

After A Modest Proposal:

Why the United States Has Been Unable to Enact Further Maternity Leave Benefits Post Family
and Medical Leave Act of 1993

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Abstract

The history of maternity leave policy in the United States is marked by only one landmark legislation: The Family and Medical Leave Act of 1993 (FMLA). Federally mandated maternity leave rights are protected by this one bill, which provides twelve weeks of unpaid, job-protected leave only to employees of companies with fifty employees or more and have been with their company for twelve months and 1250 hours. Though other proposals have been made at the federal level and several implemented at the state level, policy change in this sphere is stagnant. Despite discussions of expanding maternity leave rights during the 2016 election season, there is much holding this nation back from being able to increase family leave benefits at the federal level. Issues of polarization, culture, and economic concerns of small businesses all create blocks in the policy process to keep maternity leave advocates from leading the way to more progressive policy change. The history of the United States as a deeply religious, pro-business nation and the deep rooted aversion of American citizens to the government playing a role in business or family has kept maternity leave benefits at a standstill since FMLA. The expansion of these benefits is not matter of simple policy change in response to desires for change, or a consideration of health benefits versus economic consequences. The discussion surrounding maternity leave includes partisan polarization, deeply ingrained cultural beliefs, and a lack of momentum for change.

Introduction

Out of only eight countries in the world that do not provide some form of paid maternity leave to working mothers, the United States is the only developed, high-income nation in that group.¹ While it is easy to fault the United States and difficult to think of any reason why the leader of the free world would not provide leave for its families, the reality is that this country has a long and complex history and policy structure that have prevented landmark legislation in this field. Maternity leave is a simple issue for some; the United States does not have federally mandated, paid maternity leave, but it should. The theoretical arguments, however, are not straightforward questions of right and wrong, should and should not. If it were a simple question of should the United States allow new mothers time off for the birth of a child, you would be hard pressed to find someone who thinks not. However, this is not the whole of the issue, for perhaps if it were, change would already have occurred. Despite the many arguments in support of paid maternity leave, there are issues of polarization and culture that make such policy change almost impossible to enact.

The policy of maternity leave is a unique area of United States policy to analyze because the past 100 years are marked by just one landmark policy in 1993 and almost no reform before or after this at the national level. Because maternity leave policy is so lacking in this country, it is much easier to analyze arguments in favor of enacting such policies than those arguments against. Maternity leave advocates are numerous and vocal, while critics are more difficult to hear. In this analysis, I will summarize a handful of tangible arguments both for and against paid maternity leave, such as health and economics. However, this particular issue of policy is far

¹ Barbara Gault, Heidi Hartmann, Ariane Hegewisch, Jessica Milli, and Lindsey Reichlin, "Paid Parental Leave in the United States: What the data tells us about access, usage, and economic and health benefits, Department of Labor," Last modified March 2014, https://www.dol.gov/wb/resources/paid_parental_leave_in_the_united_states.pdf, 2.

more complex than whether or not the health benefits outweigh the economic concerns. History, culture, and polarization all make maternity leave incredibly difficult to legislate. The arguments for and against maternity leave are deeply entrenched in the history of the United States as a capitalist, pro-business nation and the culture of a country that has always feared the involvement of government in family life. It is more difficult to argue that the United States should not have maternity leave than it is to illustrate why it does not already have it and may not in the near future.

There is a theory of public policy called ideological asymmetry, the idea that policy change favors government expansion. Matt Grossman writes in his book *Artists of the Possible*, “Most policy changes expand existing government programs, establish new endeavors, or exchange new responsibilities.”² In the context of maternity leave policy, this theory applies well. Historically, the United States went from having no legislation regarding leave to mandating twelve weeks of unpaid leave in 1993.³ This is government expansion in its simplest form; the United States went from no requirement for leave to twelve weeks of government mandated leave. It is for this purpose, government expansion, that there are many advocates and arguments in support of further legislation for maternity leave.⁴ There is a current law with a federal minimum, as well as several problems with the regulations and implementations. Advocates of paid parental leave fight to expand this minimum for farther reaching effects and better benefits. However, this theory only accounts for actual change. It is when policy change does occur that government expansion is favored; there is hardly any legislation that serves the function of cutting back on government programs. The change itself is difficult to come by,

² Matt Grossman, *Artists of the Possible: Governing Networks and American Policy Change Since 1945*, (New York: Oxford University Press, 2014) 5.

³U.S. Congress, Family and Medical Leave Act of 1993, (Washington, D.C.: H.R.1 - 103rd Congress, 1993-1994), Section 102.

⁴ Barbara Gault “Paid Parental Leave in the United States,” 7.

seemingly impossible in certain policy areas. This is because of another theory, that of status quo bias. This is the idea that policy change is difficult to initiate because, “The constitutional system was designed to limit aggressive action.”⁵ In the example of maternity leave, this can explain why it is that the United States had no policy until 1993, and has yet to enact any new policy post-1993. It is also why, despite the numerous advocates and arguments in support of paid maternity leave, there has yet to be any real momentum in terms of actual legislation. The policy process in the United States is designed so that proposed legislation has to bypass an intricate system of checks and balances to be enacted. The theories of ideological asymmetry and status quo bias are important to understand in the analysis of paid parental leave policy in America.

The following analysis of maternity leave policy in the United States is in three sections. First, I will describe the history of parental leave policy in the United States. The focus of this section will be the Family and Medical Leave Act of 1993 (FMLA), which is the only major legislation in this policy area. In this section will be the provisions of FMLA and the extent of the law. Then, I will analyze the current position of maternity leave, complete with health and economic arguments in favor of and opposed to paid parental leave. Also in this section, I will explore the polarization of maternity leave policy, mainly the theory behind work-family policy in the unique example of the United States and how this has become such a complex issue in the country. In the last section, I will consider the future of paid parental leave for America. I will seek to answer the question of whether, given the economic consequences, as well as the polarization and culture of this country, paid maternity leave is a possibility in the near future. In this paper, I will be using the phrases “maternity leave” and “parental leave” interchangeably. I chose not to focus on paternity leave in this analysis because there is less research on this half of parental leave in the United States, and because I do not think that paternity leave is realistic in

⁵ Matt Grossman, *Artists of the Possible*, 15-16.

the near future given the complex debate about maternity leave. Although many policy suggestions include paternity leave with the package of parental leave, I am focusing specifically on maternity leave for simplicity.

Part I - The History of Maternity Leave

In the history of maternity leave in the United States, the most influential legislation was the Family and Medical Leave Act of 1993, signed into law by President Clinton as his first legislative action upon taking office.⁶ The purpose of the act was to support working families by allowing time off for birth or adoption of a child, as well as for health concerns of members of the family, such as if a child or aging parent becomes seriously or suddenly ill.⁷ The provisions of the law, according to the actual text of the bill, are as follows. “Eligible employees” are those who have been employed by the same employer for at least twelve months and have worked at least 1,250 hours over the previous 12 month period. Excluded from eligibility are those workers whose employer employs fewer than 50 employees.⁸ The leave requirement itself is an entitlement to twelve weeks during a twelve month period, following the birth or adoption of a child, to care for a family member with a “serious health condition,” or because of a personal “serious health condition,” that makes it impossible for the employee to work.⁹ The twelve weeks are job-protected but unpaid, and if an employer is able and decides to provide

⁶ Christopher Ruhm, “Policy Watch: The Family and Medical Leave Act,” *The Journal of Economic Perspectives* 11, no. 3 (1997), <http://www.jstor.org/stable/2138191>, 175.

