Protecting the Welfare of our Children for a Better Tomorrow

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I. Abstract

In 2011, Florida passed a law that required individuals to submit themselves to a suspicionless drug test if such individuals applied for welfare benefits. Recently, the Florida statute was deemed unconstitutional under the Fourth and Fourteenth Amendment in federal court. How is it that people who earn their income and have an actual job may be subjected to random drug testing, yet people who apply for welfare benefits from the federal and state government are not? This seems to be a double standard. People who are employed and work for their income must pay taxes, which fund welfare programs, yet it is unconstitutional to mandate welfare recipients to submit to a drug test. There are issues revolving around the Temporary Assistance for Needy Families program regarding what people who receive welfare benefits may use the cash allowance from the program. These issues affect the children of the parents who are receiving welfare benefits. Just as there is a concern for a drug-free workplace, there should be a concern for a drug-free home.

Furthermore, there are news reports that some welfare recipients trade their food stamps for cash or use their cash allowance in order to purchase drugs, alcohol, weapons, or non-essential items. It is the responsibility of the state government to assure that recipients of welfare benefits are not committing fraud in order to obtain such benefits and are not using them to purchase drugs, guns, or the like. Thus, the courts need to find a middle ground to not provide a double standard when drug-testing welfare applicants versus employees in the workforce. We need to protect our children’s welfare—economically and socially.

1 Juris Doctor Candidate May 2015, St. Thomas University School of Law, St. Thomas Law Review, Notes and Comments Editor; Bachelor of Science in Communications, Florida International University 2009.
2 MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/suspicionless (last visited Nov. 1, 2014) (defining “suspicionless” as “having or showing no suspicion”). Hence, a suspicionless search is when an authority figure performs a search, such as a drug test or search of an automobile, without suspicion of criminal activity. See generally Chandler v. Miller, 520 U.S. 305 (1997).
3 Lebron v. Wilkins, 990 F. Supp. 2d 1280 (M.D. Fla. 2013).
4 The artist name is ineligible. I do not take any credit in any way for this illustration. This comic was found on a forum. See B-Man, Drug Tests for Welfare?, TWO BILLS DRIVE (Mar. 15, 2013, 10:40 AM), http://forums.twobillsdrive.com/topic/156541-drugtests-for-welfare/ (noting that it is unknown whether the person who posted the comic is the artist).
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Poor people are poor people
And they don’t understand
A man’s got to make whatever he wants
And take it with his own hands.

—Alan Price

III. Introduction

“It is time that we recognize that many families are trying to survive in drug-induced poverty, and we have an obligation to make sure taxpayer money is not being used to support drug dealers . . . [w]e can no longer turn a blind eye to this problem.”6 Who should be allowed to receive welfare benefits?7 Is our goal to provide poverty relief to low-income families?8

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7 See generally JULIET M. BRODIE ET AL., POVERTY LAW, POLICY, AND PRACTICE 197 (Vicki Beem et al. eds., 2014).
8 Id.
Poverty is an ongoing issue not only in the United States but also around the world. Individuals living in poverty do not have enough money for food, shelter, proper clothing, and education. Poverty differs among cities, states, and countries due to the cost of living. In all, poverty is a subjective, universally undefined term, with many different interpretations. The United Nations defines “poverty” as “a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.” The federal government can help provide individuals in poverty with economic justice; however, it is difficult for the federal government to help provide social justice to all.

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9 See generally BRODIE ET AL., supra note 7 (stating that there is no specific, internationally known definition of “poverty”). Normally, poverty is defined in relative or absolute terms. Id. at 3. When defining “poverty” as a relative term, one must consider the relative finances of individuals within a community and, then, develop the average income, setting the poverty line below the average wealth within such community. Id. Hence, poverty means, in relative terms, the below average income within each community, essentially, defining such individual’s place in society. Id. Hence, each community will have its own definition of poverty. Id. However, when defining “poverty” as an absolute term, one must consider the essentials of life a particular individual needs to survive, including the amount of food and whether the individual has sufficient shelter—which can be subjective to each person. Id.


11 See generally BRODIE ET AL., supra note 7.

12 See generally BRODIE ET AL., supra note 7. Currently, poverty levels are calculated, in part, by including an individual’s gross income. Id. This is unrealistic. In calculating poverty levels, an individual’s net income should be considered after deductions have been made, not prior.

13 See generally BRODIE ET AL., supra note 7; Mollie Orshansky, How Poverty is Measured, 92 MONTHLY LAB. REV. 37 (1969) (defining poverty). The creator of the United States poverty line, Mollie Orshansky, stated: Poverty, like beauty, lies in the eye of the beholder. Poverty is a value judgment; it is not something one can verify or demonstrate, except by inference and suggestion, even with a measure of error. To say who is poor is to use all sorts of value judgments. The concept has to be limited by the purpose which is to be served by the definition. There is no particular reason to count the poor unless you are going to do something about them . . . . [W]hen it comes to defining poverty you can only be more subjective or less so. You cannot be nonsubjective.

Orshansky, supra.


15 See BRODIE ET AL., supra note 7, at 185.
Due to poverty, the federal and state governments have created welfare programs, such as Temporary Assistance for Needy Families ("TANF"), Supplemental Security Income, and the Supplemental Nutrition Assistance Program ("SNAP"), to help assist individuals in need. Although the number of individuals who receive cash welfare benefits, in the United States, is relatively small, the welfare system is a high, politically contested area, consisting of moral and ethical disputes in subjects including, but not limited to, poverty, race, and family. There is a present concern for the best interests of the children of women receiving welfare benefits and a policy concern that receiving welfare benefits disincentives individuals from obtaining employment.

Currently, the majority of individuals receiving TANF benefits are single mothers. It is more common to find drug use among women receiving welfare benefits, such as TANF benefits. It is true that the amount of women receiving public welfare benefits is small; however, the policy concerns outweigh the statistics. “Domestic violence and other family

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16 See infra Part IV.a.
18 See infra Part IV.b.
19 See Brodie et al., supra note 7, at 185; Liz Schott, CTR. ON BUDGET AND POLICY PRIORITIES, POLICY BASICS: AN INTRODUCTION TO TANF 1 (2012), available at http://www.cbpp.org/files/7-22-10tanf2.pdf. TANF is a cash assistance program, which is later discussed in this comment. There are other cash assistance programs, such as Old-Age, Survivors, and Disability Insurance, Unemployment Insurance, and Social Security Disability Insurance, which will not be discussed in this comment.
20 Brodie et al., supra note 7, at 185.
22 Brodie et al., supra note 7, at 186. Of these single mothers, a disproportionate number of them are colored women. Id.
conflicts, childcare, transportation, mental health problems[,] and other chronic potential barriers to work are intertwined with substance abuse.”25 The children of these women, who have a substance abuse issue, are in severe danger of adverse outcomes in life due to the rise in domestic violence, family conflicts, and childcare, to name a few.26 It is recommended that women, receiving TANF benefits, with substance abuse problems be given special attention because these women have more frequent and complex issues that prohibit them from attaining employment.27 In Florida, a study showed that substance-abusing women who undergo treatment have higher earnings than those who do not seek treatment.28 Therefore, it is vital that states drug test and screen its public welfare benefit applicants and recipients, so not only women but also men maintain better employment opportunities with higher wages and become independent of public welfare benefits, such as TANF.29

(last visited Nov. 11, 2014) (findings on substance abuse among women). Approximately twenty percent of recipients of public welfare benefits (within a one-year timeline) have used illegal drugs and alcohol. Id. 25 Marjorie A. Gutman, The Relationship of Substance Abuse to Welfare Reform: Barriers to Work Among a Population of Substance Abusing Women on TANF, SUBSTANCE ABUSE POLICY RESEARCH PROGRAM, http://www.saprp.org/pm_keyResFind.cfm (last visited Nov. 11, 2014).

26 Jon Morgenstern, New Jersey Study on TANF Women, SUBSTANCE ABUSE POLICY RESEARCH PROGRAM, http://www.saprp.org/pm_keyResFind.cfm (last visited Nov. 11, 2014). A study showed that children of women who had substance abuse issues were involved in high-risk behavior more frequently than children of women with no drug issues. Id. In addition, the study demonstrated that drug screening and assessing applicants and recipients of public welfare benefits—TANF—is an effective approach in seeking the proper treatment for substance abuse. Id. Further, the study reported that women, who entered treatment programs, which decreased substance abuse, had lower rates of welfare dependence due to the higher rates of employment. Id. 27 Marjorie A. Gutman, The Relationship of Substance Abuse to Welfare Reform: Barriers to Work Among a Population of Substance Abusing Women on TANF, SUBSTANCE ABUSE POLICY RESEARCH PROGRAM, http://www.saprp.org/pm_keyResFind.cfm (last visited Nov. 11, 2014).


Money corrupts. “One in every four low-income single mothers is jobless without cash aid—roughly four million women and children.” Of these single mothers, many of them have problems with addiction or depression. This is one of the many reasons why Americans believe welfare applicants and recipients are underserving individuals, and as a result, there is great concern. The problem does not end there. Recipients of public welfare benefits, specifically TANF cash assistance, use their cash to purchase drugs. There are recipients of public welfare benefits who have traded their food stamps with corrupt retailers to obtain cash to purchase weapons and drugs.

