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# FEWER OF WHOM? CLIMATE-BASED POPULATION POLICIES INFRINGE MARGINALIZED PEOPLE'S REPRODUCTIVE AUTONOMY

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**Abstract.** Changes to the earth's climate will create the most severe ecological, economic, and health crisis in modern history. Responding to evidence linking population growth to increased greenhouse gas emissions, some climate scientists have proposed policies to help reduce individuals' and populations' reproduction. This paper urges caution against such policies particularly within the United States. It discusses evidence that reproduction by marginalized communities is far less responsible for emissions and ecological changes than the growth and actions of wealthier communities and corporations. It then shows how, nonetheless, climate reproduction policies could significantly and disproportionately harm marginalized people's autonomy. First, it illustrates how some modern-day proposals derive from eugenics, overtly blaming marginalized individuals for environmental ills and arguing the accordant need to curb their reproduction. It then illustrates how, even those policies that attempt in good faith to reduce population growth – particularly through expanding voluntary access to reproductive health care for the sake of the climate – could be dangerous to marginalized people's reproductive autonomy if they do not account for the broader conditions that impair people's autonomous choice to limit their reproduction. This paper does not suggest actions should not be taken in furtherance of climate protection. Instead, it urges multifaceted approaches to the climate crisis that center marginalized communities and address the systemic challenges and needs within these communities.

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## INTRODUCTION

Changes to the earth's climate will create the most severe ecological, economic, and health crisis in modern history. These changes are well underway: atmospheric greenhouse gases and global surface temperatures continue to increase, the latter warming about a degree Celsius since pre-industrial times.[1] The globe's temperature is higher over the oceans and two to three times higher in the Arctic, melting the globe's ice and raising ocean levels, temperatures, and acidity.[2] Global climate changes have already caused and exacerbated temperature, precipitation, and other weather extremes, as well as species loss, toxic environmental conditions, food and water insecurity, and—particularly topically—infectious diseases.[3] As will be discussed *infra*, these conditions disproportionately danger and burden individuals and communities historically and presently marginalized by the United States' legal, economic, and social structures, especially low-income Black, Indigenous, and other communities of color.[4]

Climate scientists have proposed various individual practices and policy measures to decelerate and avoid the worst of these climate changes. In response to evidence that links population growth to increased energy use and emissions, these include proposals for policies that help reduce individuals' and populations' reproduction.[5]

This paper urges caution against enacting reproductive policies with the purpose to reduce population size, finding that reproductive policies that both target marginalized communities and that facilitate voluntary reproductive health care will significantly harm marginalized people when they are enacted as a means to address societal climate concerns rather than to center marginalized communities and their reproductive needs. [6] To be sure, this argument does not broadly reject—and indeed

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1 INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Summary for Policymakers*, *in* GLOBAL WARMING OF 1.5 DEGREES CELSIUS 4 (Valérie Masson-Delmotte, Panmao Zhai, Hans-Otto Pörtner, Debra C. Roberts, James Skea, Priyadarshi R. Shukla, Anna Pirani, Wilfran Moufouma-Okia, Clotilde Péan, Roz Pidcock, Sarah Connors, J.B. Robins Matthews, Yang Chen, Xiao Zhou, Melissa Gomis, Elisabeth Lonnoy, Tom Maycock, Melinda Tignor, & Tim Waterfield eds., 2018), https://www.ipcc.ch/sr15/chapter/spm/ [https://perma.cc/KA5V-M38Q] [hereinafter *IPCC Global Warming Report*]. *See generally* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS (Valérie Masson-Delmotte, Panmao Zhai, Anna Pirani, Sarah Connors, Clotilde Péan, Sophie Berger, Nada Caud, Yang Chen, Leah Goldfarb, Melissa Gomis, Mengtian Huang, Katherine Leitzell, Elisabeth Lonnoy, J.B. Robins Matthews, Tom Maycock, Tim Waterfield, Özge Yelekçi, Rong Yu, & Baiquan Zhou eds., 2021), https://www.ipcc.ch/report/ar6/wg1/#FullReport [https://perma.cc/TV8V-K5UV] [hereinafter IPCC FULL REPORT].

2 *See, e.g.*, IPCC FULL REPORT, *supra* note 1, at SPM-5, SPM-29; William J. Ripple, Christopher Wolf, Thomas M Newsome, Phoebe Barnard, William R Moomaw, & 11,258 Scientist Signatories from 153 Countries, *World Scientists' Warning of a Climate Emergency*, 70 BIOSCIENCE 8, 8 (2020).

3 *See also* J.A. Patz et al., *Climate Change and Infectious Diseases*, *in* CLIMATE CHANGE AND HUMAN HEALTH, 103-105 (A.J. McMichael et al. eds., 2003). *See generally IPCC Global Warming Report*, *supra* note 1, at 7-11;

4 *See* IPCC FULL REPORT, *supra* note 1, at 445, 447, 451-453.

5 *See infra* Section II.

6 As is custom in reproductive justice writing, I will primarily use non-gendered language, to reflect (1) that not everyone who can get pregnant and parent children is a woman, (2) that reproductive oppression is not about anatomy, but about exercising power over vulnerable people, and (3) that reproductive decisions are about lived experiences, rather than anatomy. However, because contraception, abortion, and other reproductive policies have had a historically disparate impact on non-males, I may choose to use female pronouns and language at particular instances. *See* LORETTA J. ROSS & RICKIE SOLINGER, REPRODUCTIVE

embraces—policy changes and individual actions to reduce human impacts on the climate. Consistently, this is not an argument against individuals choosing not to reproduce for whatever reason, including environmental purposes. (Indeed, multiple popular press articles have highlighted people choosing not to have children for environmental reasons.[7])

Moreover, this is certainly not an argument against policies that *center* reproductive autonomy and power, such as changes to state and federal laws that enable access to contraceptives, abortion, health insurance, labor leave, and education as a means of increasing people's personal, bodily, and economic autonomy. As this paper will argue, these kinds of policies and conditions are essential to both reproductive and environmental justice and are presently sparse in United States law and society.

This paper rejects a far more narrow, but nonetheless prevalent, set of proposals: those that seek either to control or influence marginalized people's reproductive choices *as a means* of reducing the population size. Due to the capitalistic drivers of climate change and the dearth of systemic supports for reproductive choice in the United States, any proposals that aim to address climate change through individuals' reproductive choices are misguided and dangerously threaten people's reproductive power.

Lastly, this paper focuses only on the impact of climate-based reproductive policies on communities within the United States. Global population control programs, including those created for environmental purposes, have been widely discussed from international law, medical ethics, and global health lenses.[8] This paper instead chronicles for the first time for a legal audience how proposals for climate-based reproductive policies may disparately and severely harm marginalized communities in the United States.

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JUSTICE: AN INTRODUCTION 6-8 (2017).

[7] *See* Marianna Keen, *I'm Choosing Not to Have Kids Because I Care About The Environment*, HUFFINGTON POST (Dec. 13, 2019, 9:00 AM), https://www.huffpost.com/entry/not-having-kids-for-environmental-reasons_n_5defdbcfe4b0a59848d160bc [https://perma.cc/A8NE-FY4A]; Robin Young, *Meet Allie, One of the Growing Number of People Not Having Kids Because of Climate Change*, WBUR (Sept. 16, 2019), https://www.wbur.org/hereandnow/2019/09/16/not-having-children-climate-change [https://perma.cc/6VWH-TXYK]; Ash Sanders, *I Chose Not to Have Kids Because I'm Afraid for the Planet*, BUZZFEED (July 24, 2019, 1:29 PM), https://www.buzzfeednews.com/article/ashsanders/birth-strike-no-kids-climate-change-population [https://perma.cc/LPW8-Y5SD]; Alexis Papazoglou, *Is It Cruel to Have Kids in the Era of Climate Change?*, NEW REPUBLIC (Feb. 25, 2019), https://newrepublic.com/article/153149/cruel-kids-era-climate-change [https://perma.cc/4SZ8-SSJV]; Madison Feller, *5 Women on Deciding Not to Have Children Because of Climate Change*, ELLE (Oct 19, 2018), https://www.elle.com/life-love/sex-relationships/a23837085/women-not-having-children-climate-change/ [https://perma.cc/ULC6-EVFX]; Amy Fleming, *Would you give up having children to save the planet? Meet the couples who have*, GUARDIAN (Jun. 20 2018, 1:00 PM), https://www.theguardian.com/world/2018/jun/20/give-up-having-children-couples-save-planet-climate-crisis [https://perma.cc/XJY3-TQMG]; Kayleen Devlin, *"I'm not having children because I want to save the planet*," BBC NEWS (Apr. 11, 2018), https://www.bbc.com/news/av/stories-43699464/i-m-not-having-children-because-i-want-to-save-the-planet [https://perma.cc/9TS3-NAVQ]; Maggie Astor, *No Children Because of Climate Change? Some People Are Considering It*, N.Y. TIMES (Feb. 5 2018), https://www.nytimes.com/2018/02/05/climate/climate-change-children.html [https://perma.cc/Q4EJ-QS63]; Erica Gies, *Having kids is terrible for the environment, so I'm not having any*, WASH. POST. (July 14, 2015), https://www.washingtonpost.com/posteverything/wp/2015/07/14/having-kids-is-terrible-for-the-environment-so-im-not-having-any/ [https://perma.cc/C8HJ-W8MP].