⁷ Donna Lenhoff and Lissa Bell, “Government Support for Working Families and for Communities: Family and Medical Leave as a Case Study,” National Partnership for Women and Families, <http://www.nationalpartnership.org/research-library/work-family/fmla/fmla-case-study-lenhoff-bell.pdf>, 1.

⁸ U.S. Congress, Family and Medical Leave Act of 1993, Section 101.

⁹ U.S. Congress, Family and Medical Leave Act of 1993, Section 102.

compensation for some of the twelve weeks, the remaining weeks must still be given to the employee without compensation.¹⁰

To understand what makes the Family and Medical Leave Act of 1993 such an important moment in the history of work-family policy, one must note the legislative circumstances prior to FMLA. The first two legislative acts in the United States that supported mother's employment were a change to the federal tax code in 1976 that allowed families "to take a tax credit on child care costs,"¹¹ and the Pregnancy Discrimination Act in 1978 that made it illegal to discriminate in any way, whether it be hiring, firing, promoting, or raising pay, on the basis of pregnancy or childbirth.¹² Both of these changes took place during what most would argue was the height of the fight for women's equality, and both laws specifically targeted discrimination against working women. This is more obvious in the Pregnancy Discrimination Act, because only women are able to give birth and therefore are the only ones who need protection against possible termination based on reproductive function. Though less evident, the tax credit for childcare is also intended specifically to facilitate women's involvement in the workplace. During the 1970s, and some would argue still today, employment in the United States works on a male-breadwinner model by design.¹³ For example, as of 2014 the median income for a woman in the United States was \$39,621, while the median income for a man was \$50,383.¹⁴ Though there are compounding factors here, it is obvious that a man's income is significantly more substantial for taking care of a family. In a two-parent household where only one parent can

¹⁰ U.S. Congress, Family and Medical Leave Act of 1993, Section 102.

¹¹ Maternity Leave and Employment Patterns: 1961-1995, United States Census Bureau, Last modified November 2001, <https://www.census.gov/prod/2001pubs/p70-79.pdf>, 3.

¹² Maternity Leave and Employment Patterns: 1961-1995, United States Census Bureau, 3.

¹³ Kimberly Morgan, *Working Mothers and the Welfare State, Religion and the Politics of Work-Family Policies in Western Europe and the United States* (Stanford: Stanford University Press, 2006), 136.

¹⁴ U.S. Department of Labor, Women's Bureau. Data and Statistics. "Facts Over Time." Washington, D.C. https://www.dol.gov/wb/stats/stats_data.htm.

work, it is clear that the man is the one to enter the workforce and support his family.¹⁵ The tax credit for childcare, therefore, promotes women's employment in that childcare is only necessary if both parents work, and if one parent is not working, it is the mother. Tax credits encourage placing children in childcare, which in turn allows the mother to leave the home and enter the workforce.

These are the two central legislative acts in the area of work-family policy prior to FMLA, but there were also cultural factors that influenced the desire for mandated leave in the years leading up to FMLA. In the 1970s and 1980s, price of homes and cost of living increased dramatically while men's wages remained largely the same. As a result, many women entered the workforce to supplement their husband's income.¹⁶ By 1991, "nearly 50% of all mothers of infants under one year of age are now working outside the home."¹⁷ Studies from Connecticut and Minnesota show that just prior to FMLA, only about 15% and 10% of surveyed firms, respectively, voluntarily provided leave before it was federally mandated.¹⁸ In addition to the statistics of increased instances of mothers in the workforce and few companies voluntarily providing leave, it is important to note that prior to 1993, and by many still today, it was a widely accepted belief that the home and the family were the principal places of development and education for a child.¹⁹ It was never desired that women should work full time for the entirety of her child's life and leave the upbringing to someone outside the immediate family. Maternity leave was considered necessary by many members of the population, only difficult to institute.

¹⁵ Kimberly Morgan, *Working Mothers and the Welfare State*, 71.

¹⁶ Maternity Leave and Employment Patterns: 1961-1995, United States Census Bureau, 3.

¹⁷ Eileen Trzcinski and Matia Finn-Stevenson, "A Response to Arguments against Mandated Parental Leave: Findings from the Connecticut Survey of Parental Leave Policies," *Journal of Marriage and Family* 53, no. 2 (1991): 445-60. doi:10.2307/352911, 445.

¹⁸ Eileen Trzcinski, "A Response to Arguments against Mandated Parental Leave," 446.

¹⁹ Eileen Trzcinski, "A Response to Arguments against Mandated Parental Leave," 445.

Since 1993, very little change has been made regarding maternity leave legislation. However, in recent years, there has been more demand for increasing leave benefits, specifically appeals for some form of paid leave and for increased length of leave. Many of the arguments that the United States needs longer, paid maternity leave begin with the assertion that this country is the only developed, high-income nation without federally mandated paid leave.²⁰ It is with this assertion that many advocated begin their evidence. It is not an incorrect statement, and phrased as such puts the United States behind other developed countries in this arena. Behind is not a place that Americans like to be. Post FMLA, there have been few attempts to expand maternity leave benefits, all of which have occurred in the past four years. Introduced in 2015, the Family and Medical Insurance Leave Act (FAMILY Act) proposed keeping the length of 12 weeks of leave but at 66% wages, up to a cap, paid for by taxation funds from the Treasury.²¹ This act would also cover all employees, without dependence on size of the company, and create a new Office of Paid Family and Medical Leave under the Social Security Administration.²² Although the bill, proposed by Senator Kirsten Gillibrand of New York, has not been acted upon since 2015 when it was referred to the committee on finance, it is representative of a cultural shift towards a desire for the expansion of worker's rights, specifically working mothers.²³ Another bill, first introduced in 2015 and then again in 2017, is the Federal Employees Paid Parental Leave Act. This bill, proposed by Congresswoman Carolyn Maloney of New York, would make six of the twelve weeks currently guaranteed to federal employees paid leave.²⁴ The

²⁰ Barbara Gault "Paid Parental Leave in the United States," 1.

²¹ The Family and Medical Insurance Leave Act (FAMILY Act), National Partnership for Women and Families, Last modified February 2017, <http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf>.

²² U.S. Congress, Family and Medical Insurance Leave Act, (Washington, D.C.: S.786 - 114th Congress, 2015-2016), Section 4.

²³ U.S. Congress, Family and Medical Insurance Leave Act.

²⁴ U.S. Congress, Federal Employees Paid Parental Leave Act of 2017, (Washington, D.C.: H.R. 1022 - 115th Congress, 2017-2018).

text of this bill includes the idea that the Federal Government has a “role as a model employer”²⁵ and therefore the increased leave is meant to set an example for all employers as well as increase benefits.