The constant concern is that these single mothers are mothers, mothers of children under the age of majority. Children of single mothers, who have substance abuse problems, are at an increased risk for neglect and abuse, including emotional, physical, social, and academic issues. In addition, there is a negative stigma revolved around women who receive welfare benefits that these women engage in sexual conduct, hoping to become pregnant, so they can profit from public welfare benefits. These women hope to qualify for welfare benefits, or if
they are already receiving welfare benefits, hope to have their payments increased.\textsuperscript{38} In all, crime and poverty have been associated together with public policy and public imagination since the 1960s due, in part, that generally low-income individuals are more likely to be arrested and convicted of crimes.\textsuperscript{39}

The purpose of this comment is to provide awareness of the ongoing fraud issues amongst the welfare programs, including depriving today’s children for a better tomorrow, and to provide possible, positive outcomes for a brighter future for our children. Part IV of this comment discusses background information on welfare benefits.\textsuperscript{40} Specifically, Part IV.a discusses background information on the TANF program.\textsuperscript{41} Part IV.b discusses in depth the Florida TANF program.\textsuperscript{42} In addition, Part IV.c provides background information on the SNAP program.\textsuperscript{43} Part V illustrates the ongoing welfare fraud.\textsuperscript{44} Further, Part VI provides an understanding of section 414.0652, Florida Statutes (2014) (hereinafter “Section 414.0652”).\textsuperscript{45} Part VII analyzes the Florida landmark case on drug testing recipients and applicants of welfare benefits.\textsuperscript{46} Part VIII discusses the special need to drug test individuals who seek welfare benefits.\textsuperscript{47} Part IX acknowledges the financial concern drug testing every individual who applies or receives welfare benefits addresses policy concerns.\textsuperscript{48} Part X proposes additional alternatives to amending Section 414.0652, which will minimize welfare fraud in the best interest of our children.\textsuperscript{49} Lastly, Part XI concludes and completes the discussion.\textsuperscript{50} In order to understand why

\begin{enumerate}
\item \textit{Id.}
\item BRODIE ET AL., \textit{supra} note 7, at 521.
\item \textit{See infra} Part IV.
\item \textit{See infra} Part IV.a.
\item \textit{See infra} Part IV.b.
\item \textit{See infra} Part IV.c.
\item \textit{See infra} Part V.
\item \textit{See infra} Part VI.
\item \textit{See infra} Part VII.
\item \textit{See infra} Part VIII.
\item \textit{See infra} Part IX.
\item \textit{See infra} Part X.
\end{enumerate}
drug testing or screening shall be deemed constitutional, it is important to thoroughly exhaust an overview of the purpose and history of welfare benefits.\textsuperscript{51}

**IV. Background: Welfare Benefits**

Prior to the creation of the TANF program, the Aid to Families with Dependent Children\textsuperscript{52} program was in effect.\textsuperscript{53} The Aid to Families with Dependent Children program’s purpose was to provide an adequate income to single mothers, so these women were allowed to stay home and care for their children.\textsuperscript{54} The program provided states with unlimited funds, which, in turn, offered underprivileged families money after they met certain requirements.\textsuperscript{55} Upon meeting these minimum requirements, the underprivileged family receives the benefits with no restrictions on time limits.\textsuperscript{56} During the 1960s, the program was reconfigured to encourage single mothers to obtain employment.\textsuperscript{57} A “workfare” program was developed to allow single mothers attend school, rather than obtain employment.\textsuperscript{58} However, the “workfare” program quickly dissolved because the monies single mothers, who were participating in this program,

\textsuperscript{50} See infra Part XI.
\textsuperscript{51} See infra Part IV.a–c.
\textsuperscript{52} See generally BRODIE ET AL., supra note 7, at 185–93. The Social Security Act of 1935 created the Aid to Dependent Children program, which was later renamed Aid to Families with Dependent Children, among other programs. Id. at 193. In the enactment of the Social Security Act of 1935, President Roosevelt stated, while signing the statement:

We can never insure one-hundred percent of the population against one-hundred percent of the hazards and vicissitudes of life. But we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.

Id. at 192.
\textsuperscript{53} Deparle, supra note 30.
\textsuperscript{55} See Deparle, supra note 30.
\textsuperscript{56} See Deparle, supra note 30.
\textsuperscript{57} See Deparle, supra note 30. Single mothers were provided a tax incentive if they obtained employment, and the benefits were discontinued to single mothers who “refused offers of suitable employment.” Id.
\textsuperscript{58} See Deparle, supra note 30.
were receiving was not sufficient to raise children in a healthy and safe environment. Once the Aid to Families with Dependent Children program was repealed, the TANF program was created.60

**a. Temporary Assistance for Needy Families Program**

Congress created the TANF program “as part of a federal effort to ‘end welfare as we know it.’”61 TANF is a program “designed to help needy families achieve self-sufficiency.”62 The TANF program serves four purposes63:

(1) provide assistance to needy families so that children may be cared for in their own homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.64

The TANF program focuses on the betterment of our children.65 The number of families with dependent children receiving assistance increased dramatically prior to the Welfare Reform Act of 1996.66 For instance, in 1992, the number of families with dependent children receiving

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59 See Deparle, supra note 30.
60 See infra Part IV.a.
63 In establishing these four purposes, Congress made the following findings: “(1) Marriage is the foundation of a successful society”; “(2) Marriage is an essential institution of a successful society which promotes the interest of children”; “(3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children. . . .” Act of Aug. 22, 1996, Pub. L. No. 104-193, 110 Stat. 2110.
assistance increased to 9,300,000 from 7,400,000 in 1980. Congress had many purposes for establishing the Welfare Reform Act of 1996, which incorporates the TANF program.

The Office of the Administration for Children and Families ("ACF") provides block grants to all states, so each state can create a program that pursues one or more of the TANF program purposes. Since fiscal year 1997, the federal block grant has been fixed at $16.5 million. Additionally, for a state to receive a block grant, a state must also spend its own dollars on programs for needy families. The states collectively must spend from their own

69 Office of Family Assistance, What We Do, AN OFFICE OF THE ADMINISTRATION FOR CHILDREN & FAMILIES, http://www.acf.hhs.gov/programs/ofa/about/what-we-do (law visited Oct. 29, 2014). The ACF is organized by the Division of State TANF Policy, Division of State and Territory TANF Management, Division of Data Collection and Analysis, Division of Tribal TANF Management, and Office of Family Assistance Regional Program units. Id.
70 See Joanne Fritz, What is a Block Grant?, ABOUT MONEY, http://nonprofit.about.com/od/b/g/blockgrant.htm (last visited Oct. 31, 2014). A block grant is a lump sum of money for a specified purpose given to state or local governments from the federal government. Id. With the block grant, the state or local government then creates guidelines and requirements specific to their jurisdictions in which smaller grants are to be given to another. Id.
71 Office of Family Assistance, About TANF, AN OFFICE OF THE ADMINISTRATION FOR CHILDREN & FAMILIES, http://www.acf.hhs.gov/programs/ofa/programs/tanf/about (last visited Oct. 29, 2014); Office of Family Assistance, What We Do, AN OFFICE OF THE ADMINISTRATION FOR CHILDREN & FAMILIES, http://www.acf.hhs.gov/programs/ofa/programs/tanf/about (last visited Oct. 29, 2014). The ACF administers the TANF program as well as other similar programs. Office of Family Assistance, What We Do, supra. The goal of the TANF programs is to help needy families financially secure their households and neighborhoods for the “well-being and long-term success of children and families.” Id. The ACF’s main purposes are to: “ensure that parents have the resources they need to care for their children at home; promote responsible fatherhood, engaged parenting, marriage and healthy relationships; [and] foster the long-term self-sufficiency, empowerment and success of all low-income families with employment opportunities, job training and educational support.” Id.
72 GENE FALK, CONG. RESEARCH SERV., R40946, THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT: AN INTRODUCTION 1 (2010), available at http://fas.org/sgp/crs/misc/R40946.pdf (indicating that this amount is distributed between all fifty states, including the District of Columbia, Puerto Rico, the Virgin Islands, and Guam). The amount allocated to each state has been fixed (or “frozen”) since the enactment of the Welfare Reform Act of 1996. Id. The amount each state receives was set—in the early to mid 1990s—according to the Aid to Families of Dependent Children program, among others.
funds a minimum of $10.4 billion. Overall, TANF programs help to provide some measure of economic justice to less-fortunate families.

b. Florida Temporary Assistance for Needy Families Program

On October 1, 1996, Florida initiated the TANF program. The Florida Department of Children and Families (“Florida DCF”) manages the Florida TANF program. Each state may use its TANF funds in any manner it reasonably sees fit to accomplish any of the four goals provided by federal law and regulation. Florida received a block grant of $562.34 million annually from federal fiscal years 2006 to 2010. Also, Florida is one of the seventeen states that have a “high population growth and low historic welfare expenditures that receive a supplemental grant.” Additionally, Florida received a supplemental grant of $60.4 million per annum from federal fiscal year 2006 to 2008. “The following table summarizes federal and state funding under TANF” for Florida from 2006–2010:

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74 GENE FALK, CONG. RESEARCH SERV., R40946, THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT: AN INTRODUCTION 2 (2010), available at http://fas.org/sgp/crs/misc/R40946.pdf. Combining the federal and state grants, the TANF program has a total of $31.4 billion in funds to be allocated. Id.