[8] *See generally, e.g.,* JACQUELINE KASUN, THE WAR AGAINST POPULATION: THE ECONOMICS AND IDEOLOGY OF WORLD POPULATION CONTROL (2d. ed. 1999); BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL (2d. ed. 1995); Rosalind Pollack Petchesky, *From Population Control to Reproductive Rights: Feminist Fault Lines*, 3 REPRODUCTIVE HEALTH MATTERS 152 (1995); Sandra D. Lane, *From Population Control to Reproductive Health: An Emerging Policy Agenda*, 39 SOC. SCI. & MED. 1303 (1994). As will be discussed, both international and United States' population control are rooted in racist, classist, and sexist ideas about the negative impacts of marginalized people's reproduction on society.

Section I outlines existing science connecting population growth to climate harms and distinguishes the significant population impact of wealthy communities in the United States from that of marginalized communities. Section II describes proposals for reproductive policies to contribute to climate control efforts. While some of these proposals adequately distinguish between the effects of wealthy and marginalized communities' reproduction on the climate, their conclusions and the science on which they are based do not attend to the distinct reproductive experiences of and possible harms to marginalized communities within the United States.

Section III illustrates how laws, policies, and practices have long infringed on marginalized people's reproductive autonomy. These include actions to deliberately control marginalized people's reproduction, purporting their necessity to cure social ills for which marginalized people's reproduction were allegedly responsible (Section III.A). However, they also include policies billed as voluntary opportunities to access reproductive health care that were provided without attention to or distinctly conditioned upon limitations to the financial, legal, and social conditions necessary for reproductive autonomy (Section III.B).

Finally, Section IV reveals how climate-based reproductive policies raise both of these concerns. First, some climate policies adopt similar utilitarian justifications as historical reproductive control policies, namely, that marginalized people's reproduction is responsible for climate harms and that curbing their reproduction is therefore necessary for society-wide climate solutions and their own wellbeing (Section IV.A). And, climate overpopulation policies that expand *voluntary* contraception (or abortion) to marginalized communities will also infringe upon the reproductive autonomy of people who currently lack conditions to choose from the full spectrum of reproductive choices (Section IV.B).

## I. THE INTERPLAYS OF REPRODUCTION, ECONOMIC CONDITIONS, AND THE CLIMATE

Climate scientists have identified the human behaviors most harmful to the climate.[9] These include rises in (1) the number of people in the world,[10] (2) the economic output per person (measured in world gross domestic product)[11], (3) the energy used to generate each unit of economic output (GDP),[12] and (4) the greenhouse gases and $CO_2$ emitted and fossil fuels consumed for each unit of energy used.[13] Multiple studies have connected these factors, concluding that the growing population can be attributed to rising energy use, travel, food consumption, and urbanization eliminating natural resources.[14]

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9 *See IPCC Global Warming Report*, *supra* note 1, at 4; Ripple, *supra* note 2, at 8-10.

10 While absolute population is rising, the rate of fertility is now decreasing. *Id.* at 9 fig.1.

11 *Id.*

12 This is measured in rates of oil, coal, gas, and solar/wind energy use, the rest of which are growing at higher rates than solar and wind energy. *Id.* Secondary effects of the rising GDP are also increasing, including the population of livestock and production per capita of meat, the amount of air transport, and amount of global tree cover loss. *Id.*

13 *Id.*

14 *Id.* at 9-11; Aalok Ranjan Chaurasia, *Population effects of increase in world energy use and CO2 emissions*: *1990–2019,* 5 J. POP. SUSTAINABILITY 102 (2019); Seth Wynes & Kimberly A. Nicholas, *The climate mitigation gap: education and government recommendations miss the most effective individual actions*, 12 ENVIRON. RES. LET. 3 (2017); Paul A. Murtaugh & Michael G. Schlax, *Reproduction and carbon legacies of individuals*, 19 GLOBAL ENVIRON. CHANGE 14-15 (2009).

These studies conclude that reducing global reproduction would mitigate these climate-changing conditions and amplify the effectiveness of technological solutions and personal lifestyle changes.[15] A 2008 study by statistician Paul Murtaugh and climate scientist Michael Schlax analyzed the impact of individuals' reproduction on carbon emissions, finding that "the potential savings [in carbon emissions] from reduced reproduction are huge compared to the savings that can be achieved by changes in lifestyle."[16] In most part, this is due to the emissions created not just by an individual, but by the multiple generations of an individuals' descendants—the paper concludes that

> a woman in the United States who adopted . . . six non-reproductive changes [including reduced car travel, use of energy-efficient windows, lights, and refrigerators, and recycling] would save about 486 tons of $CO_2$ emissions during her lifetime, but, if she were to have two children, this would eventually add nearly 40 times that amount of $CO_2$ (18,882 [tons]) to the earth's atmosphere.[17]

More recent articles echoed this conclusion: a 2017 study by sustainability and geography scholars reported "having one fewer child" as one of four most impactful individual actions (alongside living without a car, reducing air travel, and eating plant-based diets) to reduce emissions[18] and a 2020 review by a statistician and population scientist found a substantial impact of population growth on the increase of energy use and $CO_2$ emissions.[19] These findings are now rooted in public opinion: one 2020 United States survey found seventy-one percent of respondents believe human population growth is worsening climate change, sixty-nine percent of respondents believe society has a moral responsibility to slow human population growth if it is making wildlife extinctions worse, eighty percent agree that all birth control should be legal, free, and easily accessible, and sixty-eight percent agree that marginalized communities currently lack access to health care.[20]

However, not all populations' growth contributes equally to economic, energy, and emissions outputs. As a declaration of over 11,000 climate scientists concluded in January 2020 (hereinafter "Climate Declaration"), it is the growth of wealthy communities and the "excessive consumption of the wealthy lifestyle" that are responsible for the most concerning energy outputs, agricultural land impacts, and emissions.[21] Indeed, one study found that 50% of global emissions attributed to individual consumption can be attributed to the richest 10% of people around the world, while the poorest 50% of the global population are responsible for around 10% of these emissions.[22] Multinational

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15 Murtaugh & Schlax, *supra* note 14, at 18; Wynes & Nicholas, *supra* note 14, at 3; Chaurasia, *supra* note 14, at 103.

16 Murtaugh & Schlax, *supra* note 14, at 18.

17 *Id.*

18 Wynes & Nicholas, *supra* note 14, at 3.

19 Chaurasia, *supra* note 14, at 102.

20 KELLEY DENNINGS, CTR. FOR BIOLOGICAL DIVERSITY, CONTRACEPTION AND CONSUMPTION IN THE AGE OF EXTINCTION: U.S. SURVEY RESULTS, 3-4 (2020), https://www.biologicaldiversity.org/programs/population_and_sustainability/pdfs/Contraception-and-Consumption-in-the-Age-of-Extinction-U.S.-Survey-Results-Report.pdf [https://perma.cc/Y9J2-WYUU].

21 Ripple, *supra* note 2, at 8. ("The most affluent countries are mainly responsible for the historical GHG emissions and generally have the greatest per capita emissions. . . .")

22 OXFAM, EXTREME CARBON INEQUALITY: WHY THE PARIS CLIMATE DEAL MUST PUT THE POOREST, LOWEST EMITTING AND MOST VULNERABLE PEOPLE FIRST 1 (2015), https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-

corporations also significantly impact climate change: another study found the top 20 fossil fuel corporations have contributed to 35% of all energy-related $CO_2$ and methane emissions worldwide.[23]

And, these same capitalistic ventures and resulting economic inequality make marginalized people—those least responsible for climate changes—most vulnerable to climate changes' effects. Due to systemic racism in housing and social policies as well as capitalistic inequities in pay and social supports, people of color are more likely than white people to live in neighborhoods with crowded housing and poor access to clean air and water.[24] Furthermore, urbanization and industrialization have deforested, overfished, mined, appropriated, and polluted the waters of Indigenous peoples.[25] Climate change only makes these conditions more dangerous. An estimated seventy percent of the United States' contaminated waste sites—from which toxic exposure is likely and made only more dangerous after climate change-fueled extreme weather—are located near low-income housing.[26] Two million people, most of whom are low-income and communities of color, live within a mile of one of the 327 Superfund sites (polluted locations requiring long-term cleanup of hazardous contaminations) at risk of climate change-related flooding.[27] 1.5 million people of color live in areas that are especially vulnerable to coal ash pollution and contamination, exposing them to carcinogens like mercury, lead, and arsenic.[28] Marginalized people are also those most harmed in acute instances of extreme weather: marginalized communities are less able to evacuate to safety in storms, more likely to live in homes that are less resilient and more prone to damage, and have fewer resources—including receiving less attention and federal aid than wealthier and white communities—to rebuild their homes.[29]

These conditions on their own harm marginalized people's reproductive autonomy. Toxic chemical exposure during pregnancy has been shown to epigenetically impair fetal development, increase the risks for children of premature birth, neurodevelopmental disorders, and cancer, and permanently impact individuals' reproductive functions and capabilities.[30] Further, poor access to clean

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public/file_attachments/mb-extreme-carbon-inequality-021215-en.pdf [https://perma.cc/QAE3-57GP].

23 Matthew Taylor & Jonathan Watts, *Revealed: the 20 firms behind a third of all carbon emissions*, GUARDIAN (Oct. 9, 2019. 7:00 PM), https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions [https://perma.cc/PY89-M7J6].