Other instances of the growing cultural desire for paid maternity leave can be seen from the 2016 election season. On the campaign trail, Secretary Hillary Clinton advocated for many progressive child care reforms, such as

[C]apping a family’s child-care expenses at 10% of its income, guaranteeing 12 weeks of paid leave if a worker has a new child or ill family member, offering universal preschool for 4-year-olds, expanding the child tax credit’s value for young children, and raising pay for child-care workers.²⁶

Unlike her opponent President Donald Trump, who vaguely mentioned child care reform but did not make any specific policy proposals,²⁷ Secretary Clinton had an extensive page on her campaign website that described her desire for paid leave and an overview of how to finance this leave. Her aspirations were to “guarantee up to 12 weeks of paid family and medical leave” at two-thirds salary up to a cap.²⁸ Secretary Clinton planned to raise taxes for the “wealthiest Americans” to ensure that no businesses, big or small, would incur additional costs for their employees on leave. Though the specifics of taxation and implementation are not included on this site, her general overview and consideration of paid leave was more extensive than her victorious opponent’s. Senator Bernie Sanders also supported twelve weeks of paid leave during his presidential campaign,²⁹ and was a co-sponsor of the FAMILY Act of 2015.³⁰ In addition to Clinton’s proposed plan, the 2016 Democratic National Platform also has a vague proposed plan

²⁵ U.S. Congress, Federal Employees Paid Parental Leave Act of 2017, Section 2.

²⁶ Elizabeth Dias, “The Terrible, Horrible, No Good, Very Bad Child-Care Problem,” *Time*, October 24, 2016, <http://time.com/collection-post/4521548/2016-election-child-care>.

²⁷ Heather Boushey, “To Grow Our Economy, Start with Paid Leave,” *Cato Institute*, Last modified November 2014, <https://www.cato.org/publications/cato-online-forum/grow-our-economy-start-paid-leave>.

²⁸ Paid Family and Medical Leave, Hillary for America, <https://www.hillaryclinton.com/issues/paid-leave/>.

²⁹ Real Family Values, Friends of Bernie Sanders, <https://berniesanders.com/issues/real-family-values/>.

³⁰ The Family and Medical Insurance Leave Act (FAMILY Act).

for paid leave, making it the official stance of the Democratic Party to support paid maternity leave.

On the flip side of the partisan coin, Republican candidate Senator Marco Rubio also had a concrete plan to increase maternity leave benefits. Though he did not receive the nomination for President, Rubio was the only Republican of the many GOP contenders who considered maternity leave in his platform.³¹ The politics of his plan will be considered later on, but it is evident that the plan itself is very much in the style of the Republican party; the design surrounds a hefty tax credit. Rubio's plan was to offer a 25% tax credit to any company that offers a minimum of four weeks paid leave, up to a cap of \$4000 and twelve weeks per employee per year.³² Although Rubio's maternity leave plan offers the same length of leave as Clinton's plan, their ways of paying for these plans are radically different and reflective of their party philosophy. Clinton planned to raise taxes for a government subsidized program; Rubio desired to offer tax credits and entrust the system to businesses themselves, not the government. In addition, Clinton's plan would be mandated, required of all businesses, while Rubio's would be a choice. Nevertheless, it was groundbreaking in the 2016 election season for a GOP candidate to embrace maternity leave and support American families in this way. Unlike the Democratic Party, the GOP makes no mention of official support for maternity leave in their party platform.³³

Despite a cultural and legislative push for increased maternity leave benefits in the past few years, the Family and Medical Leave Act of 1993 remains largely the only legislative guarantee for job-protected leave. Unfortunately, the statistics of who actually benefits from

³¹ Andrea Flynn, "A GOP-Style Approach to Parental Leave," *The Atlantic*, October 7, 2015, <https://www.theatlantic.com/business/archive/2015/10/rubio-parental-leave/409285/>.

³² Andrea Flynn, "A GOP-Style Approach to Parental Leave."

³³ Republican Platform 2016, GOP, <https://www.gop.com/platform/>.

FMLA are not uplifting. Women make up 47% of the labor force in this country.³⁴ In total, 57% of women are in the workforce, but 70% of women with children participate in the workforce.³⁵ A variety of surveys have been facilitated to determine the reach and usage of FMLA benefits in the years since its passage. In 1996, just three years after the passage of FMLA, it was estimated that a mere 19% of new mothers were covered by the provisions of the act, based on statistics of how long these mothers had been employed, the number of hours worked, and whether the firm at which they were employed had 50 or more employees.³⁶ More recently, the 2012 Family and Medical Leave Act Worksite and Employee Surveys, conducted by the U.S. Department of Labor, found that 59% of employees are “covered and eligible to take leave under the FMLA.”³⁷ However, most employees who take leave do not take the full twelve weeks that they are eligible for. 40% of employees returned to work within 10 days of the birth of a child, and a total of 70% were back within 40 days.³⁸ Women generally take longer leave than men, but still the average length of unpaid leave taken by a woman is 58 days, or a little more than eight weeks.³⁹ On a more positive note, about two-thirds of workers receive some form of compensation during their leave. However, of those two-thirds, the majority are not from middle or low income families, demographics who typically struggle financially during their time of leave and have to return to work earlier than twelve weeks.⁴⁰ Granted, though these statistics may seem bleak, it is true that the United States has seen stark increases in coverage, particularly right after FMLA went into

³⁴ U.S. Department of Labor, Women’s Bureau. Data and Statistics.

³⁵ U.S. Department of Labor, Women’s Bureau. Data and Statistics.

³⁶ Christopher Ruhm, “Policy Watch: The Family and Medical Leave Act,” 177.

³⁷ A Look at the U.S. Department of Labor’s 2012 Family and Medical Leave Act Employee and Worksite Surveys, National Partnership for Women and Families, Last modified February 2013, <http://www.nationalpartnership.org/research-library/work-family/fmla/dol-fmla-survey-ey-findings-2012.pdf>, 3.

³⁸ A Look at the U.S. Department of Labor, 1.

³⁹ A Look at the U.S. Department of Labor, 1.

⁴⁰ A Look at the U.S. Department of Labor.

effect in 1993, as much as 20-25%.⁴¹ In addition, there are many state-level policies that have more progressive, even compensated leave from which some women are able to benefit. States with partial-paid leave programs include California, Hawaii, Rhode Island, New York, and New Jersey.⁴²

Since pre-cursor bills like the Pregnancy Discrimination Act of 1978 and the passing of the Family and Medical Leave Act of 1993, the policy area of maternity leave legislation has remained largely stagnant. The reach of FMLA is not exhaustive; many women are left without coverage for a number of reasons. Whether it be size of the company or simply financial insecurity to take twelve weeks without pay, there is certainly progress to be made for the benefit of working families. In recent years there has been cultural and legislative push for the expansion of benefits, namely with the proposed FAMILY Act and the Federal Employees Paid Parental Leave Act. However, these bills have not passed. They have largely not even been acted upon. The FAMILY Act has been stalled in Congress for well over a year,⁴³ and the latter had to be reintroduced in the most recent Congress for lack of action.⁴⁴ That being said, it is not malice of Congress, nor lack of understanding that there have not been increased maternity leave benefits in over twenty years. This is a complex policy area. There are many complex reasons, both practical and cultural, why maternity leave rights have not progressed. After looking at the past legislative history of maternity leave in this country, it is time to consider the many complicated reasons why the United States is where it is in terms of the rights of working mothers.

⁴¹ Jane Waldfogel, "The Impact of the Family and Medical Leave Act," *Journal of Policy Analysis and Management* 18, no. 2 (1999): <http://www.jstor.org/stable/3325998>, 285.

⁴² Barbara Gault "Paid Parental Leave in the United States," 4.

⁴³ Michaeline Skiba, "Barefoot, Pregnant and (Not Very) Happy: Management and Healthcare Reasons for Paid Parental Leave in the U.S.," *Journal Of Business Diversity* 16, no. 1 (2016): 120.

