

REVIVING THE AMERICAN DREAM FOR FAMILIES THROUGH PUBLIC POLICY

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I. INTRODUCTION	201
II. LAW, FAMILY, AND THE COMMON GOOD	203
III. ANTI-FAMILY POLICIES IN FEDERAL LAW	205
A. <i>Anti-Family Policies: Encouraging Deindustrialization and Financialization</i>	205
B. <i>Anti-Family Policies: Marriage Penalties</i>	209
C. <i>Anti-Family Policies: Privileging Dual-Income Households</i>	211
IV. FEDERAL SOLUTIONS TO ANTI-FAMILY POLICIES	213
V. CONCLUSION	216

I. INTRODUCTION

American policymakers have a duty to course-correct for United States government policies that have undermined the family. This is because strong families undergird the American Dream. The American Dream is defined in different ways by different people, but the definition that I think works the best, and the one that is most relevant for the purposes of this Essay, is the one I employed in a 2018 article for *The Atlantic*: the ability of everyday people to “work to provide for their families and build a future for their children that is better than what they had to begin with,” and eventually to retire with dignity.¹

This is what America meant to my parents. It is the dream they lived when they immigrated to the United States from Cuba in the 1950s. When my siblings and I were young, my father worked as a hotel bartender while my mother stayed at home. They were never wealthy, but they made enough money to own a home and raise their four children in the way they felt was best, and we were a happy family because of it.

Tragically, that way of life is now out of reach for many, if not most, Americans. Roughly ninety percent of baby boomers grew up to earn more than their parents, but only fifty percent of people born in the 1980s have

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¹ Marco Rubio, *America Needs to Restore Dignity of Work*, ATLANTIC (Dec. 13, 2018), <https://www.theatlantic.com/ideas/archive/2018/12/help-working-class-voters-us-must-value-work/578032/> [<https://perma.cc/CB8V-UHPH>].

done the same.² Meanwhile, the price of family necessities has increased dramatically. The median home price is roughly seven times what it was in 1940, adjusted for inflation,³ and per-person health care costs are roughly 800 percent greater now than they were in 1960.⁴ The numbers do not tell the whole story, but they tell a lot of it. Fewer than fifty percent of U.S. citizens believe their children will have a chance to achieve the American Dream.⁵ A functioning family unit is the engine by which Americans achieve that Dream. And federal policies that discourage strong families push the American Dream farther out of reach.

That will have to change if we want our nation to remain a place of promise and prosperity for the hundreds of millions of people who inhabit it. That will also have to change if we want to remain a leader of the international system. The post-Cold War moment, when the United States maintained great power and peace, and advanced equality under the law unchallenged, is over. In its stead, we have entered a new period of global competition. The coming years will be characterized by a long-term contest with the Chinese Communist Party, which rules over a country of 1.4 billion people and immense economic resources.

America will not succeed in this contest unless Americans have something worth fighting for. Historically, that something has been the opportunity to live a good life and form strong families. Unless a superior alternative comes our way, our best hope is to revive that opportunity for ordinary men and women.

Public policy alone cannot restore that lost ideal, because public policy alone is not responsible for the American Dream's demise. Nevertheless, public policy has a significant role to play. Our laws did not singlehandedly kill the American Dream, but they helped do the job, and they continue to prevent its resuscitation. Consequently, lawmakers have a duty to chart a new course.

This Essay sketches a map of that course. Part II surveys empirical evidence to confirm the assumption of some of history's greatest thinkers: that a strong family is a driver of economic growth, personal well-being, and social cohesion. Part III argues that current federal law discourages the formation of strong families in important ways and thus puts the American

² Raj Chetty, Nathaniel Hendren, David Grusky, Maximilian Hell, Robert Manduca & Jimmy Narang, *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, 365 SCIENCE 398, 398 (2017).

³ Emmie Martin, *Here's How Much Housing Prices Have Skyrocketed over the Last 50 Years*, CNBC (July 23, 2017, 2:26 PM), <https://www.cnbc.com/2017/06/23/how-much-housing-prices-have-risen-since-1940.html> [https://perma.cc/J8UH-SM5R].

⁴ Ester Bloom, *Here's How Much the Average American Spends on Health Care*, CNBC (Oct. 14, 2019, 11:55 AM), <https://www.cnbc.com/2017/06/23/heres-how-much-the-average-american-spends-on-health-care.html> [https://perma.cc/RF3N-KDDC].

⁵ Megan Brennan, *Americans Less Optimistic About Next Generation's Future*, GALLUP (Oct. 25, 2022), <https://news.gallup.com/poll/403760/americans-less-optimistic-next-generation-future.aspx> [https://perma.cc/TQ8H-N9JR].

Dream further out of reach. Part IV proposes solutions. I conclude with a call to my fellow lawmakers to fulfill our duty to strengthen the American family and power a revival of the American Dream.

II. LAW, FAMILY, AND THE COMMON GOOD

Some might dispute the need for lawmakers to concern themselves with the state of the family at all. However, lawmakers' interests are intimately tied to those of the family because the most basic purpose of the law is to promote the common good, and the common good is undergirded by the welfare of the family.

Millennia of Western legal thought testify to this truism. Aristotle wrote that the "true forms of government . . . are those in which the one, or the few, or the many, govern with a view to the common interest."⁶ Cicero defined a republic as "an assemblage of people in large numbers associated in . . . [a] partnership for the common good."⁷ Centuries later, Thomas Aquinas defined law as "an ordinance of reason for the common good."⁸ Later still, in the British Enlightenment, John Locke wrote that legitimate political power is "to be directed to no other *end*, but the *Peace, Safety*, and *public good* of the People."⁹

The American Founders thought along similar, if not identical, lines. They placed a greater emphasis than did ancient or medieval thinkers on individual freedom.¹⁰ Nevertheless, they established the U.S. Constitution to "promote the general Welfare" and "secure the Blessings of Liberty to ourselves and our Posterity," not just to grow an economy or enhance the prosperity of a privileged few.¹¹

Furthermore, the Founders recognized that the common good cannot be realized without strong families. James Wilson, a framer of the Constitution and one of the original justices of the Supreme Court, referred to the family as "the true origin of society."¹² Laws governing the formation and dissolution of marriage have also been a core part of American public life since the

⁶ ARISTOTLE, *POLITICS* bk. III, at 114 (Benjamin Jowett trans., Clarendon Press 1905) (c. 350 B.C.E.).

