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Off-Balance: Obama and the Work-Family Agenda

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OFF-BALANCE: OBAMA AND THE WORK-FAMILY AGENDA

BY
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I. INTRODUCTION

Barack Obama was elected the 44th President of the United States of America on November 4, 2008. The support of women voters was critical to his victory. In securing the female vote, Obama made many promises to address issues important to women, including healthcare, education, and work-family balance. In an acknowledgment of their support, President Obama adopted the most aggressive and ambitious work-family agenda in American history. He defined this agenda according to two goals: (1) strengthening work-family balance; and (2) strengthening the economic security of women and families. Despite establishing these goals, during his first presidential term, Obama did not sign into law any bill to strengthen work-family balance, nor did he meaningfully strengthen the economic security of women and families. Notwithstanding the special protections afforded to military families and breastfeeding mothers, by Obama, the worker protections established by the Equal Pay Act (EPA), Title VII of the Civil Rights Act of 1964 (Title VII), and the Family and Medical Leave Act (FMLA) were not expanded or superseded to strengthen work-family balance.

Obama did not fulfill many of the promises he made to strengthen work-family balance. Specifically, funding and technical assistance were not provided to the states to encourage the adoption of paid leave programs. Employers were not required to provide their work-


2. See infra Part III.A.1.

3. See infra Part III.A.1. In Obama's proposed 2013 budget he is calling for a five million dollar State Paid Leave Fund to be administered by the Department of Labor to provide states with technical assistance and support for adopting paid leave programs. WHITE HOUSE, THE BUDGET FOR FISCAL YEAR 2013, at 147 (2012), available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/budget.pdf>.
ers with seven days of paid sick leave. The Equal Employment Opportunity Commission (EEOC) did not visibly increase enforcement of Title VII to protect workers from caregiver discrimination. Flexible work arrangements did not become more widely available, and access to high quality afterschool programs was not expanded. As described above, Obama did not implement any of his specific proposed policies to strengthen work family balance. His failure in this regard is epic.

While he failed wholly at work-family balance, Obama did a modestly better job strengthening the economic security of women and families during his time in office. Obama fulfilled his promises to pass the Lilly Ledbetter Fair Pay Act (Ledbetter Act) and he signed legislation that provided various economic supports for working families, including tax credits, health care cost reductions, and teacher layoff prevention measures. Enthusiasm over the passage of the Ledbetter Act, however, must be tempered by the Administration’s failure to enact the Paycheck Fairness Act (PFA). Importantly, the Ledbetter Act reinstated the pre-Ledbetter v. Goodyear Tire & Rubber Co. understanding of discriminatory pay under Title VII. Therefore, the Ledbetter Act overturned the Supreme Court’s 2007 assault on women’s pay. The Ledbetter Act, though, did not address the many pay equity problems that the PFA was intended to cure. Thus, though Obama made some legislative progress toward strengthening the economic security of women and families, he failed to fully implement his agenda to achieve that goal.

In contrast to the specifically women-focused impact of the Ledbetter Act, Obama signed more general pieces of legislation that contributed to strengthening the economic security of women and families as well. The American Recovery and Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (ACA) may have strengthened the economic security of women and 

4. See infra Part III.A.1.b.iii.
5. See infra Part III.A.1.b.i.
6. See infra Part III.A.1.b.i.
7. See infra Part III.A.2.b.ii.
8. See infra Part III.B.1.a.
9. See infra Part III.B.1.b.i.
10. See infra Part III.B.1.a.i.
families, but did so by limited consequence rather than by design. The ACA was intended to provide Americans better health security with lower health care costs through comprehensive health insurance reform. To the extent that the ACA reduces workers' health care expenses, enables them to make personal employment decisions without fear of losing health care coverage, and improves women's access to health care, it will inevitably strengthen working families' economic security. Additionally, some provisions in the ACA specifically address work-family concerns such as breastfeeding and early intervention for at-risk families. Therefore, the ACA should be regarded, in part, as an achievement for Obama's work-family agenda.

Obama's passage of the ARRA, like that of the ACA, also contributed to his goal of strengthening the economic security of women and families. The Making Work Pay, Child Care Tax Credit (CTC), and Earned Income Tax Credit (EITC), therein established, both fulfill campaign promises made as part of his work-family agenda. By increasing low-income families' eligibility for tax credits, they temporarily strengthen the economic security of families at risk of falling into poverty. Additionally, ARRA funds directed toward preventing teacher job loss may be credited with strengthening the economic security of women and families. However, the overall purpose of the ARRA was to stimulate the economy and prevent an economic depression. It was not designed to address work-family conflict. Moreover, despite passage of the ARRA, data shows that women continued to lose jobs during the recovery despite men's job gains during the same period. Therefore, the extent to which the ARRA is responsible for strengthening the economic security of women and fami-

ilies is unclear.\textsuperscript{20}

Despite some accomplishments, then, the Obama administration failed to implement the work-family agenda it promised and, as a result, little has changed for those struggling to combine paid market work with family care work. This Article will describe the extent to which Obama failed to implement his work-family agenda during his first term. It will also make suggestions for how Obama can finally fulfill the promises he made to working families during a second presidential term if re-elected.

Part II provides an overview of work-family coverage during the 2008 presidential campaign. First, it provides a glimpse into the reality of combining work and family during that time. Specifically, it highlights statistical information relevant to the dominant work-family struggles of the time and the failure of the then-applicable federal legislation to address the issues. Next, it discusses the feminist and progressive agendas for work and family, and identifies main components of the work-family agenda ultimately adopted by the Obama administration. Part II concludes with a discussion of the excitement, enthusiasm, and hope with which feminists and progressives welcomed Obama's ascension to the White House. After establishing the state of work-family conflict during the 2008 presidential season, this Article provides an overview of how Obama’s work-family agenda fared during his first term as President.

Part III is a descriptive account of the Obama administration’s record on work-family balance. By tracing the administration’s failure to successfully implement its work-family agenda, Part III establishes that Obama has not reached his goals of strengthening work-family balance and the economic security of women and families. This section provides a comprehensive overview of the legislative and executive actions taken by the Obama administration and discusses representative legislative solutions to work-family conflict that were introduced in Congress, but never became law.

Part IV critiques Obama’s failure to implement his work-family agenda, and provides suggestions for how a second Obama term can strengthen work-family balance for America’s working families. It suggests that, if re-elected, Obama should: (1) reaffirm his commitment to strengthen work-family balance, (2) refine his work-family agenda to prioritize action items most likely to garner bipartisan support and have the greatest positive impact on work-family conflict;

\textsuperscript{20} See infra Part III.B.2.a.i.
and (3) fight for implementation of his agenda by providing increased support and pressure to ensure congressional action and ultimate adoption of his refined work-family agenda.

Obama's refined work-family agenda should focus primarily on targeting three main sources of work-family conflict: (1) time conflict; (2) workplace inflexibility; and (3) financial insecurity. If Obama adopts legislative solutions to reduce these sources of work-family conflict, he will finally fulfill his 2008 campaign promise to help families combine paid market work with family care work. Moreover, by addressing time conflict, workplace inflexibility, and financial insecurity, Obama will make a meaningful contribution to work-family balance and to the lives of millions of America's families.

II. OBAMA'S CAMPAIGN FOR THE PRESIDENCY

A. Work-Family Conflict During the 2008 Presidential Campaign

The desire to successfully combine paid market work with parenting was a goal for the overwhelming majority of America's families during the 2008 presidential election campaign. By the 2008 election season, alternative family forms had replaced the traditional family biography of a male breadwinner and a female homemaker. As early as 1990, the “typical family” was declared nonexistent.

21. Reference to “successfully combining” paid market and family care work are intended to describe a scenario where workers who are also caregivers are able to fulfill the demands of work and family, simultaneously and successfully. Many articles discuss the challenges workers face when trying to combine paid market work with family care work. Rona Kaufman Kitchen, Eradicating the Mothering Effect: Women as Workers and Mothers; Successfully and Simultaneously, 26 WIS. J. L. GENDER & SOC'Y 167 (2011); Nicole B. Porter, Synergistic Solutions: An Integrated Approach to Solving the Caregiver Conundrum for “Real” Workers, 39 STETSON L. REV. 775 (2010).


24. Howard V. Hayghe, Family Members in the Work Force, MONTH. LAB. REV., Mar. 1990, at 14, available at <http://bls.gov/mmr/199003/art2full.pdf> (“[T]he composition of the family has become increasingly diverse, as the labor force roles of members have changed, and the
More than 70 percent of America’s mothers were participating in the paid labor market with wives’ earnings accounting for approximately 36 percent of family income. While the traditional family was little more than an outdated exception, it remained the ideal for many. The demographic shifts in both the family and the workforce had significant implications for families. The number of children raised by a single mother had significantly increased to 23 percent of children. This trend was clearly on the rise, with nearly 40 percent of 2007 births to unwed mothers. Although more than three quarters of mothers of school-age children worked full time, millions struggled to achieve financial security. In 2007, the child poverty rate was 18 percent, the highest since 1998. This statistic translates to a reality where more than thirteen million American children lived in poverty. In 2006, single mothers earned between 34 and 44 percent less than their male counterparts. Consequently, the likelihood of living in poverty was especially high for children living in single-mother families.

28. Rob Stein & Donna St. George, Number of Unwed Mothers Has Risen Sharply in U.S., WASH. POST, May 14, 2009, at A6. (“About 1.7 million babies were born to unmarried women in 2007, a 26 percent rise from 1.4 million in 2002 and more than double the number in 1980, according to the new report. Unmarried women accounted for 39.7 percent of all U.S. births in 2007 -- up from 34 percent in 2002 and more than double the percentage in 1980.”); see also Stephanie J. Ventura, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHANGING PATTERNS OF NONMARITAL CHILDBEARING IN THE UNITED STATES 2 (2009), available at <http://www.cdc.gov/nchs/data/db18.pdf>.
32. Id.
33. Joan Blades & Kristin RGWE-Finkbeiner, The Motherhood Manifesto: What America’s Moms Want—and What to Do About It (2006) (“Non-mothers with an average age of thirty earn 10 percent less than their male counterparts; mothers earn 27 percent less; and single mothers earn between 34 and 44 percent less.”).
headed households, with 42.9 percent of them living in poverty. Given mothers' lower earnings as compared to fathers, this correlation between increased poverty rates and single-mother households was logically understandable. Nevertheless, family law courts proved unwilling to address the inequity by ensuring equitable distribution of property and earnings post-divorce. According to a 1999 report, following divorce, mothers and children faced a 36 percent reduction in their standard of living, while fathers experienced a 28 percent increase in theirs. As these statistics indicate, in 2008 America's workers, especially single mothers, were struggling to achieve financial security while caring for their families.

Though poverty plagued single-mother families more often, two-parent families were also struggling. Even with both parents in the paid labor market, more than 6 percent of married-parent households were poor. Mothers' lower earnings provides an explanation for families' financial struggles. Heidi Hartmann, feminist economist and president of the Institute for Women's Policy Research, described the correlation between poverty and women's wages:

Women’s higher poverty rates are the result of their lower lifetime earnings, from both lower hourly wages and fewer hours of work, and their single status, both in the childbearing years and in old age, when they typically outlive men. Women, but not men, often take time out of the labor market to raise children and take care of family members. This caregiving increases their economic vulnerability.

As Hartmann's research proves, the exploitation of mothers' paid and unpaid labor significantly contributed to America’s families’ struggles.

34. ANDERSON, supra note 31, at 2.
35. BUREAU OF LABOR STATISTICS, U.S. DEPT OF LABOR, REPORT 1022, A PROFILE OF THE WORKING POOR, 2008, at 1 (2010), available at <http://www.bls.gov/cps/cpswp2008.pdf> (“Women who maintain families were more than twice as likely as their male counterparts to be among the working poor.”).
39. Married mothers earned only 65 percent of what fathers were earning. BLADES & ROWE-FINKBEINER, supra note 33, at 7.
40. Heidi Hartmann, Women, the Recession, and the Stimulus Package, DISSERT, Fall 2009, at 43.
to attain financial security. Thus, the demographic shifts in both paid labor and family composition, along with women's depressed earnings, contributed to the bleak economic reality for America's families.

Consequently, fair pay, reasonable family leave, and protection from employment discrimination on the basis of family responsibilities were important policy goals for feminist and progressive activists during the 2008 election season. At that time, these work-family issues were covered, to a limited extent, by the EPA, the FMLA, and the sex discrimination provisions of Title VII. These laws, however, did not adequately address the problems associated with balancing the demands of work and family. Therefore, although the EPA, Title VII, and the FMLA established important legal protections for America's workers, work-family conflict remained an unresolved problem for many millions of America's women and families. In order to distinguish between pre-existing worker rights and those Obama hoped to create, this Article will briefly explain three of the most important pre-Obama legislative contributions to work-family balance.

The 1963 EPA amendment to the Fair Labor Standards Act attempted to remedy pay inequality by making it unlawful for employers to discriminate between men and women with respect to wages. As Justice Marshall noted in 1974:

Congress' purpose in enacting the [EPA] was to remedy what was perceived to be a serious and endemic problem of employment discrimination in private industry -- the fact that the wage structure of "many segments of American industry has been based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same."

Though Congress was successful in remedying some instances of discriminatory pay through the EPA, on many other occasions discriminatory pay falls into legislative exceptions, thereby escaping the Act's coverage. Only one year later, Congress tackled other forms of dis-

41. Kitchen, supra note 21 at 174-75.
44. 29 U.S.C. § 206(d).
46. See Nicole B. Porter & Jessica R. Vartanian, Debunking the Market Myth in Pay Dis-
crime in employment when it passed Title VII.

Title VII, signed into law by President Lyndon B. Johnson, sought to prohibit other aspects of discrimination in employment.\(^{47}\) Although it was principally intended to address workplace discrimination on the basis of race, it has proven to be instrumental in addressing many manifestations of sex discrimination in the workplace as well.\(^{48}\) Title VII litigation has also evolved to provide a basis for litigating family responsibilities discrimination cases.\(^{49}\) Almost 30 years later, Congress shifted its approach to women in employment by addressing work-family balance for the first time.

The FMLA of 1993 was a departure from the anti-discrimination framework for addressing workplace inequality.\(^{50}\) The FMLA is the first and only piece of federal legislation specifically aimed at helping families balance the demands of work and family by promoting "the stability and economic security of families" while "preserving family integrity."\(^{51}\) To these ends, the FMLA provides eligible workers with job-protected bonding leave for the birth or adoption of a child, and job-protected medical leave to care for the worker's self, or the worker's child, spouse, or parent with a serious illness.\(^{52}\) The FMLA is primarily a medical leave law that does not provide job-protected leave for routine or emergency childcare demands.\(^{53}\)

When passed, the FMLA was heralded as groundbreaking legis-

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47. 42 USC §§ 2000e to e17 (2006 & Supp. II 2008) (prohibiting discrimination in employment on the basis of race, color, religion, sex, or national origin).


51. Id. § 2601(b)(1).

52. Id. § 2612.

lation in the quest to help Americans balance work and family.\footnote{54} However, because of its numerous eligibility and qualification requirements, it is constrained from providing the job-protected leave workers need, and it thus fails to live up to its ambitious promise.\footnote{55} As a result, two-thirds of steadily employed mothers have no FMLA coverage at all.\footnote{56} Moreover, “whether workers are covered by FMLA or not, many cannot afford to take leave without pay.”\footnote{57} Ultimately, only about one-fifth of covered employees take family leave.\footnote{58} Among those who do take family leave, “few [can afford to] take leave for more than a couple of weeks.”\footnote{59} Despite the protections of the FMLA, many American families are, as Joan Williams notes, “one sick child away from being fired.”\footnote{60} Given this data, Elizabeth Warren’s ominous warning, that “[h]aving a child is now the single best predictor that a woman will end up in financial collapse,” was not an exaggeration.\footnote{61}

Thus, up through 2008, the promise of equal pay was often illusory and almost half of the electorate had no FMLA rights with millions more unable to afford to take the leave to which they were entitled. Though employees discriminated against on the basis of family responsibilities may have had some remedy available to them through sex-discrimination litigation, no federal law specifically outlawed discrimination on the basis of family responsibilities. Therefore, alt-


\footnote{57} AFL-CIO WORKING WOMEN’S DEP’T, supra note 55, at 1.