⁴⁴ U.S. Congress, Federal Employees Paid Parental Leave Act of 2017.

Part II - Arguments For and Against Maternity Leave

Out of 185 countries, the United States is among countries such as Oman and Papua New Guinea to not provide some form of paid maternity leave. These other two nations with which we keep company are not particularly similar to the United States in other rights and benefits, so it is worth noting that ours is the only developed country without paid maternity leave.⁴⁵ This leads to the question of why it is that the United States is among such a small minority of countries that do not provide paid leave. Often these statistics are cited as arguments in themselves; America does not provide a benefit that every other developed nation does provide, therefore it should expand its maternity leave. Unfortunately, the argument is not that simple and the reasons that the United States lacks paid maternity leave are far more complicated than should and should not. There are, of course, statistical arguments surrounding federally mandated maternity leave. Several studies explore the health effects of maternity leave for parents and children, physical and psychological. There are economic studies that say that paid maternity leave will prove beneficial for the economy, and others that argue it will hurt small businesses and decrease women's employment. From a political perspective, there is disagreement from both sides of the political spectrum regarding whether the government should mandate paid leave, and if so, then how to implement and pay for it. Perhaps most fundamentally, however, is the theory behind why it is that the United States does not have paid maternity leave.

The United States is traditionally a capitalist, pro-business nation. In her book *Working Mothers and the Welfare State*, Kimberly J. Morgan explores several theoretical reasons why the United States does not have as progressive leave policies as its European counterparts, and one particularly noteworthy reason is that Americans do not like welfare policies. Because of a lack

⁴⁵ Michaeline Skiba, "Barefoot, Pregnant and (Not Very) Happy," 115.

of a “true Social Democratic party” after World War II, some American citizens desired the expansion of welfare programs but were significantly constrained by an abundance of fiscal conservatives who fought to limit government expansion.⁴⁶ Unlike many European states, whose cultures and economies were accepting of social welfare programs, “the American welfare state has largely been a residual one that leaves most people to satisfy their welfare needs in the private market.”⁴⁷ This is evident, asserts Morgan, in our childcare systems. Most child care providers in the United States are either private, for-profit services or providers in the nonprofit sector. There is no state-run child care system, until a child is old enough to enter the public school system, because of the heavy preference for private sector providers.⁴⁸

Other theories central to American culture are largely supportive of Morgan’s view. The Libertarian philosophy, whose central fiscal policies are based in a private, free-market model, tends to argue against a governmental system of leave. “In a genuine market economy based on private property and consensual relations, employers and workers are legally treated as responsible adults to work out mutually beneficial arrangements.”⁴⁹ While a Libertarian economic approach may argue against maternity leave for financial reasons, which will be discussed later, there is nothing about maternity leave in principle that is objectionable. If an employer and a worker are able to come to a “mutually beneficial” agreement about leave, either paid or unpaid, there is nothing wrong with that because it is “consensual,” all parties are respected and benefitted, but more importantly, because it takes place within the private sector.⁵⁰ Apart from any tangible economic detriments, the only dangerous consideration of maternity

⁴⁶ Kimberly Morgan, *Working Mothers and the Welfare State*, 97.

⁴⁷ Kimberly Morgan, *Working Mothers and the Welfare State*, 79.

⁴⁸ Kimberly Morgan, *Working Mothers and the Welfare State*, 16.

⁴⁹ Robert Murphy, “‘Paid Family Leave’ Is a Great Way to Hurt Women.”

⁵⁰ Robert Murphy, “‘Paid Family Leave’ Is a Great Way to Hurt Women,” Foundation for Economic Education, last modified June 2, 2015, <https://fee.org/articles/paid-family-leave-is-a-great-way-to-hurt-women/>.

leave is if it manifests in government welfare policy, not within the private market system. Another idea that prevents paid leave is less political than ideological: American exceptionalism.⁵¹ In an article for NPR, Danielle Kurtzleben explores not the statistics of maternity leave, but the reasons why the United States seemingly falls so far behind. Unlike many European nations, the United States does not have a history of aristocracy or feudalism, and as a result is not as self-aware regarding class divisions.⁵² As a result, Kurtzleben calls Americans “individualistic” and “ambitious,” who “think of not where they are but where they assume they eventually could be.”⁵³ The connection to maternity leave is that, in general, Americans are extremely sympathetic to small businesses. Most Americans think less of their current social class or economic standing, and instead empathize with businesses because they regard themselves as one day being owners of those businesses as well.⁵⁴ The American Dream, surprisingly, is an obstacle to maternity leave policy.

In addition to the pro-business culture in the United States, this country also has a history of being deeply religious. Religiosity is another significant cultural hindrance to maternity leave that Morgan explores in her book. Although other nations, like the Netherlands, are also deeply religious but have more developed work-family policies, the United States is unique. Religion is a source of ideology for many Americans, specifically gender ideology. “In the United States, the early separation of church and state and the country’s extreme religious pluralism produced a desire to decentralize questions of morality and family life to the lowest levels of society”⁵⁵

Because of the history of church-state separation in the United States, “questions of morality and

⁵¹ Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave. Why Not the U.S.?” *National Public Radio*, July 15, 2015, <http://www.npr.org/sections/itsallpolitics/2015/07/15/422957640/lots-of-other-countries-mandate-paid-leave-why-not-the-us>.

⁵² Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave. Why Not the U.S.?”

⁵³ Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave. Why Not the U.S.?”

⁵⁴ Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave.”

⁵⁵ Kimberly Morgan, *Working Mothers and the Welfare State*, 27.

family life” were left not up to the government, but to the families themselves. It has been more difficult for the US to enact policies regarding childcare and parental leave because it has historically not been the responsibility of the federal government.⁵⁶ Countries like the United States and Netherlands, where religion has customarily been a source of gender ideology for the citizens, have seen policy histories in the area of childcare and parental leave that strengthen the idea of a full time working man and a full time at-home woman,⁵⁷ which Morgan calls the “male-breadwinner model.”⁵⁸

The concept of gender ideology is deeply ingrained in the minds of Americans and the notion of maternity leave. A public opinion study from the Brookings Institute shows that even in 2016, more Americans consistently support maternity leave policies than those who support paternity leave.⁵⁹ Questions about “paid parental leave” invoke internal thoughts of a mother, even when phrased as “parental,” not “maternity.”⁶⁰ Gender ideology has always been associated with religiosity, and this is evident in the status of policies that support women in the workforce in the United States in comparison to other countries. Both the United States and Sweden had large participation of women in the workforce during World War II. However, after the war ended, Sweden began to surpass the United States in their percentage of women with paid employment.⁶¹ In response to labor shortages, Sweden implemented child care policies to persuade more women to enter into employment. Morgan attributes the ability of Sweden to incentivize women to work to a lack of religious influence in Sweden, a country that went

⁵⁶ Kimberly Morgan, *Working Mothers and the Welfare State*, 101.

⁵⁷ Bridget Rose, “*Working Mothers and the Welfare State, Religion and the Politics of Work-Family Policies in Western Europe and the United States: Review*,” Poli-250: Public Policy, November 30, 2016.

⁵⁸ Kimberly Morgan, *Working Mothers and the Welfare State*, 71.

⁵⁹ Richard Reeves, “How much paid parental leave do Americans really want?” Brookings, Last modified July 6, 2016, <https://www.brookings.edu/blog/social-mobility-memos/2016/07/06/how-much-paid-parental-leave-do-americans-really-want/>.