75 See Global Justice Academy, Economic Justice, THE UNIVERSITY OF EDINBURGH, http://www.globaljusticeacademy.ed.ac.uk/economic_justice (last visited Nov. 7, 2014) (defining “economic justice” as “a term that encompasses both a set of values and the policies utilized to further those values”); USLegal, Economic Justice Law & Legal Definition, USLEGAL.COM, http://definitions.uslegal.com/e/economic-justice/ (last visited Nov. 7, 2014). Further, “economic justice is the enhancement of the welfare of individuals” and groups. Global Justice Academy, supra. Economic justice is a notion that is based in “ethics and reason and has powerful philosophical foundations, as well as cost-benefit analysis justifications.” Id. Generally, it is a concept that justifies in an equal distribution of benefits. USLegal, supra.


79 Id. at 3.

80 Id. at 3.

81 Id. at 3.

82 Id. at 4.
The Florida Legislature has designated three agencies to receive TANF block grants and distribute the funds accordingly: (1) The Department of Children and Families receives TANF block grants and distributes the funds according to the Florida Legislature; (2) the Department of Health to receive funds related to health services, including projects to prevent pregnancy and to reduce out-of-wedlock births among minors; and (3) the Agency for Workforce Innovation receives funds to administer workforce programs and subsidized child care and other programs.84

For a family to receive TANF cash assistance, Florida has certain requirements one must meet.85 In order for a family to be eligible to receive temporary cash assistance, a family must include a child or a pregnant woman and the family must be residents of Florida.86 In addition, families that include an adult “must meet work participation requirements and are subject to time limits on the cumulative number of months of assistance.”87 However, a Florida DCF

<table>
<thead>
<tr>
<th>Type of Funding</th>
<th>Annual Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Block Grant</td>
<td>$562,340,120</td>
</tr>
<tr>
<td>Supplemental Grant</td>
<td>$60,405,668</td>
</tr>
<tr>
<td>Total Federal TANF Block Grant Funding</td>
<td>$622,745,788</td>
</tr>
</tbody>
</table>

83 Id. at 5.
84 Id. at 10–11.
85 Id. at 7.
86 Id. at 8.
87 Id. at 7. For an adult to satisfy the work participation requirements, an adult must work or “participate in work related activities for a specified number of hours per week depending on the number of work-eligible adults in the family and the age of children.” Id. at 8. For example, in a family with a single parent and a child under the age of six, the adult must work twenty hours per week, and in a family with a married teenager or a teenager who is under the age of twenty and head of household, a teenager must either attend a secondary school (or the equivalent) and maintain satisfactory attendance or participate at least twenty hours per week in education related to employment. Id. However, there are “child-only” families where such child resides with a relative. Id. at 9. Hence, the relative does not need to comply with the work participation requirements. Id.
representative reported there is no strict enforcement of standards on a family who does not comply with the work requirements. This is to no surprise.

Further, under the Florida TANF program, recipients of public welfare benefits are restricted in time limits and amount of assistance. Under federal law, a recipient of TANF benefits shall not receive such benefits not more than sixty months. However, under Florida law, a recipient of TANF benefits shall not receive such benefits not more than forty-eight cumulative months, except when certain exemptions apply. A recipient receiving Social Security disability benefits is exempted from the forty-eight month time limit. The amount of cash assistance—temporary cash assistance—distributed to each family depends on the family size and circumstance. The following chart shows the distribution of cash by family size:

<table>
<thead>
<tr>
<th>Family Size</th>
<th>Family lives rent free</th>
<th>Family has a rent obligation of $50 or less</th>
<th>Family has a rent obligation of $50 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$180</td>
<td>$153</td>
<td>$95</td>
</tr>
<tr>
<td>2</td>
<td>$241</td>
<td>$205</td>
<td>$158</td>
</tr>
<tr>
<td>3</td>
<td>$303</td>
<td>$258</td>
<td>$198</td>
</tr>
<tr>
<td>4</td>
<td>$364</td>
<td>$309</td>
<td>$254</td>
</tr>
</tbody>
</table>

In addition, under the TANF program, recipients are allowed to receive assistance for an array of other services, such as transportation, child care, child abuse prevention and early intervention,

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90 Id.
91 Id. The exemption also applies to recipients of public welfare benefits who have a dependent disables family member. Id.
92 Id.
and mental health counseling.94 These services may be received in addition to cash assistance or on its own.95 “Under Florida law, eligibility for TANF-funded services for families who are not receiving cash assistance is generally set at 200% of the poverty line.”96 “In 2006, 200% of poverty is about $32,200 annually or $2,683 per month for a family of three.”97

c. Supplemental Nutritional Assistance Program

SNAP is the current food and nutrition assistance program as a product of the Food Stamp Act of 1977.98 The first food and nutrition program was implemented in 1961.99 Between 1961 and 1964, twenty million people had enrolled in the program, costing an estimated $262 million.100 Its purpose is to provide low-income families with a monthly allowance101 to purchase food, particularly healthy food.102 The Food and Nutrition Service and state agencies, among others, work together to help individuals apply for SNAP benefits in their respective state.103

95 Id.
96 Id.
97 Id.
98 Food Stamp Act of 1977, 88 Pub. L. No. 525, 78 Stat. 703; Food Research & Action Ctr., SNAP/Food Stamps, Heat and Eat: State Responses to the Changed Federal Law, FRAC.ORG, http://frac.org/federal-foodnutrition-programs/snapfood-stamps/ (last visited Nov. 27, 2014). The purpose of the Food Stamp Act is “[t]o strengthen the agricultural economy; to help to achieve a fuller and more effective use of food abundances; to provide for improved levels of nutrition among low-income households through a cooperative Federal-State program of food assistance to be operated through normal channels of trade; and for other purposes.” Food Stamp Act of 1977, 78 Stat. 703.
99 The first food stamp program was implemented on May 29, 1961. Food and Nutrition Service, A short History of SNAP, USDA, http://www.fns.usda.gov/snap/short-history-snap (last visited Nov. 27, 2014). Since then, the food stamp program has been revamped quite a few times. Id.
100 Id.
101 Each household receives a monthly allowance via an electronic benefit transfer card, similar to an ATM card, but the bank is a government account. Food Research & Action Ctr., SNAP/Food Stamps, Heat and Eat: State Responses to the Changed Federal Law, FRAC.ORG, http://frac.org/federal-foodnutrition-programs/snapfood-stamps/ (last visited Nov. 27, 2014).
103 Supplemental Nutrition Assistance Program (SNAP), supra note 102.
Just like any other welfare benefit program, a household must meet the eligibility requirements to participate in SNAP. To receive SNAP benefits, a household is required to meet certain criteria, such as resources, income, deductions, employment requirements, immigrant eligibility, and, if applicable, comply with special rules for disabled or elderly individuals. TANF recipients have a lesser requirement to meet in order to qualify for SNAP benefits. For instance, a household has to comply with certain income tests, unless each individual member of the household is receiving TANF or Social Security Income benefits. Recipients of TANF benefits also do not have to comply with the resources requirements. Once the family has been approved, recipients of SNAP benefits are limited in the items they can purchase from the grocery store.

