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## Women, Motherhood, and the Quest For Easier Entry Into Campaigns for Elected Office

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# WOMEN, MOTHERHOOD, AND THE QUEST FOR EASIER ENTRY INTO CAMPAIGNS FOR ELECTED OFFICE

Harold Melcher<sup>‡</sup>

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## I. INTRODUCTION

As more and more women enter the field of electoral politics and become candidates for federal and state office, they will continue to bring their unique perspectives to the myriad of policy questions and challenges of governing. The increased number of women in electoral politics will indelibly reshape our nation’s laws. To that end, and quite fittingly, before a new generation of female lawmakers reshape our halls of legislation in both state capitals and in Washington D.C., they are first changing the ways in which they arrive in those very halls.

To do so, women are taking on the herculean task of running for office while often times balancing the day-to-day necessities of raising a family. As of now, the Federal Elections Commission (“FEC”) interprets the Federal Elections Campaign Act (“FECA”) to allow for candidates to pay for child

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care for their children using campaign funds.<sup>1</sup> The problem is that the FEC's current position, arrived at after a series of individual adjudications starting in 1995, runs exactly opposite to the black letter of the controlling statute. This creates a risk that a future FEC, composed of less agreeable commissioners, could slowly chip away at the current status quo. While such action would be contrary to progress and election accessibility, it would be more in line with FECA itself. This can be avoided by passing the Help America Run Act<sup>2</sup> and replicating that bill's provisions in state capitals and election-controlling bodies around the country. Success in passing this bill at the federal level would mean that Congress has effectively changed FECA to affirmatively allow for care-related expenditures in all races for federal office to be paid for by campaign funds.

This Article explores how the FEC, over three decades, arrived at this positive, albeit unexpected and tenuous, legal outcome. Before that, however, this Article will explore what the academic literature says about women in politics; how they come to enter politics, and what often holds them back; how they get recruited, and how they do not;<sup>3</sup> and how women from different generations managed their entry into the public arena.<sup>4</sup> Next, the Article examines the foundation for this entire discussion, the Federal Elections Campaign Act, with special interest paid to the little-known, yet critical, "Irrespective Test."<sup>5</sup> Following that, the Article surveys and analyzes three important FEC decisions that brought us to the current understanding of if, and when, parents running for federal office can legally use their campaign funds to pay for child care.<sup>6</sup> Following section IV, this Article discusses the current efforts at the federal level to codify the FEC's stand-alone rulings, and the current status of state legislative and administrative decisions seeking to do the same at the state level.<sup>7</sup> Lastly, Minnesota receives honorable mention as one of the states that currently allows for campaign funds to be used for care-related expenses.<sup>8</sup> While better than many, Minnesota stands as an example of a state whose current approach lags behind the FEC's current position.

## II. WHAT THE SOCIAL SCIENCE AND LEGAL LITERATURE SAYS, AND DOES NOT SAY

Before engaging in the substantive law on this topic, it should be noted that there is already an immense amount of scholarly social science literature that endeavors to answer the question of why the gender gap in

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<sup>1</sup> See *infra* notes 137-138 and accompanying text.

<sup>2</sup> Help America Run Act, H.R. 1615, 117th Cong. (2021).

<sup>3</sup> See *infra* Part II.

<sup>4</sup> See *infra* Part III.

<sup>5</sup> See *infra* Part IV.

<sup>6</sup> See *infra* Part IV.A.

<sup>7</sup> See *infra* Part V.

<sup>8</sup> See *infra* Part V.C.

politics exists. Much of it focuses on challenges female candidates may experience while fundraising for office and differences in how they are recruited to run in the first place.<sup>9</sup> Former California Secretary of State, March Fong Eu, described raising political donations as “the greatest barrier to the election of more women.”<sup>10</sup>

In his paper, *The Forgotten Few: Campaign Reform and its Impact on Minority and Female Candidates*, Jason Conti focuses precisely on that sentiment and explores the fundraising challenges that minority and female candidates have when trying to unseat incumbents in the U.S. Congress.<sup>11</sup> Conti reviews and challenges explanations for the difficulties candidates experience that have the effect of putting them at a fundraising disadvantage.<sup>12</sup> Those challenges can include greater psychological barriers to asking for money because women have typically not been put in positions of having to be “breadwinners.”<sup>13</sup> Additionally, women may not have the occupational connections that men have that help in raising money to seek office.<sup>14</sup> Finally, women are not as accustomed to giving money to people seeking office as men are, resulting in women raising less money from other women.<sup>15</sup> John Conti fails to mention, however, that even if women manage to successfully fundraise, they could not previously use the money to lessen or eliminate the other barriers they have to entry, such as child care and health care.<sup>16</sup>

In challenging some of the explanations that fellow political scientists propose for why women may experience difficulties in political fundraising, Conti gets perilously close to engaging with the central pillar of this Article.

While the inherent problems women face may have an impact

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<sup>9</sup> See generally Richard Fox & Jennifer Lawless, *If Only They'd Ask: Gender, Recruitment, and Political Ambition*, 72 J. POL. 310 (2010) (describing how highly qualified and politically well-connected women from both major political parties are less likely than similarly situated men to be recruited to run for public office by all types of political actors); see also Jennifer L. Lawless, *Female Candidates and Legislators*, 18 ANN. REV. POL. SCI. 349 (2015) (describing research to explain why there are so few women in politics).

<sup>10</sup> Doug Brown, *Women in Politics: Candidates Face Money Problems*, L.A. TIMES (June 27, 1986), <https://www.latimes.com/archives/la-xpm-1986-06-27-vw-20639-story.html> [<https://perma.cc/5L2E-QX6R>].

<sup>11</sup> Jason P. Conti, *The Forgotten Few: Campaign Finance Reform and Its Impact on Minority and Female Candidates*, 22 B.C. THIRD WORLD L.J. 99, 108 (2002), <https://lawdigitalcommons.bc.edu/twlj/vol22/iss1/4> [<https://perma.cc/V4J9-Q5NL>].

<sup>12</sup> *Id.*; see generally SUSAN J. CARROLL, WOMEN AS CANDIDATES IN AMERICAN POLITICS 49-50 (2d ed. 1994) (describing the barriers women face when raising funds).

<sup>13</sup> CARROLL, *supra* note 12.

<sup>14</sup> *Id.* at 50.

<sup>15</sup> *Id.* Carroll cites Suzanne Paizis, who authored the book GETTING HER ELECTED: A POLITICAL WOMAN'S HANDBOOK 22-23 (1977), which she says, “While ‘she’ is writing a \$5 check for her favorite woman candidate (and considering that a sizable donation), ‘he’ is writing a \$50 or \$500 check for the candidate of his choice (usually male).”

<sup>16</sup> See *id.*

on their ability to collect campaign donations, recent studies have not reflected any perceived difficulty in raising funds. However, other commentators have noted that such difficulties may not be reflected in empirical fundraising data because gender may hinder candidates in the earlier stages of the recruitment process.<sup>17</sup>

It is possible that the way gender hinders candidates in the earliest stages of this process is that working mothers, single mothers, or stay-at-home mothers, have their political ambitions immediately stymied by the disproportionate burden of their domestic responsibilities (i.e., homemaking, child care, etc.). One indicator of this gender-based hindrance is that, of the 131 women holding federal office in Washington D.C., only twenty-six of them have children under the age of eighteen.<sup>18</sup> The same pressures affecting federal candidates may also be affecting candidates running at the state level.

When Kimberly Dudik ran for her fourth term in the Montana House, state election officials told her that she could not use campaign funds to pay for child care for her four young children.<sup>19</sup> Another mother, Amber McReynolds, encountered the same hurdle when contemplating a run for state office in Colorado.<sup>20</sup> She decided that because of the cost of child care she would not make a run for office.<sup>21</sup> McReynolds, who runs a non-profit, said, “[w]hen we look at the statistics in terms of representatives in Congress or statewide office and you don’t see single moms in that category, [the inability to use campaign funds for child care is] why.”<sup>22</sup>

The findings of a study done by Rachel Silbermann compliment and support the idea that the unique pressures placed on women affect their decision to run or not.<sup>23</sup> In her study, she found that because the majority of housework and child care is done by women, the commute time to and

<sup>17</sup> Conti, *supra* note 11, at 114.

<sup>18</sup> MOMS IN OFFICE, *The Story: Why Moms? And Why a PAC?*, <https://momsinoffice.org/the-pac> [https://perma.cc/K3J8-6BJ4]; see also Caitlin Gibson, *A Record Number of Congresswomen Are Mothers. Here’s a Glimpse Inside Their First-Ever Caucus.*, WASH. POST (Apr. 16, 2019), [https://www.washingtonpost.com/lifestyle/parenting/a-record-number-of-congresswomen-are-mothers-heres-a-glimpse-inside-their-first-ever-caucus/2019/04/16/b563b964-5c77-11e9-842d-7d3ed7eb3957\\_story.html](https://www.washingtonpost.com/lifestyle/parenting/a-record-number-of-congresswomen-are-mothers-heres-a-glimpse-inside-their-first-ever-caucus/2019/04/16/b563b964-5c77-11e9-842d-7d3ed7eb3957_story.html) [https://perma.cc/G9Y3-83H3] (noting that there are twenty-five mothers of school-age children in the House of Representatives (twenty-one Democrats and four Republicans)).