⁷ MARCUS TULLIUS CICERO, *DE RE PUBLICA*, bk. I, at 65 (T.E. Page, E. Capps, W.H.D. Rouse eds., Clinton Walker Keyes trans., William Heinemann 1928) (c. 54 B.C.E.).

⁸ THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. I-II, q. 90, art. 1 (Brian Davies, Brian Leftow eds., Cambridge Univ. Press 2006) (c. 1274).

⁹ JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* 68 (C.B. Macpherson ed., Hackett Publishing 1980) (1689).

¹⁰ Roger Pilon, *On the Moral Foundations of America*, CATO INST. (Oct. 12, 2022), <https://www.cato.org/commentary/moral-foundations-america> [<https://perma.cc/DL9D-8G9M>].

¹¹ U.S. CONST. pmb1.

¹² Scott Yenor, *The True Origins of Society: The Founders on the Family*, HERITAGE FOUND. (Oct. 16, 2013), <https://www.heritage.org/political-process/report/the-true-origin-society-the-founders-the-family> [<https://perma.cc/P6BW-NWRB>].

eighteenth century.¹³ This is evidence for the view commonly associated with historian Nancy F. Cott that the Founders saw the family as both a “medium of social unity cleaving disparate citizens together till death did them part” and the source and school of future citizens, the place where children “were elevated in virtuosity and attained the good character upon which the . . . republic depended.”¹⁴

Modern social science supports the Founders’ insights, first and foremost because data shows that strong families—families with two married parents who have time to spend with their children and the resources to provide for their upbringing—create strong new generations of citizens. A 2022 report jointly produced by the American Enterprise Institute and the Brookings Institution states that “outcomes related to education, economic security, and health suggest links between stable families and children’s well-being.”¹⁵ Specifically, children who are raised in strong families tend to achieve better grades and exhibit fewer behavioral problems than those who are not.¹⁶ They are also less likely to experience poverty and are more economically mobile over the course of their lives.¹⁷

Family is also consequential for the well-being of adults. One government survey indicates that “[m]arried people are generally healthier than unmarried people, as measured by numerous health outcomes,” including mental, financial, and substance abuse metrics.¹⁸ These benefits are also self-reported. According to a 2022 study, married adults communicate “better mental and physical health than those in less committed relationships.”¹⁹ Meanwhile, research shows that having children “can also increase social integration, leading to greater emotional support and a sense of belonging and meaning.”²⁰

What happens in the family also affects society writ large. Seth D. Kaplan, an expert on fragile states associated with the Paul H. Nitze School

¹³ See HENDRIK HARTOG, *MAN AND WIFE IN AMERICA: A HISTORY* 23–24 (2000).

¹⁴ Michael Toscano, *The Once and Future Marriage*, INST. FOR FAM. STUD. (Dec. 15, 2022), <https://ifstudies.org/blog/the-once-and-future-marriage> [https://perma.cc/Z569-9L9P] (summarizing NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2001)).

¹⁵ AEI-BROOKINGS WORKING GROUP ON CHILDHOOD IN THE UNITED STATES, *REBALANCING: CHILDREN FIRST* 27 (2022), https://www.brookings.edu/wp-content/uploads/2022/02/ES_20220228_Rebalancing_Children_First.pdf [https://perma.cc/8QXP-G2D6].

¹⁶ *Id.* at 28.

¹⁷ *Id.*

¹⁸ ROBERT G. WOOD, BRIAN GOESLING & SARAH AVELLAR, OFF. OF THE ASSISTANT SEC’Y FOR PLANNING & EDUC., U.S. DEP’T OF HEALTH & HUMAN SERVS., *THE EFFECTS OF MARRIAGE ON HEALTH: A SYNTHESIS OF RECENT RESEARCH EVIDENCE 1* (2007), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/138776/rb.pdf [https://perma.cc/KL5V-N5J4].

¹⁹ Charlie Huntington, Scott M. Stanley, Brian D. Doss & Galena K. Rhoades, *Happy, Healthy, and Wedded? How the Transition to Marriage Affects Mental and Physical Health*, 36 J. FAM. PSYCH. 608, 608 (2022).

²⁰ Patricia A. Thomas, Hui Liu & Debra Umberson, *Family Relationships and Well-Being*, 1 INNOVATION AGING 1, 4 (2017).

of Advanced International Studies at Johns Hopkins University, points out in *National Affairs* that “[p]rominent scholars from both the right and the left” have pinned “the precipitous decline in social cohesion” within the United States, particularly the working class, on “measurable declines in . . . family life.”²¹ Kaplan summarizes their arguments as follows:

Many, though certainly not all, of the economic and social problems . . . communities face would be ameliorated if strong norms about family (and community) predominated. People would be more focused on work, children, and civic engagement than they are now, with many second- and third-order benefits emerging from these commitments. A far greater proportion of children, for instance, would be born into intact families, with all the developmental and social benefits that these bring.²²

In short, the family is intimately connected to the common good. It is an engine of economic growth, personal well-being, and social cohesion. As such, policymakers have a duty to establish a legal framework that empowers Americans to raise strong families.

III. ANTI-FAMILY POLICIES IN FEDERAL LAW

The problem is that, currently, policymakers often fail to empower Americans to raise strong families, which pushes the American Dream further out of reach. This is true in three ways.