The following is a graph that shows the percentage of families receiving SNAP benefits from 2000–2014:

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105 General Information about Food Assistance and SUNCAP, supra note 102 (indicating that these agencies also work with nutrition educators and neighborhood and faith-based organizations).
107 Id.
108 Id.
109 Id.
110 General Information about Food Assistance and SUNCAP, supra note 102; U.S. Dep’t of Agric, Food & Nutrition Serv., Supplemental Nutrition Assistance Program (SNAP), Eligible Food Items, USDA, http://www.fns.usda.gov/snap/eligible-food-items (last visited Nov. 17, 2014). For example, recipients are allowed to use their SNAP benefits to purchase the following items: breads, cereals, vegetables, fruits, poultry, meat, fish, and dairy products. Supplemental Nutrition Assistance Program (SNAP), Eligible Food Items, supra. In Florida, recipients are also allowed to purchase seeds and plants to grow food at home and eat it. General Information about Food Assistance and SUNCAP, supra note 102. Recipients are specifically prohibited from purchasing wine, beer, liquor, tobacco products, nonfood items, including pet foods, paper products, cleaning supplies, medicines, vitamins, hot and ready food, and foods that will be eaten inside the grocery store, such as candy and soft drinks. General Information about Food Assistance and SUNCAP, supra note 102; Supplemental Nutrition Assistance Program (SNAP), Eligible Food Items, supra.
In 2014, approximately one in five families celebrated Thanksgiving on SNAP benefits.\footnote{CNSNews.com Staff, Nearly 1 in 5 Households Will Celebrate Thanksgiving on Food Stamps, CNSNEWS.COM (Nov. 26, 2014, 12:52 PM), http://cnsnews.com/news/article/cnsnewscom-staff/nearly-1-5-households-will-celebrate-thanksgiving-food-stamps (using data from the United States Department of Agricultural); see also USDA, Supplemental Nutrition Assistance Program, FNS.USDA.GOV (Nov. 7, 2014), http://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf (breaking down the participation, benefit costs, and average monthly benefit of SNAP benefits by fiscal years).} After the household becomes eligible, depending on the number of individuals per household, the household receives a set monthly allowance to purchase food.\footnote{Id.} For example, a household of two individuals will receive a monthly allowance of $357 whereas a household of six individuals will receive a monthly allowance of $925.\footnote{Id.} The SNAP program is completely funded by the federal government.\footnote{U.S. Dep’t of Agric, Food & Nutrition Serv., Supplemental Nutrition Assistance Program (SNAP), Eligibility, USDA, http://www.fns.usda.gov/snap/eligibility#Employment%20Requirements (last visited Nov. 27, 2014).} In fiscal year 2013, SNAP benefits amounted to $76.4 billion.\footnote{Id.} The billions of dollars were able to support approximately 47.6 million people.\footnote{Id. There has been a rise in recipients receiving SNAP benefits since 2009. See Mora, supra note 33. In 2009, there were approximately 30.8 million recipients of SNAP benefits. Id.} Many of the 47.6 million people that receive SNAP benefits are employed and receive an adequate salary;
however, many people are paid “under the table,” meaning receiving cash salary payments and not paying taxes.\textsuperscript{118} This is just one part of welfare fraud concerning our nation.\textsuperscript{119}

V. Welfare Fraud

In the 1990s, families that were constantly on and off welfare benefits were known as cycling.\textsuperscript{120} However, in the 2000s, the occurrence was known was recidivism, which is a term used in criminal law.\textsuperscript{121} The welfare system has been attempting to deter criminals from benefiting from the system.\textsuperscript{122} For instance, the Welfare Reform Act of 1996 banned all felons from applying and receiving welfare benefits.\textsuperscript{123} In fact, the Welfare Reform Act of 1996 encourages state governments to create and adopt laws that exclude certain criminals from ever obtaining any welfare benefits.\textsuperscript{124} In addition to the felon ban on welfare benefits, many states also ban individuals who have drug-related convictions from applying for welfare benefits.\textsuperscript{125} Many of the rules imposed by the federal and state governments have minimized the amount of fraud within the welfare system.\textsuperscript{126} However, fraud is still an ongoing concern and, not everyone who uses and abuses on drugs and alcohol have a criminal conviction.\textsuperscript{127}

“In Florida, ‘welfare fraud’ is a generic term to describe a broad range of fraudulent conduct aimed at illegally receiving, retaining, misappropriating, seeking, or using state and

\textsuperscript{118} \textit{Id.}
\textsuperscript{119} \textit{Id.}
\textsuperscript{120} \textsc{Kaaryn S. Gustafson}, \textit{Cheating Welfare: Public Assistance and the Criminalization of Poverty} 52 (2012).
\textsuperscript{121} \textsc{Gustafson}, \textit{supra} note 120.
\textsuperscript{122} \textsc{Gustafson}, \textit{supra} note 120, at 53–56.
\textsuperscript{123} \textsc{Gustafson}, \textit{supra} note 120, at 53–56. When the felon ban was imposed, approximately 110,000 recipients were removed from the welfare system. \textit{Id.} at 53.
\textsuperscript{124} \textsc{Gustafson}, \textit{supra} note 120, at 55.
\textsuperscript{125} \textsc{Gustafson}, \textit{supra} note 120, at 55 (stating that drug-related charges also include minimum possession in some states).
\textsuperscript{126} \textit{See generally} \textsc{Gustafson}, \textit{supra} note 120, at 51–70.
\textsuperscript{127} \textit{See generally} \textsc{Gustafson}, \textit{supra} note 120, at 51–70.
federal public assistance, services, or benefits.”\(^{128}\) The most common forms of welfare fraud are, as follows: (1) failure to disclose a material fact,\(^{129}\) (2) aiding or abetting,\(^{130}\) (3) change in circumstances,\(^{131}\) and (4) food stamps and medical services.\(^{132}\) Any person who commits welfare fraud is subject to criminal prosecution.\(^{133}\)

In 2011, Florida created the Office of Public Benefits Integrity.\(^{134}\) “The Office of Public Benefits Integrity is responsible for investigating public assistance fraud or misuse regarding . . . TANF . . . by individuals or merchants.”\(^{135}\) The Office of Public Benefits Integrity is “dedicated to preventing, detecting, and recovering waste, fraud[,] and abuse within the public assistance programs.”\(^{136}\) Welfare fraud occurs in many different ways.\(^{137}\) The United States Department of Agriculture has discovered food stamp trafficking—“sale or purchase of food stamp benefits for monetary gain”—to be a thing.\(^{138}\) When families participate in food stamp trafficking, the household does not obtain the required nutritional assistance the SNAP program is intended to provide.\(^{139}\) In addition, there are corrupt retailers who profit from this at the expense of the taxpayers.\(^{140}\)


\(^{129}\) See FLA. STAT. § 414.39(1)(a) (2014).

\(^{130}\) See FLA. STAT. § 414.39(1)(c) (2014).

\(^{131}\) See FLA. STAT. § 414.39(1)(a) (2014).

\(^{132}\) See FLA. STAT. § 414.39(2) (2014).

\(^{133}\) See FLA. STAT. § 414.39(5) (2014); State v. Wardlow, 366 So. 2d 508 (Fla. 2d DCA 1979).


\(^{136}\) Id.

\(^{137}\) GUSTAFSON, *supra* note 120, at 64.

\(^{138}\) Mora, *supra* note 33.

\(^{139}\) Id.

\(^{140}\) Id.
The Office of Inspector General has also conducted some research to determine whether welfare recipients misrepresent themselves in order to receive assistance.\textsuperscript{141} The Inspector General conducted a brief investigation in five states to learn how the states use its databases to recognize any potential fraud.\textsuperscript{142} Within five states, the Inspector General found that 8,594 recipients of welfare benefits were potentially receiving incorrect payments.\textsuperscript{143} The Inspector General further found that of these 8,594 recipients some were using a fake social security number or a deceased person’s social security number and some were receiving welfare benefits in multiple states, estimating a total of $1.1 million a month.\textsuperscript{144}

Moreover, while a recipient of TANF benefits may be complying with the work requirements, the recipient may fail to report all his or her earnings to the DCF.\textsuperscript{145} The recipient may also fail to report all of the household earnings.\textsuperscript{146} There have also been reports that recipients of TANF benefits receive assistance for a dependent child that no longer lives with them or for a dependent child that does not exist.\textsuperscript{147} Because not all individuals defrauding the welfare system are convicted criminals, many states have attempted to implement mandatory drug testing of applicant and recipients of TANF benefits to rule out any criminals not in the system.\textsuperscript{148}

\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} GUSTAFSON, supra note 120, at 64.
\textsuperscript{146} GUSTAFSON, supra note 120, at 64.
\textsuperscript{147} GUSTAFSON, supra note 120, at 64.
\textsuperscript{148} See infra Part VI.
VI. Section 414.0652, Florida Statutes: Drug Testing Welfare Applicants and Recipients

“Substance abuse and addiction can interfere with parents’ ability to get and keep jobs, as well as contribute to child abuse and neglect.”149 On July 1, 2011, the Florida Legislature enacted Section 414.0652, requiring all TANF applicants to submit themselves to a drug test.150 The purpose of the enactment of this particular Florida statute is to safeguard the important government interest of keeping children safe and healthy.151 Passing the drug test is a condition precedent to receive TANF benefits.152 If an applicant tests positive for controlled substances, he cannot receive TANF benefits for one year.153 However, this applicant can reapply in six months if he completes a treatment program for substance abuse and passes a drug test after completion of the program.154 The applicant is responsible for paying for the drug test and for the treatment