\footnote{59} Id. (“Of those employees who need family or medical leave and do not take it, more than three-quarters cite being unable to afford it as the primary reason.”).


hough the protections of the EPA, Title VII, and the FMLA long pre­
dated Obama’s presence in government, inequitable treatment of
women and mothers persisted, and the difficulties of maintaining fi­
nancial security while caring for family were prevalent for millions of
America’s women and families. Consequently, pay equity, family
leave, and prohibition of discrimination on the basis of family respon­
sibilities were important priorities for a comprehensive work-family
agenda.

B. The Feminist/Progressive Agenda for Work and Family

There are two distinct but overlapping sources for most work­
family balance advocacy. Both feminist and progressive organizations
have advocated for work-family reform and for implementation of an
aggressive work-family agenda. Various feminist organizations agree
that women’s economic security and work-family balance are two im­
portant policy goals. Mothers’ economic security, in particular, is a
primary goal for feminist groups. To that end, every feminist work­
family agenda includes the following action items: (1) achievement of
pay equity; (2) prohibition of discrimination on the basis of family re­
 sponsibilities; (3) access to affordable, quality childcare; and (4) en­
hanced family and medical leave. Several leading feminist organiza­
tions have put forth feminist agendas for work and family that
highlight these plans for action and the ultimate goals of increased
economic security and better work-family balance.

In 2009, the National Organization for Women (NOW) set out
its Feminist Action Agenda for 2009 and Beyond. The comprehen­
sive plan set out detailed initiatives for reaching nine important femi­
nist goals. The two goals most directly related to addressing the work­
family conflict were (1) economic justice, and (2) equal rights and
ending sex discrimination. NOW listed the action items that would
contribute to reaching its goals. To attain economic justice, NOW ad­
vocated implementation of policies that would ensure women and
other workers were fairly compensated for their market work while
strengthening their attachment to the labor market. The woman and

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62. See Kitchen, supra note 21, at 178-79.
63. NOW’s Feminist Action Agenda for 2009 and Beyond, supra note 42.
64. Id. The plan set out the following nine goals: (1) economic justice, (2) reproductive
rights and sexual health, (3) equal rights and ending sex discrimination, (4) healthcare for all, (5)
stop violence against women, (6) LGBT rights, (7) educational equity, (8) promoting diversity
and ending racism, and (9) media fairness and accessibility. Id.
65. Id.
child-centered agenda items included closing the wage gap; ensuring equal pay for women; ensuring women's retirement security; supporting women-owned businesses; making high quality child care affordable, accessible, and safe; ensuring economic security for children; and reforming welfare assistance programs. NOW also advocated gender-neutral domestic policies that would contribute toward its feminist goals while advancing the needs of all workers. To that end, NOW advocated improving benefits for all workers; providing additional economic crisis measures; promoting a domestic budget; and rescinding tax cuts for the rich.

To reach its goal of equal rights and ending sex discrimination, NOW advocated for the creation of a cabinet-level Office on Women; nomination and confirmation of fair and independent federal judges; appointment of feminists to key governmental positions; advancement of constitutional equality for women; ratification of the Convention on the Elimination of All Forms of Discrimination Against Women; enactment of hate crimes legislation; and lifting of the combat exclusion on women in the military. NOW's detailed agenda represents a feminist action plan for strengthening work-family balance and the economic security of women and children.

Similar to the NOW action plan, Joan Blades and Kristen Rowe-Finkbeiner, through their website, MomsRising.Org, and their book, The Motherhood Manifesto, identified seven core issues that form the basis of their grass-roots movement. Blades and Rowe-Finkbeiner called for paid family leave for both mothers and fathers upon the arrival of a new child; promotion of jobs with flexible work hours and locations and part-time options to enable parents to have greater work-family balance; availability of safe, affordable, and educational child-care and entertainment options for children after school; provision of healthcare to all children; availability of quality, affordable, childcare with early-childhood teachers being paid a livable wage; mandate of realistic and fair wages for women and families; and enti-

66. Id.
67. Id.
68. United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (United Nations agreement calling for parties to eliminate all forms of discrimination against women in all areas of life including health care, education, employment, domestic relations, law, commercial transactions, and political participation).
69. NOW's Feminist Action Agenda for 2009 and Beyond, supra note 42.
70. BLADES & ROWE-FINKBEINER, supra note 33, at 16; see also MOM'SRISING, <http://www.momsrising.org> (last viewed May 27, 2012).
tlement to paid sick days for all workers. Their calls for reform echo some of NOW's action items, but represent a specifically work-family balance focused agenda.

The editors of Ms. Magazine (Ms.) set out their "Visions for Change" which, among many initiatives to address global women's issues, included a call for specific legislative and executive actions. Ms. advocated for equal pay for women; the establishment of a cabinet level Office on Women; the appointment of federal judges to protect and ensure women's rights; and the passage of the Equal Rights Amendment. Ms.'s initiatives reflect a more global perspective and leadership-focused approach to achieving equality for women.

Much like feminist activist organizations, progressive think tanks advocate for work-family reform. Progressive policy goals to address the work-family conflict are similar to those advanced by the feminist agendas for work and family, with a few notable exceptions. First, progressive groups decidedly couch most work-family issues in gender-neutral terms. Most aligned with reconstructive feminism, progressives focus on the needs of caregivers or parents, as opposed to the gendered "mother." The Center for American Progress (CAP) and the Center for Economic and Policy Research (CEPR) are two prominent progressive organizations that use such an approach. Both avoid discussing work-family balance as a "women's issue" and instead focus on the impact work-family conflict has on America's families. "Women's issues" are identified on CAP's website as mere-

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71. BLADES & ROWE-FINKBEINER, supra note 33, at 16.
73. HerStory: 1971 - Present, supra note 72.
tlement to paid sick days for all workers.\textsuperscript{71} Their calls for reform echo some of NOW's action items, but represent a specifically work-family balance focused agenda.

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ly a sub-issue under "Domestic" where there are links to reports that are overtly woman specific and therefore not logically placed under any of its other main issues: Economy, National Security, Energy & Environment, and Media & Progressive Values.\(^77\) CAP does not advance a specific work-family agenda. Meanwhile, the CEPR website lists "Work/Life" as a sub-issue under "Labor & Jobs," which itself is a sub-issue under "Economic Policy," and it has no listing for "Women's Issues" or "Women's Rights" at all.\(^8\)

Ultimately, despite distinct non-gendered labeling, progressives are largely supportive of the feminist agenda for work and family. Progressives, like feminists, support pay equity.\(^79\) Progressives, like feminists, also support prohibition of discrimination on the basis of family responsibilities.\(^80\) And, while feminists actively advocate for affordable quality childcare, and this is not a rallying point for progressives, it is a "family" goal that is consistent with progressive values.\(^81\)

Finally, enhanced family and medical leave is a top policy objective for progressives and feminists.\(^82\)

Thus, ultimately, both progressives and feminists advocate a work-family agenda that includes the following goals: (1) enhanced family and medical leave; (2) pay equity; and (3) prohibition of employment discrimination on the basis of childcare responsibilities. It is this agenda that progressives and feminists collectively pushed Obama to implement. The Obama campaign and the Democratic Party fully embraced this feminist/progressive agenda for work and family during the 2008 presidential campaign. In so doing, the President and the Democratic Party promised work-family advocates and millions of America’s families that they would bring positive change to types of families – the poor, the middle class, and the professional class – that need comprehensive work-family government policies to give them the opportunity to achieve the American dream.


\(^{79}\) See supra notes 42, 72, 75.

\(^{80}\) Id.

\(^{81}\) Id.

\(^{82}\) Id.
the work-family conflict. It is according to President Obama’s promises, through his work-family agenda, that this Article assesses his performance during his first term in office.

C. The Obama Agenda for Work and Family

On June 15, 2007 then-Senator Obama spoke in Spartanburg, South Carolina, acknowledging that Washington was failing America’s families.

At the dawn of the 21st century we also have a collective responsibility to recommit ourselves to the dream; to strengthen that safety net, put the rungs back on the ladder to the middle-class, and give every family the chance that so many of our parents and grandparents had. This responsibility is one that’s been missing from Washington for far too long — a responsibility I intend to take very seriously as president. Obama’s articulation of the extent to which the American Dream was eluding families exemplified an understanding of and an appreciation for a primary struggle of our time. As so many have recognized, women’s increased labor force participation and their disproportionate responsibility for family care work, coupled with wage stagnation, created a reality wherein most American families felt tremendous work-family conflict. Despite their hopes and hard work, they were unable to attain simultaneous success both at work and at home. When Obama spoke of twenty-first century family struggles, he was speaking to a concern shared by millions of Americans.

Many believed that Obama’s personal history and family composition positioned him to be a leader who would take action to start the process of seriously alleviating work-family tensions. Raised by his single mother and grandparents, Obama shared a common upbringing with many of today’s voters. The Obamas (Barack, Michelle, Stanley Ann Dunham, see JANNY SCOTT, A SINGULAR WOMAN: THE UNTOLD STORY OF BARACK OBAMA’S MOTHER (2011). Other aspects of Obama’s upbringing were notably less typical. A New York Times article asked: “How many other Hawaiian-Indonesian-African-Midwestern sensations are
Sasha, and Malia), and their image as a typical family - double income with children - resonated with voters as well. 87 Finally, Mrs. Obama's personal family history helped solidify voters' connection with the presidential hopeful. 88 Mrs. Obama was portrayed as the successful professional and mother, with working-class roots, raised by a city pump operator and bank employee on Chicago's south side. 89 It was observed that Mrs. Obama's personal public image as "everywoman, a wife, professional, mother, volunteer," enabled her to "draw parallels between the voters' daily balancing acts and her own." 90 Without a doubt, many Obama supporters believed that the Obamas had experienced struggles similar to their own and that the Obamas' ascension to the White House would mean acknowledgement, validation, and reform for the challenges voters themselves faced when combining work and family. 91

Obama spoke to the American electorate. Throughout his campaign for the presidency, he articulated a commitment to America's families, specifically to address families' struggles to successfully combine paid work with family care. 92 Obama repeatedly acknowledged that "many families face increased anxiety when it comes to . . . balancing their home and work life." 93 He promised to help ease such anxieties by ensuring that if he was elected President, caring for a family member would not result in job loss. 94 During his 2008 Demo-

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88. Kantor & Zeleny, supra note 86.
89. Id.; see also Obama, supra note 86 at 439.
90. Kantor & Zeleny, supra note 86.
91. Id. An exit poll conducted by Lake Research Partners found "[v]oters, especially women, were looking for a leader who cared about the issues that affect families, including balancing work and family." Post-Election Wrap-Up and Looking Forward, MOMSRISING.ORG (Nov. 2008), <http://www.momsrising.org/page/mom/exchange_November2008>; Lake Research Partners, supra note 22.
93. Obama, supra note 83.
cratic National Convention speech, Obama declared: “Now is the time to help families with paid sick days and better family leave, because nobody in America should have to choose between keeping their jobs and caring for a sick child or ailing parent.” Obama was also aware that maintaining routine childcare was often a source of tension for American families. His proposal for universal preschool was intended to address that issue.

Further solidifying the Obama campaign’s commitment to a work-family agenda, Mrs. Obama devoted substantial efforts toward articulating her husband’s plans for addressing the needs of working families. In so doing, Mrs. Obama would often echo the real-life concerns of many working families, demonstrating a personal understanding of the issues:

The work-life balance is a harsh reality for so many women, who are forced every day to make impossible choices. Do they take their kids to the doctor... and risk getting fired? Do they work weekends to send their kids to better childcare... even though it means even less time with their families? Do they take another shift at work, so they can pay for piano lessons for their kids... even though it means they have to stop volunteering for the PTA?

Mrs. Obama would respond to these questions by providing the details of Obama’s agenda for work and family. Under Obama’s leadership, FMLA would be expanded “so that millions of additional Americans will be able to take time off to care for a baby, or an elderly parent – or just to have a few hours to attend a school play or a parent-teacher conference or take a child to the doctor.” With Barack as President, she promised, all employers will be required to provide their workers with seven days of paid sick leave each year.

Obama’s campaign promises to working families were documented in his Blueprint for Change Plan to Support Working Women and Families. Obama’s plan included a two-pronged approach: (1)
strengthening work-family balance; and, (2) strengthening economic security for women and families.\(^{101}\) His plan for strengthening work-family balance included: (1) expanding coverage of the FMLA; (2) encouraging states to adopt paid leave; (3) requiring employers to provide workers with seven days of paid sick leave; (4) protecting workers against caregiver discrimination; (5) expanding flexible work arrangements by educating private employers about the benefits of such arrangements, and making flexibility available to federal employees; and (6) expanding access to high-quality afterschool programs.\(^{102}\) His agenda for strengthening economic security for women and families included: (1) promoting pay equity through adoption of the Fair Pay Restoration Act, the Fair Pay Act, and the Paycheck Fairness Act; (2) establishing the Making Work Pay tax credit; (3) increasing the minimum wage; (4) expanding the Child and Dependent Care Tax Credit; (5) creating automatic workplace pensions; and (6) expanding retirement savings incentives for working families.\(^{103}\) Obama's work-family agenda as set out in his Blueprint for Change could hardly be characterized as modest. His plan was the most aggressive and ambitious ever proposed by a candidate who became the President of the United States.

The Democratic Party officially incorporated Obama's plans for work-family balance, and women and families into its 2008 Democratic Party Platform ("Democratic Platform" or "Platform").\(^{104}\) It was a theme prevalently addressed in many of the Platform's sections.\(^{105}\) His commitment to work-family balance was prominently featured in his agendas for economics, family, healthcare, military, poverty, rural America, and urban policy.\(^{106}\) The Director of the Institute for Health

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\(^{101}\) See Obama Plan to Support Working Families, supra note 1. The plan also includes Obama's Plan for Healthy Families — which, while certainly related to work-family balance, is outside the scope of this article.

\(^{102}\) Id.; see also Obama '08, News Release, supra note 1.


\(^{104}\) "In addition to directly addressing the challenges faced by working families, the campaign also linked the needs of working families to some of the most important overarching themes of the Democratic Platform, such as the economy, education, taxes, and poverty and women." Jody Heymann and Giulia El-Dardiry, *Work and Family Policy in the United States: Past Gaps, Future Possibilities*, Int'l J. Vol. 64, No. 1 125-133, 131 (Winter 2008/2009), available at <http://www.jstor.org/stable/40204457>.

\(^{105}\) See 2008 DEMOCRATIC PARTY PLATFORM, supra note 105.
and Social Policy at McGill University, Jody Heymann, provided a succinct overview of the Platform's work-family agenda:

"[T]he Democratic platform . . . explicitly propos[ed] policies that would benefit working families, including raising the minimum wage to $9.50/hr by 2011 and indexing it to inflation; expanding tax credits on earned income and for child and dependent care; legislat­ing a minimum of seven sick days per year; expanding the family medical leave act, after-school programs, and flexible work ar­rangements; and encouraging states to adopt paid leave." Ultimately, the Democratic Platform incorporated the various agenda items that were part of Obama's Blueprint for Change Plan to Support Working Women and Families. Thus, by the time Obama was elected President of the United States, his work-family agenda was clearly established.

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107. Jody Heymann M.D, Ph.D., is the founder and one of the directors of the Project on Global Working Families, a research institute. Heymann is also a professor at McGill University, where she founded the Institute for Health and Social Policy. Heymann is also an Adjunct Associate Professor at the Harvard School of Public Health and Harvard Medical School. She is a founding chair of the Initiative on Work, Family, and Democracy. "Making Work Families, to Support Working Families,"<http://www.hsph.harvard.edu/globalworkingfamilies/Heymann.htm> (last viewed May 29, 2012).