A. *Anti-Family Policies: Encouraging Deindustrialization and Financialization*

For one, policymakers have helped to create an economy that is extremely efficient but unsuitable to strong family formation. Economic efficiency is not a bad thing in many circumstances. But an efficient economy alone does not amount to a strong environment for families. A certain amount of financial and physical stability is also required before couples feel comfortable settling down and having children.

Polling data bears this out. Even as overall GDP growth has soared, family growth has stagnated. The preferred number of children for the American family is roughly 2.6, the same number that it has been since the late 1970s.²³ However, the U.S. total fertility rate has fallen from 2.5 in

²¹ Seth D. Kaplan, *A Systems Approach to Social Disintegration*, NAT'L AFFS. (Fall 2017), <https://www.nationalaffairs.com/publications/detail/a-systems-approach-to-social-disintegration> [<https://perma.cc/8L9U-547Z>].

²² *Id.*

²³ Frank Newport & Joy Wilke, *Desire for Children Still Norm in U.S.*, GALLUP (Sept. 25, 2013), <https://news.gallup.com/poll/164618/desire-children-norm.aspx> [<https://perma.cc/X7DC-Q28C>].

1970²⁴ to around 1.7²⁵ (dropping further to 1.6 during the height of the COVID-19 pandemic).²⁶ According to Gallup, the perceived reason for this mismatch is primarily economic: “More than three-quarters of Americans feel the main reason couples do not have more children is finances or the economy, and those who do have children agree on this point with those who do not.”²⁷ Conservative economic policy think tank American Compass also reports that a plurality of married Americans outside of the upper class (i.e., those from households that make less than \$150,000 per year) cite unaffordability as the chief cause of unmet fertility.²⁸

Historically, dignified, well-paying jobs were one of Americans’ greatest sources of security and stability. During the post–World War II era, for example, there was an abundance of skilled manufacturing positions, whose high salaries and predictable schedules enabled parents to put down roots and spend time with their children.²⁹ But as early as the 1970s, advances in transportation and communication enabled major American manufacturers to move their operations from the United States to countries with lower labor costs and workplace standards. Corporate leaders like General Electric’s Jack Welch justified themselves by declaring that their allegiance to shareholders outweighed their allegiance to the American worker.³⁰

Policymakers could have countered this emergent trend by enacting legal penalties on outsourcing and offshoring, or by incentivizing domestic production through innovations in the tax code or federal financing. Instead, they went along with academics who declared that “deindustrialization is simply the natural outcome of successful economic development.”³¹ Politicians like President George W. Bush openly celebrated the broader trend of globalization as a mark of political success, referring to it as “the triumph of

²⁴ *Fertility Rate, Total (Births Per Woman) – United States*, WORLD BANK, <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=CUS> [https://perma.cc/N9JK-V8MW] (last updated 2020).

²⁵ BRADY E. HAMILTON, JOYCE A. MARTIN & MICHELLE J.K. OSTERMAN, BIRTHS: PROVISIONAL DATA FOR 2021 1 (2022), <https://www.cdc.gov/nchs/data/vsrr/vsrr020.pdf> [https://perma.cc/DUE3-87TP].

²⁶ WORLD BANK, *supra* note 24.

²⁷ Newport & Wilke, *supra* note 23.

²⁸ See Daniel A. Cox, *Emerging Trends and Enduring Patterns in American Family Life*, SURV. CTR. ON AM. LIFE (Feb. 9, 2022), <https://www.americansurveycenter.org/research/emerging-trends-and-enduring-patterns-in-american-family-life/> [https://perma.cc/Q7ZF-8JY9].

²⁹ Katelynn Harris, *Forty Years of Falling Manufacturing Employment*, U.S. BUR. LAB. STAT. (Nov. 20, 2020), <https://www.bls.gov/opub/btn/volume-9/forty-years-of-falling-manufacturing-employment.htm> [https://perma.cc/7Y4X-8Z27].

³⁰ *Where America’s Jobs Went*, WEEK (Jan. 11, 2015), <https://theweek.com/articles/486362/where-americas-jobs-went> [https://perma.cc/6HSC-W8YB].

³¹ ROBERT ROWTHORN & RAMANA RAMASWAMY, DEINDUSTRIALIZATION – ITS CAUSES AND IMPLICATIONS 10 (1997), <https://www.imf.org/external/pubs/ft/issues10/issue10.pdf> [https://perma.cc/Y4FK-VEQW].

human liberty across national borders.”³² After the end of the Cold War, the U.S. government brought deindustrialization to a crescendo by entering the North American Free Trade Agreement and allowing China, at that time the world’s largest source of cheap labor, to join the World Trade Organization.³³

Idealistic globalists rejoiced, but Americans suffered. In the past 25 years, American industrial output has stagnated, and American manufacturing employment, which had remained around 12 million for more than 50 years, has fallen by roughly a third to less than 8.5 million.³⁴ Many working-class communities never recovered from the downturn. Their collapse into poverty, drug addiction, organized crime, and suicide is well-documented.³⁵ Others found new sources of employment, but on average, the replacement jobs paid less than the old ones.³⁶ Nor is the expansion of “gig” industries like ridesharing a sufficient solution, as they have unpredictable schedules and low job security.³⁷

As our communities declined, foreign regimes, including the Chinese Communist Party, enriched themselves at America’s expense.³⁸ Tragically, financial speculators based in the United States did the same. Motivated by the shareholder primacy theory espoused by Milton Friedman³⁹ and driven to maximize short-term gains, American businesses now invest more money in

³² *Radio Address by the President to the Nation* (The White House July 21, 2001) (transcript available at <https://georgewbush-whitehouse.archives.gov/news/releases/2001/07/text/20010721.html> [<https://perma.cc/MEN9-NFSMJ>]).

³³ He Li, *NAFTA and Its Implications for China*, 3 AM. J. CHINESE STUD. 54, 65 (1996).