24 *See* David E. Jacobs, *Environmental Health Disparities in Housing*, 101 AMERICAN JOURNAL OF PUBLIC HEALTH S115, S118 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222490/ [https://perma.cc/54D9-GPVU]; IN OUR OWN VOICE ET AL., CLEAN WATER AND REPRODUCTIVE JUSTICE: LACK OF ACCESS HARMS WOMEN OF COLOR 1 (2020), https://www.nationalpartnership.org/our-work/repro/clean-water-and-reproductive-justice.html [https://perma.cc/RLA8-7TNW].

25 *See* Joan Martínez-Alier, *Environmental Justice and Economic Degrowth: An Alliance between Two Movements*, 23 CAPITALISM NATURE SOCIALISM 51, 57 (2012).

26 Megan Mayhew Bergman, *'They chose us because we were rural and poor': when environmental racism and climate change collide*, GUARDIAN (Mar. 8, 2019) available at: https://www.theguardian.com/environment/2019/mar/08/climate-changed-racism-environment-south [https://perma.cc/ZB9T-SSFD].

27 *Id.*

28 *Id.*

29 Maggie Astor, *Environmental Justice Was a Climate Forum Theme. Here's Why.* N.Y. TIMES. (Sept. 5, 2019), https://www.nytimes.com/2019/09/05/us/politics/environmental-justice-climate-town-hall.html [https://perma.cc/V2G2-MYUX].

30 IN OUR OWN VOICE, *supra* note 24, at 1,3; Deborah Benett et al., *Project TENDR: Targeting Environmental Neuro-Developmental Risks. The TENDR Consensus Statement*, 124 ENV'T HEALTH PERSPS. A118, A118 (2016); Rachel Morello-Frosch et

air, water, and housing impact individuals' health and safety, thus impacting individuals' reproductive health and autonomy.

## II. PROPOSALS TO ADDRESS CLIMATE HARMS THROUGH REPRODUCTIVE POLICIES

Despite different communities' disparate contributions to climate change, thousands of climate scientists have proposed enacting all-inclusive polices to reduce the world's population. Instead of focusing climate efforts on the problems created by corporate and individual wealth, described above, policy suggestions call for making "family planning" (primarily contraception) services available to all countries and communities, particularly those for whom such services are not currently accessible.[31]

In January 2020, the Climate Declaration of over 11,000 climate scientists called for policies to reduce population growth.[32] The Climate Declaration states:

> Economic and population growth are among the most important drivers of increases in $CO_2$ emissions from fossil fuel combustion. . . . therefore, we need bold and drastic transformations regarding economic and population policies. . . . [T]he world population must be stabilized–and, ideally, gradually reduced—within a framework that ensures social integrity. There are proven and effective policies that strengthen human rights while lowering fertility rates and lessening the impacts of population growth on [greenhouse gas] emissions and biodiversity loss. These policies make family-planning services available to all people, remove barriers to their access and achieve full gender equity, including primary and secondary education as a global norm for all, especially girls and young women.[33]

Other proposals for population-based climate solutions have recognized the historical and potential harms posed by advocating contraception access in developing countries, and therefore state that such policies must be passed amidst conditions enabling gender equity and well-being.[34] Other population-based climate proposals distinctly repudiate the concern for human rights. Aalok

al., *Environmental Chemicals in an Urban Population of Pregnant Women and Their Newborns from San Francisco,* 50 ENV'T. SCI. & TECH. 12464, 12464 (2016); Nelly D. Saenen et al., *In Utero Fine Particle Air Pollution and Placental Expression of Genes in the Brain-Derived Neurotrophic Factor Signaling Pathway: An ENVIRONAGE Birth Cohort Study*, 123 ENV'T HEALTH PERSPS. 834, 834-35 (2015); The American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women et al., *Exposure to Toxic Environmental Agents*, 100 FERTILITY & STERILITY 931, 931-32 (2013).

31 *See* Ripple, *supra* note 2, at 11; *see also* DENNINGS, *supra* note 20, at 3 (finding 80% of people surveyed agreed birth control should be made legal, free, and easily accessible).

32 *See generally* Ripple, *supra* note 2, at 8-11.

33 *Id.* at 10-11.

34 *See* PROJECT DRAWDOWN, https://drawdown.org/solutions/health-and-education [https://perma.cc/M3FG-8A8S] (last visited Oct. 17, 2021) ("Addressing population—how many feet are leaving their tracks—remains controversial despite widespread agreement that greater numbers place more strain on the planet. Honoring the dignity of women and children through family planning is not about governments forcing the birth rate down (or up, through natalist policies). Nor is it about those in rich countries, where emissions are highest, telling people elsewhere to stop having children. When family planning focuses on healthcare provision and meeting women's expressed needs, empowerment, equality, and well-being are the result; the benefits to the planet are side effects.")

Chaurasia's 2019 review of population growth and $CO_2$ emissions (discussed *supra*) argued the need for the United Nations to integrate population reduction efforts amongst their Sustainable Development Agenda for environmental sustainability.[35] In this article, Chaurasia laments that a low or zero population growth, while appropriate environmentally, would presently be "strategically" inviable amidst a United Nations Sustainable Development Agenda that also seeks economic growth and social inclusion.[36]

Even policy proposals attending to human rights focus on the potential implications of family planning *internationally*, and thus primarily maintain that population reduction through family planning can be just if women and girls have access to health care, education, and other conditions thought to enable gender equity. Policy proposals like the Climate Declaration—and the analyses on which they rest—do not distinguish between the circumstances of different individuals in the United States nor the myriad conditions that diminish reproductive justice in this country. For instance, the study by Murtaugh and Schlax (discussed *supra*), distinguished the climate impacts of individuals' reproduction between countries (comparing the impact of individuals' reproduction on the planet between the United States and China) but did not interrogate whether a difference exists in the climate impacts of reproduction by individuals of different races or socioeconomic statuses in the United States.[37] Further, the study and others like it focus on individual choices to reproduce, rather than considering reproductive justice—how structural inequities constrain marginalized people's reproductive decisions and power.

Given the impacts of capitalism and wealth on the climate described above, these studies—on which reproduction-based climate policy proposals rely[38]—altogether overemphasize the role of individual women and marginalized people's actions in the climate crisis. Climate policies must focus on systemic causes of climate change, rather than individual actions. This conclusion goes beyond the scope of this paper. As the rest of this paper will show, climate solutions that specifically atomize responsibility for climate change into individual reproductive choices—either by attributing undue blame onto marginalized populations' reproduction or by incentivizing reproductive access while overlooking conditions disabling reproductive choice—will dangerously infringe upon marginalized people's reproductive autonomy in the United States.

## III. POPULATION REDUCTION POLICIES INFRINGE ON THE REPRODUCTIVE AUTONOMY OF MARGINALIZED GROUPS

The United States has an extensive history of controlling marginalized people's reproduction and bodily autonomy. As Section A will outline, some of this control has been explicit; from the founding of America through the present, people in power have forcibly controlled enslaved and marginalized people's reproduction for the benefit of societal needs (as defined by those in power).

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35 Chaurasia, *supra* note 14, at 102-103.

36 *Id.* at 103.

37 *See* Murtaugh & Schlax, *supra* note 14, at 18 (distinguishing population impacts between countries (United States and China) but not between intra-country communities).

38 A 2018 study by John Bongaarts and Brian C. O'Neill noted that "population growth in developing countries poses challenges for climate and development." *Global warming policy: Is population left out in the cold?* 361 SCI. 650, 652 (2018). This study was cited in the Climate Declaration. *See* Ripple, *supra* note 2, at 10-11'.

However, some of this control was and continues to be through "non-coercive" policies increasing access to contraception and financially incentivizing people to have fewer children. Section B will show how "voluntary" incentives to access contraception and curb families' reproduction are as controlling when they are provided amidst a dearth of other conditions limiting access to reproductive and economic autonomy. And, they are especially coercive when those conditions to access autonomy—such as direct financial assistance—are conditioned upon individuals limiting their reproduction.

*A. Policies to control and reduce marginalized people's reproduction have long been justified by societal "needs"*

Reproductive policies and practices have long aimed to control marginalized people's reproduction, explaining the need to do so on the basis of societal conditions for which marginalized people were allegedly responsible. Throughout the history of the United States, explicit laws, policies, and practices promoted population control of marginalized people to serve "society-wide" needs and overtly benefit people holding power, including racist concerns about retaining pure genetic bloodlines, constraining public resources, and bolstering the capitalistic economy.

This section will show how policies and practices controlling marginalized people's reproduction for societal "needs" – including enslavers' wholescale control of enslaved people's reproduction, eugenic sterilization procedures, and facially or as applied mandates for birth control use – infringe upon marginalized people's reproductive autonomy.

1. Enslavers controlled enslaved people's reproduction for economic and personal power

America's legacy of population control is rooted in laws and practices intended to further diminish enslaved people's autonomy and allow white people to amass wealth from enslaved Black people's labor. Enslavers used "carrot and stick" approaches to increase enslaved people's reproduction: enslavers rewarded enslaved women for becoming pregnant with relief from field work, clothing, and food, and inflicted physical and psychological torture on enslaved women who did not get pregnant, at times even killing them.[39] And enslavers directly manipulated enslaved people's relationships to ensure particular reproductive outcomes—some enslavers forced enslaved people to marry and reproduce to selectively "slave-breed."[40] Lastly, enslavers regularly raped enslaved women;[41] these assaults were only more violent given state laws that established that children born to enslaved women and white men were the enslaved property of the enslaver.[42]

Because of the reproductive control enabled by these state laws and common enslaver practices, Professor Dorothy Roberts writes, "Black procreation helped to sustain slavery, giving slave masters an economic incentive to govern Black women's reproductive lives."[43] This economic incentive was particularly potent following the abolition of the international slave trade, at which point enslavers' control of enslaved women's reproduction became integral to sustaining the emerging American

39 DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 25-26 (2d ed. 2016).

40 *Id.* at 27-28.