108. Heymann, supra note 105.

109. Strengthening Women and Families: Lilly Ledbetter Fair Pay, Equal Pay, see 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 14-16 and Obama Plan to Support Working Families, supra note 1 at 6; Making Work Pay, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 34-35 and Obama Plan to Support Working Families, supra note 1 at 6; Minimum Wage, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 14-16 and Obama Plan to Support Working Families, supra note 1 at 7; Child Care Tax Credit at Strengthening Work-Family Balance, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16 and Obama Plan to Support Working Families, supra note 1 at 7; Automatic Pension, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 213 and Obama Plan to Support Working Families, supra note 1 at 7-8; Retirement Savings Incentives, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 26-27 and Obama Plan to Support Working Families, supra note 1 at 8; Expand FMLA, 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16 and Obama Plan to Support Working Families, supra note 1 at 9; Paid Leave, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16 and Obama Plan to Support Working Families, supra note 1 at 9; Sick Leave, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16 and Obama Plan to Support Working Families, supra note 1 at 9; Caregiver Discrimination; See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 30 and Obama Plan to Support Working Families, supra note 1 at 9; Flexible Leave, See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16 and Obama Plan to Support Working Families, supra note 1 at 10; Afterschool Opportunities; See 2008 DEMOCRATIC PARTY PLATFORM, supra note 104 at 15-16, 18, 47-48 and Obama Plan to Support Working Families, supra note 1 at 10.

110. For clarity, hereinafter, the entirety of Obama's plans to support work-family balance and the economic security of women and families will be referred to as Obama's work-family agenda. Additionally, his work-family agenda will be categorized and discussed topically, as follows: (1) FMLA and Related Work-Family Legislation (require employers to provide workers with seven days of paid sick leave, amend the FMLA to cover more workers, encourage states to adopt paid leave programs, establish the federal government as a model employer, encourage private employers to provide flexible work options); (2) Employment Discrimination (pass the Lilly Ledbetter Fair Pay Act, Fair Pay Restoration Act, and Paycheck Fairness Act, protect workers against caregiver discrimination); (3) Economic Supports (increase the minimum wage, establish the Making Work Pay tax credit, expand the Child and Dependent Care Tax Credit);
D. Hope

On November 4, 2008, Obama was elected the 44th President of the United States when he won 52 percent of the popular vote and 349 electoral votes, which constituted nearly two-thirds of the 532 total electoral votes. A reporter for MSNBC characterized Obama’s win as a “broad, deep victory” and stated that Obama “could realistically claim a mandate.” Work-family activists celebrated the Obama victory with the certain expectation that positive change was imminent. Kim Gandy, president of NOW claimed that the Obama election was “truly a victory for women and girls in the United States and around the world.” She predicted that the Obama administration would be “the most feminist, progressive, administration ever to lead this country.” Similarly, MomsRising.org posted that they were “gratified to have a president-elect who has spoken strongly about the need to ensure the economic security of families.” NOW outlined its expectations of the Obama administration, reiterating the main components of the feminist work-family agenda that included closing the gender wage gap, adopting legislation that would help women more successfully balance family and work, and amending the FMLA to include paid leave.

Women’s high hopes for and expectations of the Obama presi-
dency were not surprising given the role they played in getting him elected. A Rockefeller Family Fund commissioned poll found that “[v]oters, especially women were looking for a leader who cared about the issues that affect families, including balancing work and family.”\(^{117}\) The poll also revealed that 63 percent of voters were more supportive of their candidate based on his positions on “issues that help American parents balance work and family, like fair pay, health care and paid sick time.”\(^{118}\) Author and MomsRising.org executive director, Kristen Rowe-Finkbeiner went further and specifically credited the Obama victory to women, claiming that

Senator Obama pulled ahead in the polls with women precisely because he addressed the shared issues not only of healthcare and education, but also of fair pay, paid family leave, sick time, and early learning – as well as other issues which are critical to the current and, more importantly, future national economic security for mothers and families.\(^{119}\)

Exit polls confirmed women’s support of Obama, showing that Obama received 56 percent of the women’s vote compared with 49 percent of the men’s vote.\(^{120}\) The significance of this gap was enhanced as women constituted a majority of voters in the election.\(^{121}\)

*Ms. Magazine* probably exhibited the most dramatic expression of feminist expectations for the President-elect. For the first time in twelve years, *Ms.* portrayed a man on its cover.\(^{122}\) To “capture both the national and feminist mood of high expectations and hope,” *Ms.* boldly displayed a picture of a supermanesque Obama, tearing open his suit shirt to reveal a t-shirt with the statement “THIS IS WHAT A FEMINIST LOOKS LIKE,” as the cover of its special inaugural issue.\(^{123}\) Critics questioned the decision to put Obama on the cover of

\(^{117}.\) Post-Election Wrap-Up and Looking Forward, supra note 91 (quoting Celinda Lake, President of Lake Research Partners).

\(^{118}.\) Lake Research Partners, supra note 91, at 7.


\(^{121}.\) Women made up 53 percent of all voters in the 2008 presidential election. Id.

\(^{122}.\) Ms. Magazine on Barack Obama: This is What a Feminist Looks Like, DEMOCRACY NOW! (Jan. 27, 2009), <http://www.democracynow.org/2009/1/27/ms_magazine_on_barack_obama_this> (including an interview by Amy Goodman with Ellie Smeal. President of the Feminist Majority Foundation and Publisher of *Ms. Magazine*, about the decision to put President Obama on the cover of *Ms. Magazine*).

arguing that Obama had not yet declared or proven himself a feminist. There was also criticism of the symbolic effect of the cover as it suggested that feminism needed to be saved by a man. Others, however, asserted that the decision to put him on the cover was consistent with the favorable views that an overwhelming majority of Americans, including feminists, had of the new President. Ultimately, regardless of whether they appreciated the controversial cover, Obama's ascension to the presidency was a welcome change for most feminists and progressives.

III. THE OBAMA ADMINISTRATION ON WORK AND FAMILY

Obama validated progressives' hopes and expectations for his administration on January 29, 2009 when he signed the Ledbetter Act as his first piece of legislation. The Ledbetter Act was characterized by NOW as a "victory for economic justice." NOW expressed its appreciation to the President and thanked him for "championing the right of working women to receive fair pay." Employment law practitioners hailed the passage of the Ledbetter Act as a distinct indication of future action. One practitioner wrote that the President's rapid signing of the Act, in the midst of the economic recession, was indicative of his support for such issues. The President himself said, upon signing the Act, "this is only the beginning." The First Lady

125. Bartow, supra note 124.
129. Id.
131. Press Release, Office of the Press Secretary, The White House, Remarks of President
expressed a similar sentiment upon the President’s signing of the Ledbetter Act. She stated that the Act was

[a]n important step forward, particularly at a time when so many families are facing economic insecurity and instability. It’s also one cornerstone of a broader commitment to address the needs of working women who are looking to us to not only ensure that they’re treated fairly, but also to ensure that there are policies in place that help women and men balance their work and family obligations without putting their jobs or their economic stability at risk.132

Professor Verna L. Williams characterized Mrs. Obama’s remarks as “suggest[ing] that pay equity and civil rights [were] part of the constellation of work/family issues to be addressed in the Obama administration.”133 Therefore, among those concerned with pay equity and work-family balance, Obama’s signing of the Ledbetter Act affirmed his dedication to his work-family agenda and signaled that change was imminent.

In April of 2009, supporters continued to rave about Obama’s passage of the Ledbetter Act as demonstrating commitment to the feminist agenda for work and family.134 Professors Eileen Appelbaum and Ruth Milkman opined:

Thanks to Obama’s electoral victory, along with [other factors], the ideological pendulum may be decisively swinging away from the market fundamentalism that has been hegemonic for the past three decades. The renewed legitimacy of government intervention presents a unique political opportunity for labor and other progressive advocates to win legislation requiring paid sick days as a minimum employment standard as well as federal support for the establishment of state insurance programs (similar in design to unemployment insurance) to provide paid family leave.135

Though Appelbaum and Milkman acknowledged that health care was the Obama administration’s first priority, they believed that “once this task is behind them, work-family policy will assume a prominent spot on the US legislative agenda.”136 Thus, the hope and expectation with which supporters welcomed Obama to the Presidency endured


133. Id.

134. Appelbaum & Milkman, supra note 120.

135. Id. at 14.

136. Id. at 15.
months into his first term.

Following the passage of the Ledbetter Act, President Obama continued to make important public gestures in support of women. Specifically, on March 11, 2009, by way of Executive Order, President Obama established the White House Council on Women and Girls (Council). The stated purpose of the Council was to "establish a coordinated Federal response to issues that particularly impact the lives of women and girls and to ensure that Federal programs and policies address and take into account the distinctive concerns of women and girls, including women of color and those with disabilities." To that end, the Council was directed to "develop and submit to the President a Federal interagency plan with recommendations for interagency action." The media labeled the establishment of the Council as a triumph for women.

Notably, in signing the executive order that established the Council, the President stressed that its benefits would not accrue to women alone. In his remarks, he stated that the issues facing women today were not only women’s issues:

> When women make less than men for the same work, it hurts families who find themselves with less income, and have to work harder just to get by. When a job doesn’t offer family leave, that also hurts men who want to help care for a new baby or an ailing parent. When there’s no affordable child care, that hurts children who wind up in second-rate care, or spending afternoons alone in front of the television set.

While feminists praised this administrative accomplishment, Obama’s presentation of it as it as benefitting men and the non-gendered “family” in addition to helping women, transformed it into a success for men and families as well.

In addition to establishing the Council and signing the Ledbetter Act, Obama made some additional inroads toward changing the

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138. Id.


141. About the Council on Women and Girls, supra note 137.

work-family reality including special support for military families and wounded warriors; legal protection for breastfeeding working mothers; establishment of the National Equal Pay Taskforce; and expanding tax credits for working families. Additionally, childcare and parenting support provisions in the ACA and the ARRA have had a positive impact on work-family issues.

Nevertheless, Obama has not brought significant "change" to the work-family landscape, and his first term leaves many core work-family promises unfulfilled. Millions of workers are left without any federally protected job leave, protection against family responsibilities discrimination, or pay equity. What follows is a detailed account of work-family executive action taken and legislation signed into law by President Obama and a variety of relevant bills introduced in Congress that never became law. For ease of reference and understanding, this discussion of the Obama administration's first term proceeds topically. It is organized according to Obama's two work-family goals: (1) strengthening work-family balance; and (2) strengthening economic security for women and families. In order to fairly assess Obama's work-family record, it is helpful to clearly articulate the extent to which Obama successfully implemented his work-family agenda as well as where he failed to do so. Assessing his first term work-family record is also an important first step toward making suggestions for any future work-family agenda.

A. Strengthening Work-Family Balance

1. FMLA and Related Work-Family Legislation

The 2008 Democratic Party Platform specifically outlined a plan to provide more workers with expanded job-protected leave and all workers with paid sick leave.

We will expand the Family and Medical Leave Act to reach millions more workers than are currently covered, and we will enable workers to take leave to care for an elderly parent, address domestic violence and sexual assault, or attend a parent-teacher conference. Today 78 percent of the workers who are eligible for leave cannot take it because it’s unpaid, so we will work with states and make leave paid. We will also ensure that every American worker

142. See infra Parts IV.A.1.a., III.A 2.a., III.B 1.a, III.B 2.a.
is able to earn up to seven paid sick days to care for themselves or an ill family member. And we will encourage employers to provide flexible work arrangements— with the federal government leading by example.\textsuperscript{144}

Despite the promises made by Obama to amend and extend FMLA protections and coverage, his administration has neither amended the FMLA as promised nor extended its protections to many millions of excluded workers. Although members of Congress have introduced a barrage of bills that would have so amended the FMLA, no such bill was signed into law. Though Obama signed the National Defense Authorization Act for Fiscal Year 2010 and the Caregivers and Veterans Omnibus Health Services Act, both of which extend important FMLA and FMLA-like rights to more of America's military families, the truth remains that Obama has failed to fulfill his promise to increase FMLA protections for all America's workers.

\textbf{a. Presidential Accomplishments}


On October 28, 2009, President Obama signed the National Defense Authorization Act (NDAA) for Fiscal Year 2010, which included amendments to the FMLA.\textsuperscript{145} The 2010 NDAA is the only amendment made to the FMLA since Obama took office, its FMLA-amending provisions only apply to military families, and it does not make significant substantive changes.\textsuperscript{146} Rather, it merely clarifies

\begin{footnotesize}
\textsuperscript{144} 2008 Democratic Party Platform, \textit{supra} note 104, at 15.


\textsuperscript{146} Military Family Leave Act of 2009, H.R. 3257, 111th Cong. (2009); Military Family Leave Act of 2009, S. 1441, 111th Cong. (2009). The Military Family Leave Act of 2009 was introduced by Senator Ron Wyden on July 10, 2009 and Representative Adam Smith on July 17, 2009, respectively. The Senate version of the bill was referred to the Senate Committee on Health, Education, Labor, and Pensions and the House version of the bill was referred to the House Committee on Veteran's Affairs and hearings by the Subcommittee on Economic Opportunity. \textit{See Bill Summary and Status, 111th Congress (2009-2010), H.R. 3257, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:cr003577> (last viewed May 29, 2012) (follow links to see cosponsors, congressional actions, and text); Bill Summary and Status, 111th Congress (2009-2010), S. 1441, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:sn01441> (last viewed May 29, 2012) (same). The bills had provisions that were substantively similar to the NDAA 2008 and NDAA 2010. Specifically, the Military Family Leave Act was intended to "grant family members of uniformed services temporary annual leave during the deployment of such members." The Act would entitle eligible employees to "two work weeks of leave for each family member" who is a member of the uniformed services and deployed on a "contingency operation." The leave could be taken "intermittently or on a reduced leave schedule." The Military Family Leave Act was never passed.
\end{footnotesize}
some aspects of the 2008 NDAA that was signed by President George
W. Bush. The 2010 NDAA does not fulfill Obama’s promises to
provide civilian families with enhanced job-protected leave, and
though it expands some of the 2008 amendment’s guarantees, it rolls
back others.

The 2010 NDAA extends family member eligibility to take quali­fying exigency leave when a member of the service is called up for duty. Under the 2008 NDAA qualifying exigency leave was only available to family members of reservists or national guardsmen. Family members of active duty service men and women were excluded from this coverage. The 2010 NDAA extends the right to take qualifying exigency leave when a service member is called to duty to family members of active members of the armed forces as well.

However, another provision in the 2010 NDAA limits the circumstances under which an eligible family member of a service member in the Reserves or National Guard can take qualifying exigency leave. Specifically, the 2010 NDAA provides that qualifying exigency leave is only available to eligible family members of a service

147 National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Pub. L. No. 110-181, 122 Stat. 3. Section 585 of the NDAA 2008 amends the FMLA. Id.; Military Family Leave Provisions of the FMLA (Family and Medical Leave Act) Frequently Asked Questions, U.S. DEPT OF LABOR, <http://www.dol.gov/whd/fmla/finalrule/MilitaryFAQs.pdf> (last viewed Apr. 26, 2012). Section 585 of the NDAA 2008 expands the FMLA to provide covered employees in military families with two types of military family leave: “qualifying exigency leave” and “military caregiver leave.” Military Family Leave Provisions of the FMLA, supra, at 1. “Qualifying exigency leave” is job-protected leave that can be taken for any qualifying exigency arising out of the covered military member’s active duty status or call or notification of an impending call to active duty. Id. at 2. Qualifying exigencies include various activities in which a family may need to engage when a covered military member is deployed, during the service member’s deployment, and post-deployment, such as: attending military sponsored functions, making appropriate financial and legal arrangements, attending counseling, arranging for alternative child care, spending time with the service member during rest and recuperation leave, and attending post-deployment activities. Id. at 2-3. The 2008 NDAA did not extend qualifying exigency leave to members of the regular armed forces. Rather, the 2008 NDAA FMLA amendments only applied to family members of National Guard, Reserves, and some retired military. Id. at 2. The 2008 NDAA also provided “military caregiver leave” for eligible employees to care for a covered service member with a serious injury or illness. Id. at 6. This leave allows eligible employees with a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness to take up to twelve weeks of job-protected leave to care for their service member. Id. The twelve weeks of “military caregiver leave” is provided in addition to the twelve weeks of “qualifying exigency” leave such that an eligible employee can take up to twenty-six weeks of job-protected leave in a “single 12-month period” where necessary. Id. at 6-7.