<sup>19</sup> Lindsay Whitehurst & Christina A. Cassidy, *As More Women Run for Office, Child Care Remains a Hurdle*, ASSOCIATED PRESS NEWS (Jan. 1, 2020), <https://apnews.com/article/tn-state-wire-ut-state-wire-child-care-ct-state-wire-co-state-wire-e6f54f9bee6467042288a459ecf9e6d3> [https://perma.cc/E87A-HK4N].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Rachel Silbermann, *Gender Roles, Work-Life Balance, and Running for Office*, 10 Q. J. POL. SCI. 123, 124-25 (2015).

from home is a significant factor when women decide to run for office.<sup>24</sup> She found that women were less likely to run for state legislative office in districts further from state capitals.<sup>25</sup> The result was validated by a survey on undergraduate students in the midst of their career search.<sup>26</sup> She found that female students weigh proximity to home twice as heavily as male students do in a hypothetical decision of whether to run for higher office.<sup>27</sup>

In a report conducted for the Brookings Institute, Jennifer Lawless, professor of politics and public policy at the University of Virginia, and Richard Fox, professor and associate chair of political science and international relations at Loyola Marymount University, noted that despite the fact that women hold a disproportionate share of household responsibilities, this does not dramatically affect whether they have ever considered running for office.<sup>28</sup> However, the authors explained that even if traditional gender and family dynamics do not inhibit a woman's thinking about the full range of career possibilities, including running for office, the context in which these ruminations occur may be different for men and women.<sup>29</sup> In the words of one gender politics scholar, "[w]omen may now think about running for office, but they probably think about it while they are making the bed."<sup>30</sup> Lawless and Fox conclude that women, in weighing the possibility of running, simply face a more complex set of choices than men because for those contemplating a run, doing so may just mean having a third job, on top of the two they already have (i.e., their own career and domestic responsibilities).<sup>31</sup>

Other fascinating research reveals a disparity between men and women in considering seeking office. In particular, women are not recruited the same way as men.<sup>32</sup> For instance, among potential candidates, men are fifteen percent more likely to be told they should run.<sup>33</sup> This comes even before women face fundraising challenges. People may be less likely to encourage women to run for office because they assume child care and other domestic responsibilities will interfere with a woman's ability to mount

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<sup>24</sup> *Id.* at 126.

<sup>25</sup> *Id.* at 127.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Jennifer L. Lawless & Richard L. Fox, *Why are Women Still Not Running for Political Office?*, BROOKINGS INST., ISSUES IN GOVERNANCE STUD. (May 2008), [https://www.brookings.edu/wp-content/uploads/2016/06/05\\_women\\_lawless\\_fox.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/05_women_lawless_fox.pdf) [<https://perma.cc/AJ2T-P7QA>].

<sup>29</sup> *Id.* at 9-10.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.*

<sup>32</sup> Jennifer Lawless, *Female Candidates and Legislators*, 18 ANN. REV. POL. SCI. 349, 354 (2015).

<sup>33</sup> *Id.* at 355. Lawless notes that women and men are equally responsive to running for office when it is suggested by a political gatekeeper, women are just less likely to ever receive such a suggestion. *Id.*

a successful campaign.<sup>34</sup> This belief may be difficult to measure because people are unlikely to admit to such a sexist assumption in a survey. However, women are more likely to consider running for office if they are in relationships with a partner who handles most of the household labor.<sup>35</sup>

Virginia Sapiro, professor of political science, feminist theory, and Dean Emerita at Boston University, finds that women perceive family commitments (i.e., domestic responsibilities) and public commitments (i.e., a potential candidate's calculation of the costs and benefits of running for office) as conflicting with one another.<sup>36</sup> Men experience this conflict at least as much as women.<sup>37</sup> Men, however, are more likely to continue to be politically ambitious despite this conflict.<sup>38</sup> Women, on the other hand, are more likely to forgo their political ambitions rather than risk adding additional conflict to their lives.<sup>39</sup>

Other research shows that it is the "masculinized ethos" of a political career that affects whether men and women consider running for office.<sup>40</sup> Specifically, this research showed that because women tend to avoid conflict and are motivated to choose work that pursues communal goals over accumulating individual power, they are less likely to exhibit political ambition.<sup>41</sup> When a career in politics is reframed away from these stereotypically-male elements towards the goal of fulfilling communal needs, the gendered, political-ambition gap shrinks.<sup>42</sup> This conclusion aligns with other research that says that adolescent girls are much more likely to prioritize community service over boys, whereas boys are much more likely

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<sup>34</sup> A study done by Sarah Fulton found that women who already held state legislative seats were less ambitious and less likely to seek a U.S. House seat because of presence of family responsibilities. Specifically, the presence of children at home. Sarah A. Fulton, Cherie D. Maestas, L. Sandy Maisal & Walter J. Stone, *The Sense of a Woman: Gender, Ambition, and the Decision to Run for Congress*, 59 POL. RSCH. Q. Vol. 59, 235-36 (2006).

<sup>35</sup> Jennifer L. Lawless & Richard L. Fox, *Why Women Don't Run for Office?*, BROWN POL'Y REP. (Jan. 2004), <https://annieslist.com/wp-content/uploads/2013/03/WhyDontWomenRun.pdf> [https://perma.cc/BP9C-FSGV]. The study showed that thirty-three percent of women who have the majority of household responsibilities have considered running for office, compared to forty-eight percent of women whose partners have the majority of household responsibilities. *Id.* at 7. The authors' main conclusion is that women are in general less likely to consider running for office because women are less likely to see themselves as qualified and less likely to be recruited in the first place. *Id.* at 7-8.

<sup>36</sup> Virginia Sapiro, *Private Costs of Public Commitments or Public Costs of Private Commitments? Family Roles Versus Political Ambition*, 26 AM. J. POL. SCI. 265, 276 (1982).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Monica C. Schneider, Mirya R. Holman, Amanda B. Dieckman & Thomas McAndrew, *Power, Conflict, and Community: How Gendered Views of Political Power Influence Women's Political Ambition*, 37 POL. PSYCH. 515 (2016).

<sup>41</sup> *Id.* at 516-17.

<sup>42</sup> *Id.* at 516.

to prioritize “standard” political involvement.<sup>43</sup>

Jennifer Lawless, in answering the question, “Do women run for office?” says, “Traditional gender socialization, in short, creates a set of circumstances in which the complexities of women’s lives, both in terms of their self-perceptions and how society perceives them, depress their political ambition.”<sup>44</sup> This is correct. However, Lawless makes this statement within the context of considering whether differences in ambition in men and women impact who runs for office and, ultimately, who gets elected.<sup>45</sup> Put simply, her findings are that men and women do not have an equal interest in running for office. She finds that men are sixteen percent more likely than women to have considered running for office.<sup>46</sup> And among men and women who do consider running, men are forty percent more likely to do so.<sup>47</sup>

Canadian researchers found that when women were encouraged to run by a female party recruiter, they exhibited no significant difference in their openness to run compared to the control group, where the gender of the recruiter was ambiguous.<sup>48</sup> However, when women were encouraged to run by a male recruiter, their openness to running was significantly less.<sup>49</sup> One explanation that the authors put forward was that being presented with a male recruiter primes women to view politics as a masculine domain where women are unwelcome outsiders.<sup>50</sup>

The difference that men and women show in expressing a desire to run for office may be explained by women’s greater share of domestic responsibilities, child care included.<sup>51</sup> Nancy McGlen sought to understand

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<sup>43</sup> Aaron Metzger & Judith G. Smetana, *Adolescent Civic and Political Engagement: Associations Between Domain-Specific Judgments and Behavior*, 80 CHILD DEV. 433, 436 (2009).

<sup>44</sup> Lawless, *supra* note 32, at 353–54.

<sup>45</sup> *Id.* at 354.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Scott Pruyers & Julie Blais, *When It Comes to Being Encouraged to Run for Office, Women Are Less Receptive to Male Recruiters*, LONDON SCH. ECON. U.S. AM. POL. & POL’Y. (May 13, 2019), <https://blogs.lse.ac.uk/usappblog/2019/05/13/when-it-comes-to-being-encouraged-to-run-for-office-women-are-less-receptive-to-male-recruiters/> [<https://perma.cc/38Y4-5WFH>]. In this study, one-third of women in the control group expressed an openness to running for office. *Id.* When encouraged to run by a male recruiter however, this number plunged to less than twenty percent exhibiting an openness to run. *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> RICHARD L. FOX, GENDER, POLITICAL AMBITION AND THE DECISION NOT TO RUN FOR OFFICE 11 (Ctr. for Am. Women & Pol., Eagleton Inst. of Pol., Rutgers, 2003), [https://cawp.rutgers.edu/sites/default/files/resources/initialdecisiontorun\\_0.pdf](https://cawp.rutgers.edu/sites/default/files/resources/initialdecisiontorun_0.pdf) [<https://perma.cc/L78X-N5WG>]. The closest that Richard Fox gets to answering this question is when asking what accounts for the difference in political ambition when pondering a run for office he notes “women’s lesser interest in office holding is linked to a



whether women participated in all types of political activities less than men because of motherhood.<sup>52</sup> She found that among college-educated women, there is “significant conflict between the political and motherhood or parenting roles, especially if the behavior in question is time consuming and disruptive.”<sup>53</sup> She concludes by saying that women will never be able to achieve parity with men in the political arena if women are forced to reduce their political activity at the exact same time that men are increasing theirs.<sup>54</sup>

Given the fact that women are fifteen times more likely than men to be responsible for the majority of child care, the likelihood that those responsibilities play a role in decision-making around political participation is high.<sup>55</sup> This connection could very much exist and should be explored by surveying women who have thought of running and asking them whether or not concerns about domestic responsibilities ever entered their minds when weighing a run.