152 FLA. STAT. § 414.0652(2)(a) (2014). Once the applicant is eligible to receive TANF benefits, the receipt of those benefits commences once the applicant has submitted to and successfully passed a drug test. See generally Condition Precedent Definition, LAW.COM, http://dictionary.law.com/Default.aspx?selected=280 (last visited Nov. 26, 2014) (defining “condition precedent” as “an event which must take place before a party to a contract must perform or do their part”).
153 FLA. STAT. § 414.0652(1)(b), (2)(h). If the applicant fails the drug tests the second time, the applicant is ineligible to reapply for three years. § 414.0652(2)(h). To avoid any false results, an applicant has the option of notifying the agent administering the drug test that they are currently taking over-the-counter or prescription drug medication. § 414.0652(2)(d). Initially, if the applicant tests positive for controlled substance, the Florida DCF submits the applicant’s information to the Florida Abuse Hotline. See generally Lebron v. Wilkins, 820 F. Supp. 2d 1273, 1280 (M.D. Fla. 2011). The Florida Abuse Hotline then sends the individual, who tested positive, a list of substance abuse treatment programs. Id. Once the Florida Abuse Hotline receives the referral from the Florida DCF, the Florida Abuse Hotline is authorized to disclose an individual’s records to criminal justice agencies and the state attorney. See FLA. STAT. § 39.202(2)(b)–(c) (2014). These authorized individuals may, in turn, use the information as they see fit. Id. However, on March 6, 2012, the Florida DCF reversed the referral policy. See FLA. ADMIN. CODE 65A-4.221, available at https://www.ifrules.org/gateway/ruleno.asp?id=65A-4.221. The Florida Administrative Code 65A-4.221 states “positive drug test results obtained by the Department pursuant to Section 414.0652 . . . will not be reported to the Florida Abuse Hotline or to law enforcement entities or officers.” Id.
154 FLA. STAT. § 414.0652(1)(b). If the applicant chooses to attend a substance abuse program, the applicant is responsible for the costs and will not be reimbursed with TANF funds even if the applicant becomes eligible thereafter. § 414.0652(j).
If the applicant fails the drug test, the child will not be deprived of his benefits, after all, TANF benefits are for the children. Thus, the adult who failed the drug test must designate another individual to serve as a protective payee; however, this third party must also submit to and pass a drug test.

From July 1, 2011 through October 24, 2011, 4,046 applicants for TANF benefits were required to submit to a drug test. From the 4,046 individuals, 108 applicants failed the drug test. However, 2,306 applicants were never drugged tested, meaning only 1,740 applicants were drug tested. These statistics concluded on October 24, 2011 because that is when the Middle District of Florida Circuit Court granted a preliminary injunction enjoining further testing under Section 414.0652. When the Florida DCF stopped drug testing applicants of TANF benefits, it approved all pending applications, including applications that were denied because the applicant failed the drug test. The Florida DCF also reimbursed approximately 1,727 applicants for their drug tests.

In 2011, thirty-six states proposed legislation concerning drug testing for applicants or recipients of public welfare assistance, and only three enacted legislation. In 2012, from the twenty-eight states that introduced legislation, only four enacted it. In 2013, twenty-nine

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155 FLA. STAT. § 414.0652(1)(b).
156 FLA. STAT. § 414.0652(2)(j).
157 FLA. STAT. § 414.0652(3). The third party is also responsible for the costs of the drug test. FLA. STAT. § 414.0652(1) (“The cost of drug testing is the responsibility of the individual tested.”) (emphasis added).
158 See Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1286 (M.D. Fla. 2013) (stating, briefly, results from the implementation of Section 414.0652).
159 Id. (indicating that 3,939 applicants passed the drug test).
160 Id.
161 Id.
162 Id.
163 Id.
165 Id.
states proposed legislation and only two enacted legislation.\textsuperscript{166} In 2014, eighteen introduced legislation and only two enacted it.\textsuperscript{167} States have been proposing legislation regarding drug testing and screening of public welfare assistance applicants and recipients since the federal welfare reform in 1996.\textsuperscript{168} In fact, the federal rules permit drug testing of TANF applicants and recipients.\textsuperscript{169}

However, a lot of these legislative proposals have failed because most of the laws were concentrated on “‘suspicionless’ or ‘random’ drug testing.”\textsuperscript{170} For instance, in \textit{Marchwinski v. Howard}, 113 F. Supp. 2d 1134 (E.D. Mich. 2000),\textsuperscript{171} the court held that requiring every applicant for public welfare benefits to submit himself or herself to a suspicionless drug test was unconstitutional.\textsuperscript{172} On appeal, the Sixth Circuit \textit{en banc} affirmed the lower court’s judgment based on the decision in \textit{Stupak-Thrall v. United States}, 89 F.3d 1269 (6th Cir. 1996),\textsuperscript{173} although


\textsuperscript{168} \textit{Id.}


\textsuperscript{170} \textit{Id.}; see also \textit{Marchwinski v. Howard}, 60 Fed. Appx. 601 (6th Cir. 2003).


\textsuperscript{172} \textit{Marchwinski}, 113 F. Supp. 2d at 1140–41. The Michigan statute governing cash welfare recipients requires applicants to submit to a drug test before a case is opened. \textit{Id.} at 1136. The court could not hold that there is a special need to drug test Michigan welfare recipients because the statute was not implemented to mitigate child abuse or neglect issues. \textit{Id.} at 1142.

\textsuperscript{173} \textit{Id.}; see Stupak-Thrall v. United States, 89 F.3d 1269, 1269 (6th Cir. 1996). Because the court is equally split on its decision, the lower court’s decision is affirmed, and the appellate court’s opinion is deemed a concurrence. \textit{Id.} at 1269.
the court was equally split—six judges favored affirmance of the lower court’s judgment whereas the other six judges favored reversal of the lower court’s judgment.174

VII.  Lebron v. Wilkins: Florida Landmark Case

Lebron v. Wilkins, 990 F. Supp. 2d 1280 (M.D. Fla. 2013), is the Florida landmark case holding that it is unconstitutional to drug test applicants or recipients of TANF benefits.175 Luis Lebron is a thirty-five year old, single father who holds sole custody of his son.176 In July 2011, Lebron applied to the Florida DCF for TANF benefits for his son and himself.177 When Lebron submitted his application to the Florida DCF, he submitted a form giving consent to the drug test requirement.178 The receipt of Lebron’s TANF benefits was contingent on him testing negative for controlled substances.179 Lebron alleged that he never used illegal drugs.180 Thus, Lebron revoked his consent to submit to and pay for a drug test.181 Lebron was, thereafter, denied TANF benefits.182

On September 6, 2011, Luis Lebron filed an action183 against the Secretary of the Florida DCF (the “State”), seeking to enjoin the enforcement of Section 414.0652 as a violation of his

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175 Lebron v. Wilkins, 990 F. Supp. 2d 1280 (M.D. Fla. 2013) (granting plaintiff’s motion for summary judgment); see also Lebron v. Sec’y Fla. Dep’t of Children & Families, 710 F.3d 1202 (11th Cir. 2013) (affirming the district court decision on the motion for preliminary injunction); Lebron v. Wilkins, 820 F. Supp. 2d 1273 (M.D. Fla. 2011) (granting motion for preliminary injunction). Before the trial court granted plaintiff’s motion for summary judgment (and denying defendant’s motion for summary judgment), the plaintiff initially filed an action seeking an injunction against the enforcement of the Florida Statute, requiring TANF benefit applicants and recipients to submit themselves to a suspicionless drug test. Lebron, 820 F. Supp. 2d at 1275.
176 Lebron, 990 F. Supp. 2d at 1284. Lebron is also a veteran of the United States Navy and an undergraduate student. Id.; Lebron, 820 F. Supp. 2d at 1275. At the time the initial action was filed, he resided and cared for his mother, who is disabled. Id.
177 Lebron, 990 F. Supp. 2d at 1284.
178 Lebron, 990 F. Supp. 2d at 1284.
179 Lebron, 990 F. Supp. 2d at 1284.
180 Lebron, 990 F. Supp. 2d at 1284. In the case, the State did not provide contrary evidence to Lebron’s allegation. Id.
181 Lebron, 990 F. Supp. 2d at 1284. The district court stated that the cost for drug tests was between $24 and $45. Lebron, 820 F. Supp. 2d at 1279.
182 Lebron, 990 F. Supp. 2d at 1284.
183 This comment will focus primarily on the most recent Lebron v. Wilkins opinion. Lebron, 990 F. Supp. 2d 1280. However, it will provide a brief overview of the two prior decisions on Lebron’s motion for preliminary injunction.
constitutional rights, specifically the Fourth and Fourteenth Amendments. District Court Judge Mary S. Scriven, who is the judge assigned to this case, essentially held, during the preliminary hearing, that the drug tests constituted an unreasonable search under the Fourth Amendment, the state’s argument that the drug test falls within the exception of special needs under the Fourth Amendment was insufficient, and *inter alia.* On the motion for preliminary injunction, although the State provided “laudable objectives” as to why there is a special need to drug test TANF benefits applicants and recipients, the district court judge wrote, in the opinion, “these stated goals can be found nowhere in the legislation, and with good reason . . . .” The district court judge, relying on the results of the Demonstration Project, which was conducted from 1998–2001, and *inter alia,* therefore, granted Lebron’s motion for preliminary injunction due to the insufficient evidence the State brought before the court. The Florida DCF appealed

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and the Florida DCF’s appeal. *See* Lebron v. Sec’y Fla. Dep’t of Children & Families, 710 F.3d 1202 (11th Cir. 2013); *Lebron,* 820 F. Supp. 2d 1273.