⁶⁰ Richard Reeves, “How much paid parental leave do Americans really want?”

⁶¹ Kimberly Morgan, *Working Mothers and the Welfare State*, 74.

through an early period of secularization in the eighteenth and nineteenth centuries.⁶² Because of the lack of religiosity and ability of the government to fill its labor shortages with women, “Swedish policy makers effectively legislated the demise of the male-breadwinner family in the late 1960s and early 1970s.”⁶³ The United States, however, has had a long history of separation of church and state which instilled deep religious convictions in many citizens since the eighteenth century. Religiosity has reinforced particular gender ideologies in the United States and made it more difficult for the nation to enact policies that challenge those ideologies.

As a result of the deeply religious, pro-business culture in the United States, there is also a permeating fear of government involvement in spheres where it does not belong. As a culture, we have developed the idea that the government should play a role neither in business nor in the family. This idea is seen many places in the argument against federally mandated maternity leave. For example, going back to Murphy’s assertion that such policies should be negotiated in a private market between workers and employers, the argument is not that maternity leave policies should never be enacted, but that they should not be enforced by the government. Kurtzleben asserts that much of the reason that the United States does not measure up to other developed nations in the policy area of maternity leave is because businesses contribute a weighty voice to the conversation. “Businesses are not opposed to paid leave itself... But those in the business community say they’re opposed to the government telling businesses how to institute those policies.”⁶⁴ The United States does not lack paid maternity leave because it hates women and does not want them to be able to work; this is a sloppy conclusion from a statistic that the United States is one of few that lacks such policy. According to Kurtzleben, this country is not actually opposed to maternity leave at all. However, it is opposed to government

⁶² Kimberly Morgan, *Working Mothers and the Welfare State*, 46.

⁶³ Kimberly Morgan, *Working Mothers and the Welfare State*, 114.

⁶⁴ Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave.”

involvement in that decision. Culturally, Americans support businesses and as a result, are apprehensive of government making choices for businesses.

The one sphere that Americans traditionally want government involvement less than business is in the home, in family life. Work-family policies such as state-sponsored child care or maternity leave policies is seen by many, especially conservatives, as the government becoming involved in child rearing.⁶⁵ In a nation like the United States where citizens have deep religious convictions that inform their moralities and gender ideologies, the idea of the government stepping into family life is unsettling. Because of the separation of church and state, questions of morality and family life have traditionally been left up to the lowest level of society: the family. Policies that seem to undermine that structure are difficult to enact. Conservative legislators have used this argument to effectively block legislation that comes across as the government extending its hand into the sphere of family.⁶⁶ The American aversion to the government enacting policies that affect business and family life is indicative of a trend in the policy process previously discussed: status quo bias. In his book *Artists of the Possible*, Matt Grossman writes that “there are many veto points and checks and balances that, in a decentralized system, have the effect of disadvantaging proponents of change.”⁶⁷ Advocates of federally mandated paid maternity leave are many and they are vocal. However, their task is much more difficult than that of those who seek to hinder any such policy. There are so many stopping points along the way of the policy process, that all it takes is a veto at one point to maintain the status quo. For change to occur, those who wish to enact policy have to overcome obstacles at every single check and balance along the way. And with the issue of maternity leave, advocates tend to be those on the left while those who desire to maintain the status quo are generally on the right. Despite the

⁶⁵ Kimberly Morgan, *Working Mothers and the Welfare State*, 101.

⁶⁶ Kimberly Morgan, *Working Mothers and the Welfare State*, 136.

⁶⁷ Matt Grossman, *Artists of the Possible*, 5.

many cultural concerns of this issue, opinions on paid maternity leave are not without polarization.

A study by Pamela Monroe, James Garand, and Holly Teeters measured three variables, party identification, ideological identification, and support for the President, to measure support for the proposed Family and Medical Leave Act of 1990.⁶⁸ Based on results from roll-call voting on this proposed legislation, the researchers were able to analyze a variety of factors that influences support for the Family and Medical Leave Act of 1990. What the researchers ultimately found was that party and ideological affiliation were correlated to the expected results. Liberal House members generally supported the legislation, even though it implied support for a Republican president.⁶⁹ Though other demographics from the member's home district mattered, most House members held very strong opinions on the topic of parental leave. Monroe wrote that "very few members were lukewarm in their support or opposition, and hence malleable with regard to constituency pressure."⁷⁰ These results are what one would expect to see in an increasingly polarized nation and Congress. In the context of polarization, it matters less what side is in favor and what side is opposed and more so that so very few members were open to opinions and persuasion. However, this lack of persuasion could be related to a House member's efforts to represent his constituency and their desires. For example, Monroe et al. found that higher feminism in the home state, measured by variables such as legislative ratio and percentage of women in the workforce, indicated more support for FMLA from the House members.⁷¹ The lack of openness to conversation and persuasion seen by Monroe could be related to efforts to stay true to home constituencies. There is hope also in the finding that liberal members of the

⁶⁸ Pamela Monroe, James Garand, and Holly Teeters, "FAMILY LEAVE LEGISLATION IN THE U.S. HOUSE: VOTING ON THE FAMILY AND MEDICAL LEAVE ACT OF 1990." *Family Relations* 44, no. 1 (1995): 47-48.

⁶⁹ Pamela Monroe, "FAMILY LEAVE LEGISLATION IN THE U.S. HOUSE," 54.

⁷⁰ Pamela Monroe, "FAMILY LEAVE LEGISLATION IN THE U.S. HOUSE," 54.

⁷¹ Pamela Monroe, "FAMILY LEAVE LEGISLATION IN THE U.S. HOUSE," 52.

House of Representatives supported a policy of which the left is traditionally in support, despite a general lack of support for the Republican president. Perhaps there is hope that truly beneficial policies, from any policy area, can cross party lines.

An example of a policy that could potentially cross party lines is Marco Rubio's Republican-style approach to a paid maternity leave proposal in the previous election season. Rubio "distinguished himself as the first GOP presidential candidate to embrace paid family leave as part of his campaign"⁷² with a proposal for up to twelve weeks of paid leave. However, his plan for providing that leave is certainly in the GOP style. By issuing a 25% tax credit that provides paid leave for employees, up to 12 weeks and \$4000 per employee, Rubio essentially hoped to incentivize businesses to provide leave.⁷³ In theory, this is a remarkable show of bipartisanship - a policy that is traditionally proposed and supported by the left being taken upon by a member of the right and putting it in a style that would appeal to his own party. However, Andrea Flynn writes that Rubio's proposal might not play out so well in practice. She asserts that historically, tax credits have not been as effective as their intended purposes. For example, to stay in the same realm of work-family policy, the government has offered a tax credit for on-site childcare for employees since 1981. Today, however, only about 7% of companies offer on-site childcare.⁷⁴ This example is not necessarily indicative of how Rubio's maternity leave proposal would play out, but it is worth noting that perhaps the reason that the right has so little to say about this policy area is that their traditional approaches would not implement well in practice.

The polarization surrounding maternity leave goes beyond tangible policy proposals and all the way to the fundamental ideologies of the two parties. It was clear from the campaign proposals of Secretary Clinton and Senator Sanders that paid maternity leave is on the minds of

⁷² Andrea Flynn, "A GOP-Style Approach to Parental Leave."

⁷³ Andrea Flynn, "A GOP-Style Approach to Parental Leave."