Women and minorities are significantly underrepresented among campaign service providers. Thus, perhaps unsurprisingly, studies indicate that political insiders encourage women to run for office less often than they encourage men, even though women are equally responsive to such suggestions when asked.<sup>56</sup>

All of this is to say that there is immense focus on things that prevent women from running for office, including fundraising, psychology, and structural challenges in recruitment. And yet, the focus largely fails to engage with the things that exist right at home that may be just as responsible for preventing women from running. One rather stunning example of this is a

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number of factors: lower levels of personal income, less external support for a candidacy, *more demanding household obligations*, and self-perceptions that they are not qualified.” *Id.* (emphasis added).

<sup>52</sup> Nancy E. McGlen, *The Impact of Parenthood on Political Participation*, 33 W. Pol. Q. 297, 305-06 (1980).

<sup>53</sup> *Id.* at 312.

<sup>54</sup> *Id.* Another conclusion of McGlen’s study is that motherhood, in addition to limiting a woman’s ability to participate in all types of political activity, also has the effect of limiting a woman’s ability to rise to senior levels of political office because she will simply have less time to do so compared to a man whose role as a father never conflicted with his political ambitions. *Id.*

<sup>55</sup> VOTE MAMA FOUND., *CAMPAIGN FUNDS FOR CHILDCARE 4* (May 2021), <https://www.votemamafoundation.org/cfcc-report> [https://perma.cc/A3VZ-A5CK]. This report does not include findings on how child care responsibilities preclude women from running for office. Rather, it shows that as a result of a 2018 FEC decision allowing the use of campaign funds for child care for Liuba Grechen Shirley, there has been a more than 300% increase in child care expenditures for federal office. *Id.* at 38. Furthermore, the report shows that in 2018 and 2020, more than 73% of all such funds were spent by female candidates. *Id.* at 13. These results imply two things. First, the results suggest that allowing this use of campaign funds solves a problem for candidates. *Id.* Second, the results indicate that women may not have been able to participate in campaigning but for using campaign funds in this way, as women make up the vast majority of candidates using the funds. *Id.*

<sup>56</sup> Robert Yablon, *Campaigns, Inc.*, 103 MINN. L. REV. 151, 186 (2018).

piece published by *Politico* that used research and polling from the aforementioned researchers, Lawless and Fox, to explain “Why Women Don’t Run for Office.”<sup>57</sup> The piece provides that in childhood and young adulthood, girls and young women are not encouraged by parents to run for office or be politically engaged in the same way that boys and young men are.<sup>58</sup> Furthermore, despite equal professional qualifications, men see themselves as more qualified to run than women do.<sup>59</sup> Finally, the aforementioned recruitment bias towards men plays a role as well.<sup>60</sup> It seems that much of the literature and writing in the popular press about this topic fails to realize that if a woman must forgo her income while running for office, she or her family will likely not be able to afford health care, child care, or care for elderly parents or other vulnerable family members.<sup>61</sup> This clearly represents an enormous hurdle to starting a political campaign.

### III. GENERATIONAL DIFFERENCES

In their book *Madam President: Shattering the Last Glass Ceiling*, Eleanor Clift and Tom Brazaitis note that when women enter politics, they

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<sup>57</sup> Janie Boschma & Ellen Weinstein, *Why Women Don't Run for Office*, POLITICO (June 12, 2017, 5:00 AM), <https://www.politico.com/interactives/2017/women-rule-politics-graphic> [<https://perma.cc/D9E2-PJWZ>]; see also, Derek Willis, *Does the Prospect of Running for Office Discourage Women?*, N.Y. TIMES (Aug. 12, 2014), <https://www.nytimes.com/2014/08/13/upshot/does-the-prospect-of-running-for-office-discourage-women.html> [<https://perma.cc/897U-RV5H>].

<sup>58</sup> See Boschma & Weinstein, *supra* note 57.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Cf. Michael Sainto, *'I don't have a choice': Childcare Cost Preventing US Women from Returning to Work*, THE GUARDIAN (Nov. 5, 2021), <https://www.theguardian.com/us-news/2021/nov/05/childcare-us-women-workforce> [<https://perma.cc/Z4E3-VLG4>] (showing how the costs of childcare prevents women from re-entry into the work force, which can be analogized to similar concerns keeping women from running for office). The FEC actually allows candidates to federal office to pay themselves a salary during the course of their campaign. See Katharine Q. Seelye, *Candidates Allowed to Have Salaries from Campaigns*, N.Y. TIMES (Nov. 26, 2002), <https://www.nytimes.com/2002/11/26/us/candidates-allowed-to-have-salaries-from-campaigns.html> [<https://perma.cc/CY5G-PNL8>]. *Id.* It has been taken advantage of recently by Rep. Tlaib (D-MI) who paid herself \$4,000 a month during her campaign. Rachel M. Cohen, *A Campaign Finance Rule Makes Life Much Harder for Working-Class Challengers*, INTERCEPT (Jan. 16, 2020), <https://theintercept.com/2020/01/16/campaign-finance-law-wealthy-working-class-candidates/> [<https://perma.cc/8HDL-QCJ4>]. Even though this rule changed nearly two decades ago, the average congressman’s net worth is still over \$500,000—five times the median U.S. household net worth. *Id.* This rule change did not have the intended effect, in part, because candidates may only start paying themselves a salary once the deadline for entering the primary has passed. *Id.* As campaign seasons stretch longer and longer, with members in competitive districts engaging in constant campaigning, this rule’s administration mean that many candidates may go quite some time before obtaining a salary from their campaign committees. *Id.*

tend to do so at a later age than men.<sup>62</sup> More specifically, they pin that later entry to women waiting until their children are older.<sup>63</sup> Over twenty years after this book was published and despite rapidly changing social norms, it is still true that women bear the brunt of raising young children.<sup>64</sup> Indeed, some women who enter politics later in life do so not because they were forced to by society and social structures, but because they made a simple choice that raising children before entering politics was the best thing for them. Representative Nancy Pelosi's own story, from California housewife to two-time Speaker of the U.S. House of Representatives, is an excellent example of that.<sup>65</sup>

After moving to San Francisco with her husband, Paul Pelosi, and her five children, Nancy Pelosi became an active Democratic Party volunteer and became known as an incredibly effective fundraiser.<sup>66</sup> Despite becoming known to Democratic politicians across the nation for her fundraising prowess, Pelosi did not run for office until she was forty-seven years old, as she preferred to wait until her youngest child was a senior in high school and presumably nearly ready to leave the nest.<sup>67</sup> Her story reflects the sentiment expressed in *Madam President*, that for women of Pelosi's generation, running for office with children in the mix was either going to be looked down upon by the electorate or simply not an option considering the overwhelming share of domestic responsibilities that women of the time had.<sup>68</sup>

Nancy Pelosi's experience as a mother reflects the way younger generations of women leverage their own experiences when running for office. Pelosi looks back on those years as a homemaker as "the best life

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<sup>62</sup> ELEANOR CLIFT & TOM BRAZAITIS, *MADAM PRESIDENT: SHATTERING THE LAST GLASS CEILING* 254 (2000). Specifically, the authors note that women enter politics ten years later than men. *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See generally *Modern Parenthood, Chapter 5: Americans' Time at Paid Work, Housework, Child Care, 1965 to 2011*, PEW RSCH. CTR. (Mar. 14, 2013), <https://www.pewresearch.org/social-trends/2013/03/14/chapter-5-americans-time-at-paid-work-housework-child-care-1965-to-2011/> [<https://perma.cc/E7DP-YCGV>].

<sup>65</sup> Walt Hickey, Mariana Alfaro, Grace Panetta & Taylor Ardrey, *Nancy Pelosi Was Just Re-Elected as House Speaker—Here's How She Went from San Francisco Housewife to the Most Powerful Woman in U.S. Politics*, BUS. INSIDER (Jan. 3, 2021), <https://www.businessinsider.com/nancy-pelosi-2013-3> [<https://perma.cc/7FYL-J5Y9>]. Nancy Pelosi's life prior to being elected is likely more representative of the traditional role that women played in American politics. *Id.* Her life was that of the valued organizer and host to social gatherings, which allowed candidates and elected officials alike to rub elbows with constituents, powerbrokers, and fundraisers. *Id.*

<sup>66</sup> *Nancy Pelosi*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/Nancy-Pelosi> [<https://perma.cc/WPX8-UAPS>].

<sup>67</sup> Stephanie Salmon, *10 Things You Didn't Know About Nancy Pelosi*, U.S. NEWS (Nov. 7, 2006), <https://www.usnews.com/news/articles/2006/11/07/10-things-you-didnt-know-about-nancy-pelosi> [<https://perma.cc/9HT6-CJVC>].

<sup>68</sup> See, e.g., CLIFT & BRAZAITIS, *supra* note 62, at 254.

and some of the worst days” and as the formative leadership training that proved invaluable to her as she entered Congress and began to rise in the ranks of the Democratic Caucus.<sup>69</sup> She speaks of the challenges of managing dinner prep, carpool logistics, and refereeing sibling rivalries as some of the most important preparation for her time in government.<sup>70</sup> Women who choose to run in today’s campaigns, we will see, tend to do the same.<sup>71</sup> They just do it while their children are still young.

