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# WILL THE NEW REPUBLICAN MAJORITY IN CONGRESS WAGE OLD BATTLES AGAINST WOMEN?

Carla M. da Luz\* & Pamela C. Weckerly\*\*

## INTRODUCTION

The results of the November 1994 elections represent a historically significant change in American politics. For the first time in forty years, voters put the Republican Party in control of both the House of Representatives and the Senate.<sup>1</sup> The election results have placed the Democrats, who previously controlled both Houses and the White House, in an unfamiliar role. As members of the minority party with a fairly unpopular presidential leader,<sup>2</sup> the Democrats are in a position where it is increas-

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\* J.D., University of California, Los Angeles, 1995; B.A., University of California, Berkeley, 1991. I would like to thank the members of the Women's Law Journal for their continued support of student authorship. I would like to recognize my grandmothers, Isabel V. da Luz and Maria R. Ferreria, for their courage to create opportunities for my families; my mother, Maria da Luz, who refused to allow me to place limits on my aspirations; my sister, Catrina da Luz, a true leader of the finest quality. And finally, thanks to Pam Weckerly for her friendship and patience.

\*\* J.D., University of California, Los Angeles, 1995; B.A., University of California, Los Angeles, 1990. I would like to thank my co-author, Carla da Luz, for writing with me again and for her friendship. I would also like to acknowledge the board and staff of the UCLA Women's Law Journal for their work on this piece and commitment to the Journal. In addition, I would like to thank Reed Peterson for always being there and for his encouragement. Finally, I would like to remember my mother, Jan Weckerly, who taught me what is important.

1. John Marelius, *GOP Gains: For Keeps, or Merely Transitory*, SAN DIEGO UNION-TRIB., Nov. 14, 1994, at A3; Paul West, *GOP Sweeps to Victory in Momentous Power Shift; Glendening, Sauerbrey Finish in Dead Heat; GOP Takes Control of Both House, Senate*, BALT. SUN, Nov. 9, 1994, at A1.

2. The fact that the Democratic Party lost more than fifty seats in the House is an indication to some that President Clinton, as the leader of the Democratic Party, is not popular. See John Hall, *Post-Election Atmosphere Very Tricky*, TAMPA TRIB., Nov. 10, 1994, at 12. The election results even caused some to speculate that President Clinton may be vulnerable to a challenge for his own party's nomination. See Bennett Roth, *Clinton Seen as Big Target with GOP Sweep*, HOUS. CHRON., Nov. 13, 1994, at A17; but see *infra* note 29 and accompanying text. Discounting President

ingly difficult for them to influence the political agenda or to direct legislative policy. Some consider the election results a referendum on President Clinton and the Democratic Party's "liberal" policies.<sup>3</sup> New House Speaker Gingrich considers the election results a sign of a revolution in American politics.<sup>4</sup> This perception may be accurate — the Democrats did lose a number of significant races.<sup>5</sup> However, the striking election results may

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Clinton's chances for re-election based solely on the midterm election results is not wise. However, the President has sought guidance from a variety of consultants to enhance his popularity, which may be evidence that even the President himself is concerned. See Martin Fletcher, *Gurus Give Clinton Guidance on Path Back to Popularity*, THE TIMES (London), Jan. 21, 1995.

3. After the elections, Speaker Gingrich said that he was prepared to cooperate with the Clinton administration, but he further stated, "I am not prepared to compromise." Melissa Healy, *Gingrich Lays Out Rigid GOP Agenda; Congress: As Next House Speaker, Republican Lawmaker Says He Will 'Cooperate' with Clinton, But He Vows No Compromise on His 10-Point Plan*, L.A. TIMES, Nov. 12, 1994, at A1. Before the new Congress took control, though, Mr. Gingrich indicated not only that he thought liberals dominated Washington, but also his resistance to ideas that deviate from the *Contract with America*. "We have to say to the counterculture: Nice try. You failed. You're wrong." *Id.* at A25.