⁷⁴ Andrea Flynn, "A GOP-Style Approach to Parental Leave."

many Democrats. Even the 2016 Democratic Platform, states as the official stance of the party that

Democrats will make sure that the United States finally enacts national paid family and medical leave by passing a family and medical leave act that would provide all workers at least 12 weeks of paid leave to care for a new child or address a personal or family member's serious health issue."⁷⁵

Democrats and Republicans disagree on many issues, and paid maternity leave is not the exception. The Republican Platform, despite having an entire section on "Great American Families," makes no mention of paid maternity leave. What it does mention in this section, however, is a promise to protect the American family, the "foundation of civil society."⁷⁶ The platform advocates support for "strong families," "natural marriage," between one man and one woman, a "two-parent household," and even explicit support for adoption.⁷⁷ Among all these family values, maternity leave is not to be found. This dichotomy of the Democratic and Republican party platforms is not meant to be a value-judgement of each party and its respective stance on maternity leave. What is important to understand about the two parties is that, in terms of their platforms, one party is in explicit support and the other in passive opposition. For better or worse, there seem to be neither common ground nor willingness to cross party lines and come to an agreement.

In addition to the many cultural and political challenges to maternity leave policy, there are many studies that explore the relationship of health and economics to paid leave. In a study comparing 18 OECD countries and their lengths of leave, Sakiko Tanaka found that as length of simple job-protected leave increases, infant mortality rates decrease.⁷⁸ When measuring for job-

⁷⁵ The 2016 Democratic Platform.

⁷⁶ Republican Platform 2016.

⁷⁷ Republican Platform 2016.

⁷⁸ Sakiko Tanaka, "Parental Leave and Child Health across OECD Countries," *The Economic Journal* 115, no. 501 (2005): <http://www.jstor.org/stable/3590461>, F19.

protected paid leave, infant mortality rates decrease even more.⁷⁹ When studying five different models of infant and child mortality rates to control for various factors such as public spending on health care and fertility rates,⁸⁰ Tanaka found that job-protected, paid leave significantly decreased “all five mortality rates.”⁸¹ Although Tanaka did find that paid leave decreased infant mortality an additional amount, the important takeaway is that these rates decrease more and more with increased time at home for the mother. Tanaka asserts that “an extension in the length of leave enhances child health through increasing parental time with the child.”⁸² Although Tanaka does not explore the physiological reasons how it is that increased time with the mother benefits infant health, it is clear that a physical bond between mother and child has a positive effect on the health of the child. While Tanaka’s study analyzed the data of 18 economically developed countries and found a infant mortality rate reduction of 2.5%⁸³, Nandi et al found that in middle to lower income countries, the same amount of job-protected paid leave would result in a 13% infant mortality rate decrease.⁸⁴ Another benefit to infant health as a result of increased maternity leave is increased rates of breastfeeding. Baker and Milligan observed a 40% increase in exclusive breastfeeding in Canada after the country expanded their paid maternity leave by six months.⁸⁵ Similar results were found in the United States, when the implementation of California’s paid parental leave program saw up to a 20% increase⁸⁶ in exclusive breastfeeding.⁸⁷ Childhood immunizations were also observed to increase with access to maternity leave;

⁷⁹ Sakiko Tanaka, “Parental Leave and Child Health,” F20.

⁸⁰ Sakiko Tanaka, “Parental Leave and Child Health,” F19.

⁸¹ Sakiko Tanaka, “Parental Leave and Child Health,” F21.

⁸² Sakiko Tanaka, “Parental Leave and Child Health,” F22.

⁸³ Sakiko Tanaka, “Parental Leave and Child Health,” F19.

⁸⁴ Adam Burtle and Stephen Bezruchka, “Population Health and Paid Parental Leave: What the United States Can Learn from Two Decades of Research,” *Healthcare*, Vol 4, Iss 2, P 30 (2016) no. 2: 30. <http://www.mdpi.com/2227-9032/4/2/30/htm#B17-healthcare-04-00030>.

⁸⁵ Adam Burtle, “Population Health and Paid Parental Leave.”

⁸⁶ Up to 20% meaning lower percentage increases at younger ages, up to a 20% increase at the older three, six, and nine month marks; Adam Burtle.

⁸⁷ Adam Burtle, “Population Health and Paid Parental Leave.”

Khanam et al found in Australia that when mothers had no access to parental leave, the immunization rates of their children fell by 20%.⁸⁸ Even after infancy and childhood, Caneiro et al found that children of mothers in Norway who were able to take four months of job-protected, paid leave had higher IQs, higher college attendance, lower dropout rates and decreased rates of teen pregnancy.⁸⁹ From birth until adulthood, children benefit physically and psychologically from maternity leave.

While there is a plethora of data to support the health benefits of maternity leave, there are several economic concerns about the expansion of leave, particularly paid leave. Many of these concerns come from the American tradition described earlier of being skeptical of government involvement in business. In his article “‘Paid Family Leave’ Is a Great Way to Hurt Women,” Robert Murphy provides the Libertarian argument that no worker has a right to any particular job, and a pregnant woman is no different. While Murphy asserts that a woman and her employer have every right to work out a “mutually beneficial arrangement,” it is clear that he disagrees with the concept of maternity leave economically. He asserts that both paid and unpaid leave are economically detrimental to employers. There are two ways an employer can make up for the lost employee during the maternity leave period: find a temporary replacement, or leave the position unfilled. Murphy asserts that both of these hurt employers as the former is an additional expense but the latter leave the employer without a whole working body. At the end of his article, Murphy again says that such policies are permissible in the workplace “*so long as they are adopted voluntarily.*”⁹⁰ A woman may not have any more right to up and leave for a few months for the birth of a child than any person would have to leave for any other reason, but the

⁸⁸ Adam Burtle, “Population Health and Paid Parental Leave.”

⁸⁹ Adam Burtle, “Population Health and Paid Parental Leave.”

⁹⁰ Robert Murphy, “‘Paid Family Leave’ Is a Great Way to Hurt Women.”

employer has every right to grant this benefit if they so choose. It fundamentally reprehensible for government to obligate employers to make such a large economic sacrifice.⁹¹

Like Murphy, Christopher Ruhm makes the argument in his study *Policy Watch: The Family and Medical Leave Act* that it is not maternity leave in principle, but government mandated leave that is economically detrimental. A minimum mandatory leave could create instances where the cost of providing leave greatly exceeds the benefits. In a perfect labor market, companies would institute their own leave policies based on what is most advantageous for themselves and their employees, and work it out through natural give and take.⁹² Ruhm writes that “a government mandate eliminates incentive for this type of sorting behavior.”⁹³ In another study, Ruhm asserts that paid maternity leave can be economically harmful for women as well, as those desiring to receive leave benefits generally pay for these benefits in lower wages during their time at the company.⁹⁴ A government mandated leave may cause the supply of women in the labor market to rise, as they are enticed by the maternity leave benefit, but their average wages will fall as a result of the cost of leave and the increasing number of women desiring to work.⁹⁵ Jacobsen and Levin find in their study “Effects of intermittent labor force attachment on women’s earnings” that women who come back to work from maternity leave more often than not have lower wages than their female counterparts that never left. What is more, they find that these women’s wages never return to the same level as those who did not take a break in their careers for maternity leave.⁹⁶ “Even women whose labor force gap occurred

⁹¹ Robert Murphy, “‘Paid Family Leave’ Is a Great Way to Hurt Women.”