However, for other women, the decision to run or not run, especially when there are children in the picture, is likely not the result of a careful weighing of choices, but rather because of a harsh reality: that if two parents aren’t working, and one is devoting most of her waking hours to an intense non-paying activity, the children will go unsupervised and other caregiving tasks will go undone.<sup>72</sup> While all this literature highlights very important causes for women being underrepresented in politics, it fails to recognize that if laws are not changed that prevent women from using campaign funds on these activities, a *de facto* bar exists to many women’s participation in the political process.

With this context and grounding, this Article moves on to the legal foundation of that bar, and hopefully soon, its amended form that may act as a catalyst for more women running for elected office: the Federal Elections Campaign Act.

#### IV. THE FEDERAL ELECTIONS CAMPAIGN ACT AND ITS IMPACT

The Federal Elections Campaign Act (“Act”), or the unfortunately abbreviated, FECA, serves as the legal foundation that all federal races for elected office must abide by.<sup>73</sup> For the purposes of this Article, the relevant sections of FECA is § 30114(a), (b). The Act prevents the conversion of campaign funds to personal use and lists examples that would be categorized as a prohibited use of funds and those that are allowed, as laid out in the chart below.<sup>74</sup>

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<sup>69</sup> Ellen McCarthy, *‘Makes going to work look easy’: Decades Before she was House Speaker, Nancy Pelosi Had an Even Harder Job*, WASH. POST (Feb. 12, 2019), [https://www.washingtonpost.com/lifestyle/style/makes-going-to-work-look-easy-how-being-a-full-time-mom-prepared-nancy-pelosi-for-this-moment/2019/02/12/416cd85e-28bc-11e9-984d-9b8fba003e81\\_story.html](https://www.washingtonpost.com/lifestyle/style/makes-going-to-work-look-easy-how-being-a-full-time-mom-prepared-nancy-pelosi-for-this-moment/2019/02/12/416cd85e-28bc-11e9-984d-9b8fba003e81_story.html) [https://perma.cc/7HLG-CSBR].

<sup>70</sup> *Id.*

<sup>71</sup> Annika Neklason, *Moms Running for Office Are Finally Advertising Their Motherhood*, THE ATLANTIC (July 23, 2018), <https://www.theatlantic.com/family/archive/2018/07/midterms-2018-mothers/565703/> [https://perma.cc/B65Q-8LNL].

<sup>72</sup> Lawless & Fox, *supra* note 28, at 353–54.

<sup>73</sup> Federal Elections Campaign Act, 52 U.S.C. §§ 30101–45 (1980).

<sup>74</sup> *Id.* at § 30114(a), (b)(2). Permitted uses are found in subsection (a) of the statute. Prohibited uses are found in subsection (b) of the statute.

<b>Permitted Uses for Contributions</b> <sup>75</sup>	<b>Prohibited Uses for Contributions</b> <sup>76</sup>
(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;	(A) a home mortgage, rent, or utility payment;
(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;	(B) a clothing purchase
(3) for contributions to an organization described in section 170(c) of title 26;	(C) a noncampaign-related automobile expense
(4) for transfers, without limitation, to a national, State, or local committee of a political party;	(D) a country club membership
(5) for donations to State and local candidates subject to the provisions of State law; or	(E) a vacation or other noncampaign-related trip
(6) for any other lawful purpose unless prohibited by subsection (b) of this section.	(F) a household food item
	(G) a tuition payment
	(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
	(I) dues, fees, and other payments to a health club or recreational facility.

It is apparent that neither list is exhaustive as to what may, or may not, be an allowable expenditure of campaign funds. Because of this, FECA utilizes a test to determine in what category an expenditure should fall.<sup>77</sup> The Irrespective Test is a rule that says a candidate cannot spend campaign funds on anything that “would exist irrespective of the candidate’s campaign” and that if the expenditure is not listed as an example of *per se* personal use, the FEC will adjudicate the matter on a case-by-case basis.<sup>78</sup> This means that the campaign cannot pay for things like the candidate’s groceries, mortgage, or electric bill because those would all exist regardless of any campaign.

In three stand-alone rulings, the FEC put this rule to the test with regards to the very issue at hand: whether campaign funds can be put toward child care expenditures otherwise not listed as permitted or not permitted.<sup>79</sup>

<sup>75</sup> *Id.* at § 30114(a).

<sup>76</sup> *Id.* at § 30114(b).

<sup>77</sup> *Personal Use*, FED. ELECTION COMM’N, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/> [https://perma.cc/SLAL-AQBE].

<sup>78</sup> 52 U.S.C. § 30114(b)(2).

<sup>79</sup> *See infra* notes 80, 94, 109.

A. *Stand Alone FEC Rulings*

1. *McCrery - 1995*

The first example of a candidate asking the FEC whether a campaign can include child care as an expenditure of its funds was *McCrery* in 1995.<sup>80</sup> Although the focus of this Article is unapologetically about how change to this legal mechanism within FECA and its corollary state laws could help lower barriers for middle and working class women who wish to engage in electoral politics, ironically, this example comes from Louisiana's Fifth Congressional District and the reelection of Republican Jim McCrery.<sup>81</sup>

During his 1995 reelection bid, Representative McCrery's campaign wrote to the FEC and described the situation the candidate was in.<sup>82</sup> Representative McCrery's wife would often accompany him to campaign-related events such as receptions, press conferences, and finance meetings.<sup>83</sup> Representative McCrery described his wife as "an integral part of my campaign team, and her presence at these events is vital."<sup>84</sup> Because the district was large, event attendance required regular overnight stays.<sup>85</sup> Therefore, Ms. McCrery would not be able to perform her regular role as primary caretaker of their twenty-month-old child while campaigning with her husband.<sup>86</sup> Representative McCrery asked the FEC if his campaign could use a portion of its funds to pay for child care during the periods of time when his wife would accompany him.<sup>87</sup>

In granting the campaign their request, the FEC walked through its analysis by first stating that campaign funds being expended for personal use includes "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."<sup>88</sup> Next, they noted that child care expenses are not listed among those expenditures that would be considered *per se* personal use, and as such would have to adjudicate the matter independently.<sup>89</sup>

The FEC decided that because Representative McCrery's wife was an integral part of the campaign and her attendance at events requiring long-distance travel was vital to the campaign's operations, her *travel expenses*

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<sup>80</sup> Advisory Opinion for Jim McCrery, 1995 F.E.C. 42 (1996).

<sup>81</sup> *Id.*

<sup>82</sup> Letter from Jim McCrery, Member of Congress, to Bradley N. Litchfield, Fed. Election Comm'r (Nov. 1, 1995) (on file with the FEC, AO 1995-42).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Advisory Opinion for Jim McCrery, *supra* note 80.

<sup>89</sup> *Id.*

are attributable to her participation in the campaign.<sup>90</sup> The FEC then went on to say that in addition to the travel expenses, the related cost of child care for their infant could be covered by the campaign because those expenses would only arise as a direct result of the campaign activity.<sup>91</sup>

Interestingly, the FEC reasoned that child care expenses were an allowable use of campaign funds because the child care need arose out of Mrs. McCrery's necessary campaign travel.<sup>92</sup> The candidate never asked whether his wife's travel costs could be covered by the campaign.<sup>93</sup> In fact, in his letter, he explicitly differentiates his request regarding child care from a previous ruling that details the FEC's stance on travel-related expenses.<sup>94</sup> The only question posed was concerning child care expenses.<sup>95</sup> Yet, the FEC devoted a paragraph to describing how Representative McCrery's wife's travel costs would only be incurred as a result of the campaign.<sup>96</sup> Only then did the FEC turn to the question at hand.

It is unclear exactly why the FEC felt the need to do this. Whether the Commission felt it needed to couch this novel decision in more a more traditional and common type of question, (i.e., spouse travel expenses) or whether the Commission really felt that the cost of the child care arose from the mother's travel expenses, might never be known.

The FEC also made explicit that the decision only applied to the candidate in the "limited circumstances" he presented (i.e., only when his wife needed to attend events).<sup>97</sup>

Lastly, the irony in the decision is clear. This FEC ruling, which paved the way for expanding rulings on this topic, came out of a *male* candidate's desire to have his wife attend campaign events. Because she was the primary caretaker of their child, the couple would need to arrange for child care. The fact this topic is primarily now championed by progressive scions like Representative Katie Porter make its inception all the more surprising.<sup>98</sup>

## 2. Shirley - 2018

Over two decades after the McCrery decision, the FEC was called upon to answer a similar question. This time the candidate was a woman

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Letter from Jim McCrery, *supra* note 82.

<sup>94</sup> *Id.* See also Advisory Opinion for Tim Roemer, 1995 F.E.C. 20 (1995). This letter was in response to a request for an opinion on whether Representative Tim Roemer could use campaign funds to cover travel costs for his two-year-old son. *Id.*

<sup>95</sup> Letter from Jim McCrery, *supra* note 82.

<sup>96</sup> Advisory Opinion for Jim McCrery, *supra* note 80.

