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For LGBTQ People, Recent Anti-Discrimination Advances Could Lessen Barriers to Economic Inclusion

By Ali Zane

June is Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Pride Month, a time to celebrate LGBTQ individuals and families. It is also a time to honor leaders of the fight for LGBTQ rights and to commemorate those lost to anti-LGBTQ violence.

Central to Pride Month, which started as a commemoration of the Stonewall Uprising against police brutality,¹ is the ongoing movement for LGBTQ justice. While the nation has made significant gains toward full social inclusion for LGBTQ people in the past two decades, there is more work to be done until every member of the LGBTQ community — and the parents who raise LGBTQ children — can work, learn, and access food, housing, health care, and public benefits without facing discrimination, criminalization, or violence.

LGBTQ People Face Higher Rates of Discrimination, Poverty

Everyone, regardless of their sexual orientation or gender identity, should have economic stability and opportunity, but discrimination against LGBTQ people is a significant barrier to their full economic inclusion. Nearly 1 in 3 LGBTQ adults reported that discrimination negatively affected their financial well-being to a moderate or significant degree, according to a nationally representative 2020 Center for American Progress survey.²

Discrimination can make it difficult for LGBTQ people to find and keep work, rent an apartment, receive needed medical care, or meet other basic needs. During the COVID-19 pandemic, the Census Bureau included questions about sexual orientation and gender identity for the first time in its Household Pulse Survey. According to Pulse data, LGBTQ adults were more likely to report loss of employment, not having enough to eat, and inability to pay expenses than non-LGBTQ adults.³

¹ Emanuella Grinberg, “How the Stonewall riots inspired today’s Pride celebrations,” CNN, June 28, 2019, <https://www.cnn.com/2019/06/28/us/1969-stonewall-riots-history/index.html>.

² Sharita Gruberg, Lindsay Mahowald, and John Halpin, “The State of the LGBTQ Community in 2020,” Center for American Progress (CAP), October 6, 2020, <https://www.americanprogress.org/article/state-lgbtq-community-2020/>.

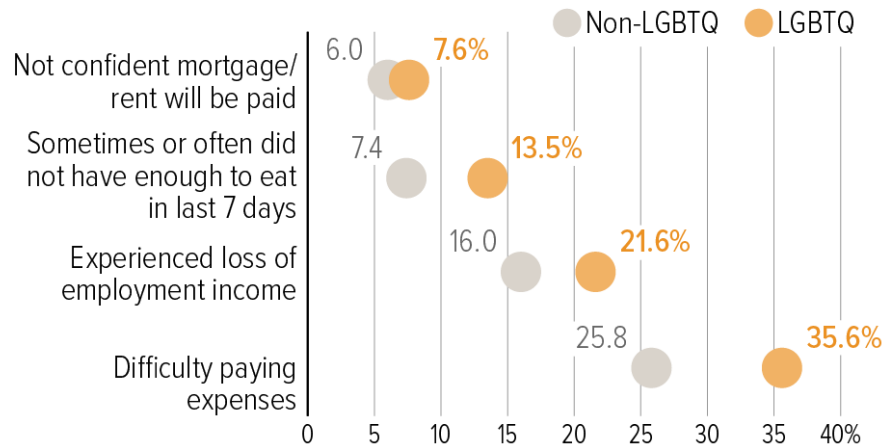
³ Lydia Anderson *et al.*, “New Household Pulse Survey Data Reveals LGBT and Non-LGBT Respondents During COVID-19 Pandemic,” Census Bureau, November 4, 2021, <https://www.census.gov/library/stories/2021/11/census-bureau-survey-explores-sexual-orientation-and-gender-identity.html>.

(See Figure 1.) These data align with previous research that LGBTQ people are more likely to have low incomes, and face economic instability at higher rates, than non-LGBTQ people.⁴

FIGURE 1

LGBTQ Adults Reported Higher Rates of Economic Hardship During Pandemic

Share of adults reporting that their household experienced the following economic hardships



Note: All differences are statistically significant at the 90 percent confidence level. Data collected between July 21 and September 13, 2021.