184 *Lebron,* 820 F. Supp. 2d at 1273–75. The current Secretary of the Florida DCF is David E. Wilkins. *Id.*

185 *Lebron,* 820 F. Supp. 2d at 1275. The State argued that whether or not the applicant submitted to the drug test and failed or refused to submit to the drug test, the applicant should be considered a drug related denial. The district court judge stated that an individual who refuses to submit to a drug test is not solely based on drug use. *Id.* at 1281. In fact, there are a variety of factors, including, but not limited to, “inability to pay for the testing, a lack of laboratories near the residence of an applicant, inability to secure transportation to a laboratory or, as in the case at bar, a refusal to accede to what an applicant considers to be an unreasonable condition for receiving benefits.” *Id.*

186 *Lebron,* 820 F. Supp. 2d at 1286. The following are the special needs the State alleged as to why there is a special need to drug test applicants and recipients of TANF benefits:

- Ensuring that TANF funds are used for their dedicated purpose, and not diverted to drug use;
- protecting children by ensuring that its funds are not used to visit an evil upon the children’s homes and families;
- ensuring that funds are not used in a manner that detracts from the goal of getting beneficiaries back to employment;
- ensuring the government does not fund the public health risk by the crime associated with the drug epidemic.

*Id.*

187 The purpose of the Demonstration Project was to study and evaluate “(1) whether ‘individuals who apply for temporary cash assistance or services under the state’s welfare program are likely to abuse drugs,’ and (2) whether ‘such abuse affects employment and earnings and use of social service benefits.’” *Lebron,* 820 F. Supp. at 1277 (citing Robert E. Crew, Jr. & Belinda Creel Davis, *Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits,* 17(1) J. HEALTH & SOC. POL’Y 39, 41–46 (2003)). The results of the Demonstration Project demonstrated that there was a low percentage of substance abuse among TANF recipients. *Id.* However, the researches suspected that many of the applicants for TANF benefits abstained from drugs to clean their urine since they were informed that applicants were being drug tested. *Id.*

188 *Lebron,* 820 F. Supp. 2d at 1293.
the motion for preliminary injunction.\textsuperscript{189} The Eleventh Circuit Court affirmed the lower court’s decision, holding that the State did not meet its burden in establishing a special need to drug test applicants and recipients of TANF benefits.\textsuperscript{190}

On motion for summary judgment,\textsuperscript{191} the issue was whether the Section 414.0652 was constitutional under the Fourth and Fourteenth Amendments.\textsuperscript{192} The Middle District of Florida had two holdings as to why Section 414.0652 was unconstitutional: (1) It was unconstitutional on its face due to the State’s failure to prove that the TANF program or the recipients were categorized as “closely guarded”\textsuperscript{193} and (2) it was unconstitutional because the State did not meet its burden in showing that the statute ensured TANF recipient job readiness, TANF met its goals on child welfare and family stability, and funds were used to mandate drug testing due to apparent substance abuse issues within TANF recipients.\textsuperscript{194} In making its decision on motion for summary judgment, the court again relied, in part, on the Demonstration Project.\textsuperscript{195} When Section 414.0652 was drafted, the Florida Legislature did not rely on the results from the Demonstration Project,\textsuperscript{196} although the Florida Legislature implemented the Demonstration Project from 1998–2001. In fact, Section 414.0652 was enacted ten years later.\textsuperscript{197} It is reasonable for the Florida Legislature not to rely on survey results that are over a decade old.\textsuperscript{198}

\textsuperscript{189} Lebron v. Sec’y Fla. Dep’t of Children & Families, 710 F.3d 1202 (11th Cir. 2013).
\textsuperscript{190} Id. at 1218.
\textsuperscript{191} This begins the analysis on the Lebron v. Wilkins, 990 F. Supp. 2d 1280 (M.D. Fla. 2013), order granting Lebron’s motion for summary judgment.
\textsuperscript{192} Lebron, 990 F. Supp. 2d at 1280.
\textsuperscript{193} Lebron, 990 F. Supp. 2d at 1289 (defining “closely guarded” to mean that there is a substantial special need to drug test a particular individual) (citing Chandler v. Miller, 520 U.S. 305, 318 (1997)).
\textsuperscript{194} Lebron, 990 F. Supp. 2d at 1280. When a plaintiff alleges that a statute is facially unconstitutional, the plaintiff bears the burden of proving that the statute cannot be constitutionally applied. Id. at 1287–88 (citing Am. Fed’n of State, Cnty. & Mun. Emps Council 79 v. Scott, 717 F.3d 851, 863 (11th Cir. 2013). In other words, the plaintiff “must establish that no set of circumstances exists under which the [statute] would be valid.” Id. at 1288.
\textsuperscript{195} Lebron, 990 F. Supp. 2d at 1293.
\textsuperscript{196} Lebron v. Wilkins, 820 F. Supp. 2d 1273, 1286 (M.D. Fla. 2011).
\textsuperscript{197} See Id.
\textsuperscript{198} See generally Id.
The court in holding Section 414.0652 found that the State had not proffered any evidence that shows the Florida Legislature’s purpose in enacting this statute.\textsuperscript{199}

In addition, the State argued that the applicants provided consent to be “searched” by the government when the applicant signed the consent form and mailed it to the Florida DCF in conjunction with the application for TANF benefits.\textsuperscript{200} The court found that the consent was invalid because it was given “in submission to authority rather than as an understanding and intentional waiver of a constitutional right.”\textsuperscript{201} So, is an employee’s consent to submit to a drug test that is conditioned on employment also invalid?\textsuperscript{202}

The district court judge also found that the State did not produce any evidence regarding a statewide drug epidemic.\textsuperscript{203} However, the Supreme Court has stated that it is sufficient to show a nationwide epidemic of drug use.\textsuperscript{204} The Eleventh Circuit Court of Appeals stated:

\textquote{[W]e in no way are suggesting that evidence of drug use within the TANF population would, in and of itself, suffice to establish a substantial special need for mandatory drug testing. Nor do we read any of the Supreme Court’s drug testing cases to say that empirical evidence of drug use is sufficient to establish a special need.}\textsuperscript{205}

Correct. It is, however, a factor the court considers in deciding whether there is a special need to mandate applicants of TANF benefits to submit to drug tests.\textsuperscript{206}

\section*{VIII. Special Need to Drug Test Individuals Who Seek Welfare Benefits}

The Fourth Amendment prohibits \textit{unreasonable} searches and seizures.\textsuperscript{207} There is no doubt that drug testing is a search under the Fourth Amendment.\textsuperscript{208} However, there is a special

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\item\textsuperscript{199} \textit{Lebron}, 820 F. Supp. 2d 1273.
\item\textsuperscript{200} \textit{Lebron}, 990 F. Supp. 2d at 1298.
\item\textsuperscript{201} \textit{Id.} (citing \textit{See} \textit{Lebron v. Sec’y Fla. Dep’t of Children & Families}, 710 F.3d 1202, 1214 (11th Cir. 2013)).
\item\textsuperscript{203} \textit{Lebron}, 990 F. Supp. 2d at 1298.
\item\textsuperscript{204} \textit{See Bd. of Educ. v. Earls}, 536 U.S. 822 (2002).
\item\textsuperscript{205} \textit{Lebron v. Sec’y Fla. Dep’t of Children & Families}, 710 F.3d 1202, 1212 n.7 (11th Cir. 2013).
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needs exception.\textsuperscript{209} Under the special needs exception, the government has the burden to prove that the special needs are substantial; it must fit within the “‘closely guarded category’ of constitutionally permissible justifications.”\textsuperscript{210} The United States Supreme Court has recognized two exceptional circumstances where an individual may be subjected to a suspicionless drug test: (1) whether there is a “specific risk to public safety by employees engaged in inherently dangerous jobs” and (2) whether the special need is for “the protection of children entrusted to the public school system’s care and tutelage.”\textsuperscript{211}

In \textit{Vernonia School District v. Acton}, the school policy required middle and high school students to consent to random urinalysis drug tests if the student wanted to participate in athletics.\textsuperscript{212} The purpose of the policy was to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with treatment programs.\textsuperscript{213} The Supreme Court found that children and athletes have a lower expectation of privacy and that it is a voluntary choice to participate in sports.\textsuperscript{214} The significant factor, in this case, was that the

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\textsuperscript{207} U.S. CONST. amend. IV. The Fourth Amendment states:
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\textit{The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.}
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\textit{Id.} (emphasis added). The Fourth Amendment applies to the states through the Fourteenth Amendment. \textit{See} U.S. CONST. amend. XIV.
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\textsuperscript{208} \textit{See} Chandler v. Miller, 520 U.S. 305, 313 (1997); Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995); Skinner v. Ry. Labor Executives’ Ass’n, 489 U.S. 602, 617 (1989). Under the Fourth Amendment, a search is (1) when the person exhibited an actual (subjective) expectation of privacy and the expectation is one that society is prepared to recognize as reasonable or (2) when there is physical intrusion in a constitutionally protected area with the intent to gain information. \textit{See} United States v. Jones, 132 S. Ct. 945 (2012); Katz v. United States, 389 U.S. 347 (1967). Generally, for a search to be reasonable, there must be an individualized suspicion of criminal activity. \textit{Vernonia Sch. Dist. 47J}, 515 U.S. at 653.
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\textsuperscript{209} Chandler, 520 U.S. at 318.
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\textsuperscript{210} \textit{Chandler}, 520 U.S. at 318; Lebron v. Wilkins, 990 F. Supp. 2d at 1289.
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\textsuperscript{212} \textit{Vernonia Sch. Dist. 47J}, 515 U.S. 646.
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\textsuperscript{213} \textit{Id.}
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\textsuperscript{214} \textit{Id.}
school policy was implemented “in furtherance of the government’s responsibilities . . . as guardian and tutor of children entrusted to its care.”