41 *Id.* at 29.

42 Jennifer L. Morgan, *Partus sequitur ventrem: Law, Race, and Reproduction in Colonial Slavery*, 22 SMALL AXE 1, 1 (2018). State rape laws also—expressly and as applied—excluded Black women from protection. ROBERTS, *supra* note 39, at 31.

43 ROBERTS, *supra* note 39, at 22.

capitalist markets.[44] Through such control, abundant slave labor secured wealth for the new nation and its white colonists and their descendants, while Black people were excluded from participating in the very wealth and systems they were building.[45]

2. Eugenicists both sterilized and marketed contraception specifically to marginalized populations to remedy the social ills these populations purportedly caused

Following the abolition of slavery, white scientists and political leaders shifted their means of controlling Black and other marginalized people's reproduction. States passed eugenic sterilization laws to "purify" American society and "remedy" its social problems.[46] Many states adopted Harry Hamilton Laughlin's[47] model sterilization law, which authorized sterilizations without consent of people of color, immigrants, people with disabilities, and poor people under the scientific and political belief that these groups presented an "economic and moral burden on the [rest of the population] and a constant source of danger to the national and racial life."[48] It demands noting that eugenic sterilization was not

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[44] *Id.* at 24. American markets in both northern and southern states were built on enslaved people's cultivation of cotton, sugar, and rice. The end of the international slave trade, patenting of the cotton gin, and the Louisiana Purchase caused shortages of enslaved labor on which emerging American markets fundamentally relied. Mary Elliott & Jazmine Hughes, *Four Hundred Years After Enslaved Africans Were First Brought to Virginia, Most Americans Still Don't Know the Full Story of Slavery*, N.Y. TIMES MAG. (Aug. 19, 2019), https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html [https://perma.cc/VD5U-W3LL] ("The sale of enslaved people and the products of their labor secured the nation's position as a global economic and political powerhouse. . . . Slavery affected everyone, from textile workers, bankers and ship builders in the North; to the elite planter class, working-class slave catchers and slave dealers in the South; to the yeoman farmers and poor white people who could not compete against free labor.").

[45] Elliott and Hughes, *supra* note 44. The same Virginia law, discussed *supra*, forbade free Black people from bequeathing wealth to their children, while statutes and case law granted enslavers rights to bequeath wealth in the form of enslaved people, their children, and future children—even those in utero or not even yet conceived—to their surviving relatives. *Id. See also* Bahati Kuumba, *Population Policy in the Era of Globalisation: A Case of Reproductive Imperialism*, 48 AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY 22 (2001) (defining reproductive imperialism as the foreign domination that manipulates population processes coercively in the interests of maintaining racial domination, capitalist labor interests, and male dominance); Matthew Desmond, *In Order to Understand the Brutality of American Capitalism, You Have to Start on the Plantation*, N.Y. TIMES MAG. (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html [https://perma.cc/SZ5A-J3ZX] (describing the rise in wealth of the "Southern white elites" on the backs of enslaved labor as the genesis of a new capitalist economy).

[46] *See, e.g.* ROBERTS, *supra* note 39 at 24; Kuumba, *supra* note 45 at 23.

[47] Laughlin was the superintendent (assistant director) of the Eugenics Record Office, a prominent eugenics and hereditary research institute that later merged into the Department of Genetics of the Carnegie Institute. *See* AM. PHILOSOPHICAL SOC. LIBRARY, Eugenics Record Office Records, https://search.amphilsoc.org/collections/view?docId=ead/Mss.Ms.Coll.77-ead.xml [https://perma.cc/Y9GL-39GB] (last visited Oct. 18, 2021); ROBERTS, *supra* note 39, at 67. ERO's research files include hereditary studies on mental and physical diseases, as well as research on government subsidization of parenthood and child welfare. *See* AM. PHILOSOPHICAL SOC. LIBRARY, *supra* note 47.

[48] ROBERTS, *supra* note 39, at 68 (internal quotations omitted) ("[The defective] 10 percent of our population, Laughlin claimed, are an economic and moral burden on the 90 percent and a constant source of danger to the national and racial life.") Prior to Laughlin's model law, fifteen states passed their own eugenic sterilization laws and five states vetoed laws. *See* HARRY H. LAUGHLIN, EUGENICAL STERILIZATION IN THE UNITED STATES: A REPORT OF THE PSYCHOPATHIC LABORATORY OF THE MUNICIPAL COURT OF CHICAGO 14-50 (1922). Laughlin's report provided model statutory text, including the duties of state

considered a "necessary evil" for the common good—it also financially benefitted wealthy white people. Much like 19th century capitalism relied on the reproductive control of enslaved people, forced sterilization of marginalized people provided 20th century industries with more childless low-wage workers.[49]

Federal courts upheld forced sterilization laws as constitutional intrusions of individual rights by the state. In *Buck v. Bell* (1927), the Supreme Court infamously upheld Virginia's law, which was modeled on Laughlin's and authorized involuntary sterilization of institutionalized people.[50] The Supreme Court held that the law was an apt use of Virginia's police powers to "prevent those who are manifestly unfit from continuing their kind," and did not violate individuals' due process and equal protection rights under the 14th Amendment.[51] This constitutional interpretation was a success of Harry Hamilton Laughlin's campaign. Indeed, five years before Carrie Buck's case reached the Court, Laughlin argued eugenic sterilization laws were constitutional because the state has established rights to use their police powers in the interests of general welfare,[52] including the "right and duty to control human reproduction along the lines of of ***race betterment***."[53]

The legal reasoning in *Buck* espouses the eugenic ideology: intruding into marginalized individuals' bodies and reproductive lives is scientifically and legally justified by the common need to control societal conditions that marginalized people were allegedly responsible for, such as ill health, poverty, and the use of public resources.[54] This logic is built upon several intersecting ideologies. First, American society has long held the expectation for people to be personally responsible for their own health and wellbeing, without regard for social conditions.[55] Second, racism, misogyny, and ableism inspire the belief that marginalized people are to blame not just for their own ills, but also for society's. Finally, government intervention to remedy these ills was justified by the "Malthusian theory," a

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eugenicists, jury demand and resolution procedures in sterilization cases, and responses to moral and constitutional critiques of the laws. *See id.* at 438-44, 446-60.

49 *See, e.g.* Roberts, *supra* note 39 at 24; Kuumba, *supra* note 45 at 23.

50 Buck v. Bell, 274 U.S. 200 (1927); *see also* Nathalie Antonios, Sterilization Act of 1924, EMBRYO PROJECT ENCYCLOPEDIA, (last modified July 4, 2018, 4:40 PM), https://embryo.asu.edu/pages/sterilization-act-1924 [https://perma.cc/G7QY-PSP9].

51 Buck, 274 U.S. at 205, 207 ("It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. . . . Three generations of imbeciles are enough.").

52 LAUGHLIN, *supra* note 48, at 338-42 (citing judicial approval of compulsory vaccination and quarantine).

53 *Id.* at 339 [emphasis added]. Eugenicists also lead passage of antimiscegenation laws to promote white reproduction without black reproduction, fearing black communities' birth rate "pressing the white race." *See* ROBERTS, *supra* note 39, at 71.

54 The conditions of the Great Depression created concerns about children and families using public assistance. ROBERTS, *supra* note 39, at 70. By the late twentieth century, 78% of white Americans believed the racist myth of the "welfare queen": "the lazy mother on public assistance who deliberately breeds children at the expense of taxpayers to fatten her monthly check." *Id.* at 17.

55 *See* ELIZABETH H. BRADLEY & LAUREN A. TAYLOR, THE AMERICAN HEALTH CARE PARADOX: WHY SPENDING MORE IS GETTING US LESS 41 (2013) ("[T]he Protestant work ethic coupled with Calvinist views of sinful idleness underlay the American belief that hard work is fundamental to the good life and that handouts should be provided sparingly. Deep fears about the potential of public aid to weaken individuals' work ethic overcame religion's emphasis on the virtues of mercy and charity, when it came to carving out the role of government in early American life. . . . America was viewed by its people as the land of plenty, with a frontier of endless opportunities for those who were willing to work for them.")

centuries-old belief that because human populations grow at a faster rate than food,[56] people in power should act to curb the reproduction of populations, especially those that exacerbate poverty and vulnerability.[57] On these ideologies, eugenics was scientifically and legally accepted as a utilitarian solution to some of society's greatest social concerns.[58]

Forced sterilization remains presumptively constitutional. The Supreme Court never explicitly overturned *Buck*; subsequent cases ruled forced sterilization unconstitutional when unequally employed across a population, but not per se unconstitutional as a violation of all individuals' due process rights.[59] Forced sterilization has been used almost exclusively against marginalized communities and Black women in particular. By the 1970s, just under half of all women sterilized were African American, especially in southern states where young girls were sterilized under the threat of either themselves or their families losing welfare benefits.[60] While most public health programs required that these abuses

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[56] *See* Michael Shermer, *Why Malthus Is Still Wrong*, SCI. AM. (May 1, 2016). Malthus was an English political economist who theorized that populations grow exponentially, while food production grows lineally. *Id.* Accordingly, Malthus predicted populations will outgrow food production and die of food shortages. *Id.* While his work on population growth led to Charles Darwin and Alfred Russel Wallace's findings on natural selection, it also promoted social Darwinism and eugenics to restrict particular populations' family size. *See id.*

[57] Shermer, *supra* note 56 (citing MATT RIDLEY, THE EVOLUTION OF EVERYTHING (2015), which outlines the historical impact of Malthus' work on social policy: "[T]he English Poor Law implemented by Queen Elizabeth I in 1601 to provide food to the poor was severely curtailed by the Poor Law Amendment Act of 1834, based on Malthusian reasoning that helping the poor only encourages them to have more children and thereby exacerbate poverty. The British government had a similar Malthusian attitude during the Irish potato famine of the 1840s . . . reasoning that famine, in the words of Assistant Secretary to the Treasury Charles Trevelyan, was an 'effective mechanism for reducing surplus population.' A few decades later Francis Galton advocated marriage between the fittest individuals ('What nature does blindly, slowly, and ruthlessly man may do providently, quickly and kindly'), followed by a number of prominent socialists such as Sidney and Beatrice Webb, George Bernard Shaw, Havelock Ellis and H. G. Wells, who openly championed eugenics as a tool of social engineering.")