Source: Adapted from Anderson et al., "New Household Pulse Survey Data Reveals Differences between LGBT and Non-LGBT Respondents During COVID-19 Pandemic," Census Bureau, November 4, 2021

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Different LGBTQ Groups Face Different Barriers to Economic Inclusion

Pride Month is a time to embrace the diversity of LGBTQ people. There is no singular “LGBTQ experience.” Therefore, addressing LGBTQ poverty requires recognizing the different circumstances of people in different LGBTQ groups.

LGBTQ people of color. Structural bias in the labor market and discriminatory governmental policies have led to higher rates of poverty for people of color, and anti-LGBTQ discrimination can put up further barriers to economic stability for LGBTQ people of color. In the 2020 Center for American Progress survey, nearly 4 in 10 Black LGBTQ adults reported that discrimination moderately or significantly affected their financial well-being.⁵ Similarly, analyzing Gallup survey data collected between 2012 and 2017, the Williams Institute found that nearly half of LGBTQ people of

⁴ See e.g. M.V. Lee Badgett, Soon Kyu Choi, and Bianca D.M. Wilson, “LGBT Poverty in the United States,” Williams Institute, University of California, Los Angeles School of Law, October 2019, <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

⁵ Gruberg, Mahowald, and Halpin, *op. cit.*; Caroline Medina *et al.*, “The United States Must Advance Economic Security for Disabled LGBTQI+ Workers,” CAP, November 3, 2021, <https://www.americanprogress.org/article/united-states-must-advance-economic-security-disabled-lgbtqi-workers/>.

color reported living in a low-income household.⁶ For the approximately 1.3 million LGBTQ immigrants — most of whom are people of color — and their families,⁷ multiple barriers to obtaining public benefits that are available to others in times of need present another obstacle to economic inclusion.

LGBTQ people with disabilities. LGBTQ people, especially trans and bisexual people, are more likely to have a disability than cisgender straight people.⁸ People with disabilities also can face significant barriers to economic inclusion, such as employment discrimination, lack of workplace accommodations, lower pay, higher disability-related costs, and insufficient workplace protections like sick days and paid medical leave.⁹ Discrimination is another such barrier; nearly 4 in 10 LGBTQ adults with disabilities reported that discrimination moderately or significantly affected their financial well-being, according to the 2020 Center for American Progress survey.¹⁰

Transgender and non-binary people.¹¹ Transgender people face the highest rates of poverty¹² and have needs distinct from those of cisgender LGBTQ people. Trans people reported high rates of discrimination when trying to find work, rent an apartment, or attend school in the latest U.S. Transgender Survey from 2015,¹³ all of which can limit their opportunities for economic stability and mobility. Moreover, there has been a recent uptick in state policies targeted against trans people and their families, seeking to deny them needed services and the ability to live their lives in accordance with their gender identity.¹⁴

For example, trans and non-binary people may experience discrimination or be denied access to needed benefits or services because their government-issued ID does not reflect their gender identity and chosen name.¹⁵ This is especially concerning given that only one-fifth of trans people in the 2015 survey reported having successfully changed all of their IDs and records to their correct

⁶ Williams Institute, “Race and Well-Being Among LGBT Adults,” <https://williamsinstitute.law.ucla.edu/visualization/lgbt-races/>.

⁷ Shoshana K. Goldberg and Kerith J. Conron, “LGBT Adult Immigrants in the United States,” Williams Institute, February 2021, <https://williamsinstitute.law.ucla.edu/publications/lgbt-immigrants-in-the-us/>.

⁸ Badgett, Choi, and Wilson, *op. cit.*

⁹ Medina *et al.*, *op. cit.*

¹⁰ *Ibid.*

¹¹ Data cited in this section uses “transgender” as an umbrella term to include people whose gender is not (exclusively) the one that they were assigned at birth. This term includes people who identify as trans men and trans women, as well as people who identify as non-binary.

¹² Badgett, Choi, and Wilson, *op. cit.*

¹³ Gruberg, Mahowald, and Halpin, *op. cit.*; Sandy E. James *et al.*, “The Report of the 2015 U.S. Transgender Survey,” National Center for Transgender Equality, December 2016, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁴ American Civil Liberties Union, “Legislation affecting LGBTQ rights across the country,” updated June 17, 2022, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>.