<sup>97</sup> *Id.*

<sup>98</sup> Brooke Staggs, *House Passes Rep. Katie Porter's Bill to Help People of All Incomes Run for Office*, ORANGE CITY REG. (Oct. 29, 2019, 3:25 PM), <https://www.ocregister.com/2019/10/29/house-passes-rep-katie-porters-bill-to-help-people-of-all-incomes-run-for-office/> [https://perma.cc/7Z55-NGN8].

named Liuba Gretchen Shirley who was running for Congress in New York's Second District.<sup>99</sup> In her letter to the FEC, Ms. Shirley explained that prior to running for office, she worked from home as a consultant.<sup>100</sup> Ms. Shirley's consultant position allowed her to act as the full-time caregiver for the children she had with her husband.<sup>101</sup> When she began her campaign, she hired a part-time caregiver to watch their children.<sup>102</sup> Ms. Shirley anticipated that as the campaign got closer to what would be a competitive primary, she would have to rely on someone to provide full-time care for her children.<sup>103</sup>

Ms. Shirley asked the FEC whether she could pay for the above-described child care expenses using campaign funds.<sup>104</sup> Her question boiled down to whether her campaign could pay for child care on a *continuing* and ongoing basis, therefore distinguishable from Representative McCrery who asked for the use campaign funds *occasionally*.<sup>105</sup> In making her request,<sup>106</sup> Ms. Shirley relied on the FEC's prior decisions in Advisory Opinion 1995-42 (*McCrery*)<sup>107</sup> and additional draft Advisory Opinion 2008-02 (*Goldup*).<sup>108</sup>

The FEC ruled that based on her description of the increasing need

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<sup>99</sup> Rachel Scott, MaryAlice Parks, Brittany Berkowitz & Chris Cirillo, *How Candidate Liuba Gretchen Shirley Is Changing How Parents Can Run for Office*, ABC NEWS (Oct. 21, 2018, 2:51 AM), <https://abcnews.go.com/GMA/News/candidate-liuba-gretchen-shirley-changing-parents-run-office/story?id=58601250> [<https://perma.cc/DSK4-AGER>].

<sup>100</sup> Letter from Liuba Gretchen Shirley, Congressional Candidate, to Lisa J. Stevenson, Acting General Counsel (Apr. 3, 2018) (on file with the FEC, AO 2018-06).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Advisory Opinion for Jim McCrery, *supra* note 80.

<sup>108</sup> Advisory Opinion for Todd Goldup, 2008 F.E.C. 02 (2008). Four affirmative votes from FEC commissioners are required to publish an opinion. *Id.* Despite the 2-0 vote in favor of Mr. Goldup's request, there were not enough voting members seated at the time to put out anything other than a draft opinion. *Id.* In her request, Ms. Shirley relied on the factual similarities between her and Mr. Goldup's request a decade earlier. Letter from Liuba Gretchen Shirley, *supra* note 100. Mr. Goldup was a father and the primary caretaker of his two children, age three and seven. *Id.* His wife worked full time out of the home. *Id.* Just like Ms. Shirley, he was making a request to use campaign funds for child care, as he anticipated that as the campaign he was waging for New York's Twentieth Congressional District became more consuming he would have to spend significant time travelling away from his children. *Id.* He told the commission that his three-year-old would need full time daycare for \$200 a week, and the same for his seven-year-old during the summer. *Id.* Citing its prior decision in *McCrery*, the FEC granted his request to use campaign funds to pay for child care because "such expenses 'would be incurred only as a direct result of campaign activity and would not otherwise exist.'" *Id.* Despite the fact that the *Shirley* opinion did not reference Mr. Goldup's request and its similarities, the fact that Ms. Shirley chose to rely on it to bolster her own argument adds to the irony established in *McCrery*. Namely, that in allowing female candidates to use campaign funds for child care, a move that would overwhelmingly benefit women due to the fact that the majority of caretaking falls to them, the FEC relies on men making the exact same request.



for child care, it would be permissible for her campaign to pay for it on a continuing basis.<sup>109</sup> In coming to this conclusion, the FEC referred directly to their decision and analysis in *McCrery* twenty-three years earlier.<sup>110</sup> The FEC noted that even though there was a difference in the scope of the expenditure (*occasional* need to pay for child care vs. a *continuing* need to pay for child care), the underlying question remained the same: “whether such expenses would exist irrespective of the candidate’s campaign or officeholder duties.”<sup>111</sup> The expenses that she described in her request, to the extent that they were incurred as a direct result of campaign activity, would not exist irrespective of the campaign, and thus they could be paid through campaign expenditures.<sup>112</sup>

While this certainly was a positive development for the campaign, the FEC noted in its ruling that if any of the circumstances described in her original request changed, the current opinion could not be relied upon.<sup>113</sup> This decision highlights structural weaknesses of the current approach to adjudicating these kinds of questions. First, each candidate whose circumstances are slightly different than those discussed in *McCrery*, *Shirley*, and later *Hegar*, must seek out an individual opinion from the FEC. And second, if any of those circumstances change more than marginally, any prior decision from the FEC may become inoperative.<sup>114</sup>

One further notable difference between *McCrery* and *Shirley* is that in the latter, the FEC directly addressed the question of child care expenses.<sup>115</sup> There was no discussion of other unrelated expenses that could be paid for by the campaign. Recall in *McCrery*, the FEC first answered a question the campaign did not ask about paying for the candidate’s wife’s travel expenses.<sup>116</sup> In *Shirley*, the FEC answered the question directly and stated that because the need to pay for child care arose as a result of her campaign, the cost could be covered.<sup>117</sup> Unfortunately, yet again, the reason for the subtle difference in approach that the FEC took in answering much the same question may never be answered. One reason may be that, as a result of the intervening two decades, addressing such a question head-on may not have been seen as a novel development with regards to allowable campaign expenditures.

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<sup>109</sup> Advisory Opinion for Liuba Grechen Shirley, 2018 F.E.C. 06 (2018).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Compare Advisory Opinion for Jim McCrery, *supra* note 80, with Advisory Opinion for Liuba Grechen Shirley, *supra* note 109, specifically in that in *McCrery* the FEC justified its decision to grant the candidate’s request based on his wife’s need to travel with the campaign, whereas in *Shirley* the FEC answered the question of campaign funds for child care head on.

<sup>116</sup> Letter from Jim McCrery, *supra* note 82.

<sup>117</sup> Letter from Liuba Gretchen Shirley, *supra* note 100.

### 3. *Hegar - 2019*

The next and most recent example of the FEC's continued evolution on this matter came from the 2020 Texas Senate campaign of MJ Hegar.<sup>118</sup> Before embarking on her campaign to unseat Senator John Cornyn, Mrs. Hegar was an accomplished U.S. Air Force veteran who had transitioned her career to that of an author and speaker.<sup>119</sup> Mrs. Hegar and her husband had two children, aged two and four, who were enrolled in all-day child care while both parents worked outside the home full time.<sup>120</sup> After she began her run, Mrs. Hegar left her job to campaign full time and was thus unable to provide full-time daycare for her children.<sup>121</sup> Because her husband also worked, he was not able to provide care for the children either.<sup>122</sup>

Her campaign, 'MJ for Texas,' asked of the FEC whether the campaign could use its funds to pay for the child care of the candidate's two children.<sup>123</sup> The FEC granted the request and cited to both of its decisions in *McCreery* and *Shirley*.<sup>124</sup> The campaign could use its own funds to pay for full-time daycare because the vast majority of the time that Mrs. Hegar would be gone and unable to provide child care came as the result of campaigning.<sup>125</sup> To the extent that the costs she incurred were the direct result of campaign activities, those could be paid using campaign funds.<sup>126</sup> Finally, the FEC also noted that Mrs. Hegar should reimburse her campaign for child care costs incurred at times that she was not campaigning.<sup>127</sup>

There are a few curious things going on in this opinion. The first is that this shows the FEC's growing liberal approach to allowing campaign funds to be used for child care. Here, a candidate and her spouse, both working full-time and already paying for full-time daycare for their children, asked if the campaign could cover that expense.<sup>128</sup> The FEC unabashedly said yes.<sup>129</sup> This is a far cry from the decision it gave twenty-four years prior in *McCreery*, where the impetus for its decision was that a male candidate needed his wife

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<sup>118</sup> Advisory Opinion for Mary Jennings Hegar, 2019 F.E.C. 13 (2019).

<sup>119</sup> Patrick Svitek, *MJ Hegar Says Her Military Experience Makes Her the Fighter Democrats Need to Take on John Cornyn*, TEXAS TRIB. (Feb. 14, 2020, 12:00 AM), <https://www.texastribune.org/2020/02/14/mj-hegar-leans-military-experience-race-beat-us-sen-john-cornyn/> [https://perma.cc/C42Q-9VYL].

<sup>120</sup> Letter from MJ Hegar to Lisa J. Stevenson, Acting General Counsel (Jun. 5, 2019) (on file with the FEC), [https://www.fec.gov/files/legal/aos/2019-13/201913R\\_1.pdf](https://www.fec.gov/files/legal/aos/2019-13/201913R_1.pdf) [https://perma.cc/TP8G-W9MK].

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 2.

<sup>124</sup> *Id.* at 3.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 1.

<sup>129</sup> *Id.* at 2.

to accompany him on the trail.<sup>130</sup>

This decision is remarkable when one considers the fact that the candidate and her spouse had *already* been paying for full-time daycare before she was a candidate.<sup>131</sup> It appears that the FEC essentially glossed over the Irrespective Test in this case because these expenses existed *before* Mrs. Hegar was a candidate and would have continued regardless of her candidacy. The only condition that changed as a result of her candidacy was that Mrs. Hegar no longer had income from her speaking and writing career, and as a result was not able to pay for child care as she had before.<sup>132</sup> The children still needed care, but not as a result of her campaign. Recall that in *McCrery* and *Shirley* the coverage of child care costs for the candidates arose as a direct result of their respective candidacies.<sup>133</sup> In Representative McCrery's case it was for the occasional event that his wife would attend with him, making her unable to provide child care.<sup>134</sup> In Ms. Shirley's case, Ms. Shirley had been the one to provide child care because she could do so at the same time as she worked from home as a consultant.<sup>135</sup> In both cases, the need for child care arose as a direct result of their campaign activities. The same cannot be said for *Hegar*.