4. See Lloyd Grove & Jill Hudson, *The Elephants' Parade: Gingrich Galas Kick Off the Revolution of the Right*, WASH. POST, Jan. 4, 1995, at B1. The use of the term "revolution" may be a word used merely for dramatic effect in politics. When President Clinton was elected in 1992, some called it a "revolution" as well. See Patrick Brogan, *How Clinton Came to Aid of the Party*, THE HERALD (Glasgow), Nov. 5, 1992, at 13.

5. The Democratic Party endured a number of losses in the 1994 elections, and exit polls indicate that voters voted Republican by a large margin. Robert Shogan & David Lauter, *Republican Score a Sweeping Victory*, L.A. TIMES, Nov. 9, 1994, at A1. The final election results were dramatic. Republicans gained control of the House of Representatives, where the Democrats had enjoyed a 256-178 majority. *Id.* They also won an additional eight seats to gain control of the Senate by a 52-48 majority. *Id.* "GOP conservatives won Senate seats in Pennsylvania, Ohio, Oklahoma, Tennessee (two), Arizona, and Michigan, all of which had been held by Democrats." *Id.* In the South, exit polls indicated that 60% of voters had cast ballots for the GOP. *Id.* Additionally, the Republicans won many gubernatorial contests. Well-known Democrat Mario Cuomo lost the governor's race in New York to a Republican, Republican George W. Bush unseated Texas Governor Ann Richards, and Republican Governor Pete Wilson defeated Democratic challenger Kathleen Brown. Picking up Tennessee, New Mexico, Wyoming, Rhode Island, and Oklahoma, the Republicans now hold a majority of the state governorships for the first time since 1970. West, *supra* note 1, at A15.

The Democratic losses were higher than usual for a president's party in a midterm election.

Over the past 40 years, the president's party has only lost an average of 12 House seats and no Senate seats in the first midterm of the president's term.

The Republican victories in House and Senate races presage a clear shift to the right on Capitol Hill, according to both parties.

*Id.*

be the product of factors other than a shift in voters' political ideology.<sup>6</sup> After all, despite facing strong challengers, several Democrats who have been considered liberal nonetheless held onto their seats in very publicized races.<sup>7</sup> In addition, the Republicans, as the minority party, were in a position to benefit from voter frustration and dissatisfaction with what appears to be a stagnant, politics-as-usual federal government. Thus, the elections may not signify voters' overwhelming endorsement of the slate of Republican policies, but instead may illustrate voters' anger about the direction in which the country seems to be heading.

Whether or not the election results actually represent a dramatic ideological shift in voter opinion, the results are almost certain to change the political agenda. Every committee chair in Congress changed.<sup>8</sup> In addition, several Democrats lost their

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6. A veteran political reporter commented, "I'm about to see something I've never seen in my entire career — the installation of a Republican Congress . . ." John M. Broder & Sam Fulwood III, *The 104th Congress: Gingrich's Gavel Sends a Signal to New Political Power Rangers; Capitol Hill: 'Newt!' The Triumphant New Speaker is Cheered, Freshman Lawmakers, Talk Show Hosts, Other Super-Heroes are in Their Glory*, L.A. TIMES, Jan. 5, 1995, at A14.

7. Senator Edward Kennedy of Massachusetts and Senator Paul Sarbanes of Maryland, considered liberal senators, both survived election challenges by Republicans. Karen Hosler, *New Conservative Firebrands Aim to Heat Up Congress*, BALTIMORE SUN, Nov. 9, 1994, at A15. California Democrat incumbent Senator Dianne Feinstein also defeated her conservative challenger in a very close race. Additionally, Virginia Democrat incumbent Senator Charles Robb held onto his seat despite challenges from Republican candidate Oliver North and Independent J. Marshall Coleman. Shogun & Lauter, *supra* note 5, at A1. Finally, Senator Bob Kerrey, a Democrat, avoided the Republican backlash by easily winning re-election in the conservative state of Nebraska. See Roth, *supra* note 2.