151 2010 NDAA, supra note 149 at § 565(b)(1).

152 2010 NDAA, supra note 149 at § 565(b)(2).
member if the service member is deployed with the Armed Forces to a foreign country. Therefore, unlike under the 2008 NDAA, where the eligible family members of a Reservist or National Guardsman were entitled to qualifying exigency leave surrounding a domestic or foreign deployment, there is no such right under the 2010 NDAA.

The 2010 NDAA also expands the military caregiver provisions of the FMLA to include as "covered servicemember," a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" under certain circumstances. This provision extends the rights given to eligible family members of current service members to eligible family members of veterans as well. Finally, the 2010 NDAA expands the definition of "serious injury or illness" to include not only those injuries or illnesses that were incurred by the service member while in the line of duty, but also those injuries or illnesses that "existed before the beginning of the member's active duty [that were] aggravated by service in the line of duty on active duty in the Armed Forces." For veterans, the definition was further expanded to apply to a serious injury or illness that manifested itself before or after the service member became a veteran.

Though the 2010 NDAA did not fulfill any of Obama’s FMLA-related campaign promises, it did extend FMLA and enhanced FMLA coverage to more of America’s military families, and thus is a concrete contribution to work-family law. Moreover, the 2010 NDAA FMLA amendments are a limited contribution toward furthering Obama’s goal of strengthening work-family balance.

ii. Caregivers and Veterans Omnibus Health Services Act

On May 5, 2010, President Obama signed the Caregivers and Veterans Omnibus Health Services Act of 2010 (Caregivers and Veterans Act) into law. Upon signing the bill, the President spoke about the significance this law held for working families:

[T]his legislation marks a major step forward in America's com-

153. 2010 NDAA, supra note 149 at § 565(a)(1).
154. Compare 2008 NDAA, supra note 147 at § 585(b)(1) with 2010 NDAA, supra note 149 at § 565(b)(1).
155. 2010 NDAA supra note 149 at § 565(a)(2).
156. Id.
157. 2010 NDAA, supra note 149 at § 565(a)(3).
158. Id.
mitment to families and caregivers who tend to our wounded warriors every day. These caregivers put their own lives on hold, their own careers and dreams aside, to care for a loved one. They do it every day, often around the clock. And these tireless caregivers shouldn't have to do it alone. As of today, they'll be getting more of the help that they need.  

The Caregivers and Veterans Act provides a variety of supports for caregivers of wounded veterans. The most progressive provision is the establishment of a monthly stipend to compensate caregivers. In addition, the Caregivers and Veterans Act provides designated family primary caregivers of an eligible veteran with access to various caregiver support services, including mental health services through the Civilian Health and Medical Program of the Department of Veterans Affairs. Though the Caregivers and Veterans Act is limited to caregivers of veterans, it is groundbreaking legislation as it is among the first federal programs to provide financial compensation for family caregiving.

The Wounded Warrior Project applauded the passage of this act

161. Press Release, supra note 159.  
162. S. Comm. on Veterans' Affairs, Plan for Implementation: Public Law 111-163, "Caregivers and Veterans Omnibus Health Services Act of 2010," Title I: Caregiver Support, Section 101: Assistance and Support Services for Caregivers 11 (2010), available at <http://veterans.senate.gov/upload/Caregivers_part%201.pdf>. Primary caregivers who receive this coverage will not have to incur cost shares or deductible for care received through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) In-House Treatment Initiative (CITI). See id. at 25.  
163. Id. at 25-26.  
164. Aid to Families with Dependent Children (AFDC) was established by the Social Security Act of 1935 as a grant program to enable states to provide welfare money to children whose parents were absent, incapacitated, deceased, or unemployed. This program essentially provided compensation to mothers to remain out of the paid labor market and provide care to their children. See U.S. Dept. of Health & Human Servs., Assistant Sec'y for Planning & Evaluation, Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF): Overview, <http://aspe.hhs.gov/asp/afdc-tanf.htm> (last updated Nov. 30, 2009). In the 1990s, public support for AFDC declined. The federal government increasingly waived portions of AFDC's federal requirements, allowing states to test changes to the requirements. See id. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced AFDC with a cash welfare block grant called the Temporary Assistance for Needy Families (TANF) program. See id. TANF gives states broad discretion in spending federal funds. Id. TANF funds may be used in almost any way that supports one of the four statutory purposes of TANF: to provide assistance to needy families; to promote job preparation, work, and marriage; to prevent and reduce out-of-wedlock pregnancies; and to encourage two-parent families. See id. The Social Security Act also established the Social Security Administration, which administers supplemental security income (SSI) benefits to low income individuals who are over age sixty-five, blind, or disabled. See U.S. SOC'L SECURITY ADMIN., SSA PUB. NO. 05-11000, SUPPLEMENTAL SECURITY INCOME (SSI) 4 (2012), available at <http://www.ssa.gov/pubs/11000.pdf>. 
and called it a “landmark step in providing [military] families with help in meeting some of their own basic needs as they care for the needs of their wounded warrior.” Christine Schei, and her son Erik, are examples of those who will benefit from the Act. Schei, who has cared for her son at home since his injury, explained, “When Erik was shot through the skull by a sniper at age 21, we were told he would need to be in a nursing home for the rest of his life ... This bill will enable me to continue the care we have provided to Erik and give us the emotional, physical and financial tools we need to remain strong for him.” Especially because of its acknowledgement that family care work is of value and deserving of compensation and support, the Caregivers and Veterans Act is an important contribution to work-family law.

iii. Support for Breastfeeding

In 1981, Judge Godbold, of the Fifth Circuit described breastfeeding as “the most elemental form of parental care. It is a communion between mother and child that ... is ‘intimate to the degree of being sacred.’” Protection of breastfeeding is an important public

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166. Id.

167. The Breastfeeding Promotion Act was originally introduced by Representative Carolyn Maloney on May 9, 2007, while Barack Obama was a Senator. Breastfeeding Promotion Act, H.R. 2236, 110th Cong. (2007). Once he was President, the bill was reintroduced in the House by Representative Maloney, Breastfeeding Promotion Act, H.R. 2819, 111th Cong. (2009), and in the Senate by Senator Jeff Merkley, Breastfeeding Promotion Act S. 1244, 111th Cong. (2009) on June 11, 2009. The Breastfeeding Promotion Act was aimed at requiring certain protection and accommodation for lactating women. Specifically, it would have (1) amended Title VII to prohibit discrimination in employment against breastfeeding women, (2) provided tax incentives for businesses that establish private lactation areas in the workplace, or provide breastfeeding equipment or consultation services to their employees, (3) provided for a performance standard to ensure breast pumps are safe and effective, (4) allowed breastfeeding equipment to be tax deductible for families by amending the Internal Revenue Code definition of “medical care,” and (5) protected the privacy of breastfeeding mothers by instructing that employers with fifty or more employees ensure that breastfeeding employees have break time and a private place to pump in the workplace. See H.R. 2819; S. 1244. Neither bill was voted on by Congress. See Bill Summary and Status, 111th Congress (2009-2010): H.R. 2819, THOMAS, <http://thomas.loc.gov/cgi-bin/query/z?d111:hr2819:> (last viewed Apr. 18, 2012); Bill Summary and Status, 111th Congress (2009-2010): S. 1244, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:rs1244:> (last viewed Apr. 18, 2012). Ultimately, some of the provisions in the Breastfeeding Promotion Act were adopted in the ACA. See supra note 14. However, the standards for breast pump safety and hygiene, and the tax credits were not enacted.

168. Dike v. Sch. Bd. of Orange Cnty., 650 F.3d 783, 787 (5th Cir. 1981) (quoting Griswold v. Conn., 381 U.S. 479, 486 (1965)). This decision was overruled to the extent it required strict scrutiny review of a government employee’s freedom of intimate association claim. See Shahar
policy objective for improving health outcomes and enhancing work-family balance. Breastfeeding results in numerous, well-documented short- and long-term health benefits for both mother and infant. Yet, breastfeeding rates in the United States remain low. While over 74 percent of infants are breastfed in the United States, by six months of age only 14.8 percent are exclusively breastfed. Mothers who work outside the home are less likely to ever breastfeed than their at-home counterparts, and they tend to breastfeed for less time. There have been repeated efforts to boost breastfeeding rates in the United States; nevertheless, U.S. rates continue to fall below the breastfeeding recommendations of the American Academy of Pediatrics and the World Health Organization, both of which recommend infants be exclusively breastfed for their first six months of life. To encourage and support higher rates of breastfeeding, Obama estab-
lished a breastfeeding policy for federal employees and included a breastfeeding provision in the ACA requiring larger employers to do the same, and thereby provided needed support to working mothers with infants, a specific issue to which he repeatedly expressed his commitment.\textsuperscript{174}

Obama's breastfeeding policy for federal workers is essentially the same as the workplace protections afforded to private employees through the ACA. Using his presidential authority, Obama directed that all federal employees be entitled to express milk during as many unpaid breaks as necessary, in a private place.\textsuperscript{175} Similarly, under the ACA, all employers with fifty or more employees are required to provide "(A) a reasonable break time for an employee to express breast milk for her nursing child for [one] year after the child's birth each time such employee has need to express the milk; and (B) a place other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public."\textsuperscript{176} The federal employee breastfeeding policy and the ACA breastfeeding provision make some progress toward fulfilling Obama's promises to make the federal government a model employer and to support working mothers.\textsuperscript{177} Additionally, these protections make a limited contribution toward strengthening work-family balance to the extent working mothers struggle with breastfeeding their infants while working in the paid market.

\begin{itemize}
  \item[b. Failed Legislative Bills]
  During Obama's first term, a barrage of worthy bills were intro-
\end{itemize}


\textsuperscript{177} See U.S. BREASTFEEDING COMM., supra note 169, at 10 ("Without employer support, working mothers who breastfeed are at a greater risk of adopting behaviors that will negatively impact their company-taking an extended leave of absence, losing focus on the job, discontinuing breastfeeding prematurely, or not returning to work at all.").
duced in the Senate and the House that would have fulfilled Obama’s promises to expand and extend FMLA protections to more of America’s workers. Nevertheless, the only pieces of legislation implemented by the Obama administration in the area of work-family balance were the 2010 NDAA and the Caregivers and Veterans Act. As a result, under Obama, America’s workers have no more right to take job-protected leave than they did under President George W. Bush.

i. Enhanced Family and Medical Leave

(a) Family Fairness Act

On May 13, 2008, Representative Tammy Baldwin introduced the Family Fairness Act of 2008 (FFA). The FFA would have extended FMLA coverage to eligible part-time employees. Specifically, the FFA would have amended the FMLA by eliminating the 1,250-hour requirement for employee eligibility. On January 9, 2009, Representative Baldwin introduced the FFA of 2009, which was substantively identical to the 2008 FFA. Neither the 2008 nor the 2009 FFA received any public attention or support from the White House, and neither bill ever made it out of committee.

(b) Family and Medical Leave Enhancement Act

Representative Carolyn Maloney introduced the Family and Medical Leave Enhancement Act (FMLA Enhancement Act), in the 110th Congress on February 3, 2009, and, in the 111th Congress, on April 3, 2011. The FMLA Enhancement Act would have fulfilled Obama’s campaign promise to extend FMLA coverage to all employers with twenty-five or more employees, thereby extending FMLA job protection to millions more workers. The FMLA Enhancement

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179. Id. § 2.
180. Id. HR. 6029 would have amended section 101(2)(A) of the FMLA as follows: “(A) IN GENERAL- The term ‘eligible employee’ means an employee who has been employed, either as a full-time or part-time employee, for at least 12 months by the employer with respect to whom leave is requested under section 102.” Id.
184. Id.; Jay Sumner, Act Would Permit Leave to Attend School Functions, Extracurricular
Act would also have fulfilled Obama's promise to provide FMLA job-protected leave for "parental involvement." Under the parental involvement allowance, an eligible employee could take up to four hours during any 30-day period, and up to 24 hours during any 12-month period, of parental involvement leave to "participate in or attend an activity that is sponsored by a school or community organization," or to "meet routine family medical care needs." This leave was to be available to both parents and grandparents.

The FMLA Enhancement Act would have strengthened work-family balance in three important ways. First, by extending FMLA protection to more workers, the FMLA Enhancement Act would have addressed the FMLA's dire coverage problem. It would have extended coverage to many of the 40 percent of American's workers and two-thirds of working mothers who have no FMLA rights today. Second, by expanding the definition of "qualifying events" to include routine parental care demands, such as caring for an ill (in addition to a seriously ill) child, well-visits, and parent-teacher conferences, the FMLA Enhancement Act would have demonstrated a commitment by the federal government and the Obama Administration to help workers combine their paid market work with parenting. Moreover, passage of the Act would have proven Obama's commitment to his statement that "nobody in America should have to choose between keeping their jobs and caring for a sick child." Third, by making grandparents eligible to take "parental involvement" leave, the FMLA Enhancement Act would have made a common-sense adjustment to family-leave law, symbolizing a normative shift toward acceptance and encouragement of the grandparental provision of care for grandchildren. With millions of grandparents routinely providing primary and secondary care to their grandchildren, the extension of FMLA protection to them would strengthen work-family balance.

185. See H.R. 824.  
186. Id. § 3(a).  
187. Id.  
188. See AFL-CIO Working Women's Dep't, Bargaining Fact Sheet, supra note 55 and accompanying text.  
189. Obama, supra note 92.  
There was an expectation that this bill would "gain greater headway" than similar bills previously introduced, given "the new composition of Congress" and the leadership of a President who had "expressed his commitment to push for more workplace flexibility." Ultimately, however, the bill died and this expectation was not met.

(c) Balancing Act

On June 25, 2009, Representative Lynn Woolsey introduced the Balancing Act in the 111th Congress. She reintroduced it in the 112th Congress on June 23, 2011, after the 111th Congress let it die in committee. This bill is an "omnibus package designed to create a healthier work-life balance for America's working families with more generous leave policies, expanded child care access, voluntary preschool, and improved school nutrition." To that end, the Balancing Act includes many individual pieces of legislation including the Domestic Violence Leave Act, the Family Leave Insurance Act, and the FMLA Enhancement Act, among others. With regard to expanding the FMLA, this bill would extend FMLA bonding leave coverage to all employers with at least two employees, thereby extending FMLA bonding leave rights to virtually all workers. It would also establish an insurance fund for the already allotted twelve weeks of leave granted under the FMLA for new parents. Although all FMLA-covered employees would receive a stipend, the exact amount of the stipend would be determined on a sliding scale based on the yearly

191. Sumner, supra note 184.
198. Id. §§ 141-44.
income of both parents.\footnote{Id. § 113.} In addition, the bill would expand paid sick leave, mandating that employers with 15 or more employees provide one hour of paid sick leave to each employee, for every 30 hours the employee works.\footnote{Id. § 174.}

Woolsey's Balancing Act would implement large segments of Obama's work-family agenda. It would fulfill numerous Obama campaign promises, and it would dramatically change the work-family dichotomy. Obama's failure to make the Balancing Act a cornerstone of his domestic agenda is virtually synonymous with his failure to fulfill his work-family balance promises.

