
Facilitating Future Workforce Participation for Stay-at-Home Parents: Mitigating the Career Costs of Parenthood

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ABSTRACT. American legislation protecting women and families has a blind spot: the future career prospects of current stay-at-home parents. Policies instead focus on parents who want to stay in the workforce continuously, emphasizing childcare subsidies and parental leave. However, this focus ignores the quarter of American mothers and seven percent of American fathers to children under the age of 18 who are stay-at-home parents.

In the absence of legal protections tailored to their parental status, stay-at-home parents face significant obstacles to workforce re-entry. Existing research suggests that given a choice between two potential hires who have both been out of the workforce for eighteen months, one of whom was laid off and the other of whom stayed home to care for children, employers are twice as likely to hire the involuntarily unemployed person.

Stay-at-home parents' eventual workforce re-entry (or, in some cases, initial entry) matters for preserving parents' ability to choose their preferred work-family balance. This Essay therefore proposes two policies within preexisting legal frameworks that would support stay-at-home parents' return to the workforce: (1) extending the Work Opportunity Tax Credit program to incentivize employers to hire former stay-at-home parents; and (2) expanding Title VII to explicitly include parental status.

INTRODUCTION

American parents should have the power to decide what work-life balance best suits their families and the flexibility to alter that balance over time. But current legislation does not provide sufficient protection for the choice to

become a stay-at-home parent – defined in this Essay as someone who leaves the workforce to care for a child – and then later return¹ to the workforce.

Legislative efforts in the United States to date focus on protecting the right of working women to remain in the workforce after becoming parents. For example, the Pregnancy Discrimination Act of 1978 amended Title VII of the Civil Rights Act of 1964 to expand its protections to prohibit sex discrimination on the basis of pregnancy;² the Family and Medical Leave Act (FMLA) entitles covered employees to twelve weeks of job-protected leave within a twelve-month period to attend to caregiving responsibilities;³ and Section 7 of the Fair Labor Standards Act (FLSA) protects the right of nursing mothers to have break time and a private space to express breast milk.⁴ These laws help pregnant, postpartum, and breastfeeding women return to the workforce quickly. And they are certainly justified; mothering should not be incompatible with work in the twenty-first century.

But not all parents wish to continue working outside the home after having a child. Even accounting for parental leave protections, most mothers must return to work while their infants are still tiny if they would like to keep their jobs. The most generous federal leave protection available – FMLA – provides only twelve weeks of unpaid leave after the birth of a child. That means the choice for many mothers is to put a three-month-old infant in daycare or quit their jobs and stay home temporarily. For perspective, the Centers for Disease Control and Prevention does not expect infants to hold their own heads up steadily before four months of age.⁵ And of course, even the three months of leave granted by FMLA is only available for some parents: forty-four percent of U.S. employees are not eligible for FMLA,⁶ so if those employees become parents they have no job-protected leave at all besides saved up vacation time, unless their employers voluntarily grant additional protection. Faced with the choice to either return to

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1. Or enter the workforce for the first time, as some stay-at-home parents have never participated in the workforce.
 2. Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e (2018).
 3. Family and Medical Leave Act, Pub. L. No. 103-3, 107 Stat. 6 (1993) (codified in scattered sections of 29 U.S.C.).
 4. Fair Labor Standards Act of 1938 § 7(r), 29 U.S.C. § 207 (2018).
 5. *Important Milestones: Your Baby by Four Months*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/ncbddd/actearly/milestones/milestones-4mo.html> [<https://perma.cc/KA8U-7FHS>].
 6. Scott Brown, Jane Herr, Radha Roy & Jacob Alex Klerman, *Employee and Worksite Perspectives of the FMLA: Who Is Eligible?*, U.S. DEP'T OF LAB. (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018PB1WholsEligible_StudyBrief_Aug2020.pdf [<https://perma.cc/7N4H-PZVS>].

the workforce while their babies are still very young or not return at all, some parents choose to quit their jobs and stay home.

Other parents, who do feel emotionally comfortable returning to work after twelve weeks or sooner, may find they still cannot do so for financial or logistical reasons. The average cost of childcare for children younger than school age is more than the average cost of in-state college tuition.⁷ As a result, for families with multiple children, it does not always make financial sense for both parents to work when the kids are small. Because of childcare costs, a larger percentage of low-income married mothers stay at home than middle-income married mothers.⁸ And the impact of childcare costs on parental ability to return to work is gendered. In heterosexual relationships, it often makes more financial sense for mom to step back than dad: men in heterosexual relationships are more likely to be the higher earning partner, and the earnings gap only widens after the birth of the first child, even if women stay in the workforce.⁹ In addition to the problems of affording childcare, finding childcare is no small task. Even before the COVID-19 pandemic increased staffing challenges for daycares, more than half of Americans lived in “child care deserts,” with only enough daycare slots for one in three children.¹⁰ Taken together, these childcare challenges make it hard for parents of young children to hold down jobs. A recent study found that childcare problems have caused twenty-six percent of parents to quit a job and caused twenty-three percent to be fired from a job.¹¹

For reasons ranging from desire to spend more time with their children to financial and logistical obstacles to returning to work, typically over a quarter of mothers to children under the age of eighteen stay at home, and seven percent

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7. *The Care Report*, NEW AM., <https://www.newamerica.org/in-depth/care-report/introduction> [<https://perma.cc/2ZXB-6PYL>].
 8. Robert VerBruggen & Wendy Wang, *The Real Housewives of America: Dad's Income and Mom's Work*, INST. FAM. STUD. (Jan. 23, 2019), <https://ifstudies.org/blog/the-real-housewives-of-america-dads-income-and-moms-work> [<https://perma.cc/SGA2-DGBU>].
 9. YoonKyung Chung, Barbara Downs, Danielle H. Sandler & Robert Sienkiewicz, *The Parental Gender Earnings Gap in the United States*, CTR. FOR ECON. STUD. 7 (Nov. 2017), <https://www2.census.gov/ces/wp/2017/CES-WP-17-68.pdf> [<https://perma.cc/Z5WB-FMMR>].
 10. Steven Jessen-Howard & Simon Workman, *Early Learning in the United States: 2019*, CTR. AM. PROGRESS (Sept. 16, 2019), <https://www.americanprogress.org/article/early-learning-united-states-2019> [<https://perma.cc/B4RA-TY6U>].
 11. Sandra Bishop, *\$122 Billion: The Growing, Annual Cost of the Infant-Toddler Child Care Crisis*, COUNCIL FOR STRONG AM. 6 (Feb. 2023), <https://strongnation.s3.amazonaws.com/documents/1598/05d917e2-9618-4648-a0ee-1b35d17e2a4d.pdf> [<https://perma.cc/C8AL-T5SG>].