⁹² Christopher Ruhm, “Policy Watch: The Family and Medical Leave Act,” 178.

⁹³ Christopher Ruhm, “Policy Watch: The Family and Medical Leave Act,” 178.

⁹⁴ Christopher Ruhm, “The Economic Consequences of Parental Leave Mandates: Lessons from Europe,” *The Quarterly Journal of Economics* 113, no. 1 (1998): <http://www.jstor.org/stable/2586992>, 288.

⁹⁵ Christopher Ruhm, “The Economic Consequences of Parental Leave Mandates,” 290.

⁹⁶ Joyce Jacobsen and Laurence M. Levin, “Effects of intermittent labor force attachment on women’s earnings,” U.S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review* (1995), <https://www.bls.gov/mlr/1995/09/art2full.pdf>, 18.

more than 20 years ago still earn between 5 percent and 7 percent less than women who never left the labor force and have comparable levels of experience.”⁹⁷ Over time, this five to seven percent gap ends up being much more than whatever amount the woman lost in wages during her leave more than twenty years ago. As found by Ruhm, Jacobsen and Levin, the cost to businesses is not the only economic concern of mandated maternity leave; the women who take leave are hurt for the rest of their careers by those twelve weeks.

However, the findings of the studies by Ruhm and Jacobsen and Levin were from 1995, 1997, and 1998. More recent findings actually show some long term economic benefits of maternity leave policies. A 2014 article from the Cato Institute asserts that paid leave is associated with economic growth, with findings based on state programs.⁹⁸ The structure of the some of the programs, like that in California, is such that there are no cost increases to employers. Furthermore, paid leave reduces worker turnover. Frequently having to replace employees is costly to the employer, who has to pay severance fees and go through the search for a new hire.⁹⁹ In addition, as paid leave begins to become the norm, there is evidence to suggest that women searching for work will forgo a job that does not provide leave for one that does.¹⁰⁰ And these are just the costs to businesses. A study by the United States Congress Joint Economic Committee found that paid maternity leave would increase the percentage of women in the workforce over time.¹⁰¹ In addition, women who take leave and return to work are 40% less likely to rely on public welfare in the year after giving birth than those who took no leave at

⁹⁷ Joyce Jacobsen, “Effects of intermittent labor force attachment on women’s earnings,” 18.

⁹⁸ Heather Boushey, “To Grow Our Economy, Start with Paid Leave.”

⁹⁹ Heather Boushey, “To Grow Our Economy, Start with Paid Leave.”

¹⁰⁰ Heather Boushey, “To Grow Our Economy, Start with Paid Leave.”

¹⁰¹ U.S. Congress, Joint Economic Committee, *The Economic Benefits of Paid Leave: Fact Sheet*, (Washington, D.C.)

all.¹⁰² Perhaps most importantly, as time goes on, more and more families rely either entirely or in part on the mother's income. Without partial income during leave or even job-protection, the economic consequences could be dire for more than 65% of families as of 2013.¹⁰³ This evidence presents a change in the conversation from a desire for increased maternity leave benefits to a need for paid leave. Even mothers who, based on personal preference and even knowledge of the health benefits that an at-home mother can provide for her children, may want to stay home for longer than leave allows may not be able to for financial reasons.

Although some studies found quantitative arguments for and against federally mandated maternity leave, the spirit of the arguments go back to the theoretical reasons why the United States does not yet have paid leave. Even the Libertarian argument is not advocating against maternity leave in principle; in a totally free labor market, employers have every right to provide this benefit to their employees. The argument against paid maternity leave is, and has been since women prominently joined the workforce post-World War II,¹⁰⁴ that the government should not be involved in matters of business or family. Murphy's Libertarian argument is not that employers should not provide leave, but that the government should not force them. The pro-business culture of the United States is one that advocates freedom for corporations to make decisions and provide benefits voluntarily. The more recent studies that leave is economically beneficial and even the contemporary cultural demand for paid leave made evident by recent proposed legislation may signify a shift in the priorities of American citizens. Perhaps certain groups or individuals are starting to recognize and prioritize the economic and health benefits of leave before their apprehension of government involvement in the spheres of business and the family. Perhaps increasing polarization has created a new policy demand in response to

¹⁰² Joint Economic Committee, *The Economic Benefits of Paid Leave*.

¹⁰³ Joint Economic Committee, *The Economic Benefits of Paid Leave*.

¹⁰⁴ Danielle Kurtzleben, "Lots of Other Countries Mandate Paid Leave."

arguments on the left or the right. Whatever the shift is that has made paid maternity leave a more coveted right than it has been in the past, it is important to understand the history and theory of a governmentally mandated family issue going forward in this policy area.

Part III - The Future of Maternity Leave in The United States

Although there have been a couple of recently proposed bills in the sphere of maternity leave policy, neither of the laws discussed in part 1 have been passed or even acted much upon since they were proposed. Both bills were introduced by Democratic Senators and Representatives, and given the current Republican control in Washington, it is unlikely that these bills will be passed, or even discussed in the near future. Part of the reason that there is likely to be no change in the next two years, despite two proposals on the table, goes back to the idea of status quo bias. Currently, there is no law that requires paid maternity leave. To get such a law off the ground, it would take active work at every check, balance, and veto point along the way. On the flip side, it is very easy to keep this from happening by blocking legislation at only one check, balance, or veto point. This could be done by someone who benefits from the current condition of this policy area. It could also be done by someone who simply has very little incentive not to block a bill but much to gain from maintaining the status quo. This is the nature of the policy process in America.¹⁰⁵ However, for maternity leave advocates, there is a light at the end of the tunnel. Although difficult to get past the obstacles presented by status quo bias, there is another theory of policy change that favors government expansion. The idea of ideological asymmetry says that although difficult to enact, when policy change does occur, it tends to expand the role of government rather than cut it back. “Most policy changes expand existing government programs, establish new endeavors, or exchange new responsibilities for old

¹⁰⁵ Matt Grossman, *Artists of the Possible*, 16.

ones. Status quo bias is more severe in spoiling attempts... when government enacts more policies, it is usually moving policy to the left.”¹⁰⁶ For maternity leave advocates, this is good news. Though it may be slow going with many obstacles put in place by those fighting to protect the status quo, it is likely that any change in this field would favor expansion of benefits.

However, it is clear that this particular policy area expands far beyond simple questions of finances and legislation. There are deeply ingrained cultural beliefs in the United States that have prevented progressive maternity leave laws up to this point. Given the United States’s history and culture, as well as the current polarization climate, government expansion of maternity leave benefits may not be possible at this time. Although there is increasing demand for paid maternity leave and research that demonstrates the benefits of such policy, it is not a simple argument of should or should not. The United States has a history of being deeply religious and therefore averse to any type of policy that may be interpreted as the government extending its reach into matters of home and family life. American citizens have a tradition of being pro-business, as a result of the American Dream,¹⁰⁷ and are resistant to government policies that tell corporations what they have to do. As a result, the public might be opposed to anything that would be detrimental for small businesses. Even with some evidence that paid maternity leave might prove more economically beneficial in the long term, the notion of the government forcing its hand on business is one that Americans respond much more passionately to. Furthermore, the increasing party polarization in the United States government does not bode well for any policy change, especially maternity leave policy. Democrats and Republicans are likely to vote according to party lines, the former of whom officially supports paid maternity

¹⁰⁶ Matt Grossman, *Artists of the Possible*, 5.