8. Republicans now chair key committees in the Senate, including: Appropriations, Mark Hatfield of Oregon replaced Robert Byrd of West Virginia; Armed Services, Strom Thurmond of South Carolina replaced Sam Nunn of Georgia; Banking, Alfonse D'Amato of New York replaced Don Riegle of Michigan; Budget, Pete Domenici of New Mexico replaced James Sasser who lost his seat; Finance, Bob Packwood of Oregon replaced Daniel Patrick Moynihan of New York; Foreign Relations, Jesse Helms of North Carolina replaced Clairborne Pell of Rhode Island; Judiciary, Orrin Hatch of Utah replaced Joseph Biden of Delaware; Labor and Human Resources, Nancy Kassebaum of Kansas replaced Edward Kennedy of Massachusetts. In the House, Republicans now head key committees, including: Ways and Means, Bill Archer of Texas replaced Sam Gibbons of Florida; Budget, John Kasich of Georgia replaced Martin Sabo of Minnesota; Judiciary, Henry Hyde of Illinois replaced Jack Brooks of Texas who lost his seat; Banking, Jim Leach of Iowa replaced Henry Gonzales of Texas; Appropriations, Joe McDade of Pennsylvania replaced David Obey of Wisconsin; Armed Services, Floyd Spence of South Carolina replaced Ron Dellums of California; Foreign Affairs, Benjamin Gilman of New York replaced Lee Hamilton of Indiana. See *Hello to the New Leadership*, DENVER POST, Nov. 10, 1994, at A14.

seats to much more conservative newcomers.<sup>9</sup> As a result, the Republican leadership is now in a position to use its majority status to change the course and terms of the political debate.

The 1994 campaign may have foreshadowed the change in the focus of the political agenda of Congress. The Republicans campaigned on issues involving "fiscal responsibility": they promised to introduce a constitutional amendment to balance the budget, lower taxes, cut federal spending, and reform welfare. Republican candidates made these promises both in campaign speeches and in the media-friendly *Contract with America*, a document which contains Republican vows to bring many issues to the floor of the House within the first one hundred days of the new Congress.<sup>10</sup>

During the 1994 campaign, the Republican leadership was always ready to announce either broad policy goals or at least to comment on their intentions to deal with federal spending, the defense budget, and tax policy. Party leaders, however, were not as eager to discuss their plans regarding other issues — several of which are likely to affect women. For instance, conspicuously absent from the *Contract with America* is any statement regarding the House Republicans' intentions regarding abortion, an issue which has been at the forefront of other elections and is still very much a relevant issue, particularly given the recent wave of violence directed at family planning clinics.<sup>11</sup> This absence is all the more striking given that it is an issue of paramount importance to the Christian right, the constituency which played a key role in producing the Republican landslide.<sup>12</sup> The Republican Party

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9. "This is by far the most conservative [freshman] class in history," said Gary L. Bauer, a former Reagan official who now promotes conservative social issues. "There are more Reagan Republicans than when Reagan was president." Hosler, *supra* note 7.

10. NEWT GINGRICH ET AL., *CONTRACT WITH AMERICA* 9-11 (1994) [hereinafter *CONTRACT WITH AMERICA*].

11. To his credit, Speaker Gingrich indirectly has spoken out against the violence directed against family planning clinics. On the first day of the new Congress, Gingrich said that he condemned "all acts of violence against the law by people for all reasons." Finlay Lewis & Stephen Green, *Opening Day 104th Congress; Republicans Storm Capitol Hill 100-Day Legislative Blitz Starts as GOP Promised*, SAN DIEGO UNION-TRIB., Jan. 5, 1995, at A1. Senator Bob Dole has signaled that he is willing to do more to protect clinics. Senator Henry Hyde, however, has not, explaining that he is "concerned about what the federal role should be, 'what the federal nexus is.'" Susan Estrich, *Call Off the Abortion War; Time to Speak Out Against Clinic Killings*, USA TODAY, Jan. 5, 1995, at A11.

12. "A study by People for the American Way, a group that calls itself 'a voice against intolerance,' found that 60 percent of the 600 candidates for national, state

leaders also have not indicated their intentions regarding the Family Medical Leave Act,<sup>13</sup> and the quasi ban on gay men and lesbians in the military. In fact, the only detailed proposal the leadership has provided which will significantly and directly affect women is the *Contract with America's* plan for "welfare reform."