of fathers do the same.¹² Of stay-at-home mothers, approximately one in three live in poverty, and half have a high-school diploma as their highest level of education.¹³ In atypical circumstances that create further childcare gaps for working parents, the number of stay-at-home parents rises. For example, employment of mothers dropped 15.7% at the beginning of the COVID-19 pandemic and has yet to recover to prepandemic levels.¹⁴ These effects were most drastic among women with young children.¹⁵

But what happens when children grow up, and their parents want or need to return to work? Children do not stay young forever, and many stay-at-home parents may find themselves needing to work when their children become school-aged or move out of the family home. When these stay-at-home parents choose to enter or return to the workforce, they face significant obstacles, including a perceived lack of professional skills due to their long employment gaps and a perceived lack of workforce commitment due to their parental responsibilities.¹⁶

Negative employment outcomes for returning stay-at-home parents reflect these barriers. Data show that employers are more reluctant to hire stay-at-home parents than multiple other categories of job seekers. In a 2018 study, Professor Katherine Weisshaar set out to determine whether stay-at-home parents face obstacles to re-entry into the workforce beyond those explainable by gaps in their employment records and, for women, comparative disadvantage to childless female peers (“the motherhood penalty”).¹⁷ Weisshaar concluded, based on an audit study focused on college-educated applicants, that stay-at-home parents

12. Richard Fry, *Almost 1 in 5 Stay-at-Home Parents in the U.S. Are Dads*, PEW RSCH. CTR. (Aug. 3, 2023), <https://www.pewresearch.org/short-reads/2023/08/03/almost-1-in-5-stay-at-home-parents-in-the-us-are-dads> [<https://perma.cc/KDP2-8E5N>].

13. D’vera Cohn, Gretchen Livingston & Wendy Wang, *After Decades of Decline, A Rise in Stay-at-Home Mothers*, PEW RSCH. CTR. (Apr. 8, 2014), <https://www.pewresearch.org/social-trends/2014/04/08/after-decades-of-decline-a-rise-in-stay-at-home-mothers> [<https://perma.cc/2TTP-CQRP>].

14. Liana Christin Landivar & Mark deWolf, *Mothers’ Employment Two Years Later: An Assessment of Employment Loss and Recovery During the COVID-19 Pandemic*, U.S. DEP’T OF LAB. 1 (May 2022), <https://www.dol.gov/sites/dolgov/files/WB/media/Mothers-employment-2%20years-later-may2022.pdf> [<https://perma.cc/WK3U-RTE2>].

15. *Id.* at 2.

16. Katherine Weisshaar, *From Opt Out to Blocked Out: The Challenges for Labor Market Re-entry After Family-Related Employment Lapses*, 83 AM. SOCIO. REV. 34, 44 (2018).

17. *Id.*; see also Kate Weisshaar, *Stay-at-Home Moms Are Half as Likely to Get a Job Interview as Moms Who Got Laid Off*, HARV. BUS. REV. (Feb. 22, 2018), <https://hbr.org/2018/02/stay-at-home-moms-are-half-as-likely-to-get-a-job-interview-as-moms-who-got-laid-off> [<https://perma.cc/TMT9-NU4N>] (reporting the results of the study to a mainstream audience). For a discussion of the motherhood penalty, see Stephen Benard and Shelley J. Correll, *Normative Discrimination and the Motherhood Penalty*, 24 GENDER & SOC’Y 616 (2010).

violate the “ideal worker norm” of demonstrating total commitment to work and are less likely to be hired than both currently employed parents and people unemployed due to lay-offs.¹⁸ In this context, stay-at-home parents seeking to return to the workforce could benefit from antidiscrimination protections. However, legislative efforts currently focus on protecting the right of mothers to remain in the workforce uninterrupted, and laws to protect parents’ ability to re-enter the workforce are essentially nonexistent.

Parents should have the opportunity to continue to work *or* to stay home with their children as they wish. Supporting new parents, especially mothers, requires empowering them to choose how best to raise and provide for their families. This includes support for parents balancing paid work and unpaid caregiving as their children grow up. This Essay argues that federal legislation should protect this choice by shielding stay-at-home parents from employment discrimination.¹⁹ The decision to leave the workforce temporarily is equally as valid as the choice to stay in the workforce and should not be overlooked for legislative support. These protections are long overdue, and now is a powerful time to advocate for their creation. The career costs of parenthood have risen to the forefront of national dialogue in the United States because of their exacerbation by the COVID-19 pandemic. As a *New York Times* headline boldly declared, “In the Covid-19 Economy, You Can Have a Kid or a Job. You Can’t Have Both.”²⁰

To be clear, this Essay is not arguing that working parents *should* become stay-at-home parents. Nor is it advocating that any stay-at-home parents *should* enter or return to the workforce unless they so desire. This Essay is motivated by the family-level and societal benefits of protecting parents’ future careers while increasing their slate of viable caretaking choices. The timeline for caring for neurotypical minor children at home is eighteen years, while a career can span decades. It is socially desirable for parents to have the choice to have both time at home and successful careers. Enabling parents, predominantly mothers, who chose to stay home with small children to later rejoin the workforce could improve the national gross domestic product (GDP), reduce the employment gap between men and women, and empower parents to choose how best to care for their children without forgoing future career prospects.

18. Weisshaar, *supra* note 16, at 47 and 55.

19. Of course, even with increased job protections for stay-at-home parents, unfortunately not every parent will have an equal ability to choose to stay home due to financial limitations. The proposals in this paper are intended as progress towards the goal of increasing the slate of choices parents have for how best to support and raise their families, not as an endpoint.

20. Deb Perelman, *In the Covid-19 Economy, You Can Have a Kid or a Job. You Can’t Have Both*, N.Y. TIMES (Oct. 30, 2021), <https://www.nytimes.com/2020/07/02/business/covid-economy-parents-kids-career-homeschooling.html> [<https://perma.cc/R7E2-QXDQ>].

This Essay proposes policy solutions in support of workforce re-entry by stay-at-home parents who have completed the full-time childcare necessary for and desired by their families. Part I discusses the societal and family-level benefits of supporting workforce re-entry by stay-at-home parents. Part II proposes two policy solutions and discusses their benefits and costs: (1) incentivizing employers with tax breaks to hire stay-at-home parents, by expanding the Worker Opportunity Tax Credit program to include stay-at-home parents; and (2) making employment discrimination based on parental caregiver status illegal by expanding Title VII to include protection for caregiver status. Part III concludes, noting that the wake of the COVID-19 pandemic and associated changes in how we work and care for children make now a perfect time for this discussion.