¹⁵ Lourdes Ashley Hunter *et al.*, “Intersecting Injustice: Addressing LGBTQ Poverty and Economic Justice for All: A National Call to Action,” Social Justice Sexuality Center, City University of New York, March 2018, https://static1.squarespace.com/static/5a00c5f2a803bbe2eb0ff14e/t/5aca6f45758d46742a5b8f78/1523216213447/FI+NAL+PovertyReport_HighRes.pdf.

gender identity and name. One-third of trans people in that survey reported not being able to change any of their IDs or records (such as Social Security and school records).¹⁶ Similarly, in the 2020 Center for American Progress survey, 51 percent of trans people reported that discrimination moderately or significantly impacted their ability to obtain accurate identification.¹⁷

Fortunately, there have been significant strides toward more trans-inclusive identification policies. For example, the federal government, as well as 22 states and Washington D.C., allow non-binary people to choose an “X” gender marker.¹⁸ On the other hand, 17 states and two U.S. Territories have policies making it more difficult for trans people to have their gender marker on their driver’s license or birth certificate align with the gender identity, such as requirements that they have undergone gender affirmation surgery.¹⁹

For trans people with criminal records, obtaining accurate ID can be even more challenging. At least 17 states either temporarily or permanently bar people with a criminal record from legally changing their name, and other states require additional scrutiny for those with criminal records.²⁰ Trans people are disproportionately arrested and incarcerated, often because they had engaged in criminalized activities to earn income to meet their basic needs.²¹ Also, due to racial bias, people of color are overrepresented across many dimensions of the criminal legal system, including arrests and incarceration.²² Therefore, policies limiting the ability of people with criminal records to change their name likely have a disproportionate impact on trans people of color.

Expanded Anti-Discrimination Protections Hold Hope for Greater Inclusion

Making progress against LGBTQ poverty will require robust protections against anti-LGBTQ discrimination. Although some progress has been made, much more is needed.

In 2020, the Supreme Court ruled in *Bostock v. Clayton County* that anti-LGBTQ discrimination in employment is a form of illegal sex discrimination under federal civil rights law.²³ The *Bostock* decision has the potential to expand LGBTQ rights far beyond employment.²⁴

¹⁶ James *et al.*, *op. cit.*

¹⁷ Gruberg, Mahowald, and Halpin, *op. cit.*

¹⁸ U.S. Department of State, “X Gender Marker Available on U.S. Passports Starting April 11,” March 31, 2022, <https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/>; Movement Advancement Project, “Equality Maps: Identity Document Laws and Policies,” updated June 23, 2022, <https://www.lgbtmap.org/equality-maps/identity-document-laws>.

¹⁹ *Ibid.*

²⁰ Beth Schwartzapfel, “What’s in a Name?” Marshall Project, January 27, 2020, <https://www.themarshallproject.org/2020/01/27/what-s-in-a-name>.

²¹ Hunter *et al.*, *op. cit.*

²² Wendy Sawyer, “Visualizing the racial disparities in mass incarceration,” PPI, July 27, 2020, <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>.

²³ *Bostock v. Clayton County*, <https://www.law.cornell.edu/supremecourt/text/17-1618>.

²⁴ Christy Mallory, Luis A. Vasquez, and Celia Meredith, “Legal Protections for LGBT People After *Bostock v. Clayton County*,” July 2020, <https://williamsinstitute.law.ucla.edu/publications/state-nd-laws-after-bostock/>.

