last updated Feb. 24, 2016).

212. Sarah Jane Glynn et al., *The Importance of Preschool and Child Care for Working Mothers*, CTR. FOR AM. PROGRESS (May 8, 2013), https://www.americanprogress.org/issues/education/report/2013/05/08/62519/the-importance-of-preschool-and-child-care-for-working-mothers/. The average cost of day care from a group center ranges from $300 to $1,564 monthly per child. *How Much You'll Spend on Childcare*, BABYCENTER, http://www.babycenter.com/0_how-much-youll-spend-on-childcare_1199776.bc (last visited Jan. 9, 2016).

213. *See How Much You'll Spend on Childcare*, *supra* note 212.

214. CCAA, 2015 STATE FACT SHEETS, *supra* note 116, at 9.

215. *Id.*

216. *Id.* at 31.

the necessary care. If the Oakeys represent the "average U.S. family," then their story illustrates that U.S. families need some help. The best way to help U.S. families is to provide a federally funded day care program. "To improve the state of U.S. child care nationally, we MUST work together to find meaningful solutions that support working families and their children."[217]

2. The Public Image of Day Care Has Changed

When the institution of day care first began, it was rooted in charity for the poor.[218] Day care as a system of charity made sense in the early 1900s because the role of women was to make the home, which included staying home with, and caring for, their children.[219] Conversely, women forced to work outside of the home did not usually have the means to find child care.[220] Day care was created to provide a safe place for children who would otherwise have been left at home by mothers forced to make a tough decision in providing for their families.[221] Consequentially, day care as a societal afterthought runs contrary to the current societal roles of women and the family structure.[222]

Today, in an economy in which it is more common for both parents to work outside of the home, child care is a necessity.[223] Today, approximately 65% of women work outside of the home and thus, adequate day care legislation is a necessity to support both parents in the work environment and to ensure that more women can return back to work after having children.[224] Additionally, without proper child care legislation, the majority of parents will need to choose between a child

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217. *Id.* at 4.

218. Michel, *supra* note 35.

219. Kaminer, *supra* note 16, at 504–05. Even in 1975, over 50% of families had a stay-at-home parent, thus, national childcare legislation would not have made sense. Glynn, *supra* note 93.

220. Michel, *supra* note 35.

221. *Id.*

222. *See* Susan Jones, *Harry Reid: Daycare 'Isn't a Luxury, It's a Necessity*,' CNSNEWS.COM (Mar. 13, 2014, 5:35 AM), http://cnsnews.com/news/article/susan-jones/harry-reid-daycare-isnt-luxury-its-necessity.

223. *Id.*; Glynn et al., *supra* note 212. Childcare assistance, which is currently provided though government subsidies to low-income families, is a start, but it not widely accessible to all families. Glynn, *supra* note 93. In 2011, only one out seven families who qualify for childcare assistance actually received it. *Id.*

224. Diana Lavery, *More Mothers of Young Children in U.S. Workforce*, POPULATION REFERENCE BUREAU, http://www.prb.org/Publications/Articles/2012/us-working-mothers-with-children.aspx (last visited Jan. 9, 2016); Jennifer Preston, *Helping Women Get Back in the Game,* N.Y. TIMES, Mar. 17, 2014, http://www.nytimes.com/2014/03/18/education/helping-women-get-back-in-the-game.html?_r=0.

care facility that is affordable but under-regulated or a facility that is high-quality, but prohibitively expensive.[225]

Day care legislation is a necessity because families in poverty are no longer the only ones crushed by the exorbitant costs of day care; even families making over 200% above the poverty level could owe one-half of their income to obtain child care from a child care center.[226] Additionally, in all fifty states, the cost of child care for two children exceeds annual rent payments, and, in thirty-five states, the cost of child care is more than the cost of attending college.[227]

Child care legislation is also "a key ingredient in a state's recipe for economic growth" by decreasing employee call-offs and turnover, which, in turn, increases business productivity and the bottom line.[228] Additionally, the investment in child care legislation builds up the next generation of workers.[229]

Also, science supports the idea that the federal government should invest in children before kindergarten.[230] The finding of a two-year window has further spurred maximizing the years before a child begins kindergarten.[231] Ten years ago, a neuroscientist found that the two years before kindergarten, particularly ages three and four, are the most crucial in overcoming the academic and social adversity that arises later in life.[232] This idea has been coined "the two-year window."[233] Social scientists have always known of a relationship between the quality of childhood and the ability to contribute to the economy as an adult.[234] The government has attempted to combat these realities with the Head Start Program and investments in elementary school education.[235] However, the phenomenon of the two-year window suggests that the government has been combating the issue from the wrong angle because the first two years of life matter most in a child's development.[236] James Heckman, an award-winning

225. Glynn et al., *supra* note 212.

226. CHILD CARE AWARE OF AM., PARENTS AND THE HIGH COST OF CHILD CARE 33 (2015), http://usa.childcareaware.org/wp-content/uploads/2016/03/Parents-and-the-High-Cost-of-Child-Care-2015-FINAL.pdf [hereinafter COST OF CHILD CARE].

227. *Id.* at 31.

228. PAT SORENSON, MICH. LEAGUE FOR PUB. POLICY, FAILURE TO INVEST IN HIGH-QUALITY CHILD CARE HURTS CHILDREN AND STATE'S ECONOMY 1 (Sept. 2014), http://www.mlpp.org/wp-content/uploads/2014/09/Failure-to-Invest-High-Quality-Child-Care.pdf .

229. *Id.*

230. *See* Cohn, *supra* note 19.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. Cohn, *supra* note 19.

economist, argues: "We can gain money by investing early" in the earliest years of a child's life or "we can continue to drive up deficit spending."[237]

Now, more than ever before, society recognizes the educational and societal impact of quality day care.[238] The public was polled after President Obama announced his plans for a universal childcare program, and 70% of U.S. citizens agreed that this legislation is a necessity.[239] Even 60% of Republicans, despite opposing the President's "socialist agenda," supported the idea of a universal preschool program.[240] The landscape of the nation has changed and evolved past the point where the quality of day care was an issue associated with the lower class.[241] Today, in the minds of U.S. citizens, day care aligns less with images of public housing and more with pension, health care policy, and social security.[242]

3. The Government's View of Day Care Has Changed

The last time national day care legislation was proposed in 1970, the Executive Branch viewed the proposal as detrimental to democracy.[243] Specifically, President Nixon likened the bill to communism and was revolted at the thought of shaking up the U.S. family structure.[244] However, today the push for stronger day care legislation comes directly from the Executive Branch.[245]

The U.S. Department of Health and Human Services (HHS) agreed that a national standard of child care quality is essential for the continued health of the institution and this country[246] and proposed a rule in 2013 that described a system of accountability for federally administered funds to the states.[247] Currently, states receive most of the

237. James Heckman, *Invest in Early Childhood Development: Reduce Deficits, Strengthen the Economy*, HECKMAN EQUATION (Dec. 7, 2012), http://heckmanequation.org/content/resource/invest-early-childhood-development-reduce-deficits-strengthen-economy.