\textbf{ii. Domestic Violence Leave Act}

Domestic violence is a serious problem affecting millions of workers each year:

In the United States, domestic violence results in an estimated 1200 deaths and two million injuries among women – and nearly 600,000 injuries among men – annually. In 2007, 248,300 individuals were raped or sexually assaulted. And approximately one million women and 371,900 men are stalked each year.\footnote{Id. § 180.}

Survivors of domestic and sexual violence need job-protected leave to "find shelter, file restraining orders, attend court dates, or receive counseling to prevent further abuse and work disruption."\footnote{Id. § 182.} On May 20, 2009, Representative Woolsey introduced the Domestic Violence Leave Act to amend the FMLA so as to provide an eligible employee with the right to take leave to care for a spouse, child, parent, or himself due to domestic violence, sexual assault, and stalking.\footnote{H.R. 2515, 111th Cong (2009). Under the FMLA, a victim of domestic violence or eligible family member may be entitled to job-protected leave if the injury that results from the domestic violence qualifies as a "serious health condition" under the act. See 29 U.S.C. § 2612(a)(1) (2006). Similarly, the Healthy Families Act, discussed infra Part III.A.1.b.iii.(d) would also provide domestic violence survivors with the needed job-protected leave.}

Throughout the presidential campaign, Obama had promised to extend FMLA rights to cover victims of domestic violence, and on September 30, 2009, President Obama declared October 2009 Domestic Violence Awareness month.\footnote{Proclamation by the President of the United States of America, National Domestic Violence Awareness Month, 2009 (Sept. 30, 2009), available at <http://www.whitehouse.gov/...>}

He then reaffirmed his dedication
to addressing the needs of domestic violence victims, stating: "[W]e rededicate ourselves to breaking the cycle of violence. By providing young people with education about healthy relationships, and by changing attitudes that support violence, we recognize that domestic violence can be prevented."\textsuperscript{205} Despite the President's words of commitment during his proclamation, he made no mention of the then-proposed Domestic Violence Leave Act. The bill died in a congressional committee.\textsuperscript{206}

One year later, President Obama, Vice President Joe Biden, and former Major League Baseball manager and child victim of domestic violence, Joe Torre, joined together at the White House as Obama once again declared his unwavering support for victims of domestic violence.\textsuperscript{207} Obama "announced an administration-wide effort to combat domestic violence, combining improved legal protections, housing, health and financial assistance for victims to address a problem that affects one in four women and some 15.5 million children."\textsuperscript{208} This rhetoric was largely hollow and not followed by any extension of FMLA protection to domestic violence victims through passage of the Domestic Violence Leave Act. However, Obama's commitment to domestic violence victims can be seen in other actions taken by his administration and through provisions in the ACA.\textsuperscript{209}

iii. Paid Leave

The value of a paid family leave program for America's workers and families cannot be overstated.\textsuperscript{210} Paid leave improves families'
economic conditions and children's health outcomes. Paid leave is especially critical to families’ financial condition and healthcare during times of serious illness. According to a 2008 Harvard study, 49 percent of all foreclosures were caused, at least in part, by a medical crisis—"including loss of work due to illness or injury . . . or caring for an ill family member." Significantly, when direct care of a person with a serious illness is provided by a family member, worsening of the condition is prevented and strong recovery is promoted. In fact, "the length of a child’s stay in a hospital decreases by 31 percent when parents are able to be present." 

In addition to enabling parents to provide care for an ill child, paid leave would allow "parents to spend crucial time bonding with their children after birth or adoption." A child’s need for parental attention is especially acute during infancy. For infants to thrive socially and emotionally, they must develop “secure attachments to adults who care for them.” Parent-infant bonding provides distinct benefits for both parent and child. For the parent, bonding may result in "a sense of personal achievement and intimacy" while resulting in improved health for the infant.

Despite the strong data to support establishing a paid leave program, to date, no such federal program has been adopted. The United States’ failure to provide paid leave to workers has established it as an outlier. A 2007 study of 168 countries around the world revealed that the United States was one of only five countries that

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211. Id. at 7-8.
212. Family Leave Insurance Act, H.R. 1723, 111th Cong. § 2(64); see Christopher Tarver Robertson et al., Get Sick, Get Out: The Medical Causes of Home Foreclosures, 18 HEALTH MATRIX 65 (2008).
213. H.R. 1723 § 2(3) (Congressional Findings).
214. Id.
216. Maxine Eichner, Families, Human Dignity, and State Support for Caretaking: Why the United States’ Failure to Ameliorate the Work-Family Conflict is a Dereliction of the Government’s Basic Responsibilities, 88 N.C. L. REV. 1593, 1597-99 (2010). “Children are born completely dependent, and live in near total dependence on others for roughly the first decade of their lives. They spend their next decade requiring considerable assistance from others, although generally to a decreasing extent.” Id. at 1597.
218. Lester, supra note 56, at 18.
219. Some states have established paid leave programs. See, e.g., California Family Rights Act, CAL. GOVT. CODE § 12945.2 (2012); New Jersey Family Leave Act, N.J. STAT. § 34:11B-1 to B-16 (2012).
failed to provide paid family leave. Since the time of that study, Australia, one of the five, has passed legislation that guarantees paid leave to parents. Starting in 2011, eligible parents are provided with eighteen weeks of paid parental leave after the birth or adoption of a child. The other three that have not passed such legislation are: Lesotho, Papua New Guinea, and Swaziland. There was an opportunity to join the community of countries that offer paid leave to their workers during Obama’s first term, through any of several bills that would have established a paid leave program for U.S. workers.

(a) Federal Employees Paid Parental Leave Act

In January 2009, Representative Carolyn Maloney introduced the Federal Employees Paid Parental Leave Act. Shortly thereafter, Senator Jim Webb introduced the companion bill in the Senate. The House passed its version on June 4th of that same year, while the Senate bill never made it out of committee. The Act would have provided federal employees with four weeks of paid parental leave. This entitlement would have begun to bridge the gap between the United States and the 167 other countries that guarantee paid leave to their workers. It would also have furthered Obama’s goals of strengthening work-family balance by making the federal government

220. HEYMANN ET AL., supra note 210, at 23.
222. Id.
223. HEYMANN ET AL., supra note 210, at 24.
228. H.R. 626, § 2; S. 354, § 2.
229. Parker, supra note 227.
a model employer. The Act’s sponsors had been advocating the benefit for 15 years. The Obama Administration officially backed the bill, but the President never had the opportunity to sign it into law.

(b) (Savings for) Working Families Act

As an alternative to a government funded and managed program, Republican Representative Joseph Pitts suggested a private option for enabling workers to take paid leave. On February 26, 2009, Representative Pitts introduced the Savings for Working Families Act (Working Families Act). Under the Working Families Act, qualified individuals would have been permitted to establish a tax exempt individual development account (IDA) to pay for certain qualified expenses. Additionally, the act would have allowed individuals to create “parallel accounts” in which to deposit “all matching funds and earnings dedicated to an [IDA] owner as part of a qualified [IDA] program.”

“Qualified expenses” under the Working Families Act would have included certain higher education expenses, first-time homebuyer costs, business capitalization of expansion costs, rollovers, and final distributions. Income replacement during family leave was not listed as a “qualified expense.” However, subject to a potential penalty, individuals would have been able to withdraw funds from their IDAs to replace lost income during family leave pursuant to the “nonqualified expenses” provision of the Act. Therefore, though as the penalty demonstrates, the congressional intent was not for IDAs to be used for family leave, the Working Families Act would still have created the potential for some income replacement for some workers during

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230. Id.
232. Federal Employees Paid Paternal Leave Act, supra note 225; Family Leave Insurance Act, infra note 239; Healthy Families Act, infra note 243; Paid Vacation Act, infra note 251; and Pandemic Protection for Workers, Families, and Businesses Act, infra note 258.
234. Id.
235. Id. §§ 3(3), 4(b)(2)(B).
236. Id. § 3(6)(B).
237. See id.
238. Under § 7(b), an individual may “withdraw any amount of funds from the [IDA] for purposes other than to pay qualified expense distributions, but if, after such withdrawal, the amount in the [individual’s] parallel account . . . exceeds the amount remaining in such [IDA], then [the individual] shall forfeit from the parallel account the lesser of such excess or the amount withdrawn.” Id. § 7(b).
family leave.

(c) Family Leave Insurance Act

On March 25, 2009, Representative Fortney “Pete” Stark introduced the Family Leave Insurance Act of 2009 to establish paid family leave through an employee-contribution based insurance program.\textsuperscript{239} Representatives Miller, Woolsey, and Maloney co-sponsored the bill.\textsuperscript{240} It never made it out of committees.\textsuperscript{241} This program would have established a federal paid leave program similar to the insurance-based paid leave programs established in California and New Jersey.\textsuperscript{242}

(d) Healthy Families Act

In May 2009 and May 2011, Representative Rosa DeLaura’s Healthy Families Act was introduced in both the House and the Senate.\textsuperscript{243} This bill would require all employers with 15 or more employees to allow one hour of paid sick leave for every 30 hours an employee works, with a maximum amount of paid sick leave that an employer must allow of 56 hours per calendar year, the equivalent of seven full eight-hour days.\textsuperscript{244} Importantly, the leave guaranteed by this bill would be flexible, allowing an employee to take leave to care for him or herself, a family member, or to deal with a medical or legal issue related to domestic violence.\textsuperscript{245} The passage of this modest entitlement would have been a critical first step toward alleviating work-family conflict.\textsuperscript{246}

\textsuperscript{239.} H.R. 1723, 111th Cong. (2009).
\textsuperscript{240.} Id.
\textsuperscript{242.} Compare H.R. 1723 with California Family Rights Act, CAL. GOVT. CODE § 12945.2 (2012) and New Jersey Family Leave Act, N.J. STAT. § 34:11B-1 to B-16 (2012).
\textsuperscript{244.} H.R. 2460, §§ 4(4), 5(a); S. 1152, §§ 4(4), 5(a). Additionally, this would be a minimum requirement law; employers would still be allowed to adopt a more “generous” plan. H.R. 2460, § 5(a); S. 1152 § 5(a).
\textsuperscript{245.} H.R. 2460, § 5(b); S. 1152, § 5(b). This bill also contained specific domestic violence provisions to allow workers to use the paid days to seek assistance related to or “recover from physical or psychological injury or disability caused by domestic violence, sexual assault, or stalking.” H.R. 2460, § 5(b)(4); S. 1152 § 5(b)(4); see also NAT'L P'SHIP FOR WOMEN & FAMILIES, supra note 201.
The Obama administration supported the Healthy Families Act. On November 10, 2009, in the midst of the H1N1 influenza outbreak, Deputy Secretary of Labor, Seth Harris, testified before a congressional committee hearing that it was time to provide America’s workers with job-protected sick leave. At that time, he expressed support for the Healthy Families Act on behalf of the Department of Labor and the Obama administration. Enactment of the Healthy Families Act would have fulfilled Obama’s specific promise to provide workers with seven days of paid sick leave and would have contributed toward his broader work-family goals. Although this bill was never voted on by the House or Senate in the 111th Congress, it remains ripe for action in the 112th Congress. However, because the bill did not come up for a vote when the Democrats held majorities in both houses of Congress and public interest was at its peak due to the H1N1 outbreak, there is no realistic hope for its passage by the 112th Congress.

(e) Paid Vacation Act

The Paid Vacation Act, introduced on May 21, 2009 in the House, would have amended the Fair Labor Standards Act “to require that employers provide a minimum of [one] week of paid annual leave to employees.” Upon enactment, the requirement would have applied to all employers with 100 or more employees. Three years after enactment, coverage would have been extended to employers with fifty or more employees and expanded for employers with 100 or more employees, requiring them to provide eligible employees with two weeks of paid vacation.

Though not targeted at sudden manifestations of work-family
conflict, this bill would have supported greater long-term work-family balance. Employees would have been required to provide their employers with thirty days notice before taking paid vacation under this bill. Additionally, the seven days of paid leave would have been limited to vacation use, separate from any sick or other leave required by law. Lastly, employees would have been required to take leave in a seven-day block, with no option for "roll over" to the next year. This bill did not target sudden work-family conflict due to childcare emergencies or illness. Instead, it sought to strengthen work-family balance by preventing various stress-related consequences of work-family conflict.

(f) Pandemic Protection for Workers, Families, and Businesses Act

The Pandemic Protection for Workers, Families, and Businesses Act was introduced in the House and Senate in November 2009. This bill was designed to "allow Americans to receive paid sick time so that they can address their own health needs, and the health needs of their families related to contagious illness." The bill noted the findings of a congressional study that between 50 and 60 million workers in the United States do not have any paid sick leave. In order to rectify this problem, the bill would have required that all employers with fifteen or more employees offer seven days of paid sick time to all full-time employees who had worked for the company for over thirty days. Part time employees who were employed for over thirty days would also have been entitled to paid sick leave, though the amount of leave would be determined by formula, taking the

254. Id.
255. Id.
256. Id.
257. See id. § 2. The Congressional Findings listed in the text of the bill include "(2) job-related stress costs business $344 billion a year in absenteeism, lost productivity, and health costs; (3) some 75 percent of visits to primary care physicians come from stress-induced problems; . . . (9) men who don't take regular vacations are 32 percent more likely to die of heart attacks, and 21 percent more likely to die early of all causes; (10) women who don't take regular vacations have a 50 percent greater risk of heart attack, and are twice as likely to be depressed as those who do; . . . (12) vacations allow workers and businesses to increase productivity, decrease stress-related health costs, and provide time for family strengthening and bonding." Id.
259. Id. § 6.
260. Id.
261. Id. § 4.
262. Id. § 5.
263. Id. § 4.
number of days and hours worked into consideration.\textsuperscript{264} The sick leave provision would not have been restricted to employees to care for their own illnesses; it would also have been permitted for employees to care for a child with a contagious illness or for diagnostic or preventative care.\textsuperscript{265} Ultimately, this bill died in committee.\textsuperscript{266}

2. Parenting, Childcare, and Education\textsuperscript{267}

In his Blueprint for Change, Obama outlined his plan for reform regarding aspects of governmental involvement in parenting, childcare, and education.\textsuperscript{268} Relevant to this assessment, Obama made some specific promises to increase the availability of affordable and educational childcare and to provide at-risk parents with parenting support services. Specifically, Obama promised to launch a Children's First Agenda to provide care, learning, and support to families with young children as part of his plan to provide high quality education for Zero to Five.\textsuperscript{269} He planned a $10 billion annual investment to create and support Early Learning Challenge Grants.\textsuperscript{270} Obama promised to quadruple the number of children eligible for Early Head Start and to increase Head Start funding.\textsuperscript{271} Also, he promised to create the Presidential Early Learning Council to increase governmental program collaboration.\textsuperscript{272} These plans would have provided vital support to poor children and families by increasing the availability of affordable and educational childcare.\textsuperscript{273}

Obama also promised to expand Nurse-Family Partnership pro-

\textsuperscript{264} Id. \S 5.
\textsuperscript{265} Id.
\textsuperscript{266} H.R. 4092 (111th): Pandemic Protection for Workers, Families, and Businesses Act, GovTrack.us, <http://www.govtrack.us/congress/bills/111/hr4092> (last viewed May 29, 2012).
\textsuperscript{267} This article focuses only on those educational initiatives that are related to childcare. For a thorough discussion and critique of Barack Obama's plan to reform No Child Left Behind, see Monica Teixeira de Sousa, \textit{A Race to the Bottom? President Obama's Incomplete and Conservative Strategy for Reforming Education in Struggling Schools or the Perils of Ignoring Poverty}, 39 STETSON L. REV. 629 (2010).
\textsuperscript{269} Id. at 31, 33.
\textsuperscript{271} OBAMA '08, supra note 268, at 33.
\textsuperscript{272} News Release, supra note 270, at unnumbered 4.
grams to help "approximately 570,000 first-time mothers each year." 274 Nurse-family partnership programs were developed by David Olds who discovered what would become "his life's work" nearly forty years ago after becoming "frustrate\[ed\] working with kids who had experienced so much trauma in their lives" that the care they received at a day care center at which he worked was "too little and too late." 275 In determining how to best affect child outcomes, Olds concluded that intervention "needed to start with the mothers, to really focus on helping a mother be a better parent from the time her child was born." 276 To that end, Olds developed the idea of nurse-home visitation programs. As of 2009, these programs provided support to more than 17,000 families across 28 states. 277 Many of these programs boast impressive results both for preventing child abuse and neglect and for saving public funds through "reduced emergency department visits, foster care assignments, hospitalizations and child protective services." 278 Acknowledging the success of these programs, Obama planned to "expand the highly-successful Nurse-Family Partnership to all [570,000] low-income, first-time mothers [each year]." 279

a. Presidential Accomplishments

i. Nurse-Family Partnerships

On March 23, 2010, when President Obama signed the ACA he signaled that Nurse-Family Partnership programs would finally receive federal support. 280 The ACA included $1.5 billion in funding for a New Home Visitation Grant Program as part of its Maternal and Child Health Services provisions. 281 Section 2951 of the ACA provides

276. Boonstra, supra note 275, at 11.
277. Id.
278. Id. at 14.
281. Id. Section 2951 allowed for the creation of a Maternal, Infant and Early Childhood Home Visiting Program. This program will provide funding for State home visiting programs during fiscal years 2010-2014 through Title V Block Grant funds. Additionally, this Section of the Patient Protection and Affordable Care Act added a Section to Title V of the Social Security Act. This new section, Section 511, requires a state to provide a need assessment in order to
for an optional nurse home visitation coverage program, and issues grants to states to establish home visitation for families with young children.282

Many states provide some variety of a home-visitation program.283 Most of the programs “focus on improving parenting skills; many also seek to prevent child abuse and neglect, promote positive child development, and improve the lives of women by helping them to delay future pregnancies and to become self-sufficient through schooling and employment.”284 Historically, the state programs did not receive federal Medicaid dollars for funding. The ACA will enable many states to continue to fund already existing programs or initiate new programs.285 Illinois, for example, claims that it stands to gain $4 million over five years and $13.4 million over ten years in additional federal Medicaid funding286 under the ACA.287 The funding of Nurse-Family Partnerships is an important contribution to strengthening work-family balance and economic security for women and families. By providing at-risk mothers with parenting support, their work-life


282. Pub.L. No. 111-148, supra note 282; These provisions were previously found in H.R. 3962 (111th), §§ 1713, 1904.


284. Boonstra, supra note 275, at 11-12.

285. MEDICAID FUNDING FOR NURSE-FAMILY PARTNERSHIP: NFP STATE MEDICAID FACT SHEETS, available at <http://www.nursefamilypartnership.org/public-policy/Medicaid>. Participating states stood to gain varying amounts: Louisiana - $38.9 million over five years, $103.6 million over ten years; Michigan - $4.5 million over five years, $14.6 million over ten years; Nevada - $754,000 over five years, $2.3 million over ten years; New Jersey - $7.4 million over five years, $19.1 million over ten years; Pennsylvania $28.3 million over five years, $70.7 million over ten years; Texas - $16.7 million over five years, $51 million over ten years; Washington - $7.6 over five years, $20.4 million over ten years.