So, what exactly is happening in *Hegar*? It appears the FEC, in deciding as it did, agrees with the proposition that child care is an acceptable campaign expenditure in most situations, even in situations where it appears the necessary child care is not a direct result of campaign activities.<sup>136</sup> Considering that *Hegar* represents a family living situation that many people can relate to (two fulltime working parents with young children in need of child care), it appears the FEC has decided that the vast majority of candidates with children can legally use their campaign funds to pay for their care. This in itself is an incredibly important outcome because what the FEC has done, albeit over nearly twenty-five years, is make it significantly easier for working parents, and particularly working mothers, to embark on campaigns for elective office.

This decision could conceivably open the door for campaigns to cover other sorts of care-related expenses. Because the care of Mrs. Hegar's children could be covered, an analogous situation could arise where a candidate who provides regular care for an elderly parent or parents, or an adult child with special needs, could request that those expenses be covered by their campaigns. This would almost certainly allow for more people in

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<sup>130</sup> Compare Advisory Opinion for Mary Jennings Hegar, *supra* note 118, with Advisory Opinion for Jim McCrery, *supra* note 80.

<sup>131</sup> Letter from MJ Hegar, *supra* note 120, at 1.

<sup>132</sup> *Id.*

<sup>133</sup> Letter from Jim McCrery, *supra* note 82, at 1; Letter from Liuba Gretchen Shirley, *supra* note 100, at 2.

<sup>134</sup> Letter from Jim McCrery, *supra* note 82, at 1.

<sup>135</sup> Letter from Liuba Gretchen Shirley, *supra* note 100, at 2.

<sup>136</sup> See Advisory Opinion for Mary Jennings Hegar, *supra* note 118, at 3.

different stages of life to embark on campaigns. They would be bolstered by the knowledge that, despite giving up a job and the income that is associated with it, they would still be able to provide these basic “care” services to the people in their families who rely on them.

All of this means that *Hegar* raises implications for the future of the Irrespective Test. Based on the facts that Mrs. Hegar presented, her request for campaign funds should have failed based on a simple application of the test because her need for child care existed before the campaign, and nothing about her running changed the family’s need for that service. Thus, her request should have been denied because those needs did not arise as a result of the campaign, as in *McCreary* or *Shirley*. Yet, the FEC allowed it despite acknowledging, “[i]f the expense would exist irrespective of the candidate’s campaign, then the use of campaign funds to pay the expense constitutes conversion to personal use.”<sup>137</sup> In reconciling this apparent facial conflict with the test, it appears that the FEC simply holds that when a parent will be spending the majority of their time away from their children as a result of a campaign, as they said in *Hegar*, the Irrespective Test simply does not apply to campaign expenditures for child care, regardless of whether they existed prior to the campaign.

Despite this welcome liberalization in what constitutes a legal expenditure of campaign funds, without the passage of legislation to codify these decisions, they may not have the lasting impact that some may want. Considering that after *Buckley v. Valeo*, appointments to the FEC are controlled by the sitting president, there could be rulings in the future that run counter to *McCreary*, *Shirley*, and *Hegar*.<sup>138</sup> This illustrates why federal efforts to amend FECA to include explicit mention of care-related expenses under the permitted uses of campaign funds are necessary.

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<sup>137</sup> *Id.*

<sup>138</sup> *Buckley v. Valeo*, 424 U.S. 1, 4-5 (1976).

## V. EFFORTS TO CODIFY AT THE FEDERAL AND STATE LEVEL

### A. *Federal Codification*

Representative Katie Porter (CA-45) understands how difficult it can be to be a mother to young children while also running for Congress. “As a single working mom myself, I am acutely aware of the challenge it can be to balance running for office and taking care of a family.”<sup>139</sup> Her first-hand experience at juggling the demands of a full-time campaign schedule with those of being a mother helped to inspire H.R. 1515 or the Help America Run Act.<sup>140</sup> After it passed the House with enormous bipartisan support, Representative Porter jokingly said “everyone in America should be grateful that my children were well supervised during the campaign.”<sup>141</sup>

Her bill, which was subsequently included in the House’s enormous voting rights revamp, H.R. 1, would allow campaign funds of currently non-elected candidates to be used to pay for child care, eldercare, health insurance premiums, or similar care for any other types of dependents the candidate claims.<sup>142</sup> Technically, the bill amends FECA by adding another section that expressly lists these types of expenditures as authorized personal uses.<sup>143</sup>

The findings and purpose section of the Help America Run Act describes the problem that the measures aim to solve. Namely:

to ensure that all Americans who are otherwise qualified to serve this Nation are able to run for office, regardless of their economic status. By expanding permissible uses of campaign funds and providing modest assurance that testing a run for office will not cost one’s livelihood, the Help America Run Act will facilitate the candidacy of representatives who more accurately reflect the experiences, challenges, and ideals of everyday Americans.<sup>144</sup>

Some of the key findings supporting this goal are that the average median net worth of lawmakers is \$1 million which is eighteen times the wealth of a typical American household.<sup>145</sup> Most importantly, the bill illustrates how seemingly neutral election rules like those that prevent using campaign funds for “care” related expenses actually disadvantage people

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<sup>139</sup> Staggs, *supra* note 98.

<sup>140</sup> *See id.*

<sup>141</sup> *Id.*

<sup>142</sup> For the People Act, H.R. 1, 117<sup>th</sup> Cong. §§ 5301–5302 (as passed by House, March 3, 2021).

<sup>143</sup> *Id.* at § 5302.

<sup>144</sup> *Id.* at § 5301(c).

<sup>145</sup> *Id.* at § 5301(b)(4).

who rely on a regular paycheck.<sup>146</sup> This skews the population of those who run for office, and are therefore elected, to being one which is more affluent.<sup>147</sup>

Despite originally passing the House with overwhelming support as a stand-alone bill, its fate is now intertwined with H.R. 1, the For the People Act.<sup>148</sup> Currently this once-in-a-generation overhaul to our voting and election system is sitting in the Senate where current rules require that it receive sixty votes to pass.<sup>149</sup> Because Democrats hold the slimmest of majorities in the upper chamber, any hopes of passing H.R. 1 would require changing the Senate rules to overcome the filibuster.<sup>150</sup> The future of H.R. 1 and the Help America Run Act are hopelessly uncertain. If H.R. 1 does not become law, the House should pass language similar to Representative Porter's original bill that essentially exempts care-related activities from the Irrespective Test. Considering how flagrantly the opinion in *Hegar* seems to ignore the test, codifying this would clarify exactly what is and is not allowed, and prevent backsliding from a future FEC.

### *B. State Codification*

The focus of this Article has thus far been on decisions and laws that pertain to elections to federal office and the candidates who run in them. Yet, the same need exists at the state level to rewrite campaign laws that act as a barrier to mothers and fathers running for office because their state election laws do not allow for campaign funds to be used for child care.<sup>151</sup>

Currently, women comprise roughly 25% of both the U.S. Senate and House of Representatives.<sup>152</sup> The number only slightly improves when

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<sup>146</sup> *Id.* at § 5301(b)(2).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Richard L. Hasen, *H.R. 1 Can't Pass the Senate. But Here Are Some Voting Reforms that Could*, WASH. POST (Mar. 16, 2021), <https://www.washingtonpost.com/outlook/2021/03/16/hr-1-voting-reforms/> [<https://perma.cc/LS53-C86D>].

<sup>150</sup> Sahil Kapur, *As Filibuster Clash Paralyzes Senate, Democratic Frustration Grows*, NBC NEWS (Jan. 25, 2021), <https://www.nbcnews.com/politics/congress/senate-paralyzed-filibuster-clash-democrats-face-dilemma-how-proceed-n1255563> [<https://perma.cc/M47Q-HMCA>].

<sup>151</sup> *See State Candidates and the Use of Campaign Funds for Childcare Expenses*, RUTGERS CTR. FOR AM. WOMEN AND POL. (Mar. 21, 2021), <https://cawp.rutgers.edu/use-campaign-funds-childcare-expenses> [<https://perma.cc/8MR8-F3BJ>], (illustrating current efforts to change state level election laws to allow for campaign-related child care expenditures, and the number of states that currently do not allow for it. States that currently explicitly ban this type of expenditure include Delaware (DEL. CODE ANN. tit. 15, § 8020), Iowa (IOWA CODE § 68A.302), Massachusetts (MASS. GEN. LAWS ch. 55, § 6), and Tennessee (TENN. CODE ANN. § 2-10-102)).