238. Cohn, *supra* note 1.

239. Matthew Lynch, *The Implications of Universal Preschool*, HUFFINGTON POST (Oct. 4, 2013, 11:24 AM), http://www.huffingtonpost.com/matthew-lynch-edd/the-implications-of-unive_b_4044318.html.

240. *Id.*

241. *See* COST OF CHILD CARE, *supra* note 226, at 33.

242. *See* Cohn, *supra* note 1.

243. Kaminer, *supra* note 16, at 525.

244. *Id.*

245. *See* State of the Union 2016, *supra* note 17, State of the Union 2015, *supra* note 17; State of the Union 2014, *supra* note 17; State of the Union 2013, *supra* note 17.

246. Jonathan Cohn, *Obama Takes on the Hell of American Day Care*, NEW REPUBLIC (May 17, 2013), http://www.newrepublic.com/article/113233/child-care-quality-new-standards-obama-administration.

247. Child Care and Development Fund, 45 C.F.R. § 98.1 (2013).

money used to subsidize child care from the Child Care and Development Fund.[248] When the fund was first issued in 1998, it came with very minimal federal requirements.[249] The HHS's new rule conditions receipt of federal funds on complying with stricter national baseline regulations for child care.[250]

HHS now recognizes that starting a change and unifying standards across state lines starts with minimal licensing requirements.[251] Currently, approximately 1.6 million children use subsidies to attend child care centers and the state requirements for those facilities widely vary.[252] The new rule would help over 500,000 centers become compliant with minimum national health and safety standards.[253]

However, due to the scientific research of the two year window discussed *supra*, HHS also realizes that minimum licensing and safety requirements are not enough.[254] The proposed rule also recognizes two separate needs: (1) parents need transparency in choosing child care providers and (2) the administrative burden of receiving child care subsidies forces many parents into unregulated facilities or to leave the work force.[255]

In an effort to combat these separate issues, HHS provides a window to look clearly at all child care providers in a geographic area and assess them based on the quality and qualifications of the caregivers.[256] Additionally, HHS is coordinating with existing state programs to reduce administrative red tape in receipt of child care benefits.[257] Currently, administrative agencies are overrun trying to hand out subsidies to poor families, and, in some jurisdictions (e.g., District of Columbia), parents know that they must stand in line starting at 3:45 AM to assure that they do not get turned away when applying for child care benefits.[258]

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248. Cohn, *supra* note 246.

249. *Id.*

250. *Id.*

251. 45 C.F.R. § 98.1(a)(5).

252. Kelli Kennedy, *Child Care Centers Overhaul Proposed by Federal Health Officials*, HUFFINGTON POST (May 16, 2013, 8:49 AM), http://www.huffingtonpost.com/2013/05/16/child-care-centers_n_3285061.html.

253. *Id.*

254. *See* Gormley, *supra* note 16, at 120.

255. 45 C.F.R. § 98.1.

256. *Id.*

257. *See id.*

258. Brigid Schulte, *Parents Miss Work, Lose Jobs Trying To Get Child-Care Subsidy*, WASH. POST, May 15, 2013, http://www.washingtonpost.com/local/parents-miss-work-lose-jobs-trying-to-get-child-care-subsidy/2013/05/15/3031ac2c-ba59-11e2-b94c-b684dda07add_story_1.html.

Although HHS mainly supports the 1.6 million children living at or below the poverty line, the administrative agency hopes this proposed rule is able to affect all children and provide quality standards for the institutions as a whole.[259] This is the first small step in what is a long journey to creating the universal preschool program that the Obama administration envisioned for the United States.[260]

Making quality and affordable child care available to all families will require much more than proposed regulations.[261] President Obama nodded toward the idea of an universal preschool program in his 2013, 2014, 2015, and 2016 States of the Union addresses.[262] The United States has never before had a universal preschool program because the public opinion and the government's willingness to legislate have never aligned, but, today, the Obama administration welcomes the idea of a universal preschool system that is available to all families, and many municipalities are following this lead.[263] For example, the City of Seattle passed Council Bill 118114 in response to the presidential mandate, which sent the Seattle Preschool Program to the November 2014 ballot for voters to consider.[264] Seattle recognizes that investing in children early on can change the "gloomy reality" of children not being able to thrive in an educational environment.[265] The new bill provided quality and affordable preschool to all three- and four-year-olds.[266]

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259. Cohn, *supra* note 246.

260. *Id.*

261. *Id.*

262. *See* State of the Union 2016, *supra* note 17, State of the Union 2015, *supra* note 17; State of the Union 2014, *supra* note 17; State of the Union 2013, *supra* note 17.

263. Cohen, *supra* note 15; *see* State of the Union 2016, *supra* note 17, State of the Union 2015, *supra* note 17; State of the Union 2014, *supra* note 17; State of the Union 2013, *supra* note 17.

264. *Seattle Preschool Program: Voluntary, High-Quality, Affordable*, SEATTLE.GOV, http://www.seattle.gov/council/issues/preschoolforall/default.html (last visited Feb. 6, 2016) [hereinafter Seattle Preschool Program]. On November 4, 2014, the voters approved the tax levy to provide "accessible high-quality preschool services for Seattle children." CITY OF SEATTLE, DEP'T OF EDUC. & EARLY LEARNING, THE SEATLE PRESCHOOL PROGRAM PLAN 5 (2015), http://clerk.seattle.gov/~CFs/CF_319422.pdf.

265. *Seattle Preschool Program*, *supra* note 264.

266. *Id.* Besides Washington, other states, including California, Georgia, New York, and Oklahoma, are also following the President's lead. *See Long-Term Effects of Oklahoma's Universal PreK Program*, FOUND. FOR CHILD DEV., http://fcd-us.org/whats-new/long-term-effects-oklahomas-universal-prek-program (last visited Jan. 12, 2016); L.A. UNIVERSAL PRESCHOOL, http://laup.net (last visited Jan. 12, 2016); *Universal Prekindergaten*, N.Y. ST. EDUC. DEP'T, http://www.p12.nysed.gov/upk/ (last visited Jan. 12, 2016); *see also* Fawn Johnson, *How Georgia Got Republicans and Democrats To Embrace Universal Pre-K*, NAT'L J. (May 7, 2014), http://www.nationaljournal.com/next-america/early-childhood/how-georgia-got-republicans-and-democrats-to-embrace-universal-pre-k-20140507.