[58] And indeed, some of its teachings have flowed into modern genetics and other biosciences. *See* AM. PHILOSOPHICAL SOC. LIBRARY, *supra* note 47. The American Eugenics Society changed its name to Society for the Study of Social Biology, and their journal is still publishing articles under the name *Biodemography and Social Biology*. ROBERTS, *supra* note 39, at 89; *see also* TAYLOR & FRANCIS ONLINE, *Biodemography and Social Biology*, https://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=hsbi20& [https://perma.cc/GG8P-9ELE] (last visited Oct. 18, 2021).

[59] *See* Skinner v. Oklahoma*,* 316 U.S. 535, 536-43 (1942) (ruling unconstitutional Oklahoma's involuntary sterilization of prisoners convicted for most crimes, but not some of those related to higher levels of wealth, given its violation of equal protection, but not due process). While modern courts are unlikely to apply *Buck v. Bell*'s precedent in future cases, state-sponsored sterilizations nonetheless occur in present day. *Compare* 4 Ronald D. Rotunda & John E. Nowak, Treatise on Constitutional Law: Substance and Procedure § 18.27 (5th ed. 2021) ("But it is doubtful that the Supreme Court would follow *Buck v. Bell* today. If the Justices can find no compelling interest to justify the prohibition of abortions, any state interest in sterilization should be held insufficient to impair this fundamental right.") *with* Letter from Project South et al. to Joseph V. Cuffari, Inspector Gen., Dep't of Homeland Sec. et al. (Sept. 14, 2020), https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf [https://perma.cc/QU94-BYC4].

[60] *See* ROBERTS, *supra* note 39, at 92-94; *see also* Rachel Benson Gold, *Guarding Against Coercion While Ensuring Access: A Delicate Balance*, 17 GUTTMACHER POL'Y REV. 3, 9 (2014), https://www.guttmacher.org/gpr/2014/09/guarding-against-coercion-while-ensuring-access-delicate-balance [https://perma.cc/N4UF-EL6L] ("In Aiken County Hospital in South Carolina, more than a third of the welfare recipients who gave birth during the first six months of 1973 were sterilized under a policy enforced by the county's three obstetricians."). North Carolina's Department of Public Welfare did not formally abolish its sterilization program – promoted as a way to address extramarital poverty and childbearing – until 1977. *Id.* In the 1970s, a lawsuit against Los Angeles County-USC Medical Center catalogued the forced or unconsented to sterilizations of ten Latina women.

stop in the mid-to-late 1970s, forced and unconsented to sterilizations continue in America's prisons continued until at least 2010 and in immigration detention centers as recently as 2020.[61]

Eugenic science also undergirded decades of marginalized people's access to contraception. The early birth control movement, led by Margaret Sanger, initially espoused eugenic and utilitarian principles to give their movement a national platform and the authority of then-reputable science.[62] Sanger's American Birth Control League and Birth Control Federation of America[63] lacked political support and struggled financially while advocating women's financial and personal autonomy.[64] Accordingly, BCFA's clinics became a new means for racial eugenics. BCFA established a Division of Negro Service to champion a "Negro Project" designed by Sanger,[65] establishing and overseeing programs for southern Black physicians to provide communities of color with birth control even while its safety remained unclear.[66]

Much like eugenic sterilization, the birth control movement claimed providing birth control to Black and poor Americans could solve societal problems. Sanger claimed contraception was "the most practical method" for reducing the birthrate, poverty, and reliance on resources of "the less desirable classes."[67]

The American Birth Control League pressured local public health and welfare agencies to include birth control in their programs, arguing birth control was essential to reducing the number of children on public relief.[68] And, like sterilization, birth control allowed marginalized people to be more available for low-income jobs. [69]

Sanger's employment of eugenics may or may not have been motivated by racism or xenophobia.[70] However, it had a lasting and critical impact on communities of color and fueled

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Madrigal v. Quilligan, Civ. 75-2057, 1978 U.S. Dist. LEXIS 20423 (C.D. Cal. 1978). The Indian Health Service identified multiple sterilizations of Native Americans under the age of 21 without consent, even after its moratorium of the practice in 1974. Gold, *supra* note 60, at 9.

61 Letter from Project South, *supra* note 59; Elise B. Adams, *Voluntary Sterilization of Inmates for Reduced Prison Sentences*, 26 DUKE J. GEN. L. & POL'Y 23, 29-30 (2018); Rachel Roth, "*No New Babies?" Gender Inequality and Reproductive Control in the Criminal Justice and Prison Systems*, 12 AM. U. J. GEN., SOC. POL'Y & L. 391, 407-08 (2004).

62 ROBERTS, *supra* note 39, at 72.

63 The Birth Control Federation of America was formed through the merger of the American Birth Control League and the Birth Control Clinical Research Bureau, the first legal birth control clinic in the U.S., both headed by Sanger. The BCFA was the predecessor organization to Planned Parenthood Federation of America. *Id.* at 76; THE MARGARET SANGER PAPERS PROJECT, *Birth Control Organizations – Planned Parenthood Federation of America History*, https://sanger.hosting.nyu.edu/aboutms/organization_ppfa/ [https://perma.cc/5V7H-N7GJ] (last visited Oct. 18, 2021).

64 ROBERTS, *supra* note 39, at 75-77.

65 Proposing the plan, Sanger wrote, "[t]he mass of Negroes, particularly in the South, . . . still breed carelessly and disastrously, with the result that the increase among Negroes, even more among whites, is from that portion of the population least intelligent and fit, and least able to rear children properly." *Id.* at 76-77.

66 *Id.* at 76-78; Elizabeth Siegel Watkins, *From Breakthrough to Bust: The Brief Life of Norplant, the Contraceptive Implant*, 22 J. WOMEN'S HIS. 90 (2010).

67 *Id.* at 74.

68 *Id.* at 76. *See also* Watkins, *supra* note 67 ("In 1962 . . . a Planned Parenthood analysis determined that a midsized city would save $75,000 over five years if women on welfare prevented pregnancies by using the pill.")

69 *See, e.g.* ROBERTS, *supra* note 39 at 24; Kuumba, *supra* note 45 at 23.

70 In *Killing the Black Body*, *supra* note 39 at 81, Professor Dorothy Roberts writes, "I agree that Sanger's views were

individuals with explicitly racist ideologies. To be sure, programs legalizing and providing access to contraception were and are critical for people to have reproductive and economic freedom. But, the birth control movement provided marginalized people access to contraception *as a means* for remedying societal conditions (such as poverty), incorrectly blaming individuals for creating those conditions, when in reality, these are conditions created by legal and social structures that marginalize individuals.

3. Lawmakers and judges incentivized and required marginalized people to use long-acting contraception to reduce their purported burdens on society

In the 1980s and 90s, laws, policies, and judicial actions mirrored the "carrot and stick" reproductive control practiced by enslavers—policies and practices financially incentivized low-income people and forced some marginalized people to use long-acting contraceptives.[71] Policies did not provide similar financial support to remove the contraception.[72] Scientists at the Population Council internationally created the long-acting contraceptive Norplant specifically for use by low-income and particularly Black women.[73] While distributors and advocates stalled on approving and marketing Norplant for upper class women,[74] and despite some concerns about its safety,[75] it quickly became known for its ability to control marginalized people's reproduction.

Much like eugenic sterilization, the Population Council justified international population control with Malthusian principles of population growth and government intervention. Proponents

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distinct from those of her eugenicist colleagues. Sanger nevertheless promoted two of the most perverse tenets of eugenic thinking: that social problems are caused by reproduction of the socially disadvantaged and that their childbearing should therefore be deterred. In a society marked by racial hierarchy, these principles inevitably produced policies designed to reduce Black women's fertility. . . . At first, the Nazi sterilization program was not tied directly to hatred for the Jews: most of its subjects were sterilized because they were judged to be feebleminded, not because of their race. But as official anti-Semitism became more evident, the Nazi eugenic policy easily merged with the subsequent plan to exterminate the Jews."

71 *See generally* Watkins, *supra* note 67.

72 *See id.* at 100 ("More often reported were the troubles some women had in finding a provider who would agree to remove the implant. Such cases arose when women lost their jobs and their health insurance benefits, or when women moved off Medicaid, or when physicians pressured women to stick with the method in spite of uncomfortable side effects.")