286. See Nurse-Family Partnership, Nurse Home Visitation Medicaid Option: What It Means for Children and Families in Illinois (2009), available at <http://www.guttmacher.org/pubs/grp12/12grp120311.pdf>; see also Affordable Health Care for America Act, H.R. 3962 111th Cong. § 1713 (2009). The Affordable Health Care for America Act was the House bill for health care reform. Although the Senate bill was ultimately adopted, many of the provisions were the same or similar, including Section 1713. See Pub. L. No. 111-148, § 2951.

conflict will be reduced.\textsuperscript{288}

ii. Pregnancy Assistance Fund

Through the Pregnancy Assistance Fund (PAF), Obama is providing federal funds to programs that provide needed assistance to at-risk pregnant women and mothers. The PAF is a competitive grant program, created by the ACA, which provides funding to states and tribes to “provide pregnant and parenting teens and women a seamless network of supportive services to help them complete high school or postsecondary degrees and gain access to health care, child care, family housing, and other critical support.”\textsuperscript{289} PAF funds are also available to the states to “combat violence against pregnant women.”\textsuperscript{290} Through the PAF, $25 million is to be appropriated for each fiscal year, 2010 through 2019, with the goal of improving “graduation rates, maternal and child health outcomes, and parenting skills” for “vulnerable teens and women who are pregnant and parenting.”\textsuperscript{291} Projects funded in 2010 through the PAF include home visitation and school-based support groups;\textsuperscript{292} intensive case management and school-based childcare services;\textsuperscript{293} services at high school and community service centers and a public education and awareness campaign;\textsuperscript{294} provision of wraparound services including medical care, health education, and social and emotional support services for young parents and their children;\textsuperscript{295} and provision of core services for pregnant and parenting teens, including flexible schooling, case management, par-

\textsuperscript{288} See Boonstra, \textit{supra} note 275, at 13, 19.
\textsuperscript{289} Press Release, U.S. Dept of Health & Human Servs.. \textit{supra} note 209.
\textsuperscript{290} Id.
\textsuperscript{291} Id.
\textsuperscript{292} OFFICE OF ADOLESCENT HEALTH, U.S. DEPT OF HEALTH & HUMAN SERVS., OAH GRANTEES BY STATE (2010), available at \url{<http://www.hhs.gov/ash/oah/oah-initiatives/paf/grantees.pdf>}. The Arkansas Child Abuse and Neglect Prevention Board partnered with the Arkansas Statewide Technical Assistance Resource Team (STARS) to fund ten communities across the state that are in greatest need of services to support pregnant and parenting teens. \textit{Id}.
\textsuperscript{293} Id. California Department of Public Health was granted $2 million to expand its existing Adolescent Family Life and CAL-SAFE (School-Age Families Education) programs. \textit{Id}.
\textsuperscript{294} \textit{Id} at 2; Office of Adolescent Health Pregnancy Assistance Fund Awards, The National Campaign to Prevent Teen and Unplanned Pregnancy, available at \url{<http://www.thenationalcampaign.org/federalfunding/pregnancyassistance_awards.aspx>}. The District of Columbia received $1,559,207 to address support for pregnant and parenting teens by providing services at high schools and community service centers and a public education and awareness campaign.
\textsuperscript{295} Office of Adolescent Health, \textit{supra} note 292, at 3. Massachusetts' Department of Public Health implemented the Massachusetts Pregnant and Parenting Teen Initiative, a project which creates an integrated service structure to formally link teams of qualified service providers to address the broad needs of pregnant and parenting teens. \textit{Id}. 
venting and life skills education, referral and linkage to prenatal care, and quality child care.\footnote{296}

Although the PAF will only provide $25 million annually for these programs, it is a significant development for work-family balance. To the extent that PAF programs take a proactive, preventative approach to addressing the work-family conflict, they are likely to enjoy success similar to the Nurse-Family Partnership programs. Both programs are an important contribution to work-family balance, as they provide services to mothers that will enhance their ability to balance work and family successfully. When work-family conflict is at its worst, families experience extreme disruption. Domestic violence,\footnote{297} joblessness,\footnote{298} substance abuse,\footnote{299} psychiatric disorders,\footnote{300} and other self- and family-destructive behaviors ensue. These programs attack work-family conflict head on by providing mothers with education, counseling, and other services that prevent work-family conflict from spiraling out of control. Obama's decision to fund these programs is an optimistic sign for his future endeavors to strengthen work-family balance.

These programs did not generate significant media attention and because they are administered at the state level, Obama is unlikely to get much direct credit for them. Yet, these programs are among the most palpable proof of Obama's commitment to work-family balance. The very real lives of many mothers and children will be positively

\footnote{296. Id. at 4. The Montana Department of Public Health and Human Services implemented the Montana Healthy Teen Parents project to provide support for pregnant and parenting teens in high schools and community service organizations across the state. Id


299. Michael R. Frone et al., Relationship of Work-Family Conflict, Gender, and Alcohol Expectancies to Alcohol Use/Abuse, 14 J. ORG. BEHAV. 545 (1993) (revealing that work-family conflict is positively related to abusive alcohol consumption); see also, Michael R. Frone, Work-Family Conflict and Employee Psychiatric Disorders: The National Comorbidity Survey, 85 J. APPLIED PSYCHOL. 888 (2000) (revealing that work-family conflict is positively related to substance dependence disorder).

300. Frone et al. supra note 299, at 891-92 (revealing that work-family conflict is positively related to having a mood anxiety, and substance dependence disorder; employees who reported experiencing work-family conflict often were 1.99-29.66 times more likely than were employees who reported no work-family conflict to experience a clinically significant mental health problem).}
impacted by these programs, and through their personal and individual success, work-family balance at the national level will be strengthened.

iii. Early Childhood Education

Obama has expressed a deep commitment to improving the quality of and access to early childhood education programs.Obama pledged $10 billion dollars for early childhood education during his presidential campaign. He promised to "establish a Presidential Early Learning Council to coordinate federal, state and local policies; to quadruple financing for Early Head Start; [and] to provide federal challenge grants for states to use for early care and education programs."303

As President, Obama has been relatively successful in fulfilling his promises to fund and expand early childhood education programs. The ARRA provided $5 billion for early learning programs, including Early Head Start, childcare, and programs for children with special needs. When Congress refused to fund the President's request to make permanent an Early Learning Challenge fund, Obama shifted money from Race to the Top to fund the early childhood education program. In December of 2011, the White House announced that nine states would receive "grant awards from the $500 million Race to the Top Early Learning Challenge fund, a competitive grant program jointly administered by the U.S. Departments of Education and Health and Human Services."

b. Failed Legislation

i. Universal Prekindergarten Act

Universal preschool would provide many benefits to families.  

302. Dillon, supra note 301.  
303. Id.  
306. Id.  
With regard to working parents, universal preschool would fulfill a significant childcare need. It would also alleviate the financial burden parents experience due to high childcare expenses. Dual-income married parents spend an average of nine percent of their household earnings on childcare while single parents typically spend between 16 and 19 percent of their earnings on childcare.\textsuperscript{308} A 2001 report revealed that 40 percent of single mothers spend at least half their cash income on childcare expenses.\textsuperscript{309} Universal preschool would also benefit children’s educational outcomes.\textsuperscript{310} Children who attend high-quality pre-school programs are more prepared for kindergarten than those who do not.\textsuperscript{311} Disadvantaged children are even more likely to benefit from pre-school education than others.\textsuperscript{312}

The Universal Prekindergarten Act was introduced in the House by Representative Dennis Kucinich on January 15, 2009. This would have helped fulfill Obama’s campaign promise for the Zero to Five Plan.\textsuperscript{313} It directs the Secretary of Health and Human Services to issue grants to state agencies developing prekindergarten programs for all children in their states ages three to five years old.\textsuperscript{314} This bill, if enacted, would also require the state to match 20 percent of the federal funding granted to the state, as well as require the state to submit an action plan for implementing the universal program with the state’s application for funding.\textsuperscript{315} Use of funds for teachers’ professional development activities would be limited to five percent of the total funding.\textsuperscript{316} Although the bill died in committee during the 111th Congress, Representative Kucinich reintroduced the bill in the House in
the 112th Congress on February 8, 2011.317 After being reintroduced, the bill was referred to the subcommittee on Early Childhood, Elementary, and Secondary Education.318

ii. After-School Opportunities

The Afterschool Alliance study, America After 3, found that 15.1 million school children, approximately 25 percent of all schoolchildren, are home alone after the school day ends.319 Of the 15.1 million, four percent are elementary students and 30 percent are in middle school.320 High-school students are even more likely to be in self-care during the after-school hours.321 While there are also benefits associated with adolescents being in self-care, studies consistently show that adolescents "who are on their own during the out-of-school hours are more likely to be sexually active, use alcohol and drugs, smoke, and be involved in violence or gangs."322 Importantly, 18.5 million parents would enroll their children in afterschool programs if such programs were available.323

During his campaign, Obama promised to address these issues and "double funding for the main federal support for after-school programs, the 21st Century Learning Centers program, to serve one million more children."324 Despite these good intentions, President Obama did not call for any increase in the current budget appropriations of $1.1 billion for after-school programs.325 Instead the House added $50 million to the 21st Century Learning Center program over

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318. Id.  
320. Id.  
321. WALDFOGEL, supra note 217, at 167.  
322. Id.  
323. Editorial, supra note 319.  
the $1.1 billion request; however, the Senate denied this addition. After negotiation, the House and Senate agreed to a $35 million increase, and President Obama signed it into law.

During Obama's first term as President, he made some progress toward achieving his goal of strengthening work-family balance. His expansion of FMLA rights and caregiver support for military families will strengthen work-family balance for those affected. Obama's funding for Nurse-Family Partnerships and the Pregnancy Assistance Fund through the ACA will, likewise, provide meaningful work-family support for those who qualify. Obama's partial fulfillment of his promises to fund early childhood education increases access to high-quality, educational childcare programs and therefore contributes to strengthening work-family balance as well. Obama should be applauded for these legislative accomplishments. However, the effectiveness of these programs is significantly undermined by their narrow scope. Ultimately, most working families will never personally feel their impact. For them, Obama completely failed to fulfill any of his work-family promises. They will continue to balance the demands of work and family without expanded job-protected leave or paid sick days. They will still be forced to choose between caring for a sick child and keeping their job. Therefore, although Obama made some limited progress toward strengthening work-family balance, he ultimately failed to strengthen work-family balance overall or to implement the work-family agenda he promised.

B. Strengthening the Economic Security of Women and Families

1. Employment Discrimination

The gender wage gap is a primary cause of economic insecurity.


Statistics show that "American women who work full-time year-round are paid only 77 cents for every dollar paid to their male counterparts." This wage gap impacts women throughout their adult lives, culminating in their increased likelihood of poverty in old age. To eradicate the gender wage gap, policy makers must commit to achieving pay equity and ending employment discrimination on the basis of sex and family care responsibilities.

Addressing discrimination in employment on the basis of sex, gender, and family responsibilities is a primary policy goal of the feminist and progressive agendas for work and family. Fair compensation for working women is of critical importance to families' economic security as the "gap in earnings translates into $10,622 less per year in female median earnings, leaving women and their families shortchanged." During his presidential campaign, Obama articulated a commitment to ensure pay equity and to end workplace discrimination on the basis of family responsibilities. Specifically, Obama promised that if elected, his administration would "continue to promote paycheck equality and close the wage gap between men and women." To that end, Obama promised to sign the Ledbetter Act, the Paycheck Restoration Act, and the PFA into law. Additionally,


332. See id.; The National Organization for Women advocates for the end of discrimination against women and for pay equity. <http://www.now.org/issues/constitution/index.html>; Visions for Change, supra note 72; CTR. FOR AMERICAN PROGRESS, supra, note 75; CTR. FOR ECON. & POL'Y RESEARCH, supra, note 75.

333. Starnes, supra note 331.


Obama promised to address workplace discrimination on the basis of family responsibilities. The Obama Campaign's Blue Print for Change stated:

Workers with family obligations often are discriminated against in the workplace. This is a growing problem, as evidenced by the skyrocketing number of discrimination suits being filed: there has been a 400 percent increase in the number of family responsibility discrimination lawsuits in the last decade. Obama will prevent parents from being discriminated against because of caregiving responsibilities. Barack Obama will commit the government to enforcing recently-enacted Equal Opportunity Commission guidelines on caregiver discrimination.†

The Democratic Platform, Renewing America's Promise, affirmed Obama's commitment to end employment discrimination against women: "We will pass the 'Lilly Ledbetter' Act, which will make it easier to combat pay discrimination; we will pass the Fair Pay Act; and we will modernize the Equal Pay Act." Obama repeatedly articulated an understanding of the discrimination facing women in the workplace and a commitment to addressing it. However, little has actually been accomplished.

a. Presidential Accomplishments

i. Lilly Ledbetter Fair Pay Act

After starting his term as president, Obama affirmed his campaign promise to fight for equal pay. As his first piece of legislation, Obama signed the Ledbetter Act, explicitly overturning the Supreme Court decision in Ledbetter v. Goodyear Tire & Rubber Co. and "restoring the pre-Ledbetter position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began." Though the Ledbetter Act did no more than codify what had been widely understood to be the congressional intent behind Title VII until the time of the Supreme Court's 2007
c...
sion, its signing held immense symbolic significance. The President acknowledged that employment discrimination was a persistent challenge and that in signing the Ledbetter Act his administration was working to address it.

ii. National Equal Pay Taskforce

On National Equal Pay Day, April 11, 2011, President Obama recognized that women still only make 77 cents for every dollar a man earns. He noted that women suffer severe consequences as a result, including lost wages, reduced pensions, and diminished Social Security benefits. Obama established the National Equal Pay Task Force (Task Force) as a compilation of members of the EEOC, Department of Justice (DOJ), Department of Labor (DOL), and Office of Personnel Management (OPM), to combat these inequities and to improve the enforcement and accountability for equal pay laws by employers. The Task Force’s goal was to “ensure that the agencies with responsibility for equal pay enforcement are coordinating efforts and limiting potential gaps in enforcement.” Obama thereby confirmed his commitment to the equal pay issue, stating, “for the sake of our daughters and granddaughters, we must renew our commitment to eliminating the barriers women face in the workforce and give both women and men the opportunity to reach greater heights.”