¹⁰⁷ Danielle Kurtzleben, “Lots of Other Countries Mandate Paid Leave. Why Not the U.S.?”

leave while the latter generally avoids the topic whenever possible. This disconnect makes the idea of discussing a policy, let alone coming to an agreement, not exactly a hopeful possibility.

Despite the seemingly paralyzing culture that has prevented any recent maternity leave legislation, Senator Marco Rubio's campaign proposal is an optimistic prospect. Although his methods are unconventional among maternity leave proposals, and arguably not as effective as they could be,¹⁰⁸ Rubio has the right idea. His proposal takes a traditionally Democratically supported policy area, and makes it approachable and appealing to Republicans. By proposing tax credits rather than tax increases, Rubio grabbed hold of a policy that the every other Republican candidate had been dancing around and put his own conservative spin on it. Although Rubio did not get the Republican nomination and has not made any move to introduce similar legislation to Congress, the principles of his campaign proposal are a step in the right direction. Because of a polarized climate in Washington, crossing party lines is essential to overcoming status quo bias. Rubio created a middle ground. His inclusion of maternity leave to his campaign platform may just have been to attract a women's vote, something the Republican party does not do as well as Democrats,¹⁰⁹ but Rubio, a father of four, may simply be acutely aware of the challenges that face the parents of young children. This understanding led him to introduce a space where Republicans could begin to have input in a traditionally Democrat dominated sphere. As seen by Monroe in her analysis of House roll-call voting, some members of Congress will cross party lines and support policy initiatives of a President from the opposite party if it is one that their party traditionally supports.¹¹⁰ Given the culture and polarization of the country, this middle ground is necessary.

¹⁰⁸ Andrea Flynn, "A GOP-Style Approach to Parental Leave."

¹⁰⁹ Andrea Flynn, "A GOP-Style Approach to Parental Leave."

¹¹⁰ Pamela Monroe, "FAMILY LEAVE LEGISLATION IN THE U.S. HOUSE," 54.

Other than the entrenched cultural beliefs that have prevented liberal maternity leave policies up to this point, the largest argument against paid leave is its economic consequences. While there is research that argues both for and against economic benefits of paid maternity leave, the question becomes whether the costs outweigh the benefits or vice versa. In the United States, would government mandated paid maternity leave do more good than harm, economically? This question is difficult to answer, because the nation does not have mandated paid leave as of yet. In order to answer this question, researchers have looked at state programs like California, comparable developed nations, and economic consequences of the Family and Medical Leave Act of 1993, which is not paid leave but is enacted legislation whose repercussions may be analyzed. Despite all these analyses that can provide valuable information, without nationally mandated paid leave, the answer this question often comes down to cultural priorities. Some, such as Murphy and the Libertarian argument, greatly prioritize businesses and free markets over universal leave. It is not that they are fundamentally opposed to paid leave, but that they consider the desires and economic prosperity of business more than individual worker's rights, like new mothers. Others, however, prioritize maternity leave as a right more than the desires and economic prosperity of individual corporations. Proposed legislation like the FAMILY Act or even Senator Rubio's campaign proposal are not flawless plans with no ramifications for employers and employees alike, but treat paid maternity leave as an end goal worthy of the growing pains and short term economic adjustments. The question of whether paid maternity leave would do more benefit than detriment is not a yes or a no; it is a question of what is more important to those making the decisions.

Conclusion

In an earlier study on roll-call voting in the Senate about the Family and Medical Leave Act of 1988, Monroe and Garand found a correlation between Senators who supported the policy and maternity leave policies adopted at the state level in their home states. The researchers assert that “success in the states sends a signal on constituency preferences to members of the U.S. Congress and could be the impetus for the development of national family policy.”¹¹¹ Not only is success at the state level indicative of support and potential success at the national level, but states with effective policies may additionally become important advocates for national maternity leave. Although Monroe and Garand’s research was on Congressional roll-call voting prior to the enactment of the Family and Medical Leave Act of 1993, history repeats itself and this pattern could as well. California, Rhode Island, New Jersey, Hawaii and New York all have some form of paid maternity leave policies at the state level.¹¹² Both of the recent policies discussed in this paper, the FAMILY Act and the Federal Employees Paid Parental Leave Act, were introduced by a Senator and a Representative from New York, respectively. The parallel for state-level policy and support for national policy is there. Well over twenty years since Monroe and Garand first completed their study, we are again seeing increased state policies that may lead to greater support for paid maternity leave at the national level as well.

Given Monroe’s findings that the adoption of maternity leave policies at the state level leads to support at the national level, it is reasonable to think that any future of maternity leave policy in the United States will begin with individual states. Prior to 1993, several states had job-protected leave, and a similar policy became enacted federally. Now, several states are beginning

¹¹¹ Pamela Monroe and James Garand, “Parental Leave Legislation in the U. S. Senate: Toward a Model of Roll-Call Voting,” *Family Relations* 40, no. 2 (1991): doi:10.2307/585484, 216.

¹¹² Barbara Gault “Paid Parental Leave in the United States.”

to implement paid leave programs.¹¹³ Although there is currently little action at the federal level to again enact a similar policy, it is clear that the desire for such policy is increasing, even if action is only occurring in private and state arenas. If federally mandated paid maternity leave is not realistic in the near future, it is still a victory for maternity leave advocates that some states are able to successfully implement policies. Perhaps this will lead to federal adoption of paid leave, but even if it not, it is possible for states to adopt successful policies for their constituents depending on what works best for them.

Another question that is not completely answerable from my research on maternity leave policy is who exactly are the maternity leave advocates. It is not the Republican Party, for despite their emphasis on “Great American Families”¹¹⁴ and slow momentum for a GOP-style proposal for paid maternity leave, the economic arguments against outweigh the benefits for the Right. However, it does not truly seem to be the Democratic Party either. Despite the inclusion of support for paid maternity leave in the party platform and a proposal from their 2016 presidential candidate, this women’s issue tends to take a backseat to conversations of equal pay, abortion, and birth control. Indeed, there are strong advocates out there, such as the National Partnership For Women and Families, a nonprofit organization that does extensive research on and championing for maternity leave rights. Nevertheless, there is no true, strong coalition presenting this issue to the American constituents or lobbying it to Congress. As a result, both sides of the partisan coin are getting by with weak support and passive opposition. Polarization is a huge obstacle to overcome for those who desire to see increased maternity leave benefits in this country.

¹¹³ Barbara Gault “Paid Parental Leave in the United States,” 4.

¹¹⁴ Republican Platform 2016.

I began the research on maternity leave in the United States believing I would find a solution, one that would make everyone happy. However, the more I read and researched about this policy area, the more complex it became. The expansion of maternity leave benefits in the United States is not just a matter of compromising between the needs of businesses and the needs of new mothers. It is a matter of overcoming deeply entrenched cultural and religious beliefs that make many Americans resistant to government involvement in business and in family, of which maternity leave policy is concerned with both. The United States will never have an uninhibited desire for the government to expand welfare policies to the extent of those other developed nations to which this one is usually compared. Despite all its complexities, however, there is reason to believe that a tentative desire may some day overcome status quo bias. Though there has been no new legislation enacted since 1993, Monroe's findings indicate that symptoms at the state level could come to fruition nationally. Though it seems unlikely, only time may tell.

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