Municipalities following Seattle's lead have started an initiative called "Preschool for All."[267] Preschool for All has been a wave sweeping over the United States for the last half decade, and it recognizes that current day care programs are failing on three fronts because programs are: (1) not available to all families; (2) not affordable for all families; and (3) severely under regulated.[268] The effort put into universal preschool by states, municipalities, and the Executive Branch is a novel consensus that sets the stage for a national universal preschool program.[269] Unlike programs already in place in the United States, it recognizes that the struggle for quality, affordable day care is not confined to low-income families.[270] Ultimately, the federal government views adequate day care legislation as an investment into the U.S. economy and a means to boost graduation rates, reduce teen pregnancy, and even reduce violent crimes.[271] States that are already driving the charge ahead of the federal government are seeing the benefits of those students able to "graduate high school, hold a job, and form more stable families of their own."[272]

4. Precedential Legislation that Promotes Socialist and Communal Care Concepts

The ACA is the largest piece of nonwartime legislation that provides a communal service and not an act of welfare;[273] however, the ACA has been criticized as "income distribution [and] . . . the hallmark of socialism."[274] Ultimately, the ACA taxes affluent U.S. citizens and puts that money into health care subsidies for the poor.[275] In today's growing liberal culture, and certainly in the wake of the depressing status of the U.S. economy, the idea of income distribution does not sound like a harmful idea to the majority of U.S. citizens.[276] Additionally, the ACA destroys the notion that a person's income

267. *Early Learning: America's Middle Class Promise Begins Early*, U.S. DEP'T EDUC., http://www2.ed.gov/about/inits/ed/earlylearning/index.html (last visited Jan. 12, 2016).

268. *Id.*

269. *See* Cohn, *supra* note 1.

270. *Id.*

271. *Id.*

272. State of the Union 2013, *supra* note 17.

273. *See* Paul Gosar, Opinion, *Obamacare: It's Not About Your Health*, CONGRESSMAN PAUL GOSAR (June 5, 2013), http://gosar.house.gov/editorial/obamacare-its-not-about-your-health.

274. Bill O'Reilly, *Obamacare and Socialism*, FOX NEWS (July 23, 2014), http://www.foxnews.com/transcript/2014/07/24/bill-oreilly-obamacare-and-socialism/.

275. *Id.*

276. *Id.*

should determine quality of health care and quality of life.[277] The ACA presses the notion of "equality of consumption."[278] Thus, the passing of the ACA sets the stage for future legislation recognizing, outside of the confines of the welfare state, that in certain service markets, it is harmful to let disposable income determine market participation.

In the extreme, income redistribution can, of course, have dramatic and problematic effects.[279] However, in the right markets, affluent U.S. citizens should not have solitary access to the benefits. Health care is now among the markets that create a level playing field for less affluent families to receive medical care.[280] Day care is also a market in which the amount of money a person has should not predetermine market participation.[281]

The ability to partake in day care services, much like health care, is essentially life altering.[282] The ability to find a quality, affordable day care determines if a mother will collect a paycheck, go back to school, or, perhaps, if she will reproduce at all.[283] Although none of these issues are unalienable rights, day care should not control the ability to enter the workforce.[284] For children, the ability to attend a quality day care center determines future learning capacity and, thus, the ability to produce and make money in society.[285] Therefore, day care needs regulation to increase accessibility because of the substantial impact the institution has on the trajectory of a child's life.[286] To the extent that day care can potentially control the trajectory of a young life suggests that, like health care, it needs more federal and communal involvement to, at a minimum, level the playing field and make the market available to the general public.[287]

Critics of the ACA's socialist ideals argue that "it is too expensive and squelches ambition," but proponents of national day care legisla-

277. Thomas E. Brewton, *Obamacare: Quintessential Socialism*, CONSERVATIVE CRUSADER (Aug. 19, 2009), http://www.conservativecrusader.com/articles/obamacare-quintessential-socialism.

278. *Id.*

279. *See* O'Reilly, *supra* note 274.

280. *See id.*

281. *See* Cohn, *supra* note 1.

282. Gina Petry, *Let's Build a Movement For Quality, Publicly Funded Childcare!*, FREEDOM SOCIALIST (2013), http://socialism.com/drupal-6.8/articles/let's-build-movement-quality-publicly-funded-childcare.

283. *Id.*

284. *See id.*

285. *Id.*

286. *Id.*

287. *Id.*

tion suggest that "money seems to go further [and] [m]aybe a little socialism would give American women a better shot at having it all."[288] Admittedly, while caring for a family is a private responsibility, the life-changing impacts of the day care market suggest that, like the ACA, a little socialism can go a long way.[289]

5. Gender Equality Demands Day Care Legislation

The cost of unaffordable, inaccessible, and expensive day care is the growing disparity between men and women in the workforce.[290] The women's equality movement, ignited in 1960, has, in the minds of many cultural experts, stalled.[291] As other countries saw the women's workforce continue to grow, the United States' leveled off in 1990, of which, one contributing factor was the lack of quality and affordable day care.[292]

The U.S. government must acknowledge the increase of women joining the workforce.[293] Other countries made day care a collective responsibility years ago because child care is the most significant barrier to full equality for women in the workplace.[294] In countries like France, in which day care is a priority, 80% of the women remain in the workforce as opposed to 60% of women in the United States.[295]

There has been an increase of women dropping out of the workforce due, in part, to the high cost of child care.[296] Some women have no choice because the only option, financially, is to stay at home.[297] The majority of single mothers do not even have this option because of the high percentage of single mothers working in shiftwork positions, and the United States lacks a functional child care system to meet their needs.[298] Thus, adequate day care legislation would protect women's ability to remain a vital part of the workforce.[299]

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288. Int'l Herald Trib., *Why Socialist Europe Is Better for Families than America*, N.Y. TIMES: BLOG (Nov. 4, 2012, 8:40 AM), http://rendezvous.blogs.nytimes.com/2012/11/04/why-socialist-europe-is-better-for-families-than-america/?_r=1.

289. *Id.*; Petry, *supra* note 282.

290. Anika Rahman, *Affordable Child Care Necessary to Reviving Gender Equality*, HUFFINGTON POST (Mar. 1, 2013, 5:05 PM), http://www.huffingtonpost.com/anika-rahman/affordable-child-care_b_2783235.html.

291. Stephanie Coontz, Opinion, *Why Gender Equality Stalled*, N.Y. TIMES, Feb. 16, 2013, http://www.nytimes.com/2013/02/17/opinion/sunday/why-gender-equality-stalled.html?_r=0.

292. *Id.*; Rahman, *supra* note 290.

293. Cohn, *supra* note 1.

294. *See id.*; Rahman, *supra* note 290.

295. Cohn, *supra* note 1.

296. Rahman, *supra* note 290.

297. *Id.*

298. *Id.*

299. *Id.*

B. None of the Current Day Care Models Are Adequate for the United States

Because public policy and political agenda are aligned, now is the right time to enact national legislation. Part II of this Comment presented the three most popular models of day care. Although each of these models attempts to tackle the issues of quality, accessibility, and affordability, none of them are a complete as-is solution to the United States' problem. This Section briefly explores the benefits and deficiencies of each of the three models.