³⁴ AMERICAN COMPASS, WHERE’S THE GROWTH? 4 (2022), <https://americancompass.org/wp-content/uploads/2022/10/AC-Atlas-Wheres-the-Growth.pdf> [<https://perma.cc/Q98D-XDD2>].

³⁵ Gabor Scheiring & Anne-Marie Jeannet, *New Perspectives on Deindustrialization as Socio-Economic Disintegration*, SOC’Y FOR ADVANCEMENT SOCIO-ECONOMICS (June 16, 2022), <https://sase.org/blog/new-perspectives-on-deindustrialization-as-socio-economic-disintegration/> [<https://perma.cc/4CBG-5E9C>].

³⁶ Jeff Ferry, *Manufacturing Jobs and Income Decline* (Aug. 15, 2019) (Coalition for a Prosperous America Working Paper), http://prosperousamer.wpengine.com/wp-content/uploads/2021/03/190815_Manufacturing_Jobs__Income_Decline_-_Working_Paper_format.pdf [<https://perma.cc/56VQ-AFKE>].

³⁷ Charles Towers-Clark, *THE UBERIZATION OF WORK: PROS AND CONS OF THE GIG ECONOMY*, FORBES (July 8, 2019), <https://www.forbes.com/sites/charlestowersclark/2019/07/08/the-uberization-of-work-pros-and-cons-of-the-gig-economy/?sh=5812169a1cc7> [<https://perma.cc/6385-R8ZM>].

³⁸ One 2013 peer-reviewed paper found that trade with China between 1990 and 2007 “killed about 1.5 million American manufacturing jobs.” Greg Rosalsky, *How American Leaders Failed to Help Workers Survive the “China Shock,”* PLANET MONEY (Nov. 2, 2021), <https://www.npr.org/sections/money/2021/11/02/1050999300/how-american-leaders-failed-to-help-workers-survive-the-china-shock> [<https://perma.cc/SW6S-MR7L>]. Worse still, the Commission on the Theft of American Intellectual Property estimates that Chinese theft of American intellectual property costs the United States between \$225 and \$600 billion every year. Stephanie Dhue & Kayla Tausche, *What’s Behind the Trade Battle with China*, CNBC (Apr. 24, 2018), <https://www.cnbc.com/2018/04/24/the-theft-of-intellectual-property-is-driving-trumps-trade-battle.html> [<https://perma.cc/FA5T-4FDH>].

³⁹ Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://timesmachine.nytimes.com/timesmachine/1970/09/13/223535702.html?pageNumber=379> [<https://perma.cc/BCJ3-65Q3>].

financial assets than capital development.⁴⁰ Instead of improving assembly lines or building new manufacturing sites, they specialize in churning out stock buybacks or dividends to shareholders.⁴¹ They are encouraged to do so by the U.S. government, which privileges financial transactions in the tax code.⁴²

There are two problems with this. First, Wall Street's trillions would almost certainly be better spent on investments in innovation and fixed assets, the profits of which are distributed more equally among low-income and working-class citizens, and the benefits of which would better support the United States in its competition with the Chinese Communist Party.⁴³ Second, financial speculation is an incredibly risky industry. That risk forces a dramatic boom-and-bust cycle on the entire country.

The Great Recession of 2008 is a perfect example of this. Financial engineering artificially inflated housing prices and then prompted an economy-wide crash.⁴⁴ Neither the pre-2008 prices nor the post-2008 layoffs did any good for low-income and working-class Americans.⁴⁵ The fact that housing prices have risen so high again is similarly deleterious to the basic standard of living. Roughly half of Americans say that "the availability of affordable housing is a major problem in their local community."⁴⁶ This surely discourages couples from settling down and having children,⁴⁷ and, judging purely from superficial similarities to housing market "bubbles" of the past, it does not bode well for the future of the economy.⁴⁸

⁴⁰ See SEN. MARCO RUBIO, *AMERICAN INVESTMENT IN THE 21ST CENTURY* 4 (2019), https://www.rubio.senate.gov/public/_cache/files/9f25139a-6039-465a-9cf1-feb5567aebb7/4526E9620A9A7DB74267ABEA5881022F.5.15.2019.-final-project-report-american-investment.pdf [https://perma.cc/P2TV-C8TM].

⁴¹ *Id.*

⁴² Matt Egan, *Marco Rubio Wants to End Stock Buybacks' Tax Advantage*, CNN (Feb. 12, 2019), <https://www.cnn.com/2019/02/12/investing/rubio-stock-buybacks-tax/index.html> [https://perma.cc/KC3F-UF88].

⁴³ SEN. MARCO RUBIO, *MADE IN CHINA 2025 AND THE FUTURE OF AMERICAN INDUSTRY* 71–76 (2019), <https://www.rubio.senate.gov/public/files/Rubio-China-2025-Report.pdf> [https://perma.cc/7BD5-BT2M].

⁴⁴ Steve Lohr, *Wall Street's Extreme Sport: Financial Engineering*, N.Y. TIMES (Nov. 5, 2008), <https://www.nytimes.com/2008/11/05/business/worldbusiness/05iht-05risk.17534841.html> [https://perma.cc/3WR2-KAF3].

⁴⁵ See generally PHILLIP SWAGEL, *THE IMPACT OF THE SEPTEMBER 2008 ECONOMIC COLLAPSE* (2010), <https://www.pewtrusts.org/-/media/assets/2010/04/28/costofthecrisisfinal.pdf> [https://perma.cc/T8JF-JL2Y] (describing the costs of the 2008 financial crisis in terms of home values, wages, and employment).

⁴⁶ Katherine Schaeffer, *Key Facts About Housing Affordability in the U.S.*, PEW RSCH. CTR. (Mar. 23, 2022), <https://www.pewresearch.org/fact-tank/2022/03/23/key-facts-about-housing-affordability-in-the-u-s/> [https://perma.cc/BB5V-XFQE].