I. BENEFITS OF SUPPORTING STAY-AT-HOME PARENT WORKFORCE RE-ENTRY

Facilitating workforce re-entry for stay-at-home parents would benefit the national economy, improve gender equity, strengthen family financial security, and provide stay-at-home parents the opportunity to pursue career satisfaction outside the home. Additionally, supporting workforce re-entry for stay-at-home parents could allow more parents the flexibility to choose to stay home temporarily, when they would otherwise face significant risks to their future career prospects.

A. *Societal-Level Benefits of Workforce Re-entry*

Eventual workforce re-entry by stay-at-home parents benefits national economic productivity. Unpaid in-home labor by stay-at-home parents, including caregiving, cooking, and housekeeping, does not directly contribute to the national GDP.²¹ Economics professors have quipped, in questionable taste, “If a man marries his maid and she keeps doing exactly the same work, the GDP goes down [as does their joint tax burden].”²² Some stay-at-home parents find that as their children age and household obligations diminish, their time could be spent more effectively by returning to the workforce.

21. These contributions may *indirectly* contribute to gross domestic product (GDP) by allowing household members who participate in the paid labor force to spend more hours doing so.

22. John C. Goodman, *Women: What Barack Obama Got Right and Many Conservatives Get Wrong*, FORBES (Jan. 27, 2015, 8:58 AM EST), <https://www.forbes.com/sites/johngoodman/2015/01/27/women-what-barack-obama-got-right-and-many-conservatives-get-wrong/?sh=362971a97e86> [<https://perma.cc/6R3F-D7YM>].

It is this category of people – stay-at-home parents who wish to return to work precisely because they no longer have sufficient labor obligations at home – whose return to the workforce would boost GDP without creating an untenable drop in domestic labor that would need to be otherwise compensated. Labor force participation has a significant impact on GDP. The White House Counsel of Economic Advisers roughly estimates that increasing the labor force participation rate – the percentage of civilians above the age of sixteen who are working or actively trying to get a job²³ – by even one percent would result in a one percent increase in GDP.²⁴ Notably, the labor force participation rate focuses on the number of people working and seeking work, not the number of available jobs or the skill of individual workers. This is important here because employers perceive stay-at-home parents, who have resumes that violate ideal worker norms, as less committed than other job seekers.²⁵ But even if this perception of stay-at-home parents is true (and not a single study has proven this), the economic benefits of increasing labor force participation do not depend on stay-at-home parents’ resumes, only their participation in the labor market. Moreover, if any inefficiency arose from hiring former stay-at-home parents, the intrinsic value of a more equal society still may be worth a small sacrifice in economic efficiency.²⁶

Facilitating stay-at-home parents’ return to the workforce would also improve gender equity in the workforce, which is a worthy goal in and of itself. Women comprise slightly less than fifty percent of the civilian labor force in the United States²⁷ despite comprising over fifty percent of the population.²⁸ What are women doing instead of participating in the paid labor force? Caregiving, at

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23. U.S. Bureau of Lab. Stat., *Labor Force Statistics from the Current Population Survey*, U.S. DEP’T LAB. (Mar. 24, 2020), <https://www.bls.gov/cps/definitions.htm> [<https://perma.cc/CJ8D-E2GE>].
 24. Heather Boushey, Lisa Barrow & Kevin Rinz, *Supporting Labor Supply in the American Jobs Plan and the American Families Plan*, WHITE HOUSE BLOG (May 28, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/05/28/supporting-labor-supply-in-the-american-jobs-plan-and-the-american-families-plan> [<https://perma.cc/US4P-QPFJ>].
 25. Weisshaar, *supra* note 16, at 36.
 26. Julian Le Grand, *Equity Versus Efficiency: The Elusive Trade-Off*, 100 ETHICS 554, 566 (1990) (noting that equity is an intrinsic value, but efficiency is not, which suggests that equity has more ethical value).
 27. Jonathan Rothwell & Lydia Saad, *How Have U.S. Working Women Fared During the Pandemic?*, GALLUP (Mar. 8, 2021), <https://news.gallup.com/poll/330533/working-women-fared-during-pandemic.aspx> [<https://perma.cc/G98K-QBWN>].
 28. According to the U.S. Census Bureau, 50.4% of the American population identifies as female. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/LFE046219> [<https://perma.cc/FBT6-ME8Z>].

much higher rates than their male counterparts. Stay-at-home parenting is not equally divided by gender: over a quarter of mothers to children under the age of eighteen stay at home, while only seven percent of fathers do the same.²⁹ The COVID-19 pandemic amplified the gender disparity in caregiving obligations, with mothers across the country reducing their working hours much more than fathers did to fill childcare gaps brought on by stay-at-home orders and school closures.³⁰ One way to address gender inequity in the workforce is to try to stop women from ever leaving it. The existing legal framework of the Pregnancy Discrimination Act of 1978,³¹ FMLA,³² and FLSA³³ take this approach, attempting to address gender inequity by lessening pressures that might otherwise force women to drop out of the workforce upon having children. This Essay presents a complementary option: enabling women who choose to step back to later re-join the workforce in a manner commensurate with their education and former training. Advocating for women to return to work after caregiving for children may also open the door to broader policy conversations about returning to work after caregiving for elders or disabled family members.

B. Family-Level Benefits of Believing Workforce Re-entry Is Possible

In addition to the societal benefits related to national economic output and gender equity, facilitating the return of stay-at-home parents to the workforce has several benefits at the level of the family unit. Enabling families to add another adult wage earner – in a position in keeping with that adult’s level of education – would increase family income. There are also benefits specific to the well-being of the stay-at-home parent. First, though some stay-at-home parents no longer in the stage of full-time childcare may continue to find fulfillment homemaking, others may prefer to pursue fulfillment in professional settings outside the home. Second, stay-at-home parents are not monetarily compensated for their contributions to the family, typically relying instead upon a partner to provide financial support. In the event of partner job loss, partner

29. Fry, *supra* note 12.

30. See, e.g., Caitlyn Collins, Liana Christin Landivar, Leah Ruppanner & William J. Scarborough, *COVID-19 and the Gender Gap in Work Hours*, 28 *GENDER, WORK & ORG.* 101 (2020); Yue Qian & Sylvia Fuller, *COVID-19 and the Gender Employment Gap Among Parents of Young Children*, 46 *CANADIAN PUB. POL’Y* 89 (2020).

31. Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e (2018).

32. Family and Medical Leave Act, Pub. L. No. 103-3, 107 Stat. 6 (1993) (codified in scattered sections of 29 U.S.C.).

33. Fair Labor Standards Act of 1938, 29 U.S.C. § 218d (2023).

disability or death, or relationship separation, the stay-at-home parent's ability to join the workforce is of utmost importance for their financial independence.