The French model is what started the Preschool for All revolution around the world.[300] The benefit of the crèche system is that it is an affordable national system.[301] The government-run system allows for a centralized and regulated standard of care that far surpasses the patchwork system currently in place in the United States.[302] Because of these centralized standards, students are provided with amenities that accentuate the quality of the French model, namely, college educated teachers and onsite health care.[303] The government uses tax dollars to subsidize the cost of child care and sets the remaining fees according to a sliding income scale; thus, French families bear far less out-of-pocket expenses than the average U.S. family.[304] Undoubtedly, the French model is a great example of how a government-run system can actually provide quality and affordable child care; however, critics argue that it is not truly accessible to all families.[305] France does not

300. Frances Wisniewski, *Universal Preschool Around the World*, UNIVERSAL PRESCHOOL, http://www.universalpreschool.com/get-info/preschool-around-the-world.asp (last updated Feb. 8, 2013). The phrase "Preschool for All" was coined by the State of Illinois in an attempt to make quality childcare available to all three- and four-year olds. *See generally* ILL. EARLY LEARNING COUNCIL, PRESCHOOL FOR ALL: HIGH-QUALITY EARLY EDUCATION FOR ALL OF ILLINOIS' CHILDREN (2006), http://www.theounce.org/pubs/PreschoolForAll.pdf (detailing the program).

301. Cohn, *supra* note 1.

302. *Id.*

303. *Id.*; Steven Greenhouse, *If the French Can Do It, Why Can't We*?, N.Y. TIMES, Nov. 14, 1993, http://www.nytimes.com/1993/11/14/magazine/if-the-french-can-do-it-why-can-t-we.html?pagewanted=all&src=pm.

304. Cohn, *supra* note 1; Greenhouse, *supra* note 303.

305. Pascal-Emmanuel Gobry, *4 Myths and One Truth About French Childcare*, FORBES (Apr. 17, 2013, 5:50 AM), http://www.forbes.com/sites/pascalemmanuelgobry/2013/04/17/4-myths-and-one-truth-about-french-childcare/. To see the great disparity between the government-run day care systems of France and the United States, look at the Head Start Program in the United States. *See* Cohn, *supra* note 1. The failures of the Head Start Program promote arguments against the contention that government-run day cares are high-quality. *See* Ham, *supra* note 148. However, France excels because of its centralized system, whereas the Head Start Program is arguably free money thrown to the states without actual standards surrounding the educational environment or teacher education. *See* Cohn, *supra* note 1 ("Comparing the French system with the American system . . . is like comparing a vintage bottle of Chatequ Margaux with a $4 bottle

publish how many families are waitlisted for a spot each year, but, in 2013, a family lobby group estimated that 20% of families will never have access to crèches because the government cannot meet the growing demand.[306] The French model is an improvement in comparison to day care in the United States, but the political and social goal should be preschool for all; however the French model is not accessible to all.[307]

The German model guarantees child care for all children over one-year-old.[308] Unlike the French model, Germany is still attempting to see if it can create enough day care facilities to meet the increase in demand.[309] Perhaps in recognition of France's supply-demand struggle, the German government is quickly building and converting as many day care facilities as possible.[310] The benefit of the German model is that the government provides every family a legal right to child care in recognition of the important economic windfall of protecting the workforce; however, critics argue that a right to child care is much different than a right to quality child care.[311] The German government quickly put together day care facility employees to accommodate the demand for day care facilities, and, as a result, the German model still suffers from infrastructure and personnel issues.[312] Specifically, the Federal Families Ministry commissioned a report, which found that only 3% of the German facilities were of good quality.[313] In Germany, much like the United States, the states determine the education laws, so the lack of quality is partially due to a lack of substantial and centralized regulation.[314] Although the German model affirmatively answers the call for preschool for all, the economic burden heavily outweighs the socioeconomic benefits if day cares are not held to high quality standards.[315]

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of American wine." (alteration in original) (quoting Greenhouse, *supra* note 303)); *supra* notes 146–49 and accompanying text (discussing the problems with the Head Start program).

306. Gobry, *supra* note 305. Additionally, Osez le feminism, a women's rights group agreed with the family lobbyist that, generally, "if you are not somebody's cousin, or affiliated with the right union . . . you [will] have a problem [getting into a crèche]." *Id.* (quoting Julie Sauliner, *La Pénurie des Places en Crèche en 4 Chiffres*, L'EXPRESS (July 25, 2012, 4:11 PM), http://www.lexpress.fr/actualite/societe/la-penurie-des-places-en-creche-en-4-chiffres_1142435.html).

307. Gobry, *supra* note 305.

308. Heine, *supra* note 137.

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. Heine, *supra* note 137.

315. *Id.*

The DoD model far surpasses any of the other models discussed *supra*.[316] Once a failing attempt to ease the worry of military families, the program has now made child care a united commitment and priority.[317] The benefit of the DoD model is affordable, accessible, and high-quality child care.[318] However, the DoD model cannot succeed without accepting the daunting task in front of lawmakers, acknowledging child care as a serious problem and making a commitment to provide training, oversight, and financial resources.[319] The challenge in expanding this model to the nation at large is clear:[320] Although the model works great within the confines of the military, the United States, as a whole, will have a higher demand, an increase in geographical and socioeconomic diversity, and a political culture less keen on federal government intervention.[321] However, the lessons learned from the DoD model set up a great foundation for building national day care legislation.[322]

C. A New Model for a National Day Care Program

The model this country should use for a national day care program is one that builds on the foundational lessons from the DoD model and learns from the failings of the Head Start Program and deficiencies in other day care models.[323] This Section addresses five takeaway lessons to consider when creating a new model of voluntary day care.[324]

1. Lesson 1: The Federal Government Should Regulate Day Care or Delegate the Service to One Approved Executive Agency.

Both the United States and Germany currently use models in which individual states control day care regulation with little to no federal

316. Kozaryn, *supra* note 123.

317. M.-A. Lucas, *The Military Child Care Connection*, FUTURE CHILDREN, Spring/Summer 2001, at 129, 129.

318. *Id.*

319. *Id.* at 132 (citing CAMPBELL ET AL., *supra* note 122).

320. *See* Roger Neugebauer, *The US Military Child Care System: A Model Worth Replicating*, EXCHANGE, Jan./Feb. 2005, at 31 (2005), https://www.childcareexchange.com/library/5016131.pdf.

321. *See generally* LINDA K. SMITH & MOUSUMI SARKAR, NAT'L ASS'N OF CHILD CARE RESOURCE & REFERRAL AGENCIES, MAKING QUALITY CHILD CARE POSSIBLE: LESSONS LEARNED FROM NACCRRA'S MILITARY PARTNERSHIPS (2008), http://mldc.whs.mil/public/docs/report/qol/NACCRRA_Making-Quality-Child-Care-Possible_2008.pdf (discussing how to expand the model in civilian communities).

322. Neugebauer, *supra* note 320, at 31–32.

323. *See* Lynch, *supra* note 239; Neugebauer, *supra* note 320, at 31–32.