In January 2021, President Biden signed an executive order directing all federal agencies to implement policies that align with the *Bostock* decision.²⁵ This executive order has already expanded anti-discrimination protections in key areas, including:

Health care. While health care is critical for everyone, many LGBTQ people, especially trans people, face discrimination in health care settings or avoid care for fear of discrimination.²⁶ Ensuring that LGBTQ people can access health care without discrimination is especially important because they are more likely to report fair or poor health and to have ongoing health conditions than non-LGBTQ people.²⁷

Section 1557 of the Affordable Care Act prohibits health care providers that receive federal funding from discriminating based on sex.²⁸ In May 2021, the Office of Civil Rights in the Department of Health and Human Services (HHS) announced that it will interpret and enforce Section 1557 to protect sexual orientation and gender identity.²⁹ The Biden Administration recently indicated that it will issue a Notice of Proposed Rulemaking (NPRM) that is expected to restore explicit anti-discrimination protections in federal regulation³⁰ that the Obama Administration established in 2016 but the Trump Administration rolled back in 2020,³¹ including:

- Protection for trans and non-binary people, by restoring language protecting against discrimination based on gender identity (which was defined in the 2016 rule to include gender expression and transgender status) and sex stereotyping under Section 1557. The NPRM is also expected to include sexual orientation in its definition of sex discrimination, to align with the *Bostock* decision.
- Protection against denying or limiting services to trans and non-binary people if the services are either typically or exclusively available to members of another sex or gender. For example, a trans man would be explicitly protected against being denied a necessary Pap smear.

²⁵ White House, “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>.

²⁶ Gruberg, Mahowald, and Halpin, *op. cit.*

²⁷ Lindsey Dawson *et al.*, “LGBT+ People’s Health and Experiences Accessing Care,” Kaiser Family Foundation (KFF), July 22, 2021, <https://www.kff.org/womens-health-policy/report/lgbt-peoples-health-and-experiences-accessing-care/>.

²⁸ Patient Protection and Affordable Care Act, 42 USC § 18116 (2010).

²⁹ Office of Civil Rights, Department of Health and Human Services, “Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972,” May 10, 2021, <https://www.hhs.gov/sites/default/files/ocr-bostock-notification.pdf>.

³⁰ *Ibid.*

³¹ MaryBeth Musumeci *et al.*, “Recent and Anticipated Actions to Reverse Trump Administration Section 1557 Non-Discrimination Rules,” KFF, June 9, 2021, <https://www.kff.org/racial-equity-and-health-policy/issue-brief/recent-and-anticipated-actions-to-reverse-trump-administration-section-1557-non-discrimination-rules/>.

- Protection for trans people against being categorically denied coverage, or given only limited coverage, for gender-affirming health care, such as hormone replacement therapy and gender affirmation surgery.
- Protection against discrimination in health care against people, including LGBTQ people, who are seeking or have had an abortion.

The NPRM is also expected to restore LGBTQ anti-discrimination protections in ten other regulations, include those pertaining to state Medicaid programs, Medicaid managed care entities, private health insurers, and health insurance marketplaces.

Having an administration with the policy tools and will to protect LGBTQ people’s access to health care is important in the face of recent threats, including from states pursuing policies to ban or restrict transgender people’s access to gender-affirming care.

Housing. Housing is critical for supporting economic inclusion and good health; unfortunately LGBTQ people, especially youth, trans people, and people of color, face high rates of housing instability and homelessness.³² The Department of Housing and Urban Development (HUD) has taken two recent actions to protect LGBTQ people from discrimination.

First, HUD issued a memorandum interpreting the 1968 Fair Housing Act to prohibit anti-LGBTQ discrimination and greatly expanded its efforts to combat such discrimination.³³ This memorandum directed the federal Office of Fair Housing and Equal Opportunity, as well as fair housing organizations that receive HUD funding, to combat anti-LGBTQ housing discrimination. The memorandum differs from previous HUD policy protecting LGBTQ people because it applies *beyond* housing entities that receive HUD funding. These protections are critical because research, including a 2017 study in which pairs of testers posed as equally qualified home-seekers differing only in their sexual orientation or gender identity, shows that LGBTQ people face discrimination in the housing market.³⁴

Second, in March 2021, HUD withdrew a Trump Administration proposed rule that would have rolled back an important 2016 rule that requires same-sex shelters that receive HUD funds to accommodate trans individuals in accordance with their gender identity.³⁵ This action allows the 2016 rule to stay in place.

³² Ann Oliva, “Ending Homelessness: Addressing Local Challenges in Housing the Most Vulnerable,” CBPP, Testimony before the House Financial Services Committee, Subcommittee on Housing, Community Development and Insurance, February 2, 2022, <https://www.cbpp.org/research/housing/ending-homelessness-addressing-local-challenges-in-housing-the-most-vulnerable>; Bianca D.M. Wilson *et al.*, “Homelessness Among LGBT Adults in the US,” Williams Institute, May 2020, <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>.