73 *Id.* at 91. Scientists at the Population Council developed Norplant specifically for international population control. *Id.* Rather than applying for marketing approval in the US, the Population Council applied for approval to the State Department Agency for International Development to make Norplant available to population control programs in developing nations. *Id.* 21 out of the 26 countries in which Norplant was approved in 1992 were in Asia, Africa, and Latin America, most through family planning programs with the "explicit objective of reducing population growth." *Id.*

74 The United States distributor, Wyeth Ayerst, focused on the drug's marketing on low-income populations. They waited several months after Norplant's FDA approval before marketing to physicians, and two years post approval to advertise in middle class women's magazines. *Id.* at 92. The women's health movement did not focus on Norplant, which was finalized in the late 1980s amidst the continued efforts to defend the legality of abortion. *Id.* at 90-91.

75 A representative of the National Women's Health Network (NWHN) testified before FDA advisory committee reviewing the Norplant application, stating "it is premature to approve Norplant for contraceptive use at this time . . . because of the lack of data on long-term safety . . . [but] I think that the population community and the feminist women's community are closer together than they ever have been before." NWHN's newsletter reported Norplant as "[a] new method which has been well-researched and is clearly very effective . . . [that] may fill the needs of *at least certain segments of the population*." *Id.* (emphasis added).

believed Norplant could minimize social conditions such as burdens on the welfare system, poverty, child abuse, and teen pregnancy.[76] This belief became widespread—the day after the FDA approved Norplant in 1990, THE PHILADELPHIA INQUIRER published an editorial, titled *Poverty and Norplant: Can Contraception Reduce the Underclass?*, linking Norplant with a report about black children living in poverty and suggesting welfare mothers should be given incentives to use Norplant.[77]

Throughout the 1990s, policymakers considered ways to do just that. While the implant was far too expensive for individuals and health centers,[78] 48 state Medicaid programs covered Norplant's insertion[79] and some predominantly Black schools offered the implant to students.[80] Legislators in thirteen states (unsuccessfully) proposed further financial incentives for women to use Norplant.[81] Further, some states proposed mandating Norplant insertion for women who received welfare benefits for their children, women with multiple children,[82] women who had abortions using federal funds, mothers evidencing substance abuse during pregnancy, and women convicted of a crime.[83] Indeed, mirroring the modern practices of forced sterilization procedures, some judges did require people to have Norplant inserted if they were incarcerated or as a condition of sentencing or probation, especially for women convicted of harming their children or pregnancies.[84]

The United States thus has an immense history of controlling marginalized people's reproduction and bodily autonomy, justifying this control through racist ideologies blaming these people of societal ills. These actions are not merely historical – sterilization procedures and contraception are still forced upon some of the most marginalized women and people in American society, including people who are incarcerated and those immigrating to the United States to escape danger and persecution. As the next section will highlight, some of this control was and continues to be promoted as non-coercive. However, contraception and other reproductive health care offered

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76 *Id.* at 93. *See also* ROBERTS, *supra* note 39, at 200. "The modern-day reproductive punishments [such as Norplant sentencing] . . . are not eugenic because they are not based on the belief that criminality is inherited. They are based, however, on the same premise underlying the eugenic sterilization laws—that social problems can be cured by keeping certain people from having babies and that certain groups therefore do not deserve to procreate."

77 *Poverty and Norplant: Can Contraception Reduce the Underclass?*, PHILA. INQUIRER, Dec. 12, 1990, at 18-A. *See also* Watkins, *supra* note 67, at 92-93.

78 Norplant notoriously cost far more than the birth control pill or other forms of contraception, estimated about $580 for the implant and insertion. *Special Report . . . Norplant – One Year Later*, *in* GUTTMACHER INSTITUTE, WASHINGTON MEMO (Dec. 20, 1991) https://pubmed.ncbi.nlm.nih.gov/12343466/ [https://perma.cc/B4PB-EHJA].

79 *Id.*

80 Watkins, *supra* note 67, at 94. *See also* Darci Elaine Burrell, *The Norplant Solution: Norplant and the Control of African-American Motherhood*, 5 UCLA Women's L. J. 401, 402 (1995) (citing Tim Larimer, *High School Offers Birth Control Implant, Blacks Disagree on Merits of Program*, DALLAS MORNING NEWS, Mar. 17, 1993, at A37).

81 Watkins, *supra* note 67, at 93. For instance, Texas' legislators proposed an appropriations amendment that would offer a woman $300 to receive Norplant and $200 additional if she retained it for five years. Gold, *supra* note 60, at 10.

82 This logic led to states capping welfare funds for families at the family size and payments at which they applied for public assistance, thus incentivizing families not to have more children once receiving welfare. *See infra* Section III.B; Sojourner A. v. New Jersey Dep't of Human Servs., 828 A.2d 306 (N.J. 2003) (holding New Jersey's cap on cash assistance for families at the level set when the family enters the state welfare system constitutional under the state constitution's guarantees to privacy and equal protection).

83 *Gold*, *supra* note 60, at 10-12.

84 *See, e.g.*, Watkins, *supra* note 67, at 93-94.

within a vacuum, without conditions enabling the full spectrum of reproductive choices, is no less controlling than reproductive interventions forced upon people.

### *B. Reproductive policies offer hollow choices for people who lack access to conditions enabling a full spectrum of choices*

As shown above, contraception has always been offered to Black and marginalized people under the guise of choice. As noted *supra*, birth control clinics and state Medicaid programs offered contraception to marginalized communities with the intent to reduce their birth rates and subsequent impacts on society. However, marginalized people needed contraception was just as much (if not more) as any wealthy white women, given its groundbreaking ability to promote women's bodily and economic autonomy.

Yet, by financially incentivizing low-income people to use contraception without supporting conditions for people to otherwise access the health care to control their own reproduction,[85] birth control clinics and Norplant programs provided (sometimes semi-permanent) contraception to marginalized communities in coercive and controlling manners. As stated above, it is clear that legislative and judicial mandates for some kinds of people to use Norplant infringed marginalized people's reproductive autonomy—these mandates intended to permanently strip these people's ability to reproduce.

Importantly, though, so too did financial incentives for marginalized people to use Norplant. In the 1980s and 90s, social conditions were such that other forms of contraception, let alone abortion, were not easily accessible especially for Black and low-income women. Yet, especially without broader labor, family, and economic supports, controlling one's *own* reproductive choices is and was critical for marginalized people's economic and personal freedom. Even when Norplant was provided *voluntarily*, it was provided—and incentivized—amidst a dearth of other choices to control people's reproduction.[86] And, incentives to voluntarily use Norplant had the same permanent impact on some people's reproduction—these legislative proposals did not grant people similar financial support to have Norplant removed, and the removal of Norplant was ultimately found to result in several injuries.[87]

These "incentives" are especially coercive when the conditions required to access reproductive and economic autonomy (such as direct financial support) are conditioned on people limiting their reproduction. The federal Personal Responsibility and Work Opportunity Act provided state welfare systems more discretion to administer cash assistance.[88] Under such discretion, some states capped families' cash assistance based on their family size.[89] Just like sterilization, welfare caps were couched in ideas that marginalized and low-income families are responsible for societal ills.[90] Welfare caps forced

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85 *See generally* Watkins, *supra* note 67.

86 Scholars have defined conditions in which voluntary choices become coercive due to the contextual impossibility of choice as unconstitutionally coercive under the unconstitutional conditions doctrine. *See e.g.*, Adams, *supra* note 61, at 32-33.

87 *See* Watkins, *supra* note 67, at 100-101.

88 *See, e.g.*, Richard P. Nathan & Thomas L. Gais, *Is Devolution Working? Federal and State Roles in Welfare*, BROOKINGS (June 1, 2001), https://www.brookings.edu/articles/is-devolution-working-federal-and-state-roles-in-welfare/ [https://perma.cc/TZ7W-UUGG].

89 *See supra* note 82 and accompanying text.

90 ROBERTS, *supra* note 39, at 216-17.

marginalized parents to "choose" to have fewer children to receive adequate funding to support their existing families.[91] And, reminiscent of enslavement and forced sterilization, welfare caps explicitly stated poor women should have fewer children and be more available to work (again, in low-wage jobs bolstering wealthy people's capital).

## IV. CLIMATE-BASED REPRODUCTIVE POLICIES WILL INFRINGE MARGINALIZED PEOPLE'S REPRODUCTIVE AUTONOMY

Reproductive policies enacted to combat climate change are distinct from population control policies employed by enslavers or eugenicists. Climate policies are justified by evidence-based science impacting the entire world, rather than racist science intended to benefit only people and systems in power. However, American climate policies that promote access to contraception *as a means* to reduce the population's size will nonetheless significantly harm marginalized people. This is the case of both policies that explicitly justify infringing upon marginalized people's reproduction given their purported contribution to climate change (Section A) and those that aim to be non-coercive, but do not adequately account for and center the experiences of communities marginalized by United States' history, law, and social conditions (Section B).

### *A. Climate-based reproductive policies espouse incorrect utilitarian justifications for targeting marginalized people's reproduction*

Environmental conditions specifically have long been employed as social justifications for population control of marginalized people. Indeed, the same Malthusian argument undergirding eugenics articulated a modern environmental concern—that population would outgrow food production and result in starvation. Motivated by a mix of genuine concerns for the environment and racial biases, environmentalists worked in tandem with the birth control and eugenics movements to encourage reproductive control of people of color and immigrants throughout the 20th century.[92] Later, environmentalists Paul Ehrlich and John Holdren adopted an environment-specific formula of the Malthusian theory, I=PAT:

> the environmental *I*mpact of human groups equals *P*opulation size multiplied by *A*ffluence (or the average volume of goods consumed per person), multiplied by *T*echnology (or the pollution that results when goods are consumed).[93]

Anti-immigration organizations, benefitting from the support of environmentalists, have since used this formula to emphasize the importance of curbing population growth, particularly through stopping immigration or reducing births.[94]

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91 *See id.* at 209-11.