324. *See infra* notes 325–53 and accompanying text.

control.[325] Additionally, in both of these models, the quality of care severely suffers.[326] However, in the French and DoD models, centralized government regulation increased the quality of care.[327] Therefore, at the very minimum, the United States needs more federal regulation in the institution of day care to protect the quality of care.[328] This Comment argues that, ideally, but not past the extent constitutionally permissible or publically acceptable, the federal government should leave a minimal amount of regulation to the states.[329]

2. Lesson 2: Establish and Enforce Comprehensive Standards, Which Includes Assisting Providers To Become Accredited

This lesson is comprised of two parts. First, the federal government needs to establish standards.[330] Second, and undoubtedly the harder component, the federal government needs to enforce these standards.[331] One of the failings of the Head Start Program is that even the minimal standards in place at both the federal and state level are hard to enforce due to lack of resources.[332] In contrast, the DoD program has extensive standards that are enforced through quarterly unannounced visits and yearly recertification.[333] Additionally the military enforces these standards through an accreditation program.[334] Currently, the National Association for the Education of Young Children (NAEYC) has accredited 98% of military care centers; however, only 10% of U.S. centers have attained this accreditation.[335] Therefore, the federal government should consider enforcing the NAEYC standards.

As the government begins the task of considering where to begin with standards, it should start with procedures required to become a day care provider.[336] Licensing requirements should include annual visits, more thorough criminal background checks, facility safety standards, and basic health standards.[337] If the government can tackle licensing regulation, the bar for quality centers will already be

325. *See* Gormley, *supra* note 16, at 117; Heine, *supra* note 137.
326. *See* Gormley, *supra* note 16, at 117, 122–23; Heine, *supra* note 137.
327. *See* Cohn, *supra* note 1; Lucas, *supra* note 317, at 129–30.
328. *See* Cohn, *supra* note 1.
329. CCAA, 2013 UPDATE, *supra* note 22, at 18–20.
330. Lucas, *supra* note 317, at 132.
331. *Id.*
332. *See* Mackowiack, *supra* note 22.
333. Lucas, *supra* note 317, at 130, 132.
334. *Id.* at 130–31.
335. *Id.* at 131.
336. *See* CCAA, 2013 UPDATE, *supra* note 22, at 12.
337. *Id.* at 23–57.

improved.[338] Second, the government should map out what a child entering kindergarten should know before graduating preschool to implement academic standards for a National Day Care Program.[339] Finally, the government should look at minimum education for directors as well as lead teachers and develop a continuing training program to ensure directors and teachers remain educated and trained.[340]

3. Lesson 3: Enhance Provider Compensation and Training

Day care providers should earn higher wages than they currently do and should receive continued training.[341] On average, the DoD pays child care providers $0.50 more per hour than non-DoD providers.[342] In contrast, Germany's struggles to find enough qualified employees for a universal preschool program suggest that a venture of this size demands high pay to protect quality and attract enough employees to run a functional institution.[343]

To find a competitive wage rate, the government should require wages to match, at a minimum, the wages of local teachers who possess similar education and time in the field or require wages to match the DoD provider salaries.[344] In respect to training, the government should mandate both initial and annual training.[345] Initial training should take a minimum of forty hours and cover child development, guidance, abuse identification, emergency preparations, licensing guidelines, and learning activities.[346] Annual training should take a minimum of twenty-four hours and cover the same topics as initial training plus the addition of community-based training.[347]

4. Lesson 4: Reference What Families Can Actually Afford in Today's Culture To Define Affordability and Recognize That This Number Will Continually Evolve

Even though the federal government provides subsidies for families 200% above the poverty line, the majority of U.S. citizens still cannot

338. *Id.* at 23.
339. *Id.* at 37.
340. *Id.* at 27–30.
341. Lucas, *supra* note 317, at 132.
342. *Id.*
343. Heine, *supra* note 137.
344. *See* Lucas, *supra* note 317, at 131 (discussing how the DoD broke the link between staff salaries and parent fees).
345. CCAA, 2013 UPDATE, *supra* note 22, at 31–35.
346. *Id.* at 31. However, forty hours is a very modest requirement as compared to manicurists and barbers who the state requires to undergo hundreds of hours of training before practicing. *Id.*
347. *Id.* at 34–35.

afford child care services.[348] If day care is affordable for all families, the government can successfully support the present workforce and invest in the future workforce early.[349] The DoD model maintains 25% lower fees than what the average families pays in the civilian market.[350] Therefore, the federal government should render day care services on a sliding fee scale to help lower the economic burden on families.

5. Lesson 5: Invest Financially Upfront

The new DoD model failed at first because the military was unwilling to invest financially upfront; however, the DoD saw success when they more than tripled the funding devoted to child care.[351] However, the military never sacrificed quality for quantity but was intentional about setting tangible building and financial goals to make their day care program a true success.[352] Therefore, although this Program will cost the United States a lot of money, this investment is worth the benefit to the economy.[353]

IV. IMPACT

Although the ACA, presidential agendas, and the increasingly socialist sentiment in the collective public mind all lay the groundwork for instituting a National Day Care Program in the United States, the impact of this legislation will ripple through all sectors of society.[354] Regardless of the societal and legislative precedent, any regulatory change is about weighing the individual and communal costs and benefits.[355] The current day care model in the United States is out of balance; Congress has overprotected the benefit of private market competition to the benefit of a few and to the detriment of the majority of the national population, women's rights, and childhood educa-

348. CCAA, 2013 UPDATE, *supra* note 22, at 27.

349. *See* Jones, *supra* note 222.

350. Lucas, *supra* note 317, at 132.

351. *Id.*

352. *Id.* at 131.

353. Cohn, *supra* note 1.

354. Alia Wong, *The Case Against Universal Preschool*, ATLANTIC (Nov. 18, 2014), http://www.theatlantic.com/education/archive/2014/11/the-case-against-universal-preschool/382853/.