The *Contract with America* is instructive in revealing some of the goals of the new leaders. However, because of its economic focus and its stated intent to map out only the first 100 days of the Congress,<sup>14</sup> it probably does not adequately reflect the entire Republican agenda. By looking to Republican positions that have been consistently articulated by key Republican

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and local offices who were supported by religious conservatives won their elections." Richard L. Berke, *The 1994 Election: The Voters; Religious-Right Candidates Gain As G.O.P. Turnout Rises*, N.Y. TIMES, Nov. 12, 1994, § 1, at 10. The gains in this election significantly increased the influence and clout of the religious right in politics. "More politicians than ever owe their jobs to the organizing and financial support supplied by religious-right groups . . . their expectation is that the right-wing agenda will receive top priority in the next two years." *Id.* The religious right, through organizations such as the Christian Coalition, has become a significant force in the political arena. The Christian Coalition gave at least \$1,000,000 to promote the *Contract with America*. Ralph Reed, the Director of the Christian Coalition, frequently consults with Gingrich and Dole. Kim Hubbard et al., *Ralph Reed; The Religious Right's New Leader Loves His Political Enemies; They're Afraid His Affection Is Deadly*, PEOPLE, Feb. 27, 1995, at 60, 64. Credited with the recent Republican landslide, the religious right has taken firm stands on various political issues, and having waved its "hefty political stick," clearly expects the new Republican Congress to stand by these issues. *Id.* at 60. The coalition is anti-abortion, against affirmative action, and opposed to extending rights to gays and lesbians. *Id.* at 60, 62. Despite the fact that the:

polls now show that even 71 percent of Republicans favor some degree of abortion rights, you have to wonder why every major G.O.P. Presidential candidate, including supposed moderates like Robert Dole and Lamar Alexander, is anti-choice. The answer, of course, is Pat Robertson's Christian Coalition. Correctly or not, most Republicans seeking the Presidency believe they cannot win the nomination without this pro-life group's approval.

Frank Rich, *Their Own Petard*, N.Y. TIMES, Feb. 23, 1995, at A17. The religious right recognizes its power position to direct the Republican Party. Ralph Reed, Director of the Christian Coalition and Pat Robertson's right-hand man, gave the Republicans an ultimatum: that both the presidential and vice-presidential candidates for 1996 must be pro-life for the Christian Coalition to support the Republican ticket. *Id.* The Christian Coalition counts 1.5 million members in 1200 chapters. It is considered the "most influential group of religious conservatives." *Id.* at 9. Richard L. Berke, *Christian Right Issues a Threat to the G.O.P.*, N.Y. TIMES, Feb. 11, 1995, § 1, at 1, 19.

13. This is particularly odd, given these leaders' vocal opposition in the past to the Family Medical Leave Act. See *infra* part II.

14. See CONTRACT WITH AMERICA, *supra* note 10.

leaders who now have institutional control of Congress, other changes can be predicted.

Long-time Republican Party leader Senator Bob Dole is now the majority leader of the Senate.<sup>15</sup> Dole has consistently spoken as a representative of the Republican Party and is known for his efforts to attack President Clinton at every progressive move.<sup>16</sup> The fact that his role as senator has often included activities usually associated with a president is a testament to his considerable power. For instance, Dole represented the United States at NATO regarding Bosnia, has held audiences with ex-Prime Minister Margaret Thatcher, and was a key player in GATT, effectively lobbying for its implementation. Dole "is considered the consummate Washington insider."<sup>17</sup> He attained significant media exposure while working on Republican proposals for changing tax law, reforming welfare policy, and urging passage of the balanced budget amendment.<sup>18</sup> Moreover, Dole's approval ratings are on the rise and he is currently a front-runner for the Republican Party nomination for the presidency in 1996.<sup>19</sup>

Dole's counterpart in the House of Representatives is Newt Gingrich, who stepped into his new position as Speaker of the House after the 1994 elections. Speaker Gingrich is leading a new generation of Republicans into power. Gingrich recruited Republican representatives to run for office, taught them how to win elections, molded them in his image, and supplied them with campaign money. In so doing, he created a significant and loyal following.<sup>20</sup>

15. Bob Dole has been in Congress since 1961. Richard L. Berke, *The 104th Congress: The 1996 Campaign, Dole Takes Another Step Toward Bid for President*, N.Y. TIMES, Jan. 13, 1995, at A23.