Beyond the direct benefits to individual families of helping stay-at-home parents return to the workforce if they so choose, there are also *indirect* family-level benefits to consider. At least some parents, who would not have otherwise, may choose to stay at home temporarily if they are confident that they will be able to return to the labor force at a time of their choosing.³⁴ This greater latitude, in turn, would give parents more options in deciding how to raise their children.

For one, making stay-at-home parenting accessible as a temporary option could grant parents more flexibility to have the number of children they desire. American women currently have fewer children than they purport to want.³⁵ This is likely due to a combination of factors,³⁶ including perhaps career concerns: polling shows that forty percent of American adults who do not plan to have children are influenced by work-life balance considerations.³⁷ Enabling one parent to take a few years off of work to focus on childcare logistics and save on daycare costs, while knowing it will be possible to return to the workforce as needed, could increase the family-size options for parents of young children.³⁸ Because economists have not pinned down the precise impact on the birthrate of multiple different likely factors,³⁹ it is difficult to determine if giving parents more flexibility would change enough minds to cause a rise in the birthrate. At the moment, the United States birthrate is below the population replacement rate of 2.1%.⁴⁰ Popular perception of the birthrate remains split, with some

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34. This assertion is based on anecdotal observations. This would be a worthy area of further empirical study.
35. Lyman Stone, *American Women Are Having Fewer Children than They'd Like*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/upshot/american-fertility-is-falling-short-of-what-women-want.html> [<https://perma.cc/6FML-FWM3>].
36. See generally Melissa S. Kearney, Phillip B. Levine & Luke Pardue, *The Puzzle of Falling US Birth Rates Since the Great Recession*, 36 J. ECON. PERSPECTIVES 151 (2022) (analyzing potential causes of falling birth rates and concluding that the cause is likely multifaceted).
37. AJ Skiera, *Personal Independence Behind Declining Birthrates*, HARRIS POLL (Oct. 11, 2022), <https://theharrispoll.com/briefs/birth-rates> [<https://perma.cc/XN23-L3GT>].
38. Of course, this depends on the level of awareness that childless adults have of (1) the career impact of children; and (2) existing policies to support working families. Based on that, it is likely that any effect would be largest on families that already have one child.
39. See Kearney et al., *supra* note 36.
40. Daniel Crown, *The Demographic Outlook: 2023 to 2053*, CONG. BUDGET OFF. (Jan. 2023), <https://www.cbo.gov/publication/58912> [<https://perma.cc/S22S-JGMB>] (“In [the Congressional Budget Office’s] projections, the total fertility rate remains at 1.66 births per woman through 2023 and then rises as fertility rates among women ages 30 to 49 increase. By 2030,

commentators arguing a falling birthrate is a good thing, while others warn of societal consequences.⁴¹ For the purposes of this Essay, the best birthrate is one that accurately reflects the desires of American adults to have children.

Additionally, giving parents more flexibility to stay home could give families more freedom to use or not use daycare as they see fit. The impact of daycare on childhood development remains a controversial issue, with split opinions on its benefits and drawbacks at both the interpersonal and academic levels.⁴² Sixty percent of American survey respondents believe that having a stay-at-home parent is better for children than having only working parents.⁴³ Making stay-at-home parenting less permanent and therefore more accessible would allow more parents to decide for themselves whether daycare is the right choice for their family, without long-term career outcomes weighing heavily in the balance of that decision.

Admittedly, there is some tension between the societal-level benefits discussed above of stay-at-home parent return to the workforce (increased GDP and increased workforce gender equality) and the possible indirect family-level

the fertility rate is projected to be 1.75 births per woman, where it remains through 2053. That rate is below the replacement rate of 2.1 births per woman—the fertility rate required for a generation to exactly replace itself in the absence of immigration.”).

41. Compare Laura Spinney, *Why Declining Birth Rates Are Good News for Life on Earth*, *GUARDIAN* (July 8, 2021, 5:00 EDT), <https://www.theguardian.com/commentisfree/2021/jul/08/why-declining-birth-rates-are-good-news-for-life-on-earth> [<https://perma.cc/N7BK-B5CS>] (asserting that declining birth rates are not the problem they are often made out to be, are reasonable in the context of climate change, and have the potential to improve standards of living), with Lois M. Collins, *How a Declining Birthrate Could Impact Every American*, *DESERET NEWS* (June 1, 2023, 12:01 EST), <https://www.deseret.com/2023/5/31/23742505/how-declining-us-birth-rate-could-impact-every-american> [<https://perma.cc/6AZ3-4X48>] (warning of economic consequences to falling birth rates, including a reduced and older workforce and the possible need to reallocate societal resources away from schools).
42. Compare Michael Baker, Jonathan Gruber & Kevin Milligan, *Universal Child Care, Maternal Labor Supply, and Family Well-Being*, 116 *J. POL. ECON.* 709, 713 (2008) (concluding that after the implementation of a national childcare program in Quebec, children grew up to be slightly more anxious, hyperactive, and aggressive than children raised, in otherwise comparable circumstances, prior to the implementation of the national childcare program), and Jenet Erickson & Katharine B. Stevens, *Universal Child Care: A Bad Deal for Kids?*, *INST. FAM. STUD.* (Feb. 1, 2021), <https://ifstudies.org/blog/universal-child-care-a-bad-deal-for-kids> [<https://perma.cc/T54U-YYS3>] (describing follow-up studies conducted twenty years after the inception of the universal childcare program in Quebec, which found negative social-emotional outcomes persisting into adolescence and young adulthood for participants), with Eric Dearing, Henrik Daae Zachrisson & Ane Naerde, *Age of Entry into Early Childhood Education and Care as a Predictor of Aggression: Faint and Fading Associations for Young Norwegian Children*, 26 *PSYCH. SCI.* 1595, 1605 (2015) (concluding that though there may be modestly higher levels of aggression associated with early entry into Early Childhood Education and Care Centers, these effects disappear between the ages of two and four).
43. Cohn et al., *supra* note 13.

benefit of additional parents choosing to stay home with children temporarily, safe in the knowledge they can later return. The reality is that because most stay-at-home parents currently are women, it is likely that if more parents chose to opt out of the workforce temporarily, most of these parents would be mothers.⁴⁴ This is not a major detractor from the discussed societal-level benefits for several reasons. First, there is not yet empirical evidence regarding how many more women would choose to stay home, so this may not be a large group at the population level. Second, even if the option to stay home with the promise of return causes more women to step out, any effects from this will likely be short-term. Presumably, many of these women will eventually want to step back in (otherwise they wouldn't be swayed to step out by the presence of the option to step back in).

In sum, proposals to help support stay-at-home parents rejoin the workforce have the potential to increase national GDP, increase workplace gender equity, improve the financial prospects of individual families, improve security and happiness for former stay-at-home parents, and increase the ability of parents to make the choices they see as best for their families.