In the *Board of Education v. Earls*, the school policy required middle and high school students to consent to a urinalysis drug test as a condition for participation in any after school activity. The student was required to consent to and submit to a drug test: (1) before participating in any activity; (2) randomly, while participating in such activity, and (3) any time upon reasonable suspicion. The drug test would only detect illegal drugs, not medical conditions or prescribed medication. The Supreme Court found that students subject themselves to many of the same intrusions on their privacy just like professional athletes. The results of the drug tests are kept in confidential files and released only to school personnel on a need to know basis. The results are not provided to any law enforcement agency. In fact, the Supreme Court found that the only consequence of a failed drug test was that the student was denied the privilege to participate in after school activities. The school was not required to show there was a drug problem within its school district, just a nationwide drug epidemic.

Similarly, in the *Lebron* case, it is a privilege to apply for and receive benefits from the TANF program. An individual is not required by law or regulation to submit an application for TANF benefits. By submitting an application for TANF benefits to the Florida DCF, the individual is submitting himself (or herself) to intrusions on his (or her) privacy just as

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215 *Id.* at 665.
216 *Bd. of Educ.*, 536 U.S. 822.
217 *Id.*
218 *Id.*
219 *Id.*
220 *Id.*
221 *Id.*
222 *Id.*
223 *Id.*
224 See supra notes 106–13 and accompanying text.
225 See supra notes 106–13 and accompanying text.
government employees, who submit an application for employment in a government agency or
the like. 226 The government employee is not required to submit an employment application,
however, if the individual wants to work for the government, rather than the private sector, then
he or she must submit an application, which may involve consenting to a drug test in order to
gain employment. 227 In addition, Florida DCF shall not be limited to show a statewide drug
epidemic among TANF recipients, rather a nationwide epidemic. 228 The Supreme Court has
noted that there is a government interest in deterring children from using drugs and that the
government has the responsibility as “guardian and tutor” of the children. 229 The courts have
also recognized that there is a government interest in the best interest of the child. 230 The
standards for the best interest of the child concerns the child’s “health psychology[,] and welfare
that marks the progress of a maturing society.” 231

In the Lebron opinion, the district court judge asked:

Even if such suspicionless testing as proposed by the State were limited to those
persons receiving state funds, would college students receiving governmental

226 See supra text accompanying notes 170, 175.
for private employment. However, if an individual wants to reap the benefits (for example, holidays off or
retirement plans) of working for the government, then the individual will most likely have to submit to a drug test.
Id.
228 See Lebron v. Sec’y Fla. Dep’t of Children & Families, 710 F.3d 1202, 1212 n.7 (11th Cir. 2013) (stating that the
State has not presented evidence that there is an epidemic of drug use among Florida TANF recipients); Lebron v.
Wilkins, 990 F. Supp. 2d 1280 (M.D. Fla. 2013) (agreeing with the Eleventh Circuit Court of Appeals); see also See
supra text accompanying note 166. “[A]ll that the Court has said of actual evidence of drug use is that it is neither
necessary nor sufficient to establish the type of substantial special needs that permit a drug testing regime to fall
within the closely guarded category of permissible suspicionless searches.” Sec’y Fla. Dep’t of Children & Families,
710 F.3d at 1212 n.7; Lebron, 990 F. Supp. at 1292.
found the mother and grandparent’s house to be in a deplorable state. Id. The children were also dirty and required
baths. Id. The officer took the four children into protective custody and brought them to the Department of Human
Services. Id. On the same day, a social worker visited both houses and corroborated the officer’s report on the
living conditions of the children. Id. The Department of Human Services then filed neglect petitions against the
mother. Id. The court held that it is in the best interests of the child to be with their parents, unless their parents are
unfit. Id. The court stated that it could not look at one occurrence to determine whether the children have been
neglected. Id. It further stated that a state can intervene only after it has been established that a parent has acted or
failed to act in a way that endangers the welfare of his or her child. Id.
231 In re J.M.P., 528 So. 2d 1002, 1013 (La. 1988).
assistance to subsidize their education . . . be subjected to random, suspicionless drug testing if it could be shown that drug use is demonstrably higher among college students?232

No, unless the college student has a child.233 College students are receiving financial aid to finance their education and are, generally, over eighteen-years-old.234 There is common ground between college students and recipients of TANF benefits; they both receive public funds.235 However, there is a difference; all recipients of TANF benefits have children whereas not all college students have children.236

The government and public’s interest lies in the children.237 The initiation of the requirement of TANF applicants to submit to a drug test is focused on the children, specifically dependent children.238 Further, the Supreme Court has found that home visitation by a social worker to determine the living situation of the child(ren) is reasonable under the Fourth Amendment.239 In 2006, the Ninth Circuit Court of Appeals found that home visitations for the

232 Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1292 (M.D. Fla. 2013). In Chandler v. Miller, under Georgia law, a political candidate must submit to a drug test thirty days before qualifying for nomination. Chandler v. Miler, 520 U.S. 305 (1997). The United States Supreme Court held that this statute is unconstitutional, stating that mandates suspicionless drug tests of political candidates is an unreasonable search. Id. The Supreme Court found that the candidates are already monitored in so many other ways. Id.

233 Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1292 (M.D. Fla. 2013) (answering that the Fourth Amendment suggests it does not).

234 There are high school dual enrollment courses in which a student attends high school and enrolls in college courses for credit while attending high school. See Dual Enrollment – Frequently Asked Questions (FAQ’s), Miami Dade College, http://www.mdc.edu/asa/dual_enrollment.asp#what (last visited Nov. 27, 2014).


236 See supra Part IV.a–c.

237 See supra notes 230–31 and accompanying text; see also Wyman v. James, 400 U.S. 309 (1971).

238 See Wyman, 400 U.S. at 318. In Wyman v. James, the issue was whether social workers unreasonably search an individual when the social worker makes a home visit in order to determine eligibility of welfare benefits, thus making the search unconstitutional under the Fourth Amendment. Id. at 309, 317. The court found the home visits were not an unreasonable search under the Fourth Amendment, due, in part, that there was no evidence to indicate that the purpose of the home visit was to obtain information on any wrongdoing. Id. at 319–26.

239 The Supreme Court held:

[T]he home visitation as structured by the New York statutes and regulations is a reasonable administrative tool; that it serves a valid and proper administrative purpose for the dispensation of the AFDC program; that it is not unwarranted invasion of personal privacy; and that it violates no right guaranteed by the Fourth Amendment.

Id. at 326.
purpose of welfare benefits are not searches under the Fourth Amendment. The Supreme Court or the Ninth Circuit Court of Appeals made no mention that an individual’s consent is invalid because it was given to authority “rather than as an understanding and intentional waiver of a constitutional right.” In fact, in *Wyman v. James*, the plaintiff, who refused to give consent to the social worker for a home visit, was denied benefits because the social worker was unable to conduct a home visit. Thus, to say that Lebron’s consent to submit to a drug test was invalid is to say that an individual’s consent to a home visit is also invalid. This is an incorrect analysis for the reasons explained above.

In *Sanchez v. City of San Diego*, the court analyzed the following factors to balance the government’s interest in home visitations against the invasion on the applicant’s privacy:

1. The public’s strong interest in the protection of dependent children and ensuring that aid provided from tax revenue reaches its intended and proper recipients;
2. The statute’s focus on assistance and rehabilitation;
3. That the home visit was not a criminal investigation and did not involve police or unverified authority;
4. The visits’ procedural safeguards, including providing advanced written notice and prohibiting forced entry or “snooping” within the home; and
5. The serious administrative difficulties posed by a warrant requirement in the welfare context.