⁴⁷ See AM. COMPASS, *2021 HOME BUILDING SURVEY* 5–6 (2021), https://americancompass.org/wp-content/uploads/2022/10/American-Compass_2021-Home-Building-Survey_Final.pdf [perma.cc/SSQ8-DF3A].

⁴⁸ Charles Marohn, *What Will Housing Prices Be a Year from Now?*, STRONG TOWNS (Sept. 26, 2022), <https://www.strongtowns.org/journal/2022/9/26/what-will-housing-prices-be-a-year-from-now> [https://perma.cc/ALM8-ZHB4].

Taken together, the U.S. government's encouragement of deindustrialization and financialization has created an unstable, unpredictable market that pays well for a privileged few with access to exclusive assets but not for everyone else. The abstract economic "pie" may have grown in recent years, but the country is now less suited to family formation and stability. This means policymakers have failed at one of their most important tasks.

B. Anti-Family Policies: Marriage Penalties

Policymakers have also failed the family unit by not infrequently penalizing its most vital partner institution: marriage. This is most obviously true for the millions of Americans receiving welfare benefits. Under current law, it is often more financially beneficial for them to cohabit than marry, as marrying and reporting income would lead to the reduction or total loss of government benefits. Brad Wilcox of the American Enterprise Institute illustrates this thoroughly in a recent report:

[A] pregnant woman earning \$21,000 per year cohabiting with a man earning \$29,000 per year would normally be eligible for Medicaid/Children's Health Insurance Program (CHIP) coverage for her own care and the cost of childbirth in states such as Arizona and Ohio if she only reported her income and not the income of her significant other. However, if this very same pregnant woman married the father of her child, their combined income of \$50,000 would make her ineligible for Medicaid/CHIP coverage for childbirth and associated perinatal care, which costs an average of \$12,000. Thus, from a purely short-term financial standpoint, it would make less sense for her to marry than to cohabit and report only her individual income.⁴⁹

Such penalties exist, not just for Medicaid or CHIP, but in other welfare programs, from Temporary Assistance to Needy Families to the Supplemental Nutrition Assistance Program, whose income eligibility threshold is not doubled for married couples.⁵⁰ In fact, Wilcox estimates that they apply to forty percent of cohabiting parents with children, and that they can exceed thirty percent of income for some couples.⁵¹

The penalties' impact should not be understated. According to one survey, "31 percent of Americans say they personally know someone who

⁴⁹ W. BRADFORD WILCOX, *THE MARRIAGE DIVIDE, MARRIAGE PENALTIES, AND UNITED STATES WELFARE POLICY 2* (2020), https://www.aei.org/wp-content/uploads/2020/09/HMRF_Brief_Marriage_Divide_Marriage_Penalties_Draft_508-1.pdf [<https://perma.cc/3FUK-7CCN>].

⁵⁰ *Id.*

⁵¹ *Id.* at 2.

chose not to marry for fear of losing a means-tested benefit.”⁵² Moreover, decades of research indicate that such penalties discourage marriage and encourage cohabitation to a statistically meaningful degree.⁵³

Even couples who are not receiving welfare may incur marriage penalties through the general tax code. As the Tax Policy Center illustrates:

Consider parents of two children, each parent earning \$100,000 Filing jointly and taking a \$24,800 standard deduction, their taxable income is \$175,200, for which their 2020 income tax liability is \$26,207. If they could file separately, one as single and the other as the head of a household, the single filer would owe a tax of \$15,104 and the head-of-household filer would owe \$8,245, yielding a total tax of \$23,349. Their joint tax bill is thus \$2,858 higher than the sum of their hypothetical individual tax bills, imposing on them a marriage penalty equal to 1.4 percent of their adjusted gross income.⁵⁴

A penalty of 1.4% may not seem like much, but it still matters. Furthermore, the impact of a marriage tax penalty can be compounded by the effects of marriage welfare benefit penalties. According to the Tax Policy Center, this can “create effective marginal tax rates that approach 100 percent.”⁵⁵ Finally, it should be noted that, despite these relatively high-income examples, Wilcox’s research indicates that “the greater burden of marriage penalties falls on couples whose income is between 100 percent and 250 percent of the poverty line—that is, working-class Americans who have already seen the greatest erosion in marriage of any group in the nation in the last three decades.”⁵⁶

Marriage penalties in general are opposed to family formation because the marriage bond is the bedrock on which strong families are built. By some definitions, a family cannot even exist without marriage. Even granting a less rigid understanding, there remain mountains of social science data to back up the common-sense intuition that families centered on a married couple tend to fare better than those that are not.⁵⁷ In sum, a mutual commitment between two parents to care for each other and any children who might result from their relationship is the strongest bulwark American families can

⁵² W. BRADFORD WILCOX & WENDY WANG, *THE MARRIAGE DIVIDE: HOW AND WHY WORKING-CLASS FAMILIES ARE MORE FRAGILE TODAY*, AM. ENTER. INST. 11 (2017), <https://www.aei.org/wp-content/uploads/2017/09/The-Marriage-Divide.pdf?x91208> [<https://perma.cc/LC43-HL2L>].

⁵³ *Id.* at 11–12.

⁵⁴ *Briefing Book: What Are Marriage Penalties and Bonuses?*, TAX POL’Y CTR. (May 2020), <https://www.taxpolicycenter.org/briefing-book/what-are-marriage-penalties-and-bonuses> [<https://perma.cc/4X6D-8AZJ>].

⁵⁵ *Id.*

⁵⁶ WILCOX, *supra* note 49, at 4.

⁵⁷ *See* WILCOX & WANG, *supra* note 52, at 7.

ask for. And yet, the U.S. government has sometimes discouraged such commitment through financial penalties. This is problematic to say the least.