The Task Force issued a report identifying five key challenges of current equal pay legislation: (1) lack of coordination among enforcement agencies; (2) lack of understanding of the scope of the

342. See supra notes 127-33 and accompanying text.
345. Id.
348. Sutphen, supra note 347.
349. Proclamation No. 8653, supra note 344.
wage gap; (3) lack of education between employers and employees about wage discrimination; (4) persistence of a wage gap among federal employees; and (5) failure of existing laws to provide sufficient power for the government to combat the wage gap.\textsuperscript{350}

The Task Force advocated recommendations and an action plan to remedy the identified problematic factors.\textsuperscript{351} To rectify the first challenge, caused by having three different federal agencies, each with distinct responsibilities to enforce pay discrimination laws, the Task Force recommended that the EEOC, DOJ, and DOL establish a working group to coordinate investigations, improve employer compliance, and revise the Office of Federal Contract Compliance Programs enforcement guidance for the EEO enforcement and litigation program.\textsuperscript{352} To remedy the second challenge, the government's inability "to understand the full scope of the wage gap and to identify and combat wage discrimination," the Task Force recommended Congress "[i]nstitute a strategy to collect pay data from federal contractors, culminating in a data collection tool that will identify contractors who are likely to be out of compliance."\textsuperscript{353} To remedy the third problem, that "employees and employers are insufficiently educated on their rights and obligations with respect to wage discrimination," the Task Force recommended a plan to "[u]ndertake a public education campaign."\textsuperscript{354} To remedy the fourth and fifth problems, the "[1] percent wage gap between men's and women's average salaries in the federal workplace" and the failure of existing laws to "provide federal officials with adequate tools to fight wage discrimination," the Task Force recommended "[i]mplement[ing] a strategy to improve the federal government's role as a model employer."\textsuperscript{355} On August 16, 2011, the OPM and the EEOC issued a joint letter to inform federal employees of their right to equal pay, and to assure federal employees that the "EEOC and OPM are committed to ensuring equal pay for equal work without regard to gender, or any other prohibited basis."\textsuperscript{356}

\textsuperscript{350} THE WHITE HOUSE, National Equal Pay Task Force, \textit{supra} note 346.
\textsuperscript{351} \textit{Id.}
\textsuperscript{352} \textit{Id.} at 1, 2-4.
\textsuperscript{353} \textit{Id.} at 2, 5.
\textsuperscript{354} \textit{Id.} at 2.
\textsuperscript{355} \textit{Id.} at 2, 7-8.
\textsuperscript{356} Memorandum from John Berry, U.S. Office of Personnel Mgmt. and Jacqueline Berrien, Chair, Equal Employment Opportunity Comm'n, to Chief Human Capital Officers, Directors of EEO, and Federal Employees regarding Equal Pay in the Federal Government (Aug. 16, 2011), available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4218>. In April of 2012, after this article was written, the White House re-
iii. Equal Employment Opportunity Commission Efforts

During his presidential campaign, Obama repeatedly promised to aggressively enforce the anti-discrimination provisions of Title VII. Specifically, Obama promised to take steps to remedy unlawful discrimination against caregivers. Building on the 2007 EEOC enforcement guidance, in 2009, the EEOC issued a document on best practices, Employer Best Practices for Workers with Caregiving Responsibilities, to avoid discrimination against workers with caregiving responsibilities. This document provides employers with useful tools for preventing and avoiding unlawful discrimination against caregivers. Since Obama took office, the EEOC has received a record number of complaints, totaling 99,947 for Fiscal Year 2011. Meanwhile, the EEOC has reportedly obtained a record amount of relief of over $364,000,000 for workplace discrimination violations. To address the increase in the number of complaints filed with the EEOC and also in an effort to reduce the backlog of cases, Obama added 170 new investigators to the agency. The administration also asserted itself on the issues of workplace flexibility and caregiver discrimination by unofficially selecting Mrs. Obama as its "poster mother." However, Mrs. Obama's role has been limited to empathetically discussing caregiver discrimination and the struggles of fellow working mothers.

357 See supra notes 92-95 and accompanying text.
358 See supra notes 92-95 and accompanying text.
359 Caregiving Guidance, supra note 49.
363 Id.
364 Id.
365 See Michelle Obama, First Lady, Remarks at a Workplace Flexibility Conference (Mar. 31, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/21/AR2010033103642.html>. Unable to find a babysitter on the day of a job interview, Michelle Obama brought Sasha to the interview. She stated:

And I prayed that her presence wouldn't be an automatic disqualifier. And it was fortunate for me that, number one, she slept through the entire interview. And I
Despite these efforts and claims, there is little evidence that the EEOC successfully stepped up enforcement against employers who discriminate against workers on the basis of caregiving responsibilities. To the contrary, the EEOC's own statistics seem to indicate that under Obama's leadership the EEOC is issuing "reasonable cause" findings less often than under either George W. Bush or Bill Clinton in sex discrimination claims, and no more often in pregnancy discrimination or equal pay claims. This is not to suggest that the Obama EEOC is intentionally less aggressive in its enforcement of prohibited discrimination against caregivers. Rather, it is more likely that the Obama EEOC has failed to make meaningful progress on behalf of victims of unlawful caregiver discrimination for the same reasons that other presidential administrations have failed to attain their political goals through EEOC action; the EEOC, like other governmental agencies, is, by design, stubbornly resistant to change according to presidential political affiliation.

was still breastfeeding – if that's not too much information. And I got the job. But I know that I was lucky, number one. I was interviewing with the president that had just had a child himself and was very understanding and open-minded. But I know that most folks are nowhere near as lucky as I was. Particularly right now with the job market the way it is, many folks can't afford to be picky about the jobs that they take.


b. Failed Legislative Initiatives

i. Paycheck Fairness Act

Despite the Obama administration’s strong support for the PFA, it never became law. Upon its defeat, Obama stated:

I am deeply disappointed that a minority of Senators have prevented the Paycheck Fairness Act from finally being brought up for a debate and receiving a vote. The bill passed in the House almost two years ago; today, it had 58 votes to move forward, the support of the majority of Senate, and the support of the majority of Americans... [M]y Administration will continue to fight for a woman’s right to equal pay for equal work.368

After the devastating defeat of the PFA in the 111th Congress369 it was reintroduced in the 112th Congress in April 2011.370 The 2010 PFA received significant support from the White House and was a popular topic for newspapers and other media outlets in the weeks leading up to the Republican filibuster that blocked an up or down vote on the bill.371 The PFA was intended to build upon the fair pay guarantees of the EPA.372 Under the PFA, a successful pay discrimination plaintiff would be eligible to receive full compensatory and punitive damages, in addition to liquidated damages and back pay.373 Moreover, all employees would be automatically protected, unless they opted out of the Act’s protections.374 The bill would prohibit employers from punishing employees for sharing salary information and require that employers submit gender, race, and national origin information to the EEOC.375 The PFA would also permit victims of pay


373. Paycheck Fairness Act, S. 3772, 111th Cong., § 3(c) (2011).

374. Id.

375. Id.
discrimination to file suit as a class, consistent with the Federal Rules of Civil Procedure. The PFA would narrow employer defenses to pay discrimination by affirmatively requiring employers to prove a non-discriminatory reason for the disparity. Finally, the PFA would clarify that individuals need not provide specific evidence of a comparable employee’s pay in the same office, but rather, may prove discriminatory pay by using comparators across the same county or other subdivision and possibly even between broader groups of employees. Unfortunately, Congress did not pass the PFA. The bill was two votes short of an automatic up or down vote in the Senate. Obama was disappointed by the PFA’s defeat, but affirmed that “[d]espite today’s vote, my Administration will continue to fight for a woman’s right to equal pay for equal work.”

Strengthening the economic security of women and families was a major goal of Obama’s work-family agenda. Ending employment discrimination against women and caregivers in employment are key routes to achieving this goal. The only concrete advance made in this respect, was the passage of the Ledbetter Act. While Obama’s passage of the Ledbetter Act was his most meaningful legislative contribution to strengthening women’s economic security, it was not as groundbreaking as many would have hoped. Though passage of the Ledbetter Act was greeted with great fanfare and anticipation, ultimately, it merely reversed a highly criticized Supreme Court decision that refuted most practitioners’ and judges’ understanding of pay discrimination cases. Essentially, the Ledbetter Act took employment law back to May 28, 2007, the day before Ledbetter was decided.

Passage of the Ledbetter Act did not fulfill Obama’s bigger


377. Id.

378. See Porter, supra note 46, at 169.


380. Id.


382. “As much a victory as the Ledbetter bill is for the renaissance of congressional power over statutes interpreted by the courts, some perspective is in order.” Ruben Garcia, Toward a Fundamental Change for the Protection of Low-Wage Workers: The “Workers’ Rights Are Human Rights” Debate in the Obama Era, 1 U. CHI. LEGAL F. 421, 439 (2009).
promise to take us to a future where men and women are paid equitably and the gender wage gap is eradicated. Moreover, the Ledbetter Act did not address non-cognizable types of workplace discrimination (like discrimination against parents and other caregivers). The Ledbetter Act was expected to be the first piece of legislation signed by Obama to address workplace discrimination against women and caregivers. Instead, it was the only piece of legislation. Obama's failure to pass the Paycheck Fairness Act and to prohibit workplace discrimination on the basis of caregiving in addition to reversing the Supreme Court's Ledbetter decision, leads to the conclusion that his promise to strengthen the economic security of women and families through anti-discrimination legislation remains unfulfilled. As will be discussed below, although Obama made some progress toward his goal through economic supports, these supports also proved insufficient to strengthen the economic security of women and families during his first term in office.

2. Economic Supports

a. Presidential Accomplishments

Obama's Presidency began in the midst of, what some have called, the "Great Recession." Understandably, Obama was immediately under pressure to take action to address the economic downturn and prevent further economic crisis. In essence, the financial meltdown that occurred less than two months before the presidential election forced the incoming President to take reactive steps: "stop the bleeding, return the patient to health, and place the nation on a sharply different course." Before even being elected, Obama was instrumental in ensuring democratic support for the Troubled Asset Relief Program. Once President, Obama urged Congress to pass the ARRA. He signed it into law on February 17, 2009. Journalist Jonathan Alter credits the ARRA with keeping "the economy from cascading downward" by provided a variety of recession-fighting measures including "[t]he extension of unemployment benefits for [33] weeks, expansion of food stamps, and $50 billion in stabilization funds to states and localities (which prevented hundreds of thousands

of layoffs." Though the ARRA is not work-family legislation in any sense, to the extent it is anti-poverty legislation, it contributes to Obama's work-family agenda and to his goal of strengthening the economic security of women and families.

i. Making Work Pay Tax Credit

As part of the ARRA, Obama established the Making Work Pay tax credits. The flat $400 (or $800 for a married couple filing jointly) tax credit is available to low and moderate income earners. To be eligible, an individual must earn income of at least $6,451 (or $12,903 for a married couple filing jointly). The credit is refundable, such that even a worker who owes no taxes, can receive a check for the credit. While this credit may be very helpful to women and families who qualify, it is only available for a limited time and therefore is not a lasting contribution to strengthening work-family balance or the economic security of women and families.

ii. Child Tax Credit

The ARRA also expanded eligibility for the Child Tax Credit (CTC). The CTC allows families to reduce their federal income tax by up to $1,000 per child. The tax credit is available to married families filing jointly who earn a modified adjusted income of up to $110,000 and for families filing singly who earn a modified adjusted income of up to $55,000. The expanded CTC lowers the earning requirements for the CTC from $12,500 to $3,000. Under the expanded CTC, families of more than 16 million children are eligible.

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386. ALTER, supra note 384, at 131.
387. "A congressman approached the first lady at a White House reception after the [ARRA]'s passage and told her the stimulus was the best antipoverty bill in a generation." Id.
389. Id.
391. Id. at 268.
393. Id.
394. Id.
395. Id.
396. Id.
397. Id.
ditionally, the expanded CTC increased the credit payment to the families of more than ten million children. The extension as established in the ARRA was set to expire at the end of 2010. However, pursuant to the Tax Relief and Job Creation Act of 2010, the extension will not expire until December 2012.

iii. Earned Income Tax Credit

As part of the ARRA, Obama permanently expanded the Earned Income Tax Credit (EITC). The expanded EITC provides an increased tax credit for parents with three or more children. Prior to this expansion, EITC calculations were based on either one child, or two or more children, with no additional increase in the credit for families with three or more children. The expanded EITC allows for calculation of the credit based on three or more children such that families with three or more children are now eligible for a higher credit than those with two or fewer children. Additionally, the expanded EITC increased the income ceiling by $5,000 for married taxpayers filing jointly so as to address some families' inability to claim the credit due to the marriage penalty. As a result, "millions of families were set to receive wage supplements of up to $6,000 a year from Washington – enough to prevent them from slipping back into poverty."

iv. Prevention of Job Loss for Teachers

Provisions in the ARRA also helped women and families by preventing teacher job loss. Funding provided to the states through the State Fiscal Stabilization Fund (SFSF) of the ARRA was intended to

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401. Id.
402. Id.
403. See Bird-Pollan, supra note 390, at 267-68.
404. See id. at 268.
405. Id.
406. ALTER, supra note 384, at 131.
help school districts retain their teachers during the economic recession. Ultimately, more than $40 billion was funneled to the states to restore nearly 100 percent of the 2008-09 state education budget gaps and a significant portion of the 2009-10 budget gaps. Obama specifically stated that these SFSF funds would "prevent up to 280,000 teachers from losing their jobs." Some estimates show that the ARRA may have saved as many as 325,000 jobs in education. However, others argue that the true effect of the funding defies quantification and that it is impossible to determine whether the job-loss-prevention numbers are realistic.

Though some provisions in the ARRA had a favorable impact on women's economic security, reports suggest that, overall, Obama's economic stimulus preferred men over women. The recession was especially difficult for men. However, as a National Women's Law Center review of the early recovery data reveals, women fared much worse than men during the recovery. While the recovery brought almost two million new jobs to men, women gained just over 500,000 jobs. As a result, men's unemployment decreased from 9.9 to 7.8

412. See id. Critics argue that the calculations used to assess how many teacher jobs were saved were inherently flawed and unreliable. Hiefling, supra note 410.
413. The tax credits and teacher job loss prevention measures of the ARRA, discussed in Part II.B.2.a. of this Article, were positive contributions to the economic security of women and families, by increasing families' access to funds and job security that could help them avoid slipping into poverty.
415. Men lost over 70 percent of the jobs during the recession, while women lost less than 30 percent. Modest Recovery Largely Leaves Women Behind, NAT'L WOMEN'S LAW CTR. (updated June 1, 2012), <http://www.now lc.org/resource/modest-recovery-largely-leaves-women-behind>.
416. See HARTMANN, supra note 414, at 4 ("In this recession women are experiencing substantial job loss... [T]hose with less education are faring worst and experiencing more unemployment, and minorities are faring worse than whites."); Modest Recovery Largely Leaves Women Behind, supra note 415.
percent while women’s unemployment rate dropped only two tenths of a percent.\footnote{Women’s unemployment between June 2009 and May 2012 dropped from 7.6 percent to 7.4 percent. Id.} A Pew Research Center report similarly found that “employment trends during the recovery ... favored men over women in all but one of the 16 major sectors of the economy.”\footnote{Rakesh Kochhar et al., Pew Research Ctr., Two Years of Economic Recovery: Women Lose Jobs; Men Find Them 1 (July 6, 2011), available at <http://www.pewsocialtrends.org/files/2011/07/Employment-by-Gender_FINAL_7-6-11.pdf>.}

The higher percentage of male job loss cannot fully explain why women were largely left out of the recovery.\footnote{Men lost more than 70 percent of jobs lost during the recession (December 2007-June 2009). Modest Recovery Largely Leaves Women Behind, supra note 415. For a gender-focused explanation regarding the recession’s impact on women, see Hartmann supra, note 415.} A \textit{Washington Post} article states that the hiring gap is partly attributable to the concentration of men and women in different industries.\footnote{Suzy Khimm, The Recession’s Gender Gap: From “Man-Cession” to “He-Coverity”, \textit{Wash. Post} (Sept. 6, 2011, 12:12 PM ET) <http://www.washingtonpost.com/blogs/ezra-klein/post/the-recessions-gender-gap-from-man-cession-to-he-coverity/2011/09/06/gIQACdsvdJ_.blog.html>.
} Many of the job-creating provisions in the ARRA focused on “shovel-ready,” “infrastructure” jobs which disproportionately benefitted men.\footnote{Id.} By contrast, creating “human infrastructure” or “care jobs” would have had a more positive impact on women.\footnote{Id.} A group from the Institute for Women’s Policy Research explained that “investing in social sector jobs, such as early childhood education and home-based care, generates the most jobs per $1 invested and also provides the most jobs to the most vulnerable groups of unemployed.”\footnote{Id.} By preferring jobs in physical infrastructure projects, Obama’s stimulus plan left women out. Thus, despite the inclusion of some women- and family-friendly provisions in the ACA and the ARRA, the Obama administration’s failure to include a focus on women in its economic recovery plan vividly illustrates the extent of its failure to strengthen women’s economic security.