355. *See* OFFICE OF MGMT. & BUDGET, 2014 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES (2014). In fact, in 2000, Congress enacted the Regulatory Right-to-Know Act, which requires the Office of Management and Budget to submit an annual report regarding the costs and benefits of federal regulation to Congress. Regulatory Right-to-Know Act, Pub. L. No. 106-554, tit. IV, §624, 114 Stat. 2763, 2763A–161 to A–162 (2000) (codified as amended at 31 U.S.C. § 1105 (2012)).

tion.[356] This Part discusses the levels of impact a National Day Care Program will have on: (1) private providers; (2) parent-consumers; (3) the federal government; (4) childhood education; and (5) women's rights.[357]

A. Impact on Private Providers

A National Day Care Program can either have the benefit of increasing consumption overall or the cost of crowding out private consumption.[358] Economic theories suggest that government intervention would result in decreased private consumption as compared to government subsidization alone.[359] This anomaly exists because when the government provides a good, there is most likely additional costs to the consumer above the market price.[360] However, if, as this Comment suggests, the government supports existing public and private facilities and uses Congress's spending power to enforce regulation, increase supply, and keep costs down, then a National Day Care Program could benefit private providers as well.[361]

To implement a National Day Care Program, the federal government would need to increase the supply of providers to meet the increasing demand.[362] An increase in the supply of child care providers could happen in one of two ways: (1) new facilities would be given economic incentive to join the market or (2) with government support, current poor quality centers could become able players in a high-quality child care market and, thus, increase the overall supply.[363] The strength of the first model is clearly a rejuvenated system with facilities that start off in regulatory compliance.[364] However, a key weakness would be that new facilities could crowd out existing facilities that would be forced to close.[365] The second model, or a blend of both, is arguably the most beneficial to existing private facilities be-

356. Kaminer, *supra* note 16, at 508–15 (concluding that the childcare crisis has caused numerous harms to mothers, fathers, children, the economy, society, employers and low-income families).

357. *See infra* notes 358–438 and accompanying text.

358. Daphna Bassok et al., *Does State Preschool Crowd-Out Private Provision? The Impact of Universal Preschool on the Childcare Sector in Oklahoma and Georgia* 29 (Nat'l Bureau of Econ. Research, Working Paper No. 18605, 2012), http://www.nber.org/papers/w18605.pdf.

359. Sam Peltzman, *The Effect of Government Subsidies-in-Kind on Private Expenditures: The Case of Higher Education*, 81 J. POL. ECON. 1, 1 (1973).

360. *Id.* at 6.

361. *See* Bassok et al., *supra* note 358, at 22.

362. *See* Heine, *supra* note 137.

363. Bassok et al., *supra* note 358, at 7 & n.3.

364. *See id.* at 32–33.

365. *Id.* at 30.

cause fewer existing private facilities will need to close.[366] Additionally, an increase in supply will have the necessary impact of increasing competition, which would put the burden of fair dealings on providers.[367]

An increase in supply also means navigating new labor markets. Although the states currently operating with local universal systems attest that wages of employees have neither increased nor decreased, many countries have experienced trouble filling all of the new job positions with qualified applicants.[368] Therefore, both existing and new facilities will have to reexamine their staff and take appropriate precaution through effective talent management and recruitment efforts.[369]

The federal regulations will create high-quality facilities. A high-quality form of child care will potentially increase consumer participation.[370] Families that felt they had no option other than to keep their children at home will now have the option for their child to receive education before kindergarten.[371] Also, high-quality facilities will incentivize a percentage of homeschool-educated children to become new market participants because parents will now have more high-quality choices.[372]

A National Day Care Program will have a heavy impact on the private market; however, the impact will have both positive and negative effects.[373] The increase in market supply will lead to increased competition, some facilities shutting down, and a heightened awareness of the labor market.[374] A National Day Care Program will create high quality centers and, thus, also increase consumer participation.[375] Arguably, high-quality centers could lead to rises in prices and decreases

366. *Id.* at 32–33.

367. *Id.* at 8.

368. *Id.* at 27; Heine, *supra* note 138.

369. *See* Heine, *supra* note 138. Ultimately, what many fear is that, as this Comment argues, the wages of day care center employees will need to be raised, which will be an added cost passed on to the parent-consumers, increasing the unaffordability of childcare. However, note that the DoD model found a way to prevent cost-shifting. Lucas, *supra* note 317, at 131.

370. VANDELL & WOLFE, *supra* note 173, at 91.

371. Cohn, *supra* note 1.

372. *See* Jaimi, *Is Preschool Worth It*, STAY-AT-HOME-MOM SURVIVAL GUIDE: BLOG (AUG. 18, 2013), http://thestay-at-home-momsurvivalguide.com/2013/08/is-preschool-worth-it.html (questioning the benefit of preschool over homeschool).

373. Bassok et al., *supra* note 358, at 18–21.

374. *Id.* at 6–8.

375. Elizabeth U. Cascio & Diane Whitmore Schanzenbach, *The Impacts of Expanding Access to High-Quality Preschool Education*, *in* BROOKINGS PAPERS ON ECONOMIC ACTIVITY 127, 136–37 (2013).

in accessibility.[376] However, Congress can draft legislation that mandates price control, controls cost-shifting, and requires accessibility.

B. Impact on Parent-Consumers

This Comment argues for a National Day Care Program because it is best for the parent-consumer.[377] Although, nothing in this legislation would require any parent to enroll a child in a preschool program, the expectation is that more parents will take advantage of this opportunity.[378] A National Day Care Program will impact individual parent-consumers differently depending on their specific geographic location; however, some costs and benefits will have a nationwide impact.[379]

Initially, every parent-consumer should expect an increase in government "red tape" and also an inability to keep up with the demand.[380] This initial impact should remind consumers of the very beginning stages of health care enrollment during the ACA's "maiden voyage."[381] At the beginning, the government was not prepared to take on the new consumer demand, and, ultimately, the system was shut down for several days.[382] In the case of day care, consumers should not expect quality, affordability, and accessibility to come magically all at once. The government will most likely spend the most time figuring out quality and affordability, which means that accessibility is something that will need to increase over time.[383]

In exchange for their patience, consumers should expect something that is brand new to the U.S. day care system: real options. A family will no longer have to decide between whether to send a child to a facility they cannot afford or a facility without educational substance.[384] With a National Day Care Program in place, parents can consider concerns of substance—drive time, teacher relationships, and teaching methods—to find the center that best fits the needs of their family. Under the current model, families are stuck between two im-

376. Wong, *supra* note 354.

377. Cohn, *supra* note 1.

378. *See* Cohn, *supra* note 16.

379. Bassok et al., *supra* note 358, at 30–33.

380. *E.g.*, Heine, *supra* note 137.

381. David Catron, *HealthCare Dot Commie*, AM. SPECTATOR (Oct. 21, 2013), http://spectator.org/articles/56595/healthcare-dot-commie.

382. Tom Cohen, *Rough Obamacare Rollout: 4 Reasons Why*, CNN: POLITICS, http://www.cnn.com/2013/10/22/politics/obamacare-website-four-reasons/ (last updated Oct. 23, 2013, 9:17 AM).

383. *See* Heine, *supra* note 137; Heine, *supra* note 138. Practically speaking, that may mean waitlists just to participate in private consumption.

384. Sandra L. Hofferth, *Child Care in the United States Today*, FUTURE OF CHILDREN, Summer/Fall 1996, at 41, 41, 59.

possible choices, but under the new model families are placed in the driver's seat and can balance these choices on their own.