II. POLICY SUGGESTIONS

This Part presents two policy proposals and discusses further avenues for research as workforce re-entry after staying home is understudied to date. Republicans and Democrats agree that family and children bring significant meaning to their lives, with many ranking family and friends as more important for creating meaning than careers and material stability.⁴⁵ This suggests that voters from both political groups may support the goal of increasing flexibility and options for families. Though there are likely many possible avenues for supporting stay-at-home parents seeking to return to work outside of the home, this Essay proposes two policy changes that could be enacted together or separately: (1) adding stay-at-home parents to the list of groups that qualify for Work Opportunity Tax Credits (WOTCs); and (2) expanding Title VII to include explicit protections for parenthood.

44. Jill Filipovic, *Conservatives Say They Want to Help 'Parents' Stay Home. They Mean Mothers.*, WASH. POST (May 3, 2021, 10:13 AM EDT), <https://www.washingtonpost.com/outlook/2021/05/03/conservatives-childcare-parents-mothers> [<https://perma.cc/ZKC9-DM92>].

45. Laura Silver & Patrick Van Kessel, *Both Republicans and Democrats Prioritize Family, but They Differ over Other Sources of Meaning in Life*, PEW RSCH. CTR. (Nov. 22, 2021), <https://www.pewresearch.org/short-reads/2021/11/22/both-republicans-and-democrats-prioritize-family-but-they-differ-over-other-sources-of-meaning-in-life> [<https://perma.cc/6CGQ-T49V>].

A. *Work Opportunity Tax Credits*

WOTCs are a well-established federal program. Employers can claim WOTCs for hiring individuals belonging to ten “targeted groups who have faced significant barriers to employment,” including Temporary Assistance for Needy Families recipients, qualifying veterans, ex-felons, and summer youth employees living in empowerment zones.⁴⁶ The credits come in the form of tax write-offs, usually valued at \$2,400 per new worker hired,⁴⁷ but they can go as high as \$9,600.⁴⁸ To claim the tax credit, employers must file Form 8850 to receive certification that the new employee is a member of a target group and then file Form 5884 to receive the credit.⁴⁹ The approximately one in three stay-at-home parents experiencing poverty⁵⁰ are likely already covered by WOTCs as Temporary Assistance for Needy Families recipients, Supplemental Nutrition Assistance Program (SNAP) recipients, or long-term family-assistance recipients. As such, this proposal targets stay-at-home parents not already covered by WOTCs.

Because the program already exists and has received bipartisan endorsement, expanding WOTCs has a clear path to implementation. This makes doing so a practical option for stay-at-home parent support. Congress has confidence in the WOTC program as an avenue for decreasing unemployment, as evidenced by the fact that it has recently been renewed to extend through 2025,⁵¹ and was most recently introduced in both chambers of Congress by a bipartisan group of sponsors.⁵² Adding stay-at-home parents to the list of targeted groups for WOTCs

46. *Work Opportunity Tax Credit*, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit> [<https://perma.cc/9ZJW-N6VW>].

47. Emp. Dev. Dep’t, *FAQs – Work Opportunity Tax Credit (WOTC)*, ST. OF CAL., https://www.edd.ca.gov/jobs_and_training/wotc_frequently_asked_questions.htm [<https://perma.cc/C2CV-TMB6>].

48. *Fact Sheet: Returning Heroes and Wounded Warrior Tax Credits*, OFF. PRESS SEC’Y (Nov. 21, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/21/fact-sheet-returning-heroes-and-wounded-warrior-tax-credits> [<https://perma.cc/G3WY-ZBTY>].

49. *Id.*

50. Cohn et al., *supra* note 13.

51. Roy Maurer, *Work Opportunity Tax Credit Extended Through 2025*, SHRM (Feb. 16, 2021), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/work-opportunity-tax-credit-extended-through-2025.aspx> [<https://perma.cc/KD85-C9ZU>].

52. Chad Qian, *An Overview of the Work Opportunity Tax Credit*, TAX FOUND. (Aug. 2, 2019), <https://taxfoundation.org/work-opportunity-tax-credit-wotc> [<https://perma.cc/9SAF-M239>]; Press Release, Rep. Lloyd Smucker, *Legislation Strengthens Proven Tool Connecting Individuals to the Workforce* (Dec. 14, 2023), <https://smucker.house.gov/media/press-releases/smucker-introduces-bipartisan-improve-and-enhance-work-opportunity-tax-credit> [<https://perma.cc/2ZFR-GF5K>].

need not be a major administrative or political challenge. From an administrative standpoint, the program is already set up, so administrative start-up costs would be relatively low. From a political standpoint, stay-at-home parents are a bipartisan group. About as many stay-at-home parents voted for Hillary Clinton (the Democratic candidate) as voted for Donald Trump (the Republican candidate) in the 2016 presidential election.⁵³ Therefore, stay-at-home parents are not a voting block for a single political party, making them more likely to receive bipartisan support.

Arguably, it could be inappropriate to add stay-at-home parents to this list, because some of them may be very wealthy while many of the other groups on the list (e.g., recipients of federal assistance) are explicitly not. However, this argument is weakened by WOTCs' coverage of some groups (e.g., disabled veterans), where membership in the group does not require having a low income but members still struggle to rejoin the workforce. The unifying theme of WOTC groups is that members of the targeted groups have more trouble than the average person in getting a job. Stay-at-home parents fit within this unifying characteristic.

WOTCs have had modest success in getting eligible people back to work. Studies of the program disagree on its relative *level* of success – one study found a 12.6% increase in employment rates among eligible groups,⁵⁴ while an earlier study found a 5.9% increase in the short term and no increase in the long term likely due to low program participation⁵⁵ or possibly due to inadequate training to improve human capital in the long term.⁵⁶

Though these percentages may seem low, the program remains worthwhile for stay-at-home parents and may be more successful for stay-at-home parents than other groups. Helping return any number of people to the workforce who desire to do so is beneficial for the economy, gender equity, and individual family happiness, as discussed in Part I, and WOTCs are an administratively and politically feasible way to realize these benefits. And lower participation rates mean lower costs: since the tax credits are only issued when a WOTC hire is made, no

53. Christopher F. Karpowitz & Jeremy C. Pope, *2017 Summary Report: Marriage and Family in the Age of Trump*, 42 (2017), <https://csed.byu.edu/0000017e-262a-d1e9-a1ff-676aabbe0000/afs-report-2017-full-embargoed-pdf> [<https://perma.cc/9NMB-N7X3>].

54. *Id.*

55. Sarah Hamersma, *The Effects of an Employer Subsidy on Employment Outcomes: A Study of the Work Opportunity and Welfare-to-Work Tax Credits*, 27 J. PUB. POL'Y ANALYSIS & MGMT. 498, 509-10 (2008).