16. See, e.g., discussion *infra* part II.

17. Tom Morganthau et al., *The Orphanage*, NEWSWEEK, Dec. 12, 1994, at 30.

18. Despite appearance of Dole's considerable popularity and power, there may be some limit to his influence. New GOP senators voted out Alan Simpson of Wyoming, Dole's longtime ally, and installed Trent Lott, an ally of Newt Gingrich, as Deputy. Howard Fineman, *Dole's Virtual Presidency*, NEWSWEEK, Dec. 12, 1994, at 36, 37.

19. Robert Shogan, *Dole Touts Experience as He Kicks Off Presidential Drive*, L.A. TIMES, Apr. 11, 1995, at A1.

20. Stephen Engelberg & Katharine Q. Seelye, *Gingrich: Man in Spotlight and Organization in Shadow*, N.Y. TIMES, Dec. 18, 1994, § 1, at 1. The entity behind these efforts is a political action committee, created by Gingrich, called GOPAC. GOPAC has "nurture[d] a dynamic new generation of Republican politicians — a farm team that could some day march from the statehouses to Congress." *Id.* "To Republican admirers it was [GOPAC] that sowed the seeds of this year's victory.

One of Gingrich's most significant appointments was Henry Hyde, who now chairs the influential House Judiciary Committee.<sup>21</sup> Hyde, a long-time representative from Illinois, is "a patriarch of anti-abortion activism."<sup>22</sup> During the Reagan administration, Hyde successfully worked to curtail women's access to abortion by garnering support for the Hyde Amendment.<sup>23</sup> A compelling example of Hyde's power is the fact that he was able to protect the core of the Hyde Amendment, despite the Clinton administration's intentions to repeal it.<sup>24</sup>

Hyde is likely to play a big role in the new Congress. "Five of the 10 provisions of the Republican 'Contract with America' — which many House Republicans used as their winning campaign platform — and about 70 percent of the implementing legislation will come under the [Judiciary] committee's jurisdiction."<sup>25</sup> Speaker Gingrich apparently chose Hyde to head this critical committee because he "wanted someone with Hyde's stature, conservative activism and oratorical skills to be the chief party spokesman on the controversial issues that will go through the judiciary committee."<sup>26</sup>

Certainly, it is too early in the 104th Congress to make definitive predictions concerning how the new Congress will affect issues such as reproductive freedom, family medical leave, gays and lesbians in the military, and welfare policies. Speaker Ging-

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[GOPAC] boasts that 33 of the 73 Republicans elected this year were from the farm team that Mr. Gingrich assembled, and most of the other winners were eager recipients of its advice." *Id.* at 1, 32. Newt Gingrich's GOPAC is the central entity of an interlocking set of entities, known as "Newt Inc." "Newt Inc." includes: the Progress and Freedom Foundation, a think tank that advises Gingrich; a weekly conservative call-in television program; and a college course, taught by Gingrich, that is transmitted by satellite to 130 classrooms in the United States. *Id.* at 32. "No previous Speaker of the House has commanded such a far-flung political empire — or anything so close to a party within a party." *Id.*

21. See *supra* note 8.

22. Bill Turque, *Aborted Revolution?*, NEWSWEEK, Dec. 12, 1994, at 38, 40.

23. The Hyde Amendment is a ban on federal funding of abortions. See *infra* note 39 and accompanying text.

24. See *infra* notes 39–42 and accompanying text.

25. Mitchell Locin, *Hyde Will Steward Gingrich's Program*, CHI. TRIB., Nov. 17, 1994, at N1. These provisions include the "balanced-budget amendment and line-item veto; congressional term limits; revising the crime bill that passed earlier this year to eliminate many of its social programs; family law, including tougher child-support payments and anti-child-pornography laws; and changing the civil justice system, including liability laws." *Id.* at N26. After the elections, Speaker Gingrich indicated that a constitutional amendment on school prayer is also a top priority. That proposal also would fall under the jurisdiction of the Judiciary Committee. *Id.*