³³ Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, “Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act,” February 11, 2021, https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

³⁴ Diane K. Levy *et al.*, “A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals,” Urban Institute, June 30, 2017, <https://www.urban.org/research/publication/paired-testing-pilot-study-housing-discrimination-against-same-sex-couples-and-transgender-individuals>.

³⁵ National Alliance to End Homelessness, “HUD’s Equal Access Rule,” updated April 2021, <https://endhomelessness.org/resource/huds-equal-access-rule/>.

Allowing trans people to access shelter in accordance with their gender identity is critical. The 2015 U.S. Transgender Survey asked respondents if they were homeless because they are transgender. Only 15 percent of people who responded that they experienced homelessness because they were trans reported that they attempted to enter a homeless shelter — the rest chose not to even try to access the shelter system.³⁶ Of those who did attempt, 41 percent reported being denied due to their gender identity or expression.

Nutrition. When people do not have enough to eat, it can affect their health, their ability to care for their families, and their success in staying employed or finding a job if they are otherwise able to work. Thus it is troubling that LGBTQ adults reported not getting enough to eat at nearly double the rate of non-LGBTQ adults, according to Pulse data from summer 2021.³⁷ This aligns with prior research showing that even before the pandemic, LGBTQ people, especially people of color, also reported not having enough to eat at higher rates.³⁸

During the pandemic, trans people reported not having enough to eat at nearly three times the rate of non-LGBTQ people (when non-LGBTQ people of all races are considered). The rate was four times higher for trans people of color.³⁹ Yet Pulse data indicate that a lower share of income-eligible trans people (29 percent) were enrolled in SNAP than income-eligible cis people (39 percent), which could indicate that they face additional access barriers.⁴⁰ The Department of Agriculture’s Food and Nutrition Service (FNS), which administers SNAP, took a positive step toward addressing this issue by declaring in May 2022 that it will interpret and enforce existing anti-discrimination protections in SNAP to protect LGBTQ people.⁴¹

In June 2022, President Biden signed another executive order to support LGBTQ people and families.⁴² On the domestic side, the order:

- Directs HHS to study and make recommendations to address barriers to federal benefits and programs for LGBTQ people, especially those in chosen families (not biologically related)

³⁶ Kathryn K. O’Neill, Bianca D.M. Wilson, and Jody L. Herman, “Homeless Shelter Access Among Transgender Adults,” Williams Institute, November 2020, <https://williamsinstitute.law.ucla.edu/publications/trans-homeless-shelter-access/>.

³⁷ Anderson *et al.*, *op. cit.*

³⁸ Taylor N.T. Brown, Adam P. Romero, and Gary J. Gates, “Food Insecurity and SNAP Participation in the LGBT Community,” Williams Institute, July 2016, <https://williamsinstitute.law.ucla.edu/publications/lgbt-food-insecurity-snap/>.

³⁹ Kerith J. Conron and Kathryn K. O’Neill, “Food Insufficiency Among Transgender Adults During the COVID-19 Pandemic,” Williams Institute, April 2022, <https://williamsinstitute.law.ucla.edu/publications/trans-food-insufficiency-covid/>.

⁴⁰ *Ibid.*

⁴¹ Civil Rights Division, Food and Nutrition Service, U.S. Department of Agriculture, “Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update,” May 5, 2022, <https://www.fns.usda.gov/cr/crd-01-2022>.

⁴² White House, “Fact Sheet: President Biden to Sign Historic Executive Order Advancing LGBTQI+ Equality During Pride Month,” June 15, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-president-biden-to-sign-historic-executive-order-advancing-lgbtqi-equality-during-pride-month/>.

that are not legally recognized. The order also directs the Office of Management and Budget to coordinate with federal agencies on implementing HHS' recommendations.