Because *Lebron v. Wilkins* revolves around welfare benefits, it would be practical to develop factors as the Ninth Circuit Court of Appeals did, which were similar to factors the Supreme Court used in *Wyman v. James*. Section 414.0652 is set to deter adults from drug use, which is in the best interest of the child. As a result, parents would not be deemed unfit to care for their

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240 Sanchez v. City of San Diego, 464 F.3d 916 (9th Cir. 2006) (discussing that even if the home visit is considered a search, it is not an unreasonable search under the Fourth Amendment).
241 See supra note 88 and accompanying text; Sanchez, 464 F.3d 916.
244 See supra text accompanying note 187–89, 228–29.
245 Sanchez, 464 F.3d at 923.
246 *Wyman*, 400 U.S. at 318–24; Sanchez, 464 F.3d at 923.
247 See supra Part VI.
children, and the State of Florida would not intervene in the parent-child relationship.\footnote{See supra Part VI; see also notes 216–218 and accompanying text.} The drug test, at first, may have seemed like a criminal investigation because if the individual failed the drug test, his or her name would be referred to the Florida Abuse Hotline, which, in turn, would authorize law enforcement agencies to use this information as they see fit.\footnote{See supra note 153 and accompanying text.} However, since the implementation of Section 414.0652, the Florida Legislature has enacted another statute that prohibits the Florida DCF from sharing the individual’s name and drug test results with any law enforcement agency.\footnote{See supra note 153 and accompanying text.}

Moreover, the drug tests are not administered by law enforcement agencies, rather approved facilities as provided by the Florida DCF.\footnote{See Lebrón v. Wilkins, 990 F. Supp. 2d 1280, 1285 (M.D. Fla. 2013).} The drug tests are also not randomly administered.\footnote{See supra Part VI.} The applicant is aware that upon submitting an application for TANF benefits, the applicant will be required to submit to a drug test.\footnote{See supra Part VI.} Additionally, when the applicant applies for TANF benefits, he or she consents to the drug test, so it is not a suspicionless search, just as the Supreme Court and Ninth Circuit Court have validated consent to home visitations by social workers.\footnote{See supra Part VI.} There is no penalty if the applicant does not consent to the drug test; the only disadvantage is that the applicant cannot be eligible to receive TANF benefits.\footnote{Fla. Stat. § 414.0652 (2014).} Thus, the consent to submit to a drug test is valid, and although the Supreme Court has found drug tests are searches under the Fourth Amendment, there is a special need for the protection of the children to require applicants for TANF benefits to submit to a drug test and pass it.\footnote{See notes 207–55 and accompanying text.}
IX. Policy Outweighs Any Financial Concerns

Those who oppose drug testing and screening applicants and recipients of public welfare benefits opine that drug testing is costly and useless.\(^{257}\) While it is true that states should be restricted to drug testing applicants and recipients of public welfare benefits to cases where it has a certain reason or suspicion to do so, it cannot be the true for every single case.\(^{258}\) There are times where the agency workers are inexperienced or uneducated in formulating a certain reason or suspicion to drug test an applicant or recipient of public welfare benefits.\(^{259}\)

Having suspicionless drug tests seem to be a huge cost expense to states.\(^{260}\) From 2011 to 2012, it cost Florida taxpayers $45,780 to drug test public welfare recipients.\(^{261}\) It is noted that it is “unfair and immoral” to drug test and screen applicants and recipients of public welfare benefits.\(^{262}\) In addition, it is suggested that others, such as loan-backed students, tax-supported homeowners, and politicians, among others, be tested for drug use.\(^{263}\) However, these other people are not receiving public welfare benefits in which taxpayers and state and federal government fund and there is a higher rate of drug use among families in poverty.\(^{264}\) For the reasons stated in Part VIII of this comment, any financial concern is waived.\(^{265}\)

Recipients of welfare benefits tend to be characterized as the undeserving poor.\(^{266}\) The TANF and SNAP program, among other programs, receive money from public funds, which are


\(^{258}\) Id.

\(^{259}\) Id. at 4.


\(^{261}\) Id. Out of 4,086 welfare recipients, 108 persons failed the drug test. Id.

\(^{262}\) Id.

\(^{263}\) Id.

\(^{264}\) Id.

\(^{265}\) See *supra* Part VIII.

\(^{266}\) See BRODIE ET AL., *supra* note 7, at 186 (characterizing recipients of welfare benefits as undeserving and recipients of insurance type benefits as deserving).
then provided to the low-income families or individuals who apply for the programs.\textsuperscript{267} Because the public funds these programs, the public has an interest in how the money is expended to others.\textsuperscript{268} In fact, just like one who donates to a charitable organization has a natural interest in knowing how his funds are utilized, one whose money is being used to fund public welfare programs also has an interest on how their money is used.\textsuperscript{269}

\section*{X. Additional Possible Alternatives}

“The children of the poor and the children of the rich, the children who live in poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education.”\textsuperscript{270} “Equality is the key word here.”\textsuperscript{271} In Florida, the “rich kids” are the taxpayers and the “poor kids” are the children who are receiving money from the government, which, in part, is funded by taxpayer money. The poor kids deserve economic and social justice. In fact, it would be inhumane to say otherwise. However, the issue then becomes how can we help these children to have access to the same living style as the rich kids? Well, we cannot. It is impossible. There is one state government and a lot more children. What we can do is micromanage the parents of these children by providing them with TANF benefits and assuring the parents, who are the caretakers of these children, are not abusing drugs or alcohol or committing crimes.\textsuperscript{272}

As an alternative, a proposed amendment to Section 414.0652 should be considered. In 2014, two additional states—Alabama and Mississippi—have proposed and enacted laws

\bibitem{267} See supra Part IV; Wyman v. James, 400 U.S. 309, 318 (1971).
\bibitem{268} See id.
\bibitem{269} See id.
\bibitem{270} Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989) (explaining that every child has a fundamental right to an adequate education).
\bibitem{271} Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989).
\bibitem{272} See supra Part VI, VIII.
governing drug testing of applicants and recipients of welfare benefits. Alabama passed a law that requires applicants of TANF benefits to submit to a drug test if there is reasonable suspicion. This should pass constitutional muster pursuant to the requirements of the Fourth Amendment, requiring a person to be free from unreasonable searches and seizures. Alabama states that there is reasonable suspicion if the applicant has been convicted of the use or distribution of drugs within the last five years. In Mississippi, the statute requires all applicants to complete a written questionnaire comprised of psychological questions to determine the likelihood of a substance abuse problem. If the responses indicate there is likelihood that the applicant has a substance abuse problem, then the applicant is required to submit to a drug test. The questionnaire does not impose on an individual’s privacy in anyway; it is merely a piece of paper. A combination of both the Alabama and Mississippi statutes should be adopted in order to pass constitutional muster in Florida and to require TANF applicants to submit to a drug test.

Drug testing may not always identify substance abuse issues, but when is any test 100% accurate? Tests, in general, are developed as a way to strike down some uncertainty, but not all. In the alternative, a blood test may seem a little bit more reasonable in the sense that it may

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274 Id.
275 U.S. CONST. amend IV.
277 Id.
278 Id. (indicating that the depending on the responses to the questions, one may develop reasonable suspicion).
279 Id.
280 See generally CLASP, TANF Policy Brief, CLASP 2, http://www.clasp.org/resources-and-publications/publication-1/520.pdf (last updated Oct. 2013). Some chemical tests, such as urine samples, do not identify substance abuse issues. Id. Alcohol is the most common abused substance and is not tested for in urine samples. Id. CLASP reported that that urinary tests cannot distinguish between controlled substances and prescription drugs. Id. at 3. It reported that a mother was investigated for child abuse because her urinary sample tested positive for prescription drugs. Id. However, this kind of misclassification can easily be dispelled by requiring the mother to bring any and all prescription drugs to the day of her drug test where the administer of such exam can properly note the prescription drugs the applicant or recipient is currently taking.
capture more than a urinary test. A blood test will need to overcome the same constitutional barrier that the drug test has not.\textsuperscript{281} Further, some TANF benefit recipients also receive benefits from other welfare programs.\textsuperscript{282} One of the requirements for Medicaid is to have a blood test completed, in which the applicant pays for upfront but is later reimbursed, and submitted with the application.\textsuperscript{283} Therefore, when the blood test is being administered, if the Medicaid applicant is also a TANF applicant or recipient, such individual must also be tested for alcohol and drugs.\textsuperscript{284} Both programs are both state and federally funded, so it should be government friendly to share this individual’s blood test if such individual is applying to both Medicaid and TANF benefits.\textsuperscript{285}

\textbf{XI. Conclusion}

There is an ongoing concern for the betterment of our children.\textsuperscript{286} Welfare fraud exists, and something needs to be done about it.\textsuperscript{287} The statutes have failed because the legislatures have not drafted a statute in a way to pass constitutional muster.\textsuperscript{288} In drafting a law to better manage applicants and recipients of TANF benefits, the law should acknowledge that there is a special need and government interest to protect our children from child abuse and neglect.\textsuperscript{289} Thus, in the alternative, the law should require all applicants of welfare benefits, including TANF and SNAP benefits, to complete a questionnaire, which could establish an individualized

\textsuperscript{281} See supra Part VII.
\textsuperscript{284} Id.
\textsuperscript{285} Id.
\textsuperscript{286} See supra Part III.
\textsuperscript{287} See supra Part V.
\textsuperscript{288} See supra Part VII.
\textsuperscript{289} See supra Part VIII.
suspicion of criminal activity (or wrongdoing). On the other hand, because the SNAP program, TANF program, and Medicaid all intertwine in some way, each agency should be allowed to share results among each other; it’s “killing two birds with one stone,” essentially meaning that our taxpayer funds will be used more efficiently.

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290 See supra Part XI.
291 See supra Part XI.