When the quality of child care increases, the stigma hanging over a parent's decision to go back to work diminishes.[385] A National Day Care Program will help discredit the mantra that a woman's place is in the home and, thus, society can begin to define women outside of the role they may play at home.[386] Men also suffer from the stigma of day care. For decades, the poor quality of day care has reinforced the belief that women need to stay at home and men need to financially provide for their families.[387] With better quality day care, society can also define men outside of what they do in the workplace.[388]

A National Day Care Program could also impact a parent-consumer's decision of whether to continue having children or, alternatively, a would-be parent's decision to reproduce at all. Child care compromises over $40,000 of the $245,000 it takes to raise a child.[389] The cost of having a child is so high that many adults opt to not have families or, at the very least, families make practical decisions about when to stop procreating.[390] Scholars estimate that if the cost of child care goes down, the government will need a plan for population control.[391] This ultimately means that federal tax dollars would fund another U.S. citizen's decision of whether to have children.[392] Implementing a National Day Care Program will cost a lot of money,

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385. Cohn, *supra* note 1; Bryce Covert, *Infographic: How Universal Preschool Is an Economic Boon to Working Mothers*, NATION (Mar. 6, 2013), http://www.thenation.com/blog/173224/infographic-how-universal-preschool-economic-boon-working-mothers.

386. *See* Covert, *supra*, note 385.

387. *See* Jill Ceder, *Changing the Stigma of Paternity Leave, One Dad at a Time*, ABOUT PARENTING, http://childcare.about.com/od/costofchildcare/fl/Changing-The-Stigma-of-Paternity-Leave-One-Dad-At-A-Time.htm (last updated Feb. 09, 2016) (describing the plight of working fathers); Covert, *supra* note 385 (describing the plight of the working mother).

388. The parents will now become equal partners because if mothers can get back into the workforce, then the mother is not solely responsible for child care and the father is not solely responsible for financially providing.

389. Melanie Hicken, *Average Cost of Raising a Child Hits $245,000*, CNN: MONEY (Aug. 18, 2014), http://money.cnn.com/2014/08/18/pf/child-cost/.

390. *See* Erika L. Sánchez, Opinion, *The Cost of Being a Millennial and a Mother: Young Women Who Want Children Face Too Many Financial Burdens*, ALJAZEERA AM. (May 11, 2014, 1:00 AM), http://america.aljazeera.com/opinions/2014/5/motherhood-millennialyoungwomen childreneconomyjobssecuritydebt.html (discussing the "reproductive quandary").

391. *See, e.g.*, Martin Eckhoff Andresen, Women and Children First: Labor Market Effects of Universal Child Care for Young Children (2013) (unpublished Master thesis, University of Oslo) (manuscript at 1), https://www.duo.uio.no/bitstream/handle/10852/35711/andresen-master.pdf?sequence=1 ("[Interventions like universal child care] are said to affect fertility and combat low fertility . . . high-income countries like Germany have seen universal subsidized child care as a tool for increasing below-reproduction fertility.").

392. Tim Hunt, *Taxpayer-Funded Universal Preschool Is No Panacea*, PLEASANTON WKLY. (Apr. 3, 2014), http://www.pleasantonweekly.com/blogs/p/2014/04/03/taxpayer-funded-universal-

which means that the government will need to divert taxes or even increase federal taxes to support this program because the cost will not be covered "by the increased tax income from the increases in labor supply."[393]

C. Impact on the Federal Government

Implementing a National Day Care Program is expensive.[394] However, CAP has proposed some financial ways to make this legislation a reality.[395] This proposal actually has several components, including financial assistance to help parents pay for infant and toddler care as well as additional investments in the Early Head Start Program.[396] However, the biggest component of the proposal is the state partnership with the federal government, matching states investments dollar-for-dollar up to $10,000 with a goal of subsidizing preschool based on income.[397] The American Progress proposal would increase federal funding approximately $10.5 billion a year.[398] However, proponents of more federal government intervention argue that this cost is an investment in early childhood education that sets up the current work force for success and also paves the way for the future work force.[399]

Additionally, the government will likely receive public backlash from implementing a National Day Care Program.[400] Although society has come a long way and more U.S. citizens support the welfare state and a few socialist concepts now more than ever before, citizens lobbied and protested the last time that the federal government attempted to instate a similar program.[401] Even when the ACA was enacted, there was huge concern from the public over government intrusion into "private family matters."[402] When this National Day Care Program is enacted, the government will likely not see angry letters from parents or galvanized grassroots movements from fundamentalists,[403] but the nation's most conservative citizens will likely strongly

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preschool-is-no-panacea (suggesting the impropriety of people choosing to have children and then expecting other people to pay for it through their taxes).

393. Andresen, *supra* note 391 (manuscript at 3, 42).

394. Wong, *supra* note 354.

395. Peters, *supra* note 154.

396. *Id.*

397. *Id.*

398. Brown et al., *supra* note 156.

399. Cohn, *supra* note 1.

400. *See* Cohen, *supra* note 15.

401. *Id.*

402. Joseph Farah, *Whom Is Obama Kidding?*, WND COMMENTARY (Jan. 28, 2011, 1:00 AM), http://www.wnd.com/2011/01/256305/.

403. Cohen, *supra* note 15.

oppose this legislation. Critics argue that this pushback will hurtfully divide the country across strong party or racial lines;[404] however, if done correctly and following the lessons mentioned in the previous Part, this legislation can bring people together.

Constitutional challenges from local educational boards and state-run agencies will also impact the federal government's efforts in this arena. When the ACA was enacted, the legislation ran into multiple constitutional challenges. For example, in *Nat'l Fed'n of Indep. Bus. v. Sibilius*,[405] the National Federation of Independent Business (NFIB) challenged the ACA as violating Congress's regulatory power under the Spending and the Commerce Clause.[406] The NFIB argued that the individual mandate for consumers to participate in the market place for health insurance was outside of Congress's Commerce Clause power.[407] Additionally, the NFIB argued that the Medicaid expansion provisions were outside of Congress's Spending Clause power.[408] The U.S. Supreme Court agreed with the NFIB on both issues and, for the first time, held that an act of Congress (the Medicaid expansion provision) was coercive on the states but ultimately upheld the individual mandate under Congress's taxation power.[409]

Similar to the ACA, this Comment argues that Congress should enact a National Day Care Program under its Spending Clause power.[410] Congress should condition the receipt of federal funds on meeting certain heightened regulatory criteria.[411] However, unlike the ACA, this legislation should not mandate participation in the day care market, but it should provide economic incentives for doing so.[412]

D. Impact on Childhood Education

Implementing a National Day Care Program will likely put the U.S. education system more on par with many other developing countries

404. *See, e.g.*, *id.*

405. 132 S. Ct. 2566 (2012).

406. *Id.* at 2580, 2585.

407. *Id.* at 2593.

408. *Id.* at 2601.

409. *Id.* at 2608; *id.* at 2609, 2630 (Ginsburg, J., dissenting).

410. *See* South Dakota v. Dole, 483 U.S. 203, 206–07 (1987). In *Dole*, the U.S. Supreme Court held that legitimate use of Congress's spending power must: (1) promote the general welfare; (2) impose an unambiguous condition; (3) relate to a federal interest; (4) not violate an independent clause in the Constitution; and (5) not coerce the states. *Id.* at 207–08. Unlike the original enactment of the ACA, a National Day Care Program would comply with all of these stipulations.