C. *Anti-Family Policies: Privileging Dual-Income Households*

It is also problematic that, among families, lawmakers extend financial privileges to dual-income households. One major example is the Child Care and Development Block Grant. This program, established in 1990, received more than eight billion dollars in Fiscal Year 2023 appropriations to provide thousands of dollars to dual-income households seeking childcare.⁵⁸ However, there is no comparable program to support households in which one parent takes time off from work or stays home to raise children. In the same vein, policymakers have instituted the Child and Dependent Care Credit, which may offer as much as \$16,000 per year for out-of-home childcare expenses,⁵⁹ but they have made no such credit for expenses associated with homemaking.

There is also the simple fact that dual-income households can contribute more to their 401(k) retirement plans than single-income households can. This is true even when their combined household incomes are identical, because plans are tied to individual earners, not to families. Currently, a dual-income household can contribute up to \$54,000 per year to a 401(k).⁶⁰ In contrast, a single-income household can contribute a maximum of \$34,000 (\$27,000 from the breadwinner and \$7,000 from the homemaker).⁶¹

Finally, it is important to note that lawmakers in both parties are pushing to expand the financial preferences for dual-income households, entrenching the anti-homemaker bias in the law. Last year, the Build Back Better Act and the reauthorization of the Child Care and Development Block Grant, both of which proposed to grow subsidies for dual-income households, were championed by Democrats and Republicans, respectively.⁶²

These privileges would not be problematic if having two full-time working parents were the most preferable arrangement for family life. But, at least among Americans, this is not the case. While it is true that Americans do not favor the “breadwinner” model as much as they did in past generations, fifty percent of American women with children under eighteen

⁵⁸ Alycia Hardy, *CCDBG FY 2023 State-by-State Appropriations Distribution Estimate and Increases*, CTR. FOR L. & SOC. POL'Y (Jan. 10, 2023), <https://www.clasp.org/publications/fact-sheet/ccdbg-2023-state-approps-estimates/> [https://perma.cc/SR3M-XU6G].

⁵⁹ *Understanding the Child and Dependent Care Credit*, I.R.S. (Dec. 20, 2022), <https://www.irs.gov/newsroom/understanding-the-child-and-dependent-care-credit> [https://perma.cc/QP55-2N58].

⁶⁰ See Ivana Greco, *Reframing Family Policy*, 53 NAT'L AFFS. 49, 57 (2022).

⁶¹ *Id.*

⁶² See Brad Wilcox & Jenet Erickson, *Perspective: When Helping Families with Young Children, Don't Leave Out Stay-at-Home Moms*, DESERET NEWS (Apr. 28, 2022), <https://www.deseret.com/2022/4/27/23041310/perspective-when-helping-families-with-young-children-dont-leave-out-stay-at-home-parents-child-care> [https://perma.cc/5UEP-QL29].

continue to state that they prefer homemaking to working outside the home.⁶³ That number is even higher for married mothers and fathers with children under five.⁶⁴

There is a class divide on the subject of family formation. The dual-income household is relatively popular in the most privileged echelon of society. Over 30% of Americans from households earning over \$150,000 per year favor it over alternative arrangements.⁶⁵ Outside of the upper class, however, the dual-income household receives a fourteen to twenty-four percent favorability rating.⁶⁶ In fact, most low-income, working-class, and middle-class adults believe the traditional single-income household is the ideal.⁶⁷

In some circles, these Americans are chauvinistically considered backward,⁶⁸ but empirical data lend credence to their preferences. After ten years of collecting data, researchers with the National Institute of Child Health and Human Development concluded that young children who spend a great deal of time in childcare exhibit far more behavioral problems than those cared for directly by their parents.⁶⁹ Analysts Jenet Erickson of the Wheatley Institution and Katharine Stevens of the American Enterprise Institute describe the findings as follows:

By age four-and-a-half, children who had spent more than 30 hours per week in child care had, on average, worse outcomes in every area of social-emotional development—weaker social competence, more behavior problems, and greater conflict with adults—at rates three times higher than their peers. Just 2% of children who averaged less than 10 hours per week exhibited behavioral problems, compared to 18% of those who averaged 30 hours or more and 24% of those who averaged 45 hours or more per week. The negative effects associated with extensive hours in child care rivaled the effects of poverty. Family income, maternal education, childcare quality, and quality of the child’s relationship with the caregiver had no impact on those effects.⁷⁰

⁶³ Megan Brenan, *Record-High 56% of U.S. Women Prefer Working to Homemaking*, GALLUP (Oct. 24, 2019), <https://news.gallup.com/poll/267737/record-high-women-prefer-working-homemaking.aspx> [<https://perma.cc/G4ZA-4HFB>].

⁶⁴ See AMERICAN COMPASS, *supra* note 47, at 9.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Erin Almond, *Why Do We Continue to Stigmatize Stay-at-Home Moms?*, WBUR (Mar. 28, 2014), <https://www.wbur.org/cognoscenti/2014/03/28/boston-magazine-mean-moms-erin-almond> [<https://perma.cc/NST8-ESYN>].

⁶⁹ NAT’L INST. OF CHILD HEALTH & HUMAN DEV., *THE NICHD STUDY OF EARLY CHILD CARE AND YOUTH DEVELOPMENT: FINDINGS FOR CHILDREN UP TO AGE 4 1/2 YEARS 17* (2006), https://www.nichd.nih.gov/sites/default/files/publications/pubs/documents/seccyd_06.pdf [<https://perma.cc/5GYL-FDAS>].

⁷⁰ Jenet Erickson & Katharine B. Stevens, *Universal Child Care: A Bad Deal for Kids?*, INST. FOR FAM. STUD. (Feb. 1, 2021), <https://ifstudies.org/blog/universal-child-care-a-bad-deal-for-kids> [<https://perma.cc/2R3G-LA5J>].