<sup>152</sup> *Women in the U.S. Congress 2021*, RUTGERS CTR. FOR AM. WOMEN AND POL. (Mar. 21, 2021), <https://cawp.rutgers.edu/women-us-congress-2021> [<https://perma.cc/N6DU-94K4>].

looking at state legislatures.<sup>153</sup> In 2021, of the 7,383 state legislators in the United States, 31.1% of them are women.<sup>154</sup> Only twenty-two states currently allow campaign funds to be used for child care, and of those, only fourteen have enshrined it in law.<sup>155</sup> Nine have relied on their respective election authorities, with one being decided by a state court.<sup>156</sup> The majority of state's laws are silent on the issue, while three specifically prohibit it.<sup>157</sup>

In states where this use of campaign funds has become enshrined in law, the legislative intent for doing so varies, but generally follows the same logic of the Help America Run Act. Namely, that not being able to use campaign funds for child care is a barrier that prevents working parents, specifically mothers, from running for office, and that it should be eliminated. In Rhode Island, Senate Bill 60 passed while acknowledging the FEC's 2018 *Shirley* decision.<sup>158</sup> California's version of the law allows this type of expenditure when the candidate is "engaging in campaign activities."<sup>159</sup> The authors of California's bill also cited the FEC's decision the year prior in *Shirley* as a motivation for introducing the bill.<sup>160</sup> Before Vermont passed its version, H.B. 10, the legislature heard testimony from Cary Brown, Executive Director of the Vermont Commission on Women.<sup>161</sup> In her report, she echoed many of the same reasons used to support similar measures in other states. Namely, that women face disproportionate obstacles to running for office, specifically regarding child care responsibilities.<sup>162</sup> While acknowledging the burden that women historically bear with regards to children, Ms. Brown's testimony made the strong case that this change would benefit men just as much as women:

<sup>153</sup> *Women in State Legislatures 2021*, RUTGERS CTR. FOR AM. WOMEN AND POL. (Jan. 2021), <https://cawp.rutgers.edu/women-state-legislatures-2021> [https://perma.cc/2AJ8-DTEZ].

<sup>154</sup> *Id.*

<sup>155</sup> *State Candidates and the Use of Campaign Funds for Childcare Expenses*, *supra* note 151.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Press Release*, RHODE ISLAND GEN. ASSEMBLY, *New Law Allows Childcare as Election Expense* (Jul. 15, 2021), [https://www.rilegislature.gov/pressrelease/\\_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=371934](https://www.rilegislature.gov/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=371934) [https://perma.cc/EZV9-GGJ2].

<sup>159</sup> CAL. GOV'T CODE § 89513 (2015).

<sup>160</sup> See Evan Symon, *Campaign Funds Can Now Be Used to Cover Child Care Costs Under Newly Signed AB 220*, CALIFORNIA GLOBE (Oct. 3, 2019), <https://californiaglobe.com/articles/campaign-funds-can-now-be-used-to-cover-child-care-costs-under-newly-signed-ab-220/> [https://perma.cc/9GJ3-94NB].

<sup>161</sup> *Hearing on H.619 – An Act Relating to Permitted Candidate Expenditures Before the S. Comm. on Gov't Operations*, 2019-2020 Sess. (Vt. 2020) (statement of Cary Brown, Executive Director of the Vermont Commission on Women), <https://women.vermont.gov/sites/women/files/pdf/VCW%20testimony%20on%20H619%204%20Jun%202020.pdf> [https://perma.cc/Y9NQ-JELC].

<sup>162</sup> *Id.* at 2.

Now we have both women and men running, both women and men in the workforce, and both women and men needing someone to take care of the children.

Allowing child and dependent care as a campaign expense is not just a benefit to women candidates. Fathers running for office are finding themselves with the same need for child and dependent care to allow them to campaign as mothers.<sup>163</sup>

Ms. Brown's testimony also acknowledged the recent FEC decisions that had allowed this type of expenditure at the federal level.<sup>164</sup> Based on this and other states' justifications for their own versions of these laws, it is clear that the FEC decision in *Shirley* was a green light for similar decisions at the state level.

In Tennessee, Democratic Representative Jason Powell authored and introduced H.B. 0007.<sup>165</sup> Representative Powell stated that the bill was needed to help recruit a wider range of candidates for office.<sup>166</sup> Ultimately however, the bill did not pass after it was voted down in the House Elections and Campaign Subcommittee.<sup>167</sup> Republican Representative Crawford justified his opposition to the bill because he could not understand "how a candidate who couldn't afford child care during a campaign could be a lawmaker during a legislative session."<sup>168</sup> A similar bill in Ohio also failed to pass before the legislature adjourned despite using the similar justifications from states where related bills have passed.<sup>169</sup>

Unfortunately, little support for this Article's central thesis can be drawn from the example of states that have allowed for the use of campaign funds for child care expenses. Several of the states that have codified these measures into law rank in the bottom ten states for representation of women in their legislatures.<sup>170</sup> One explanation for this might be due to the relative recency of these changes, many of which have only been operative since 2018, allowing for essentially one election cycle from which data can be

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> H.B. 0007, 111<sup>th</sup> Gen. Assemb., (Tenn. 2019).

<sup>166</sup> *Tennessee Kills Bill Allowing Campaign Cash for Child Care*, COLUMBIA DAILY HERALD (Mar. 13, 2019), <https://www.columbiadailyherald.com/story/news/2019/03/13/tennessee-kills-bill-allowing-campaign/5720952007/%20> [<https://perma.cc/Y2QH-B8Z2>].

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> OHIO LEG. SERV. COMM'N, S.B. 122 BILL ANALYSIS, <https://www.legislature.ohio.gov/download?key=17089&format=pdf> [<https://perma.cc/PD6A-UW8P>].

<sup>170</sup> *See Women in State Legislatures 2021*, *supra* note 153 (showing WV, MS, TN, AL, SC, WY, LA, OK, ND, and AR in the bottom ten states).



drawn.<sup>171</sup>

It appears that many of the efforts to change state level election laws in this area have arisen within the last three years.<sup>172</sup> Following the FEC's decision in *Shirley*, several state-level candidates asked their respective authorities essentially the same question regarding use of campaign funds for child care.<sup>173</sup> The majority of states that have examined the issue now allow the use of campaign funds for this purpose in some form.<sup>174</sup> There remain eighteen states where there has been no explicit permission granted or denied.<sup>175</sup>

### C. *Minnesota's Statutory Example*

Of the states that currently explicitly allow for campaign funds for child care, Minnesota's statute serves as a helpful example. Minn. Stat. § 211B.12 describes legal campaign expenditures that are reasonably related to the conduct of campaigns.<sup>176</sup> Subdivision 26 explicitly states that "costs of child care for the candidate's children when campaigning" is an acceptable non-campaign disbursement.<sup>177</sup> This bill is generally reflective of the approach that other states have taken in this area;<sup>178</sup> that child care can be covered by a campaign during the time that the candidate is actively campaigning, and the care is necessary.<sup>179</sup>

This approach, while certainly helpful to parents who choose to run in local and state races, seems to indicate less willingness to support such candidates in comparison to the generous allowances in the Help America Run Act.<sup>180</sup> The first indication of that is that state laws and administrative decisions mostly seem to address the child care component while leaving out the other "care" services a candidate might face, such as health care or

<sup>171</sup> See *State Candidates and the Use of Campaign Funds for Childcare Expenses*, *supra* note 151 (describing the first FEC ruling in May 2018, for Liuba Grechen Shirley, a congressional candidate in NY, in support of using campaign funds to cover campaign-related child care expenses).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See MINN. STAT. § 211B.12 (2021).

<sup>177</sup> See MINN. STAT. § 10A.01. subdiv. 26(11) (2021).

<sup>178</sup> See, e.g., CAL. GOV'T CODE ANN. § 89513 (West) (stating that when child care costs arising when the candidate is engaging in political activity may be covered by the campaign); see also S.B.19-229, 73rd Gen. Assemb., Reg. Sess. (Colo. 2019) (Colorado's SB19-229 allowed candidates to use campaign funds for child care expenses that arise directly from campaign activities); H.B. 221, 67th Gen. Assemb., Reg. Sess. (Mont. 2021) (Montana also allows for this when the candidate is engaged in campaign activities). See Center for American Women and Politics, *State Candidates and the Use of Campaign Funds for Childcare Expenses*, *supra* note 141 (for a definitive list).

<sup>179</sup> CAL. GOV'T CODE ANN. § 89513 (West).

<sup>180</sup> See For the People Act, H.R. 1, 117<sup>th</sup> Cong. §§ 5301-5302 (as passed by House, March 3, 2021).

elder care.<sup>181</sup> Secondly, state laws and decisions seem to reflect the sentiment that the FEC had when deciding *McCrery* back in 1995. Namely, that a campaign could cover these costs on the occasions when the candidate was campaigning and otherwise unavailable to take care of a child.<sup>182</sup> Compared to the seemingly expansive allowance the FEC made in *Hegar*, the approach the states take appears rather confined in scope.

In further contrast, the Help America Run Act says that these types of expenditures are authorized “if the services are necessary to enable the participation of the candidate in campaign-connected activities.”<sup>183</sup> This clearly illustrates that campaigns are able to cover these costs even when the candidate is not exclusively campaigning, but rather when doing so will help them participate in the first place. States should reexamine the approaches they have taken in this area, and where appropriate, tailor their efforts to be more in line with the federal approach. Hawaii appears to be the lone example of a state going further by including “child and vital household dependent care costs” as permitted campaign expenditures.<sup>184</sup> Following Hawaii’s approach could help make campaigning for state and local offices more appealing and accessible to working parents and mothers who may have concerns other than simply providing child care.

#### *D. Administrative Decisions*

While some states have passed or amended legislation to explicitly allow for child care to be a covered campaign expense, other states have relied on their equivalent of the FEC.<sup>185</sup> The decisions vary widely.