26. *Id.*



rich and the Republicans are not accustomed to controlling the House and may face obstacles to some of their plans.<sup>27</sup> The Democrats are also likely to be as obstructionist as the Republicans were during their years as the minority party.<sup>28</sup> In addition, since the 1994 elections and the 1995 State of the Union address, President Clinton's popularity has increased while Speaker Gingrich's has decreased, while the approval rating for the entire Congress increased.<sup>29</sup> Further, while the Republicans have the

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27. While Speaker Gingrich is a formidable force in American politics, some commentators have suggested that his acerbic style ultimately makes him an ineffective coalition builder. Gingrich's "penchant for seeing virtually everything through the prism of his self-declared ideological war" frequently gets him into trouble. For example, Gingrich:

suggested that the killing of two children in South Carolina by their mother was somehow the result of Democratic policies. "How a mother can kill her two children, 14 months and 3 years, in hopes that her boyfriend would like her, is just a sign of how sick the system is and I think people want to change," he declared. "The only way you can change is to vote Republican. That's the message for the last three days."

Thomas B. Rosenstiel & Edith Stanley, *Gingrich Tames Rhetoric, Savors 'Speaker'; Georgia: It is Expected that His Triumph Will Turn Washington Upside Down, Portending the Rise of a New Kind of Ideological Politics*, L.A. TIMES, Nov. 9, 1994, at A14. Speaker Gingrich's aggressive tactics are not newly acquired. "As a young House back-bencher, he openly attacked fellow congressmen personally, kept files on colleagues and waged campaigns designed to damage [Democratic House leaders.]" *Id.* In addition to possible personality problems, Gingrich is not known as a particularly effective legislator. During the 1980s, some Republican Party leaders commented that, "Newt's a talker . . . He couldn't legislate his way out of a paper bag . . ." Helen Dewar, *Republicans Wage Verbal Civil War: Gingrich Leads Rebels*, WASH. POST, Nov. 19, 1984, at A1. Perhaps more telling is the fact that during 16 years of service in the House, Gingrich never authored a piece of legislation that became law. See Rosenstiel & Stanley, *supra* at A14.

28. University of California professor (and author of *The Politics of Congressional Elections*) Gary Jacobsen predicts a "tremendous amount of partisan acrimony" in the 104th Congress. "If you thought the 103rd Congress was gridlocked, there'll be even more intense partisan rancor in the 104th." David Hess, *Riled by Congress? It May Get Worse; Off-year Republican Gains Could Trigger More Gridlock and Bitter Partisan Wrangling*, PITT. POST-GAZETTE, Oct. 23, 1994, at A13. In addition, according to Jonathan Krasno, a political scientist at Princeton University, "Congress' relations with the White House will be brutal . . . Apart from a couple of issues like trade and, perhaps, a tax cut, there are no grounds for agreement on anything." *Id.* When the same situation of divided political control occurred during the presidency of Harry Truman, "[i]t was a stalemate," said Norman Ornstein, a congressional scholar at the American Enterprise Institute. "The partisan battling was endless. Very little got done." *Id.*

29. "Clinton, playing off a Republican-controlled Congress, saw his overall job-approval rating inch upward from 47% two weeks ago, before his State of the Union speech, to 49% now." Richard Benedetto, *Clinton Gets a Bump, Gingrich Slides in Poll*, USA TODAY, Feb. 7, 1995, at A4. The same poll had Congress' approval rating at 38%, its highest since September 1987. *Id.* Speaker Gingrich's job approval rat-

numbers to push legislation through the 104th Congress, "they don't have the votes to override a White House veto."<sup>30</sup> The Republicans also are not necessarily united on every issue.<sup>31</sup> Significantly, the *Contract with America* does not promise passage of its ten legislative goals outright, but merely promises that the House will vote on the proposals.<sup>32</sup> Even outspoken Newt Gingrich, "signaling hard-core conservatives to lower their expectations," has acknowledged some limits to the Republican Party's power.<sup>33</sup>