411. 45 C.F.R. § 98.1 (2013).

412. Cohn, *supra* note 16.

in the world.[413] Currently, the United States ranks 26th in the world for the percentage of four-year-olds enrolled in education programs[414] as compared to the nearly 100% enrollment rate present in countries like France, Japan, Mexico, and the United Kingdom.[415]

The impact of a National Day Care Program with regard to childhood education is best conceptualized in two different ways: short- and long-term.[416] The short-term impact on children is having the ability to attend a facility that is both safe and high-quality, which produces both academic and socioemotional readiness.[417] "Robust evidence suggests that a year or two of center-based [education] for three- and four-year-olds, provided in a developmentally appropriate program, will improve children's early language, literacy, and mathematics skills when measured at the end of the program or soon after."[418] Children that attend preschool gain one-third of an academic year of additional learning above what a child without preschool receives.[419] Although less studies have researched the short-term socioacademic impact, a study of the Tulsa programs suggested that "prekindergarten attendees had lower levels of timidity and higher levels of attentiveness, suggesting greater engagement in the classroom," as compared to children who's parents opted out of a preschool education.[420] Unsurprisingly, studies also revealed that children have even more gains with higher-quality preschools or with multiple years of attendance.[421]

The long-term impacts of a federalized universal preschool program are more heavily debated.[422] In states in which the charge for universal education for preschoolers has already begun, the "students grow up more likely to read and do math at grade level, graduate high school, hold a job, and form more stable families of their own."[423] The societal impact is clearly evidenced in years of education com-

413. Juliana Herman et al., *The United States Is Far Behind Other Countries on Pre-K*, CTR. FOR AM. PROGRESS (May 2, 2013), https://www.americanprogress.org/issues/education/report/2013/05/02/62054/the-united-states-is-far-behind-other-countries-on-pre-k/.

414. *Id.*

415. *Id.*

416. HIROKAZU YOSHIKAWA ET AL., SOC'Y FOR RESEARCH IN CHILD DEV., INVESTING IN OUR FUTURE: THE EVIDENCE BASE ON PRESCHOOL EDUCATION 3 (2013), http://fcd-us.org/sites/default/files/Evidence%20Base%20on%20Preschool%20Education%20FINAL.pdf.

417. *Id.* at 3–5.

418. *Id.* at 4.

419. *Id.*

420. *Id.* at 4–5.

421. *Id.* at 5.

422. Wong, *supra* note 354.

423. State of the Union 2013, *supra* note 17.

pleted, earnings, reduced crime and teen pregnancy.[424] However, many researchers point out that overtime, the test score gap, between the two groups of students converges.[425]

E. Impact on Women's Rights

Women have the most to gain from instituting a National Day Care Program.[426] The problems in the U.S. day care system have, to date, been treated as a poverty issue, but these problems affect us all, especially women.[427] This piece of legislation will help equalize the playing field in the workforce.[428]

"Mommy wars" is a phrase describing the tension filled dynamics between stay-at-home and working mothers, with each side believing the other is not doing the best they can for their child.[429] Critics of universal preschool accuse these programs of fueling the mommy wars.[430] Some parents believe that voluntary programs will eventually lead to mandatory programing and force parents to abandon homeschooling in an effort to create uniform cookie-cutter children creations.[431] This Comment in no way advocates for the mandatory programing that many parents fear; however, the role of women in society has changed and the laws should reflect the evolving role of women and families.[432]

Plainly, a National Day Care Program will allow more women to enter the workforce and combat the wage disparity between men and women.[433] Currently the cost of day care or preschool causes many women to do the math and drop out of the workforce.[434] However, studies have found that mothers with stable child care are twice as likely to stay in their jobs as those without child care.[435] The women who choose to leave the workforce often see their wages decrease or

424. YOSHIKAWA ET AL., *supra* note 416, at 9–10.

425. *Id.* at 10.

426. Covert, *supra* note 385.

427. Cohn, *supra* note 1.

428. Covert, *supra* note 385.

429. Cohn, *supra* note 1.

430. *See, e.g.*, Rhonda Robinson, *Universal Preschool Ignites Mommy Wars*, ILL. REV. (MAR. 3, 2006), http://illinoisreview.typepad.com/illinoisreview/2006/03/universal_presc.html.

431. Diane Flynn Keith, *Universal Preschool: A Weapon of Mass Instruction in the War on Toddlers*, HOMESCHOOLING INFO. & RES. (2005), http://homeedmag.com/HEM/226/universalpreschool.php.

432. Covert, *supra* note 385.

433. Rahman, *supra* note 290. "[U]niversal child care is claimed to be an efficient tool for increasing female labor force participation by reconciling work and family responsibilities." Andresen, *supra* note 391 (manuscript at 1).

434. Covert, *supra* note 385.

435. *Id.*

end up returning to work in a lower position.[436] Experts believe that much of the wage disparity is actually due to women who must spend less time in the workforce: the mommy penalty.[437] At a minimum, a National Day Care Program would stop the increasing wage gap and boost women's employment rate up to 10%.[438] The costs and benefits of enacting a National Day Care Program are clear. This piece of legislation will have an impact on private providers, parent-consumers, the federal government, childhood education, and women's rights, and the benefits far outweigh the costs.

V. Conclusion

Here are the facts of living in the United States in 2016: the family structure is changing and more parents are working outside of the home. If the government wants to encourage labor force expansion, support the role of women outside of the home, and increase academic and social success in the education system, then it is time to improve the day care system. The current child care system is built on the notion that only poor families need day care, but, in 2016, the majority of U.S. families are attempting to navigate the child care system. Furthermore, the current system provides a service that is failing in the United States and is far behind other major industrial countries. To solve these problems, the government should provide a National Day Care Program and address the issues of accessibility, affordability, and quality. This type of legislation was vetoed before; however, the wake of the ACA has set the perfect stage for Congress to finally provide a permanent solution to the institution of day care. "[Universal Child care is] not a nice-to-have, it's a must-have. So it's time we stop treating childcare as a side issue, or as a women's issue, and treat it like the national economic priority that it is for all of us."[439]

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436. S.M., *Women in the Workforce: A Taxing Situation*, Economist (Apr. 9, 2013, 6:05 PM), http://www.economist.com/blogs/democracyinamerica/2013/04/women-workforce.

437. Catherine Rampell, *The 'Mommy Penalty,' Around the World*, N.Y. Times: Economix Blog (Dec. 17, 2012, 6:33 PM), http://economix.blogs.nytimes.com/2012/12/17/the-mommy-penalty-around-the-world/.

438. *See* Covert, *supra* note 385; Rampell, *supra* note 437.

439. State of the Union 2016, *supra* note 17, at 3.

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