92 LISA SUN-HEE PARK & DAVID NAGUIB PELLOW, THE SLUMS OF ASPEN: IMMIGRANTS VS. THE ENVIRONMENT IN AMERICA'S EDEN, 128-29, 131 (2011).

93 *Id.* at 133.

94 *Id* at 133-134. For an example of climate-based population control proposals serving as pretext for these explicitly racist, xenophobic, and otherwise exclusionary goals, see *id.* at 131-136. In 1999, the city of Aspen unanimously passed a resolution petitioning U.S. Congress and President Clinton to restrict the number of immigrants entering the United States. The

Today, considerations of the climate retain the utilitarian ideologies and the Malthusian theory that justified historical population control. Climate crisis scholars adopt justifications to impede on individuals' rights for both the common good and the good of marginalized individuals' themselves.[95] The 2019 report urging the United Nations to consider population growth, cited *supra*, explicitly cites and builds about Malthus and Ehrlich's work.[96] In another call for policymakers to "adequately assess" the "voluntary population control's potential contribution to climate change mitigation," philosopher Philip Cafaro cited John Stuart Mill's consequentialism, writing, "coercive population policies can be justified only by the threat of major harm, the threat of the destruction of people and of standards of life, and not by lesser inconveniences and impoverishments."[97] Accordingly, Cafaro concludes individuals' rights—in this case, to reproductive choice—"are justified by [individual's] contributions to human flourishing. When the exercise of a right undermines the conditions for that flourishing, it sometimes should be curtailed."[98]

These proposals do not just justify infringing on marginalized people's reproduction for the utilitarian *greater good*. Like historical population control, they also attribute responsibility for climate conditions to marginalized populations and accordingly justify constraining their reproduction. While calling for international population control in the journal *Science*—an article cited by proposals such as the Climate Declaration[99]—John Bongaarts and Brian O'Neill wrote that "[a]lthough [the belief that poor communities will be disparately impacted] is real, it does not change the fact that population growth in developing countries ***poses challenges*** for climate and development and deprives the international community of an important policy lever to improve human welfare."[100] Further, Philip Cafaro's proposal, discussed *supra*, concludes that people should only have a right[101] to be unencumbered in their reproductive choice if they adequately contribute to "human flourishing." This utilitarian and capitalistic proposal targets marginalized populations. First, Cafaro's calculus discounts

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city provided the "negative impact of immigrants on the nation's ecosystems" as a primary reason for their petition. *Id.* at 1. As chronicled through Park and Pellow's research, the city's resolution fits into a history of environmentalists and nativists "shar[ing] a preoccupation not only with population control but also with erecting and reinforcing borders to support conservation efforts." *Id.* at 13.

95 *See generally* Philip Cafaro, *Climate Ethics and Population Policy*, 3 WILEY INTERDISCIPLINARY REVS.: CLIMATE CHANGE 45 (2012).; Corey J.A. Bradshaw & Barry W. Brook, *Human Population Reduction Is Not a Quick Fix for Environmental Problems*, 111 PNAS 16610 (2014) (arguing, in an article edited by environmentalist Paul Ehrlich—whose work is discussed *supra*— that drastic population measures are urgent, given that "the current momentum of the global human population precludes any demographic 'quick fixes.').

96 Chaurasia, *supra* note 14, at 89, 103.

97 Cafaro, *supra* note 95, at 45, 50.

98 *Id.* at 50.

99 *See supra* note 38.

100 Bongaarts & O'Neill, *supra* note 38, at 652 (emphasis added). Bongaarts is a Distinguished Scholar at the Population Council, whose work continues to be cited and well-regarded in climate and other scientific literature, including the Climate Declaration, Ripple, *supra* note 2, at 10. Bongaarts is a member of the US National Academy of Sciences and is widely published in some of America and Europe's most impactful scientific journals. *John Bongaarts*, POPULATION COUNCIL, https://www.popcouncil.org/uploads/experts/BongaartsCV_March2017.pdf [https://perma.cc/494N-MJRN] (last visited Oct. 18, 2021).

101 This is a moral right, rather than a legal one. However, Laughlin (and the Supreme Court) connected this moral framework to their conception of legal rights in the case of eugenic sterilization. *See supra* Section III.A.b.

the contributions of marginalized communities to human flourishing. In reality, how one defines contributions human flourishing for this calculus is subjective and value-laden. Policies undergirded by value judgements center white individuals with wealth, and discount the contributions, experiences, and rights of marginalized communities. Moreover, Cafaro's reasoning paternalistically concludes that population control of marginalized communities is not only justified for the population's health at large, but useful *to* marginalized communities.[102]

Attributing blame to marginalized communities is not just harmful to their autonomy, it is also factually inaccurate. As outlined in Section I, *supra*, when compared to all communities' population growth and affiliated effects on the climate, marginalized communities (and their population sizes) contribute the least.[103] In fact, population growth of marginalized communities is itself an effect of capitalistic economies. As Professor M. Bahti Kuumba writes "overpopulation . . . [can] be considered a symptom, as opposed to a cause, of an increasingly skewed distribution of global power and wealth" caused by racist and capitalist economies.[104] This is clear through the very conditions that currently limit marginalized people's reproductive autonomy, such as the web of laws that make abortion and contraception inaccessible primarily for low-income and Black women.[105]

### *B. Even well-intentioned policies will infringe on marginalized people's autonomy if they don't account for conditions impacting peoples' reproductive choices*

As discussed *supra*, some climate policies more accurately acknowledge the limited role of marginalized communities' reproduction and actions in climate harms and the risks of impacting them with reproductive policies.[106] However, as shown *supra*, even climate policies that facially provide non-coercive access to reproductive health care and emphasize empowerment can harm marginalized people when they overlook the conditions that limit the full spectrum of individuals' reproductive choices in the United States.

The conditions impeding robust reproductive choice in the Norplant era still exist today. Low-income people's access to contraception—supported by federal Title X funding and regulations—has been significantly diminished during Republican administrations by regulations that require reproductive health care providers to choose between accepting federal funds to provide low-income people contraception and other reproductive health care or providing ethical and warranted information about and services to help (or allow) patients access abortion care.[107]

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102 Cafaro, *supra* note 95, at 51 (quoting GARRETT HARDING, LIVING WITHIN LIMITS: ECOLOGY, ECONOMICS, AND POPULATION TABOOS 262 (1993) ("[T]he real point of population control . . . is not to reduce the population *per se*, but to reduce misery among the living.")

103 See *supra* Section I and affiliated notes.

104 M. Bahti Kuumba, *A Cross-Cultural Race/Class/Gender Critique of Contemporary Population Policy: The Impact of Globalization*, 14 SOCIOLOGICAL FORUM 447, 449 (1999) ("The limited availability of resources to particular groups is attributed more to the historically developed mechanisms of production and accumulation in the context of a world's racist, capitalist economy than to 'overpopulation.' . . . From this perspective, the Malthusian position on population [see *supra* Section III.A.b] is essentially an apology for labor exploitation and inequality. . . .")

105 DAVID S. COHEN & CAROLE JOFFE, OBSTACLE COURSE: THE EVERYDAY STRUGGLE TO GET AN ABORTION IN AMERICA, 8-10, 13 (2020).

106 *See supra* note 34 and accompanying text.

107 *Compare* 42 C.F.R. § 59:16 (2019) *with* 42 C.F.R. § 59:18. *See also* Laurie Sobel & Alina Salganicoff, *Litigation Challenging*

Access to contraception is also tenuous for people with private insurance. While the Affordable Care Act and some state law extensions statutorily require most private health plans to offer coverage for contraception used by people with uteruses, state laws and court decisions allow some employers to exclude contraceptive coverage from health plans offered to employees on the basis of religious or moral objections.[108]

Laws and social conditions even further limit access to abortion. At the time of writing, federal law (through the Hyde Amendment[109] and its judicial approval in *Harris v. McRae*[110]) continues to bar patients from using federal funds to cover abortion care, limiting abortion access for low-income people who rely on Medicaid, and others who rely on federal health coverage (such as veterans and Native American tribe members).[111] Only 16 states allow their state Medicaid funds to cover all or most medically necessary abortions.[112] Without this insurance coverage, 1 out of 4 people receiving Medicaid who would otherwise have had an abortion is forced to continue their pregnancy.[113] State "TRAP" (Targeted Regulation of Abortion Provider) laws, which have imposed increasingly stringent requirements on clinics, require many clinics to close and thus limit people's access to abortion by location.[114] State laws also limit abortion access by imposing requirements that a patient receives (often false) information about the risks of abortion,[115] waits 24-48 hours to receive their abortion after being given this information,[116] and show proof of parental consent if they are a minor.[117] These requirements especially limit access to abortion for young people, people who work, people who have other children to care for (as many people getting abortions do), and people who live far from the clinics (which, as

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*Title X Regulations*, KAISER FAM. FOUND. (Nov. 21, 2019), https://www.kff.org/womens-health-policy/issue-brief/litigation-challenging-title-x-regulations/ [https://perma.cc/9KGD-F8W6].