This Recent Development is intended to briefly examine how the new Republican-led Congress may affect some issues of particular concern to women. First, it examines how the new Congress may restrict the current level of access to abortion. Second, it discusses the impact the 104th Congress may have on the Family and Medical Leave Act. Third, it explores how the Republicans may alter current policies regarding gay men and lesbians in the military. Finally, it analyzes the Republican plan for "welfare reform." Because "welfare reform" is the one proposal of direct and particular concern to women that the Republicans have explicitly detailed and passed in the House, this section also critiques aspects of the plan.

The Republicans' majority status has put them in a position to influence new and existing policies regarding these issues.

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ing "fell one point to 38%, while his disapproval zoomed up 13 points to 48%." *Id.*; see also *Congress: The First 100 Days Poll: Clinton, Congress Gain in Popularity*, ATLANTA J. & CONST., Jan. 31, 1995, at A4; *Poll: Clinton More Popular*, PITT. POST-GAZETTE, Feb. 7, 1995, at A6.

30. *Reality Bites*, USA TODAY, Nov. 14, 1994, at A14.

31. Despite its popularity,

some Republicans are not on board with every contract issue. Incoming House Judiciary Committee Chairman Henry Hyde (R.-Ill.), for instance, is against term limits, while Sen. Pete Domenici (R.-N.M.), in line to head the Senate Budget Committee, is wary of tax cuts that could worsen the federal deficit.

Even assuming that much of the contract passes the House within the first 100 days, it will face far greater difficulty in the Senate. Incoming Senate Majority Leader Bob Dole (R.-Kan.) is no great fan of Gingrich, and the dueling presidential ambitions of Dole and Sen. Phil Gramm (R.-Tex.) could get in the way.

Michael Arndt et al., *The GOP Agenda; As Republicans Take Charge in Congress, a Look at "Contract with America,"* CHI. TRIB., Jan. 1, 1995, at C1, C4. However, the 73 Republican freshmen in the House are unlikely to deviate from the *Contract*, so they should provide Gingrich with a formidable voting bloc within the 230 Republicans in the majority. *Id.* at C4.

32. *Reality Bites*, *supra* note 30.

33. *Id.*

They are likely to take advantage of this opportunity. They have done little to suggest the opposite. For instance, one of the first actions taken by the GOP was to eliminate the budgets for the Congressional Black Caucus and the Congressional Women's Caucus.<sup>34</sup> This change perhaps is only the beginning. With few exceptions, the Republican Party historically has shied away from championing women's rights and some party members have displayed insensitivity regarding gender issues.<sup>35</sup> Women's rights

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34. This action did not go unnoticed. Upon learning of the budget elimination plans, Black Caucus Chairman Kweisi Mfume of Maryland declared, "They have created 41 pit bulls [members of the caucus] that will chase this [Republican] elephant day in and day out . . ." Kenneth J. Cooper & Kevin Merida, *House Republicans Scrambling to Jettison Stereotypes of Party*, WASH. POST, Dec. 11, 1994, at A29.