56. Qian, *supra* note 52.

money is spent unless the program is being used. The WOTC program incurs a similar cost to that of comparable job tax credits.⁵⁷

Plus, if it is indeed true that long-term benefits are limited,⁵⁸ this finding is potentially less concerning for stay-at-home parents than for other groups. Research on WOTC efficacy has focused on food stamp recipients,⁵⁹ now known as SNAP recipients. This is appropriate given that SNAP recipients comprise the vast majority of WOTC certifications (73.5% in FY2016).⁶⁰ However, SNAP recipients (some of whom may be stay-at-home parents already covered by WOTCs) may face different obstacles and biases than stay-at-home parents who are not SNAP recipients when returning to work. The average SNAP recipient receives benefits for multiple years,⁶¹ while the signaling bias stay-at-home parents face⁶² is most acute in the first job they take after being home.⁶³ Low-income assistance recipients may continue to face challenges from being low-income even after losing benefit (and therefore WOTC) eligibility. By contrast, stay-at-home parents will no longer be stay-at-home parents after receiving their first job upon re-entering the workforce (unless they choose to leave the workforce and become stay-at-home parents again later in life). Therefore, in most cases, stay-at-home parents' eligibility for the program is limited to one-time use. This meaningfully alters the short-term versus long-term benefits analysis: the counterargument that there are scarce long-term benefits of adding stay-at-home parents to WOTCs is undermined, because the short-term benefits might be sufficient for addressing the most significant challenge faced by stay-at-home parents – obtaining the first job.

57. *Id.*

58. Hamersma, *supra* note 55.

59. *Id.* at 21.

60. BENJAMIN COLLINS & SARAH A. DONOVAN, CONG. RSCH. SERV., R43729, THE WORK OPPORTUNITY TAX CREDIT 6 (2018).

61. Arthur Delaney, *How Long Do People Stay on Public Benefits?*, HUFF POST (May 29, 2015, 2:31 PM EDT), https://www.huffpost.com/entry/public-benefits-safety-net_n_7470060 [<https://perma.cc/5ZV4-L5RB>].

62. Weisshaar, *supra* note 17.

63. Existing concerns about hiring biases against stay-at-home parents focus on re-entering the workforce, not persisting in the workforce, suggesting re-entry is the time of most acute struggle. See Jocelyne Gafner, *Report: 93% of Stay at Home Moms Have Experienced or Anticipate Experiencing Challenges When Reentering the Workforce*, INDEED (Aug. 10, 2023), <https://www.indeed.com/career-advice/news/stay-at-home-mom-valuable-transferable-skills> [<https://perma.cc/Y92K-7P84>]. The Work Opportunity Tax Credit program structure reflects that some hiring “red flags” are more acute than others. For example, to qualify for the program an ex-felon must be hired within a year or either conviction or release from prison. Likely the thinking is that some negative resume signals lessen over time.

The largest potential downside to the proposal to add stay-at-home parents to the WOTC target-groups list is cost: even with many eligible people and employers not filing claims, the Office of Management and Budget estimated spending over one billion dollars on the program in 2017.⁶⁴ There are multiple ways to address this consideration. First, the credit for hiring former stay-at-home parents need not be as large as any of the other existing credits, though empirical work could help determine whether reducing the credit reduces efficacy, especially for stay-at-home parents applying to white-collar industries that may be less motivated by receipt of small tax credits. The program already differentiates credit levels among existing target groups.⁶⁵ Second, the existing legislative cap on the dollar amount available for each individual claim could be extended into a legislative cap on the dollar amount available for claims within the stay-at-home parent category. Congress could determine how much money it is willing to allocate to help stay-at-home parents rejoin the workforce, factoring in the increased tax revenue that will come from more workers collecting incomes and paying federal income taxes as a result of the program.

Though the WOTC program already exists, the precise cost or impact of adding stay-at-home parents cannot be ascertained without further research. This Essay is intended as a starting point for a conversation about returning stay-at-home parents to the workforce, not an end point. Most policy proposals remain at best educated guesses until either randomized pilot programs take place, or the policies are implemented. As with any policy proposal, additional cost-benefit analysis by the Congressional Budget Office would be wise prior to adoption.

There are several empirical questions about the WOTC proposal that could benefit from additional study. Logically, there are a number of possible WOTC program scenarios: no tax credit for hiring stay-at-home parents (the current scenario), a tax credit for hiring stay-at-home parents that is smaller than the tax credit offered to employers for hiring members of other qualifying groups, a tax credit for hiring stay-at-home parents that is the same as the tax credit offered to employers for hiring members of other qualifying groups, or a tax credit for hiring stay-at-home parents that is larger than the tax credit offered for hiring members of all other qualified groups. Running randomized pilot programs for the scenarios for a short duration could be an effective way to evaluate outstanding questions such as: (1) the amount each scenario would cost per year, given

64. COLLINS & DONOVAN, *supra* note 60, at 6.

65. *Federal Work Opportunity Tax Credit*, CORP. TAX INCENTIVES, <https://www.ctilc.com/work-opportunity-tax-credit> [<https://perma.cc/V5AD-8JH6>].

that cost would be determined based on program participation; and (2) the percent by which each scenario would increase hiring of stay-at-home parents.

Pilot programs could be complemented by surveys to determine whether parents would be more likely to stay at home temporarily if WOTCs were available to help them later get a job. If so, this would change the cost calculations for the program over time. Also, it would be useful to gain empirical research about the type of jobs to which stay-at-home parents would be attempting to return, and the likely relative efficacy of WOTCs in those industries in the aftermath of this proposed program expansion. For example, would there be a difference in efficacy with helping a woman return to a job requiring no degree, versus helping a woman return to a career requiring graduate-level education? This could help identify whether specific income demographics of stay-at-home parents stand to gain more from the program than others.

WOTC eligibility for stay-at-home parents is worthy of further consideration. WOTCs are politically and logistically feasible, successful in getting people back to work at least in the short-term, and have a direct connection between costs and benefits.

B. Expansion of Title VII

An alternative or additional option to the WOTC-expansion proposal is adding parental status or an equivalent to the list of protected classifications in Title VII. Title VII prohibits employment discrimination, including in hiring practices, against members of protected classifications (currently, race, color, religion, sex, and national origin).⁶⁶ The Pregnancy Discrimination Act of 1978 amended Title VII to expand the definition of sex to include protections for pregnancy and childbirth.⁶⁷ However, there is no provision in Title VII that directly protects job seekers against employment discrimination on the basis of parenthood, including former stay-at-home parenthood.