- Directs various federal agencies, including HHS and the Departments of Education and Justice, to work with states and other entities so that the needs of LGBTQ people can be met in education, health care, housing, child welfare, and juvenile justice.
- Directs HHS to strengthen anti-discrimination protections for LGBTQ youth and families in the foster care system and for LGBTQ seniors in long-term care facilities, as well as to undertake rulemaking to designate LGBTQ seniors as a group with the “greatest social need” under the Older Americans Act.
- Directs HHS and the Federal Trade Commission to take action to protect LGBTQ youth from “conversion therapy,” a harmful practice that the American Psychological Association and other major bodies of health professionals have condemned.⁴³
- Establishes a new coordinating committee to promote an expansion of federal data collection on sexual orientation and gender identity.

The steps taken by the Biden Administration are important. At the same time, actions by state and local officials will also have a significant impact on whether LGBTQ people can access the help they and qualify for. Recent actions by some states to limit access to gender-affirming care are one indication that LGBTQ people in some states are likely to continue to face obstacles — explicit and unspoken — in accessing government services and benefits.

Congress Also Should Strengthen Economic and Health Security Programs

In addition to anti-discrimination protections, LGBTQ people experiencing poverty would benefit from legislation expanding access and improving benefits in key economic and health security programs. For example, Congress should:

- Expand the Child Tax Credit, most importantly by making the full credit available to children in families with the lowest incomes, and the Earned Income Tax Credit to provide critical income support to families with children and workers without children.⁴⁴
- Close the Medicaid coverage gap and extend the American Rescue Plan's expansion of premium tax credits to greatly expand health coverage.⁴⁵

⁴³ Human Rights Campaign Foundation, “The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity,” <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>.

⁴⁴ Jabari Cook, “Congress Should Support LGBTQ People With Low Incomes by Expanding the Child Tax Credit and Earned Income Tax Credit,” CBPP, June 23, 2022, <https://www.cbpp.org/blog/congress-should-support-lgbtq-people-with-low-incomes-by-expanding-the-child-tax-credit-and->

⁴⁵ Sarah Lueck, “Economic Legislation Should Include Health Policies to Boost Coverage, Ease Strain on Families’ Budgets,” CBPP, March 21, 2022, <https://www.cbpp.org/blog/economic-legislation-should-include-health-policies-to-boost-coverage-ease-strain-on-families>.

- Increase funding for Housing Choice Vouchers, a proven method to reduce housing instability and homelessness, as called for in President Biden’s fiscal year 2023 budget.⁴⁶
- Increase access to affordable, quality child care and preschool.⁴⁷
- Expand and simplify Supplemental Security Income, which provides cash assistance to people who are at least age 65 or are disabled and have little income and few assets.⁴⁸
- Expand access to SNAP by removing the three-month time limit on benefits for non-elderly adults without minor children or serious disabilities⁴⁹ and by repealing the federal ban on participation in SNAP and Temporary Assistance for Needy Families by people with drug-related felony convictions.⁵⁰

⁴⁶ Will Fischer, “President’s Budget Would Provide More Vouchers to Help Families With Rising Housing Costs,” CBPP, April 20, 2022, <https://www.cbpp.org/blog/presidents-budget-would-provide-more-vouchers-to-help-families-with-rising-housing-costs>.

⁴⁷ Sharon Parrot, “Murray-Kaine Proposal to Expand, Improve Child Care Would Benefit Families and the Economy,” CBPP, May 18, 2022, <https://www.cbpp.org/research/federal-budget/murray-kaine-proposal-to-expand-improve-child-care-would-benefit-families>.

⁴⁸ Kathleen Romig and Sam Washington, “Policymakers Should Expand and Simplify Supplemental Security Income,” CBPP, updated May 4, 2022, <https://www.cbpp.org/research/social-security/policymakers-should-expand-and-simplify-supplemental-security-income>.

⁴⁹ Ed Bolen, “Time’s Up for SNAP’s Time Limit,” CBPP, July 7, 2021, <https://www.cbpp.org/blog/times-up-for-snaps-time-limit>.

⁵⁰ Darrel Thompson and Ashley Burnside, “No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions,” Center for Law and Social Policy, updated April 2022, <https://www.clasp.org/publications/report/brief/no-more-double-punishments/>.