Decisions that come out in favor of child care expenditures use some form of a “but for” test, similar to the FECA’s Irrespective Test.<sup>186</sup> The Nebraska Accountability and Disclosure Commission published a decision one year before *McCrery* that described expenditures that would not have arisen but for the campaign are allowable.<sup>187</sup> Furthermore, Nebraska’s Candidate Committee Treasurer’s Guide exemplifies a permitted campaign fund expenditures by allowing: “Babysitters when it is necessary that both the candidate and his/her spouse attend a campaign event.”<sup>188</sup> Read together,

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<sup>181</sup> *Id.*

<sup>182</sup> Advisory Opinion for Jim McCrery, *supra* note 80.

<sup>183</sup> For the People Act, H.R. 1, 117<sup>th</sup> Cong. §§ 5301–5302 (as passed by House, March 3, 2021).

<sup>184</sup> S.B. 597, 31st Gen. Assemb., Reg. Sess. (Haw. 2021).

<sup>185</sup> *State Candidates and the Use of Campaign Funds for Childcare Expenses*, *supra* note 151.

<sup>186</sup> *Id.*

<sup>187</sup> Advisory Opinion No. 146 for Eric Will, Neb. Accountability and Disclosure Comm’n. (1994), <https://nadc.nebraska.gov/AdvisoryOpinions/OPINION%20146.htm> [<https://perma.cc/VC9U-KRFS>].

<sup>188</sup> NEB. ACCOUNTABILITY AND DISCLOSURE COMM’N, TREASURER’S GUIDE (July 2015), <https://www.nadc.nebraska.gov/pdf/2016CandidateComTreasGuideDraft31Jul15.pdf> [<https://perma.cc/L7B2-9VME>].

this would imply that in situations like *McCrery*, child care is a permitted expenditure.

Examples from other states that have allowed this type of expenditure do so by saying that spending campaign funds on child care is allowable, but it must arise “directly” from campaign activities.<sup>189</sup> Just like the laws that some states have passed, these decisions generally fall short of the current standards set by the FEC and the Help America Run Act.<sup>190</sup> This might be explained, however, by the fact that many of these election-related commissions and boards in the various states likely do not want to exceed their authority and move beyond what their respective legislatures have allowed. That was the sentiment when the Iowa Ethics & Campaign Disclosure Board (“IECDB”) denied a request from a candidate to use campaign funds for child care.<sup>191</sup>

Despite the national patchwork of laws and administrative rulings that either authorize this type of campaign expenditure, deny it, or remain silent on the matter, it is clear this issue is not going away. Lawmakers and outside groups, like the Vote Momma Foundation, will continue to advocate for campaign funds to cover child care costs for candidates. As more mothers enter the field of electoral politics they will bring with them their experience as mothers, and they will show voters the advantages of sending a person with that title to the halls of government.

## VI. MOTHERHOOD AND CHILD CARE AS AN ASSET

As mentioned earlier, the FEC allows first-time candidates to withdraw a salary that adheres to specific limits and guidelines.<sup>192</sup> In fact, this measure was promulgated to lower the bar for entry into federal campaigns for people who are not independently wealthy.<sup>193</sup> This begs the question: If the FEC already allows candidates to pay themselves a salary, does that not essentially eliminate the need for individual opinions on child care expenditures or federal and state codifications of such adjudications?

It is true that if a candidate receives a salary from the campaign, it would obviate the need for the candidate to ask the FEC for permission to pay for child care because a candidate’s salary is theirs to use, like the salary

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<sup>189</sup> See *State Candidates and the Use of Campaign Funds for Childcare Expenses*, *supra* note 151 (showing how various states allow for this type of expenditure).

<sup>190</sup> For the People Act, H.R. 1, 117<sup>th</sup> Cong. §§ 5301–5302 (as passed by House, March 3, 2021)

<sup>191</sup> Advisory Opinion for Reyma McCoy McDeid, 2018 IECDB 02, (2018), <https://ethics.iowa.gov/advisory-opinion/iecdb-ao-2018-02> [<https://perma.cc/9C6B-2GFX>].

<sup>192</sup> See *supra* text accompanying note 61.

<sup>193</sup> Bridget Bowman, *Running for Office is a Full-Time Job. How One Candidate is Still Getting Paid*, ROLL CALL (July 23, 2020, 7:30AM), <https://www.rollcall.com/2020/07/23/running-for-office-is-a-full-time-job-how-one-candidate-is-still-getting-paid/> [<https://perma.cc/VP74-EHPP>].

for anyone else, candidate or not.<sup>194</sup> However, relatively few candidates take advantage of the ability to take a salary.<sup>195</sup> During the 2017–2018 season, only twenty-two candidates did so.<sup>196</sup> As mentioned above, the way this provision is administered may explain some of the reason for this.<sup>197</sup> Just like how hiring a family member to a campaign position may create political headaches or cries of nepotism, a candidate taking a salary may not be received well by the electorate and could certainly be spun against the candidate by competitors. So as long as a candidate chooses not to take a salary, which will frequently be the case, it will still be necessary to have opinions from the FEC and state election boards, and legislation to affirm or deny questions on the use of campaign funds for child care.

However, there is likely another variable at play here. As opposed to decades ago when a female candidate likely would have faced repercussions from running for office in lieu of caring for her children, the decision to run and be a mother simultaneously may in fact now be a political asset.<sup>198</sup> In recent years, women running for office have begun centering their experiences as mothers, and use it as a point of differentiation.<sup>199</sup> This has included bringing children to campaign events, featuring them in promotional materials, and drawing on stories about raising and supporting their families to show connection and understanding to their communities.<sup>200</sup> This is not to say that highlighting a candidate's experience as a mother of young children will not elicit some old-fashioned opinions as to her ability to do the job.<sup>201</sup> Yet, more and more, what was once considered a liability can now be used as a political asset.

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<sup>194</sup> See *supra* text accompanying note 61.

<sup>195</sup> Ashley Balcerzak, *How to Run for Congress if You're Broke*, NBC NEWS (Dec. 10, 2018, 4:06 AM), <https://www.nbcnews.com/politics/elections/how-run-congress-if-you-re-broke-n945371> [<https://perma.cc/XJ67-LTNH>].

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Neklason, *supra* note 71.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> BARBARA LEE FAMILY FOUNDATION, MODERN FAMILY: HOW WOMEN CANDIDATES CAN TALK ABOUT POLITICS, PARENTING, AND THEIR PERSONAL LIVES 2 (2017). This study finds, frustratingly, that voters will often knowingly uphold a double standard and perceive female candidates with children differently than their male peers. *Id.* At the same time, voters still also worry that a candidate that is not married or has not had children will have difficulty relating to their issues. *Id.* These two findings seemingly box female candidates into the old model of entering politics only after their children are grown. Voters also continue to express concern over a female candidates' ability to balance her work in office with the requirements of her family, a critique that male candidates rarely face. *Id.*

## VII. CONCLUSION AND RECOMMENDATION FOR FURTHER RESEARCH

After the election of Donald Trump to the presidency, the nation saw an explosion of women interested in running for office and many followed through.<sup>202</sup> Gone are the days described in the book *Madam President*, where if a woman wanted to run for office she would likely have wait until her children were grown out of fear that having both public and maternal obligations would be seen as a liability.<sup>203</sup> Or worse, that it could even be used as a political cudgel against her candidacy.<sup>204</sup>

Today, mothers should not be constrained to the old rules of the road, and instead turn their status as being mothers to young children from a liability into an asset. In 2018 for example, there were two gubernatorial candidates, in Wisconsin and New Jersey, who both featured footage of them breastfeeding their infant children in campaign ads.<sup>205</sup> Yet even with changing attitudes about who makes a good candidate, women (and men) who would have to give up a full-time job in order to run, face the added challenge of covering the cost of child care or any other types of “care” related expenses. The lived experience of parents to young children, especially mothers are just as important as anyone else’s. It is high time that our federal and state election laws are changed to allow these candidates an equal opportunity to engage in the political process and share their perspectives on matters of public importance. The addition of their voices will enrich our political discourse and hopefully make our office holders more representative of the diversity that can be seen in our nation.

Lastly, in researching and writing on this topic, there was an absolute dearth of scholarly literature in both social science and legal journals on this subject. As mentioned before, there is a large amount of literature from political scientists that question the underrepresentation of women and diverse voices in politics and answer it with discussion of societal norms, psychological dispositions, recruitment biases, etc.<sup>206</sup> Within legal journals, the research generally focused on the minutia of various campaign finance laws and the effects they may have on women and minority candidates. It is unclear why there would be such an enormous research gap on this topic. One reason may be that writing a proposal for grant funding to conduct this type of research is a failing endeavor for the academic faced with the

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<sup>202</sup> Chris Tognotti, *Women Are Running for Office at Unprecedented Rates Since Trump Took Office*, EMILY’S LIST, <https://www.emilyslist.org/news/entry/women-are-running-for-office-at-unprecedented-rates-since-trump-took-office> [https://perma.cc/853T-QG59].

<sup>203</sup> CLIFT & BRAZAITIS, *supra* note 62.

<sup>204</sup> *Id.*

<sup>205</sup> Neklason, *supra* note 71.

<sup>206</sup> *See generally supra* Part II.

prospect of “publish or perish.” Suggesting “let candidates pay child care out of campaign funds” may not be a desirable thesis for an aspiring political scientist or legal scholar with which to lead. In addition to a lack of social science and legal writing on the topic, there also appears to be no survey or paper that identified the number of women who wanted to run for office but decided against it because of uncertainty surrounding whether or not they would be able to afford child care without a full-time salary.

It is these simple, possibly obvious changes to election law that can incrementally help to diversify our pool of federal and state candidates. Hopefully this leads to a greater diversity within our federal and state legislatures. It certainly cannot hurt.