This Essay does not argue that receiving childcare is always worse for children than staying at home, or that the dual-income household is inferior to other models of family life. But the evidence is clear that there is no reason to privilege the dual-income household, at least as far as parents' preferences and child well-being are concerned.

So why does U.S. policy favor families with two full-time working parents when tens of millions of Americans do not? Author and professor Michael Lind has argued that policymakers may favor the dual-income household because it boosts GDP. In his own words, "Gross Domestic Product . . . grows when activities like child care are performed by paid labor in the marketplace—unlike the unpaid labor of family members in the home."⁷¹

This, however, is an insufficient reason to countermand the views of the American people. It is a fallacy of free-market fundamentalism to rank GDP as the ultimate measure of a country's economic strength or the American Dream. GDP is incapable of measuring intangible values like family strength or social capital, which disproportionately incentivizing dual-income households might endanger.

IV. FEDERAL SOLUTIONS TO ANTI-FAMILY POLICIES

To remedy the effects of their unjustified meddling, lawmakers must respond to their duty to enact policies that bring the American Dream back into the reach of American families, or that at least make it more attainable for them than it is now.

Broadly, lawmakers should make family formation more viable by changing the composition and nature of the American economy, moving it away from hyper-efficiency and bringing dignified, good-paying jobs back to the United States. As discussed in Part III of this Essay, non-dual-income households were often viable in the past because manufacturing jobs with high salaries and predictable schedules were widely available to low-income and working-class citizens. According to the post-Cold War free-market fundamentalist consensus, losing those jobs was inevitable.⁷² In reality, however, outsourcing and offshoring are neither necessary nor universally positive phenomena, and there is no reason to think they cannot be reversed by strategic public policy.⁷³

⁷¹ Michael Lind, *Family Policy for the Working-Class Majority*, AM. COMPASS (Feb. 25, 2021), <https://americancompass.org/family-policy-for-the-working-class-majority/> [<https://perma.cc/7VXM-H33W>].

⁷² ROWTHORN & RAMASWAMY, *supra* note 31, at 10.

⁷³ See generally ANDREW FISH & HONORA SPILLANE, RESHORING ADVANCED MANUFACTURING SUPPLY CHAINS TO GENERATE GOOD JOBS (2020), https://www.brookings.edu/wp-content/uploads/2020/07/BrookingsMetro_RecoveryWatchEssays_Reshoring-Strategy_FINAL.pdf [<https://perma.cc/JWW7-KPRE>] (describing how "reshoring"—bringing back jobs to the United States from overseas—can lead to positive economic outcomes).

In fact, there are already legislative proposals in place to make such a transition happen. My Medical Manufacturing, Economic Development, and Sustainability Act is one such bill. It would establish tax benefits for American medical supply producers who relocate their factories to the United States.⁷⁴ Similarly, Representative Ro Khanna (D-CA) and I have re-introduced the National Development Strategy and Coordination Act to invest government funds appropriated for development purposes more intentionally and effectively in critical domestic industries.⁷⁵

If enacted, these proposals would not just secure our country's vulnerable supply chains and reassert American dominance in technological innovation. They would also help replenish our stock of dignified, good-paying jobs. This would give more couples the financial and logistical resources necessary to settle down and start families.

Lawmakers should also eliminate marriage penalties in welfare programs and the federal tax code. For instance, a cohabiting couple with two children that earns a combined \$40,000 per year but is considering marriage currently faces a roughly \$3,000 decrease in its Earned Income Tax Credit ("EITC").⁷⁶ At a minimum, this should be changed so that the couple receives the same amount in EITC after marriage as it did beforehand.

Single parents should continue to receive what they need. This is not about penalizing our most vulnerable citizens. Nevertheless, the government should not be in the business of discouraging marriage, given its many social and individual benefits. If anything, Washington has an interest in encouraging marriage, since the strength of that institution is tied to the common good.

In addition to these indirect measures, lawmakers should support families more directly. One way to do so would be to further expand the federal Child Tax Credit. In 2017, Senator Mike Lee (R-UT) and I secured the doubling of that credit to allow working families to keep more of their hard-earned income.⁷⁷ Data released in 2018 confirmed that the increase helped millions of families in every tax bracket except those earning more than one million dollars per year.⁷⁸ It was especially beneficial to households making less than \$20,000, who on average saved more than \$600.⁷⁹ In my Providing

⁷⁴ Medical Manufacturing, Economic Development, and Sustainability Act of 2021, S. 1203, 117th Congress (2021).

⁷⁵ National Development Strategy and Coordination Act of 2022, S. 5246, 117th Congress (2022).

⁷⁶ *Briefing Book: What Are Marriage Penalties and Bonuses?*, *supra* note 54.

⁷⁷ Press Release, Marco Rubio, U.S. Sen. for Fla., WTAS: Expanding the Child Tax Credit "A Hard Fought Moment" for Rubio (Dec. 16, 2017), <https://www.rubio.senate.gov/public/index.cfm/2017/12/wtas-expanding-the-child-tax-credit-a-hard-fought-moment-for-rubio> [<https://perma.cc/WZB9-2DLU>].

⁷⁸ Nicole Kaeding & Anna Tyger, *A Preliminary Look at 2018 Tax Data*, TAX FOUND. (July 19, 2019), <https://taxfoundation.org/2018-tax-return-data/> [<https://perma.cc/YVL2-EWYU>].