108 *See* Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 140 S. Ct. 2367 2373-75 (2020) (summarizing the promulgation of the contraceptive coverage mandate); *State Requirements for Insurance Coverage of Contraceptives*, KAISER FAM. FOUND., https://www.kff.org/other/state-indicator/state-requirements-for-insurance-coverage-of-contraceptives/ [https://perma.cc/FL2N-YLWA] (last visited Oct. 18, 2021); *Little Sisters of the Poor Saints*, 140 S. Ct. 2367 (2020); Zubik v. Burwell, 578 U.S. 403 (2016); Burwell v. Hobby Lobby Stores, 573 U.S. 682 (2014).

109 *See* 42 U.S.C. § 18023 (2010).

110 Harris v. McRae, 448 U.S. 297, 322-24 (1980) (holding that "poverty, standing alone, is not a suspect classification" and ruling accordingly that the Hyde Amendment was appropriately rationally related to the legitimate interest of protecting the potential life of a fetus.)

111 *See, e.g. Fact Sheet: About the Hyde Amendment,* ALL ABOVE ALL, https://allaboveall.org/wp-content/uploads/2020/05/Hyde-Fact-Sheet-201909.pdf [https://perma.cc/XQX2-ZDY5]; Megan K. Donovan, *In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact*, 20 GUTTMACHER POL'Y REV. 1, 1-5 (2017), https://www.guttmacher.org/sites/default/files/article_files/gpr2000116.pdf [https://perma.cc/9L27-HRP9].

112 *State Funding of Abortion Under Medicaid*, GUTTMACHER INST. (last updated Oct. 1, 2021), https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid#_[https://perma.cc/R8JB-PQ3X].

113 COHEN & JOFFE, *supra* note 105, at 13.

114 *Id.* at 60-63. In some states, there is now only one clinic who meet the TRAP law requirements to provide abortion care. *See, e.g.*, Holly Yan, *These 6 States Have Only 1 Abortion Clinic Left. Missouri Could Become the First with Zero*, CNN (June 21, 2019), https://www.cnn.com/2019/05/29/health/six-states-with-1-abortion-clinic-map-trnd/index.html [https://perma.cc/PWQ3-G8YM].

115 COHEN & JOFFE, *supra* note 105, at 148-157.

116 *Id.* at 177.

117 *Id.* at 44.

above, many people do).[118] These laws have been found to particularly bar Black people, people of color, young people, people with disabilities, and low-income people from exercising their rights to bodily autonomy and abortion care.[119] And, pending Supreme Court decisions regarding laws in Texas and Mississippi that directly contravene *Roe v. Wade* and *Planned Parenthood v. Casey* have the potential to wholly eliminate the right to abortion in up to 22 states.[120]

Finally, law and policy do not support broader conditions essential to reproductive autonomy. Paid family and medical leave is not federally required in the United States—limited mandatory paid leave enacted for COVID-19 is now optional for employers.[121] Paid leave is essential for people to have the time, funds, certainty of employment, and for many, insurance to care for their and their families' health needs. This freedom is critical to people's financial independence, which not only impacts people's decision regarding having children, but also serves as a lifesaving option for people who need to separate from abusive partners. This lacuna creates conditions reminiscent of 1990s work and welfare requirements limiting individuals' reproductive choices.[122]

Accordingly, well-meaning climate policies will still infringe on marginalized people's reproductive choice. Indeed, existing policy proposals (discussed *supra*) call for increased access to

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118 *Abortion and Young People in the United States*, Advocates for Youth, https://www.advocatesforyouth.org/resources/fact-sheets/abortion-and-young-people-in-the-united-states/ [https://perma.cc/J9AS-9M5Z]; Jonathan M. Bearak, Kristen Lagasse Burke & Rachel K. Jones, *Disparities and change over time in distance women would need to travel to have an abortion in the USA: a spatial analysis*, 2 LANCET PUBLIC HEALTH e497-e499 (2017).

119 COHEN & JOFFE, *supra* note 105, at 13; Advocates for Youth, *supra* note 118; Access, Autonomy, and Dignity: Abortion Care for People with Disabilities, National Partnership for Women & Families and Autistic Self Advocacy Network, 9-10 (Sept. 2021), https://www.nationalpartnership.org/our-work/resources/repro/repro-disability-abortion.pdf. [https://perma.cc/MC2F-FJHV].

120 Elyssa Spitzer & Nora Ellmann, State Abortion Legislation in 2021, Center for American Progress (Sept. 21, 2021), https://www.americanprogress.org/issues/women/reports/2021/09/21/503999/state-abortion-legislation-2021/ [https://perma.cc/ES4S-J9QJ]; Abortion Policy in the Absence of Roe, Guttmacher Institute (Oct. 1, 2021), https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe [https://perma.cc/BE7G-BAQ9].

121 Families First Coronavirus Response Act, Pub. L. No. 116-127 § 3102 (2020). The original relief was also only available to private employees working for employers with fewer than 500 employees, and health care and large employers could opt out of offering employees paid leave time. *Id.* This relief expired on December 31, 2020 and was replaced by a voluntary tax credit for private sector employers, now available through September, 2021. *Id.*; Coronavirus Response and Relief Supplement Appropriations Act, 2021, Pub. L. 116-260 § 286 (2021) (authorizing employers to provide paid leave *on a voluntary basis* in exchange for a payroll tax credit through March 31, 2021); American Rescue Plan Act of 2021, Pub. L. 117-2 § 3131-33 (2021) (extending the definition of employees eligible for paid leave and reauthorizing tax credits to employers providing such leave through September 30, 2021).

122 *See generally* ISABEL V. SAWHILL, RON HASKINS, & THE BROOKINGS INSTITUTION, WELFARE REFORM AND THE WORK SUPPORT SYSTEM (2002), https://www.brookings.edu/wp-content/uploads/2016/06/pb17.pdf [https://perma.cc/S8RV-VA33]. Even more on point are states' recent impositions (authorized by Trump Administration regulations) of work requirements to access Medicaid funds. Amy Goldstein, *Trump administration opens door to states imposing Medicaid work requirements*, WASH. POST (Jan. 11, 2018), https://www.washingtonpost.com/national/health-science/trump-administration-opens-door-to-let-states-impose-medicaid-work-requirements/2018/01/11/d6374482-f628-11e7-a9e3-ab18ce41436a_story.html [https://perma.cc/YU7U-357B]. The Biden Administration Department of Health and Human Services withdrew its support in an Administrative Procedure Act challenge to these regulations, and the Supreme Court has since canceled arguments on the case. Lydia Wheeler, *High Court Cancels Argument in Fight Over Medicaid Work Rules*, BLOOMBERG L. (Mar. 11, 2021, 12:37 PM), https://news.bloomberglaw.com/health-law-and-business/high-court-cancels-argument-in-fight-over-medicaid-work-rules [https://perma.cc/M45N-J78E].

contraception (and perhaps abortion) specifically for the populations who presently do not have sufficient access to them. Unlike policies directly aiming to restrict marginalized people's reproduction, these policies nonetheless direct attention toward those people who they presume presently may have more (environmentally harmful) children, because they lack the legal and financial means to restrict their own reproduction. However, these proposals overlook multiple aspects of marginalized people's reproduction: (1) as stated *supra*, their reproduction is not to blame for climate harms, (2) marginalized people have the same multifaceted reasons for making choices to have or not to have children as privileged people, and (3) at the same time, marginalized communities lack myriad legal and financial means to actualize their choices to not have or have more children. Thus, policies directed toward controlling their reproduction for the purpose of broader societal needs may require marginalized people to choose between incomplete reproductive options tailored to broad societal needs rather than their own needs and not accessing health care necessary for reproductive autonomy. Climate-based reproductive policies will infringe marginalized people's reproductive autonomy when they use their reproduction as a means to an end by presenting them with hollow reproductive choices.

Reproductive policies must instead center on marginalized people's reproductive experiences and autonomy. Reproductive justice scholars and advocates have written at length about the legal, political, and social changes necessary to center and enable marginalized people's reproductive experiences, including legal, financial, and social supports for myriad kinds of reproductive health care, family and medical leave from labor, and health care.[123] Reproductive policies enacted with this focus are essential for reproductive justice, and as a side effect, will bolster environmental justice.

## CONCLUSION

Reproductive policies intended primarily to reduce population growth will significantly infringe on the reproductive autonomy of marginalized people. Reproduction by marginalized communities is far less responsible for emissions and ecological changes than the growth and actions of wealthier communities and corporations. Yet, climate reproduction policies continue to adopt ideologies shown to be harmful to marginalized people's autonomy. They blame marginalized individuals for environmental ills and justify curbing their reproduction to remedy them. And, even policies that attempt to reduce reproduction by expanding voluntary access to contraception infringe on marginalized people's reproductive autonomy. United States reproductive and social law and policy does not provide sufficient supports to enable the full spectrum of reproductive choice for some people. Climate policies that provide contraception (and abortion) to marginalized people to reduce their reproduction, yet do not account for the broader conditions that impair people's autonomous choice to limit their reproduction, are troubling. Such reproductive health care infringe on these people's reproductive autonomy.

This paper does not suggest actions should not be taken in furtherance of climate protection—quite the opposite. The myriad impacts of climate change will only continue to most severely harm marginalized communities, and multifaceted approaches to the climate crisis are crucial for justice. These approaches must center marginalized communities—those who need climate

123 *See e.g.*, SISTERSONG WOMEN OF COLOR REPRODUCTIVE HEALTH COLLECTIVE & THE PRO-CHOICE PUBLIC EDUCATION PROJECT, REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE (2007).

solutions the most. The actions of marginalized communities must not serve as means to climate solutions' ends, instead climate solutions must address the systemic challenges and needs within with these communities.