\section*{v. Patient Protection and Affordable Care Act}

On March 23, 2010, Obama signed the ACA into law, reforming health care for millions of Americans. While achieving its overall goal of decreasing health care expenses for all will inevitably strengthen the economic security of women and families, some provisions of the

\footnotetext[418]{Women’s unemployment between June 2009 and May 2012 dropped from 7.6 percent to 7.4 percent. Id.}
}
\footnotetext[420]{Men lost more than 70 percent of jobs lost during the recession (December 2007-June 2009). Modest Recovery Largely Leaves Women Behind, supra note 415. For a gender-focused explanation regarding the recession’s impact on women, see Hartmann supra, note 415.
}
}
\footnotetext[422]{Id.
}
\footnotetext[423]{Id.
}
\footnotetext[424]{Id.
}
ACA are more specifically tailored to improve families' economic security, and therefore are herein discussed as specific work-family accomplishments. For example, sections 2704 and 2705 of the ACA specifically enhance work-family balance by enabling workers to make employment decisions without fear of losing health coverage due to a pre-existing condition and by prohibiting insurance companies from charging women or those with pre-existing conditions more for their health care coverage.425 These provisions will go into effect in 2014.426 Additionally, the ACA expands women's access to preventative services including mammograms and cervical cancer screenings, by eliminating additional costs for those services.427 The ACA expands children's access to preventative services without additional cost in many circumstances, including access to well-visits.428 Finally, the ACA also provides increased support for breastfeeding and family planning.429 Therefore, though the ACA is not a piece of work-family legislation, per se, it clearly contributes to families' work-family balance by expanding workers' employment choices, and by lowering costs for both preventative and remedial health care services.

IV. ASSESSING THE OBAMA ADMINISTRATION'S IMPLEMENTATION OF ITS WORK-FAMILY AGENDA

As Parts II and III of this article demonstrate, during his 2008 campaign for the Presidency, Obama developed a comprehensive work-family agenda that promised to address a myriad of work-family challenges including such issues as pay inequity, the lack of access to quality childcare, workplace inflexibility, and the dearth of paid parental leave. To these ends, Obama established two broad goals for his work-family agenda: (1) strengthening work-family balance; and (2) strengthening the economic security of women and families. Ultimately, he failed to pass legislation that would meaningfully contribute toward reaching either of these goals and, consequently, he failed to implement lasting change for working families. Along with Obama's personal failure to put his work-family agenda into place, there were other factors that prevented its implementation. Among them, the following can be included: (1) prioritization of other do-

426. Id. § 1201, 124 Stat. 154-60 (adding new sections 2704-05 to the Public Health Service Act).
427. Id. § 1001, 124 Stat. 131-32 (adding new section 2713 to the Public Health Service Act).
428. Id. § 1001, § 1201, 124 Stat. 131-32, 156-60.
429. Id. §§ 2303, 4207, 124 Stat. 293-96, 577-78.
mestic initiatives, (2) political obstacles due to the loss of a Democratic majority in both houses of Congress; (3) pressure to balance the budget and avoid growing government and creating additional entitlement programs; and (4) focus on international issues. With the 2012 presidential election rapidly approaching, President Obama must declare that during a second term under his leadership, his work-family agenda will receive the attention and resources necessary to ensure its implementation.

If re-elected, Obama will have a renewed opportunity to fulfill the promises he made to working families, especially working mothers. Obama should reaffirm his commitment to strengthening work-family balance and the economic security of women and families. To that end, Obama should refine his work-family agenda and prioritize specific action items that are most likely to address primary sources of work-family conflict. He should also narrow his work-family agenda by eliminating those items unlikely to garner the requisite political support. Finally, Obama should fight to make implementation of his work-family agenda a reality by strategically allocating the necessary resources. By following this suggested course of action, Obama will finally fulfill the campaign promises he made in 2008. He will also avoid alienating women voters this fall. Most importantly, by strengthening work-family balance and the economic security of women and families, Obama will enhance the quality of life for many millions of America’s families and start this nation on a path toward balance.

A. Obstacles to Implementation

Upon entering the office of the Presidency, Obama was forced to immediately devote substantial time, energy, and political capital toward a potpourri of international and domestic concerns. Even before he was elected President, Obama was busy reacting to the economic recession and advocating for action to prevent a more devastating depression. Once in office, the President was called on to immediately engage as Commander in Chief to manage the two wars he inherited from the Bush administration. He was expected to begin restoring the United States’ position in the international community as soon as possible. With Osama bin Laden still at large, Obama needed to make strategic decisions and take concrete actions to maintain pres-

430. ALTER, supra note 384, at 3-14.
431. Id. at 113, 224-227.
sure on the Taliban and the Pakistani government.\textsuperscript{432} Mid-way through his first-term, his power over Congress decreased when the Democrats lost the House to a Republican majority.\textsuperscript{433} Soon after, Obama and the rest of the international community faced the reality of the “Arab Spring,” along with the unpredictability and instability it created.\textsuperscript{434} Clearly, the domestic and international crises that pre­ existed and materialized during Obama’s first term, significantly influenced the course of his Presidency and his ability to fulfill his cam­ paign promises.

Still, despite the multiple external explanations for his inability to fully implement his work-family agenda during his first term, some degree of responsibility lies directly with Obama. Obama delivered campaign promises to address work-family conflict through legislation, knowing the U.S. was engaged in two wars, the economy was in recession, and there was no guarantee of a continued Democratic majority in Congress. Notwithstanding the presence and potential development of additional obstacles, Obama promised to implement his work-family agenda. Once President, when the threat of an economic depression loomed, and he gained a more intimate awareness of the many domestic, international, and national security issues he would face during his Presidency, he continued to make promises to legislate support for greater work-family balance. He argued, rightfully, that work-family balance and economic security for families was the path to economic recovery. Despite his progressive rhetoric, however, he did not follow through. To excuse the Obama administration’s failure to make any lasting progress on the issue of work-family balance during his first term due to the economy or Republican obstruction or national security concerns, is to give the President too little credit for the power he wields. Obama supporters must hold him accountable for his failures, just as they credit him for his accomplishments.

The Obama administration had many significant domestic and international accomplishments. It passed the ACA, reforming healthcare for millions of Americans. It produced a stimulus bill that arguably prevented a severe national, and possibly global, economic depression. It established the Consumer Financial Protection Bureau

\textsuperscript{432} Id. at 132-135, 224-227.


\textsuperscript{434} Dave Boyer, Critics Slam Obama’s Handling of Arab Spring, WASH. TIMES (Feb. 8, 2010), <http://www.washingtontimes.com/news/2012/feb/8/critics-slam-obama-handling-arab-spring/?page=all>. 
and multiple financial regulatory measures to prohibit the type of conduct that contributed to the 2008 financial crisis. Obama ended the war in Iraq and redefined the war in Afghanistan. He organized the Nuclear Security Summit and entered into the Strategic Arms Reduction Treaty to lead a global effort to "secure all vulnerable nuclear material around the world in four years." He ordered the mission that led to the killing of Osama bin Laden. He provided support to the Libyan rebels to remove Gaddafi from power. He has largely repaired the image of the United States abroad.

Nevertheless, as we approach the close of Obama’s first term as President, severe and pervasive work-family conflict persists.

B. Obama’s Second Term

As we near the end of his first term, it is now abundantly clear that, despite other meaningful accomplishments, Obama did not fulfill his promises to strengthen work-family balance and the economic security of women and families. After almost four years of Obama’s leadership there is no evidence of a decrease in the work-family conflict experienced by America’s families. Workers have no enhanced or additional rights to job-protected leave or workplace flexibility. No law has been passed to strengthen work-family balance. This dearth of any right to balance is so blatant that a New York judge recently


436. Critics of Obama’s handling of the wars in Iraq and Afghanistan may not characterize his “ending” of the Iraq war or his “redefining” of the Afghanistan war as “accomplishments” or, even, as fulfillment of his promises. Mary L. Dudziak, This War is Not Over Yet, N.Y. TIMES, Feb. 15, 2012, at A31, available at <http://www.nytimes.com/2012/02/16/opinion/this-war-is-not-over-yet.html>.

437. ALTER, supra note 384, at 356.


noted: “the law does not mandate ‘work-life balance.’”\textsuperscript{442} With so many families struggling with work-family conflict, the time has come for the law to finally recognize a right to balance.

Likewise, the economic security of women and families has not been strengthened during Obama’s presidency.\textsuperscript{443} Though Obama’s ARRA tax credits may have prevented even more dire economic circumstances for women and families, and the ACA may positively impact them in the future, at present, women and families are not faring well financially.\textsuperscript{444} A U.S. Census Bureau Report found that median household income continued to decline between 2009 and 2010 and that the poverty rate increased.\textsuperscript{445} Of course, this data represents the impact of the most severe economic crisis since the Great Depression and, therefore, the Obama Administration should not be blamed entirely for the increase in economic insecurity. Nevertheless, with the exception of some provisions in the ARRA and the ACA, Obama has not signed legislation to strengthen the economic security of women and families.

If re-elected, the Obama administration will have a second chance to implement a work-family agenda that will provide lasting support for working families. Work-family advocates must work with the Obama administration to develop a narrow work-family agenda that will garner the needed public and congressional support and to which Obama will commit sufficient resources. The best chance for success in this endeavor is for Obama to refine his work-family agenda to directly address primary sources of work-family conflict while increasing its bipartisan and popular appeal. Given the political and economic climate, Obama should adopt a work-family agenda that is practically aggressive while fiscally modest. In other words, the work-family agenda must materially improve families’ work-family balance while requiring little or no fund allocation from taxpayers. Today, there is no serious congressional support to adopt expensive work-family legislation such as federally paid family leave, sick days, or va-


\textsuperscript{444} Families’ median income decreased during Obama’s presidency. \textsc{Carmen DeNavas-Walt et al.}, \textsc{U.S. Census Bureau}, \textsc{U.S. Dept of Commerce, Income, Poverty, and Health Insurance Coverage in the United States: 2010}, at 7 (2011), \textit{available at} <http://www.census.gov/prod/2011pubs/p60-239.pdf>; see \textsc{Hartmann, supra note 414, at 8}.

\textsuperscript{445} Id.
cation. Therefore, at this time, advancing a work-family agenda with broad, unrealistic goals probably does little more than excite advocates and incite opponents.

Instead of adopting an over-aggressive work-family agenda that pleases work-family advocates but has little likelihood of implementation, I argue that the better approach is to “reaffirm, refine, and fight.” Specifically, Obama should reaffirm his commitment to the goals of strengthening work-family balance and the economic security of women and families. Next, Obama should refine his work-family agenda by focusing on specific action items that will directly address major causes of work-family conflict. Finally, Obama must fight for the adoption of legislation that will finally strengthen work-family balance and the economic security of women and families. With regard to Obama’s reaffirmation of his commitment to the work-family agenda goals he established in 2008, and with regard to the fight he must engage in to ultimately ensure achievement of those goals, I have little to add. These are matters of judgment that lie solely within Obama’s discretion and that of his advisors. With regard to refining his work-family agenda, however, I have some ideas.

Obama should refine the action items included in his first-term work-family agenda to achieve and maintain only those items that would attack primary causes of work-family imbalance and that would not require significant taxpayer funding. More specifically, Obama should focus his work-family agenda action items on three primary causes of work-family conflict: (1) time conflict; (2) workplace inflexibility; and (3) financial insecurity.

Time conflict is a well-understood source of work-family conflict. Time, unlike many other resources, is finite. Time spent engaged in paid labor market work is usually time spent away from family. Likewise, time spent with family or engaged in care work is rarely time spent at one’s paid job. An example of how common employment policies exacerbate time conflict and thereby increase work-family conflict is provided by the concept of mandatory overtime. Research shows that mandatory overtime work is specifically associated with more extreme work-family conflict. The present irreconcilabil-


ity of paid labor time with family care time explains why women, who do more family care work than men, spend fewer hours in the paid labor market than men. Women's time investment in family care work also helps explain why they comprise the majority of part-time workers. Addressing time conflict would help to alleviate work-family conflict. There are a multitude of approaches to addressing the problem of time conflict. Obama should specifically focus on passing legislation that would strengthen work-family balance by reducing time conflict.

Like time conflict, lack of schedule flexibility causes workers increased work-family conflict. When employees have greater autonomy over their work schedules and increased discretion over setting their hours, work-family conflict is reduced. A comprehensive study of the effects of workplace flexibility on employees, conducted by the Boston College Center for Work & Family found that employees with flexible work schedules experienced higher levels of work-life balance than those with traditional schedules. Moreover, the study found that the more flexible the work schedule, the greater the work-life balance. The study concluded that "[e]mployees working flexibly are more satisfied with their jobs, more satisfied with their lives, and experience better work-life balance." Thus, work-family balance would be significantly strengthened if working families were given greater autonomy over their work schedules.

Finally, financial insecurity is both a cause and a consequence of work-family conflict. Financial insecurity and the threat of financial insecurity impact how individuals balance work and family. For example, concern over financial ramifications may prevent workers from reducing their work hours or taking their federally protected family leave. On the other end of the work-family conflict, financial insecurity appears as a too-common consequence of unsuccessfully

448. For a thorough discussion of how employee perception over whether they have some discretion over the setting and timing of their work hours and schedule impacts work-family balance, see Golden et al., supra note 447. Working parents' availability to provide routine care for children is important because parental evening and night work have negative consequences for children and families. HEYMANN ET AL., supra note 210, at 10-11.


450. Id. at 1-2, 23.

451. Id. at 2.

452. "Of those employees who need family or medical leave and do not take it, more than three-quarters cite being unable to afford it as the primary reason." Kessler, supra note 58 at 326.
balancing work and family. This problem is exemplified by the fact that a quarter of all poverty spells are triggered by the birth of a baby. Addressing financial insecurity is an important aspect of addressing work-family balance because it is both a cause and a consequence of work-family conflict.

Therefore, Obama’s second-term work-family agenda should focus on legislative solutions that would reduce working hours, increase workplace flexibility, and enable more families to attain financial security. By addressing primary causes of work-family conflict, Obama will achieve both his work-family agenda goals: (1) strengthening work-family balance; and (2) strengthening the economic security of women and families. Through achieving these goals Obama will have finally fulfilled his 2008 campaign promises to women and families. Most importantly, by passing legislation to address work-family conflict, Obama will positively impact the lives of many millions of America’s families by enabling them to finally attain balance.

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453. BLADES & ROWE-FINKBEINER, supra note 33, at 80.
454. “[P]rivate sector efforts cannot be expected to fulfill the needs of working parents alone.” However, “[m]any of the basic steps taken to protect workers, such as health and safety regulations, workman’s compensation, and anti-discrimination measures, have included roles for both government and business.” Id. at 5. For a compelling discussion of why, ultimately, legislative solutions to workers’ rights issues are limited and a conceptual shift toward framing “workers’ rights” as “human rights” is necessary, see Garcia, supra note 382.