⁷⁹ *Id.*

for Life Act, I propose further expanding the credit so that families can deduct up to \$3,500 per child (\$4,500 per every child under six).⁸⁰

This is preferable to establishing a universal child allowance, which some Democrats have misleadingly proposed as their own version of a child tax credit.⁸¹ It is an old argument, but unconditional cash benefits perpetuate a cycle of unemployment.⁸² What led to bipartisan welfare reform in 1996 was the recognition that such benefits corrode the human spirit and thereby harm the family.⁸³

Consider the difference between the Biden administration's pandemic-era child allowance and the bipartisan Paycheck Protection Program (PPP), whose passage and implementation I led in 2020 during the early pandemic lockdowns. The former did not distinguish between households with no working adults and those with at least one.⁸⁴ As such, it denigrated the dignity of work by disconnecting labor from financial rewards. This helps explain why the child allowance received middling favorability ratings, and why relatively few Americans wanted it to become a permanent feature of the social safety net.⁸⁵ The PPP, in contrast, empowered businesses to keep their employees on payroll, sustaining the reciprocal social compact for those parents in the workforce.⁸⁶

Lawmakers should also empower Americans who want to spend more time with their children, thereby counteracting the government's unfair privileging of dual-income households. The first step is to change public rhetoric. If politicians celebrate the stay-at-home or part-time working parent sacrificing for his or her kids as much as they celebrate the latest tech startup or Wall Street success story, it might lead to healthier families and stronger communities.

On the policy front, lawmakers should consider legislation like my New Parents Act. Senator Mitt Romney (R-UT) and I wrote this bill to allow parents to use a portion of their Social Security benefits to fund up to three months off work after the birth or adoption of a child. Almost all parents under the median income would be eligible to receive two-thirds of their

⁸⁰ Providing for Life Act, S. 4868, 117th Congress (2022).

⁸¹ *The Child Tax Credit Expansion*, MICHAEL BENNET: U.S. SENATOR FOR COLORADO, <https://www.bennet.senate.gov/public/index.cfm/child-tax-credit-expansion> [<https://perma.cc/YE5Q-5A4B>].

⁸² Matthew D. Dickerson, *Joe Biden's Coronavirus Stimulus Bill: A \$1.9 Trillion Disaster*, NAT'L INT. (Mar. 9, 2021), <https://nationalinterest.org/blog/politics/joe-bidens-coronavirus-stimulus-bill-19-trillion-disaster-179765> [<https://perma.cc/D5L6-3WAG>].

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Kathy Frankovic, *The Public Supports the Child Tax Credit, but They View It as a Temporary Solution*, YOUGOVAMERICA (July 26, 2021), <https://today.yougov.com/topics/politics/articles-reports/2021/07/26/public-supports-child-tax-credit> [<https://perma.cc/9QQ9-SUDE>].

⁸⁶ Press Release, Marco Rubio, U.S. Sen. for Fla., Chairman Rubio Statement on the Reopening of the Paycheck Protection Program (Jan. 10, 2021), <https://www.rubio.senate.gov/public/index.cfm/2021/1/chairman-rubio-statement-on-the-reopening-of-the-paycheck-protection-program> [<https://perma.cc/CUT2-4HS9>].

standard wages.⁸⁷ This proposal would directly support one or even both parents temporarily leaving the dual-income household model for the sake of their child and the common good.

Finally, and perhaps most importantly, lawmakers should reform the childcare benefit system. As discussed in Part III, the Child Care and Development Block Grant and the Child and Dependent Care Credit give thousands of dollars of resources every year to dual-income households but give nothing to those who favor at-home care for their children. What is more, politicians in both parties are advocating an expansion of such benefits.⁸⁸ Some are even advocating a universal childcare system.⁸⁹

This is unwise, since data suggest that out-of-home childcare is no better for children than at-home childcare.⁹⁰ It is unfair as well, since the dual-income household is not the scenario that most people would prefer if they had children under the age of five.⁹¹ Also, only twenty percent of American adults who desire greater government support for families would prefer more childcare subsidies.⁹²

Therefore, lawmakers should reform the system to ensure that non-dual-income households which otherwise meet the eligibility thresholds of said childcare subsidies receive the same level of support as dual-income households.

V. CONCLUSION

Proposals to empower non-dual-income households must not be interpreted as the fruit of nostalgia for an older, more traditional society. America is not going back to the arrangement of the 1950s, in which women were discouraged from working outside the home and men with families were paid a higher wage than bachelors. This Essay does not argue for a return to a Golden Age that never existed.

However, there is nothing wrong with trying to inject new life into the American Dream through public policy that strengthens the family unit. Indeed, it is the obligation of responsible lawmakers to do so. That dream must not be left behind in one historical period, if for no other reason than that its resurrection is crucial to restoring hope and optimism to the American public in this challenging time.

An essential part of the American Dream for my parents was the opportunity to raise a family on less than two full-time incomes. Despite discourse

⁸⁷ New Parents Act of 2021, S. 2764, 117th Congress (2021).

⁸⁸ Claire Cain Miller, *Republicans and Democrats Agree Child Care Needs Help. Here's How They Differ.*, N.Y. TIMES (Apr. 8, 2022), <https://www.nytimes.com/2022/04/08/upshot/child-care-republicans-democrats.html> [<https://perma.cc/7XDF-KNYH>].

⁸⁹ Universal Child Care and Early Learning Act, H.R. 2886, 117th Congress (2021).

⁹⁰ See *supra* note 70 and accompanying text.

⁹¹ AMERICAN COMPASS, *supra* note 47, at 9.

⁹² *Id.* at 10–12.

that stigmatizes homemaking, this remains the case for a majority of Americans. They, like the American Founders before them, see tremendous value in the family. So do social scientists, whose research registers an intimate connection between the ability of couples to form strong families and the realization of the common good.

That is why it is so problematic that American policymakers have discouraged family formation by facilitating deindustrialization and financialization, penalizing marriage, and privileging dual-income households. It would be too much to say that the U.S. government is entirely or even primarily responsible for the myriad ways in which the family has decayed in recent decades. But the fact that it lent a helping hand and continues to do so demands a federal response. In this Essay, I have explored several potential federal solutions to anti-family policies. As lawmakers, we have a duty to employ them, and other feasible measures, to reverse the government's past mistakes. It is what our constituents want and what our nation requires. And we have no excuse not to do right by them.