Protections for parental status are not unprecedented in an employment context and have previously been proposed at the federal level. Federal Executive Order 13,152 prohibits discrimination based on parental status in federal employment, though its prohibition does not extend to the private or state sectors.⁶⁸ The private-sector companion act for Executive Order 13,152—the Ending Discrimination Against Parents Act (EDPA),⁶⁹ the text of which was extremely similar to Title VII in all meaningful ways—was introduced in the Senate but never

66. Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

67. Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. § 2000e(k)).

68. Exec. Order No. 13,152, 3 C.F.R. 264 (2001).

69. S. 1907, 106th Cong. (1999).

proceeded beyond that point.⁷⁰ Inclusion of parenthood, or “familial status” protections, has been successful in other legislation. For example, “familial status” is one of the seven classifications protected in the federal Fair Housing Act, disallowing landlords from refusing to rent to tenants because the tenants have children.⁷¹ And New York State has family-status protections that cover parents with children under the age of eighteen, including in the workplace.⁷²

Expanding Title VII’s protections to parental status would ensure that all employees have access to the same protections federal employees already do, and prevent employers from discriminating against parents who chose to temporarily opt out of the workforce to care for their families. Given Professor Weisshaar’s research finding, detailed in Part I, that employers are less likely to hire stay-at-home parents than other unemployed people whose resumes are otherwise identical,⁷³ a blanket protection of the kind afforded by Title VII may be necessary.⁷⁴ Protection for parental status has been taken up occasionally in law reviews,⁷⁵

70. Peggie R. Smith, *Parental-Status Employment Discrimination: A Wrong in Need of a Right?*, 35 U. MICH. J.L. REFORM 569, 588 (2002).

71. 42 U.S.C. §§ 3602(k), 3604 (2018).

72. *Familial Status Discrimination*, BROWN, KWON & LAM LLP, <https://www.bkllawyers.com/employment-discrimination/familial-status-discrimination> [<https://perma.cc/NEN5-95AB>].

73. See *supra* text accompanying notes 16-18.

74. Granted, employers could still attempt to get around such a blanket protection by distinguishing between applicants who are unemployed by choice and applicants who are unemployed involuntarily. However, the lines of this distinction are not neat: some parents became stay-at-home parents as a first choice, while others did so when other doors closed; some non-parents choose to temporarily opt out of the labor market as well. Additionally, determining in a hiring process the details of why an applicant is currently unemployed may be difficult, as most applicants will be inclined to cast their unemployment in the best possible light. And any such policy against hiring applicants unemployed by choice may have a disparate impact on parents that cannot be justified by business necessity, making the policy impermissible under Title VII if the statute were expanded to protect parental status. For an introduction to disparate impact caselaw, see *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

75. See, e.g., Smith, *supra* note 70, at 585-94 (describing policy suggestions that “parents should be treated as a protected class under employment anti-discrimination law”); Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375, 509-10 (1996) (suggesting “a special class of worker—the parent” to protect from hiring discrimination); Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women’s Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. MICH. J.L. REFORM 371 (2001) (arguing that Title VII does not account for women’s lack of choice in being the default caregivers of families and thus does not provide adequate protections); Michelle A. Travis, *A Post-Pandemic Antidiscrimination Approach to Workplace Flexibility*, 64 WASH. U. J.L. & POL’Y 203 (2021) (arguing that remote work accommodations could be applied for mothers under Title VII in the post-pandemic world); Maxine Eichner, *Square Peg in a Round Hole: Parenting Policies and Liberal Theory*, 59 OHIO ST. L.J. 133 (1998) (arguing that Title VII protections are too narrow to protect parents).

with one prominent piece opposing Title VII legislation to protect against parental-status discrimination on the grounds that it is only marginally more beneficial than existing gender antidiscrimination provisions.⁷⁶ This margin is implicated in the stay-at-home parent protection context, an important one in a post-COVID world with work becoming increasingly flexible.

Existing Title VII sex protections extend to parenting for women⁷⁷ in some contexts, but this is insufficient to address the stay-at-home parent context raised by this Essay. In the classic case of *Phillips v. Martin Marietta Corp.*, the Supreme Court held that sex-plus discrimination (sex discrimination that occurs when another trait, e.g., being a parent, is also present) is illegal.⁷⁸ In *Phillips*, the plaintiff's employer hired fathers with preschool age children but not mothers.⁷⁹ The reasoning in the case turned on the idea that, even though this was parenting discrimination, it was really sex discrimination because mothers and fathers were being treated differently.⁸⁰ But this reasoning does not help protect stay-at-home parents; given that stay-at-home parents of all genders face difficulties with workforce re-entry, there is no straightforward sex claim here. No sex claim means no protection. For example, the early case of *Bass v. Chemical Banking Corp.* determined that a married woman with children who lost a position to an unmarried woman with no children could not claim sex discrimination under Title VII.⁸¹ The problem for stay-at-home parents is that, according to Weisshaar, they are being treated differently than similarly situated nonparents, not similarly situated parents (though stay-at-home dads may be slightly worse off than stay-at-home moms for workforce return). An additional limitation is that one interpretation of the sex-plus doctrine is that "the 'plus' must also be a fundamental right or an immutable characteristic." Parental status counts, childcare choices don't.⁸² Despite arguments to expand the test for identifying sex-plus discrimination,⁸³ such an expansion has not occurred. And rightfully so, as to subsume all parental discrimination within sex discrimination is to read "sex"

76. Smith, *supra* note 70, 619-20.

77. This argument is bolstered by the fact that working motherhood would have been at the forefront of the sex-discrimination conversation at the time Title VII was passed. Arianne Renan Barzilay, *Parenting Title VII: Rethinking the History of Sex Discrimination Prohibition*, 28 YALE J.L. & FEMINISM 55, 99-101 (2016).

78. 400 U.S. 542, 544 (1971).

79. *Id.* at 543.

80. *Id.* at 544.

81. No. 94 Civ 8833, 1996 WL 374151, at *5 (S.D.N.Y. July 2, 1996).

82. See Heather M. Kolinsky, *Taking Away an Employer's Free Pass: Making the Case for a More Sophisticated Sex-Plus Analysis in Employment Discrimination Cases*, 36 VT. L. REV. 327, 344 (2011).

83. See, e.g., *id.* at 350-53 (advocating for a more sophisticated sex-plus test that accounts for intraclass discrimination, e.g., discrimination against mothers compared to other women).

far beyond the text of the statute and to ignore progress made towards equalizing caregiving responsibilities between men and women. Thus, expanding Title VII to include parental status would fill a blind spot in antidiscrimination law.

The largest potential downside to the Title VII proposal is political feasibility. EDPA, a similar bill, stalled out in the Senate at the end of the twentieth century.⁸⁴ Republicans are less likely to support an expansion of Title VII due to recent reluctance to expand civil-rights legislation that limits the discretion of businesses.⁸⁵ However, though this may be an uphill battle, it is not without hope. Republicans may be swayed by arguments about the importance of protecting parents. House Republicans recently passed the “Parents Bill of Rights” to increase parental control in public schools.⁸⁶ Though the bill is about parents’ rights to direct their children’s education, not parents’ rights to participate in the workforce, it prioritizes the individual family unit over other considerations, which is similar to the Title VII proposal. Liberal Democrats are likely to support Title VII expansions. For example, the Equality Act, which would expand Title VII to include “sexual orientation and gender identity” as protected classifications, passed the House with unanimous support from Democrats.⁸⁷ Moreover, the failure of EDPA was over twenty years ago, before the COVID-19 pandemic underscored the struggles of balancing parenting and working. Because Title VII expansion has no financial cost and offers significant potential benefit to parents, the political hurdles are worth surmounting.

Compared to the WOTC proposal, there is much less need to conduct an empirical study on the Title VII proposal. Although passing workplace antidiscrimination laws may change the composition of the workplace, and, therefore, alter the economy by improving the labor force participation rate and GDP,⁸⁸ changes in Title VII coverage do not directly impact the federal government’s budget in the way that a tax-credit program does. Title VII’s efficacy has scholarly detractors, but engagement with that discussion is beyond the scope of this

84. Smith, *supra* note 70, at 588 (“EDPA languished in congressional committees . . .”).

85. See, e.g., Sheila Callahan, *Republicans Deny that Older Job Applicants Need Protection from Age Discrimination*, FORBES (Nov. 26, 2021, 9:48 AM EST), <https://www.forbes.com/sites/sheilacallahan/2021/11/26/republicans-deny-that-older-job-applicants-need-protection-from-age-discrimination> [<https://perma.cc/TB5D-H5XV>].

86. Bianca Quilantan, *House Republicans Pass Broad Education Measure on ‘Parents Rights,’ POLITICO* (Mar. 24 2023, 2:23 PM EDT), <https://www.politico.com/news/2023/03/24/house-republicans-pass-parents-rights-bill-00088729> [<https://perma.cc/74S4-ENH9>].

87. Danielle Kurtzleben, *House Passes the Equality Act: Here’s What It Would Do*, NAT’L PUB. RADIO (Feb. 25, 2021, 4:39 PM ET), <https://www.npr.org/2021/02/24/969591569/house-to-vote-on-equality-act-heres-what-the-law-would-do> [<https://perma.cc/4T2U-EZ9X>].

88. See *supra* notes 21-26 and accompanying text.

Essay, aside from noting that Title VII remains the most comprehensive federal antidiscrimination employment protection legislation to which there is no current legislative alternative.

Title VII exists to protect disadvantaged groups from employment discrimination. Parents face workforce challenges that nonparents do not face and are not already covered by Title VII. Adding protections to parents through Title VII could increase protections for stay-at-home parents returning to work, as well as parents who chose never to step away from the workforce. Further thought is required about how to do this most effectively within the Title VII framework, especially because adding protections for parents to Title VII would have much broader impacts than just protecting stay-at-home parents, but preliminary implementation proposals exist.⁸⁹

C. *Alternative Policy Proposals*

A primary appeal of the WOTC and Title VII proposals is that both statutory frameworks already exist, making adoption of the proposals more practically feasible and the outcomes more predictable. However, these proposals do not preclude other potentially effective options.

For example, another effective and complimentary option is the creation and expansion of local programs to provide assistance for developing job application materials. It is possible that stay-at-home parents could mitigate some negative perceptions by employers by carefully crafting their resumes and cover letters. This is currently unexplored empirically in the stay-at-home parenthood context: the Weisshaar study used only one type of signal on both resumes and cover letters to signal parenthood and stay-at-home parenthood.⁹⁰ However, there is empirical evidence for the general proposition that application assistance is an effective way to get people back into the workforce.⁹¹ Individual-level improvements in the quality of job applications can complement broader policy supports for stay-at-home parents to re-enter the workforce.

Furthermore, filling existing research gaps would help conceptualize additional or alternative policy proposals. Though the Weisshaar study broke important empirical ground, many unanswered questions remain about employers'

89. See, e.g., Debbie N. Kaminer, *The Work-Family Conflict: Developing a Model of Parental Accommodation in the Workplace*, 54 AM. L. REV. 305 (2004).

90. Weisshaar, *supra* note 16, at 45.

91. See, e.g., IAN AYRES, SUPER CRUNCHERS: WHY THINKING-BY-NUMBERS IS THE NEW WAY TO BE SMART 65-67 (2007) (discussing the results of “search-assistance” tests, which demonstrated that “[u]nemployed workers who received the assistance found a new job about a week earlier than similar individuals who did not receive assistance” and that “[t]he jobs found by the program participants paid just as well as the ones found later by non-participants”).

hiring practices regarding stay-at-home parents. These questions include whether the stay-at-home parent hiring disadvantage is stronger for job seekers of specific racial groups, sexual orientations, gender identities, marital statuses, income levels, and education levels. It could also be useful to extend greater consideration to the career impacts of working part-time due to parenthood, rather than constraining the conversation to the dichotomy of stay-at-home parenting and full-time work. Additionally, it may be helpful to understand whether employer bias against stay-at-home parents is grounded in reality: are former stay-at-home parents any less productive or reliable than other people who were temporarily unemployed? A concrete answer to the question of whether former stay-at-home parents are truly “worse” employees matters for political advocacy purposes. However, this Essay has argued that even if the answer is yes, the benefits of returning stay-at-home parents to the workforce are worth any inefficiencies.⁹²

CONCLUSION

Parents should have the flexibility to choose the childcare and work balance that is best for their individual family units, including the option to stay at home temporarily while children are young and then later return to the workforce. Stay-at-home parents face greater barriers to re-employment than both continuously employed parents and involuntarily unemployed persons.⁹³ This Essay presents two policy proposals to assist stay-at-home parents who wish to rejoin the workforce. First, employers could be financially incentivized to hire stay-at-home parents by including stay-at-home parents in an existing hiring tax-credit program. Second, employers could be prevented from discriminating against stay-at-home parents in hiring by including parental status as a protected classification in Title VII. The Worker Opportunity Tax Credit expansion proposal is likely more politically feasible than the proposed Title VII expansion, though Title VII expansion would be a more extensive, permanent, and less expensive protection.

The COVID-19 pandemic changed the way we conceptualize work, at precisely the same time that many people became stay-at-home parents by necessity. The time is now, both politically and in terms of need, to enhance protections for stay-at-home parents to re-enter the workforce if, and when, they wish.

92. See *supra* Section I.A and note 27.

93. Weisshaar, *supra* note 16, at 46-47.

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