35. One example is the issue of sexual harassment. The three standout attackers during the Clarence Thomas-Anita Hill hearings were Republican Senators Orrin Hatch, Alan Simpson, and Arlen Specter. See Robert Healy, *An Election Burden for Bush*, BOSTON GLOBE, Oct. 20, 1991, at A37; Arthur Morgenstern, *Senator Specter*, JERUS. POST, Dec. 20, 1992; Sydney H. Schanberg, *Senate Doubles Up On Its Own Idiocy*, NEWSDAY, Feb. 7, 1992, at 45. Hatch, Simpson, and Specter illustrated their general insensitivity and disregard for the issue of sexual harassment and mistrust of claims of sexual harassment. Anna Quindlen, *Simple, He Got Confirmed and She Got Trashed*, HOUS. CHRON., Oct. 17, 1991, at B11. The hearings have been likened to a "Salem Trial," Schanberg, *supra* at 45, and "a Republican team effort not only to nominate Thomas but also to destroy Anita Hill," Robert Healy, *An Election Burden For Bush*, BOSTON GLOBE, Oct. 20, 1991, at A37. The threesome "called Hill a liar, questioned her sanity for bringing a sexual harassment charge," *id.*, and portrayed her as a "romantic loser, [and] woman scorned," Quindlen, *supra* at B17. Among the most striking moments of the hearings: when Senator Orrin Hatch accused Hill of plagiarizing her story from a previous federal case, and from *The Exorcist*. Schanberg, *supra* at 45. Recently, Senate Republican leader Dole displayed a similar disregard for sexual harassment claims. Dole dismissed the claims of 13 women who accused Republican Senator Bob Packwood of sexual harassment, because he believed they were largely partisan. *Dole Sees Politics in Packwood Case*, CHI. TRIB., Feb. 8, 1993, at N8.

Republican Party leader Newt Gingrich has similarly illustrated an insensitivity towards women's issues, and has taken a position contrary to expanding women's rights regarding the issue of women in combat. For example, Gingrich expressed his poignant views on the differences between the genders to support his conviction that women should not serve in combat:

If combat means living in a ditch, females have biological problems staying in a ditch for 30 days because they get infections and they don't have upper body strength. I mean some do, but they're relatively rare.

On the other hand, men are basically little piglets; you drop them in the ditch, they roll around in it; it doesn't matter, you know. These things are very real.

On the other hand, if combat means being on an Aegis class cruiser managing the computer controls for 12 ships and their rockets, a female may again be dramatically better than a male who gets very, very frustrated sitting in a chair all the time because males are biologically driven to go out and hunt giraffes.

advocates are appropriately wary.<sup>36</sup> However, alterations in existing policies regarding reproductive freedom, family medical leave, gays and lesbians in the military, and welfare affect groups other than women. Thus, every citizen should watch as the new Congress takes up these issues.

### I. REPRODUCTIVE FREEDOM

During the 1992 campaign, then-candidate Bill Clinton declared his support for *Roe v. Wade* and indicated that he would sign a bill preventing states from barring abortions.<sup>37</sup> Almost immediately after his inauguration, President Clinton repealed a number of restrictions on abortion access that had been put in place during the Reagan and Bush administrations.

In a series of executive memoranda, he overturned the so-called gag rule, which restricted abortion counseling at federally funded family planning clinics; began allowing abortions at U.S. military hospitals overseas; and reversed a 1984 order that prevented the United States from providing foreign aid to overseas organizations that perform or promote abortion.<sup>38</sup>

President Clinton also attacked the Hyde Amendment. The Hyde Amendment, named for its author, Republican Representative Henry Hyde, is an eighteen-year-old ban against federal funding for abortions.<sup>39</sup> At the time, the Amendment prohibited the use of federal Medicaid money for abortions except in cases where the woman's life was threatened.<sup>40</sup> President Clinton indicated to Congress that he wanted to repeal the Hyde Amendment by omitting the provision from the budget he submitted to Congress.<sup>41</sup>

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*Gingrich Finds Women Have Their Limitations*, ROCKY MTN. NEWS (Denver), Jan. 19, 1995, at A3.

36. National Organization for Women (NOW) President Patricia Ireland stated, "[w]e will give Newt Gingrich fair warning: If Republicans go after . . . gains women won during the 103d Congress, women will go to the polls in record numbers in 1996 and make sure Newt presides over the shortest revolution in history." Tom Brazaitis, *GOP Ready to Back Up Campaign Promises*, THE PLAIN DEALER (Cleveland), Jan. 4, 1995, at A1.

37. Ronald Brownstein, *Decision '92: Special Voter's Guide to the Presidential Election; The Issues: What Do the Candidates Stand For? Here's a Roundup of Their Positions, From A to Z*, L.A. TIMES, Oct. 18, 1992, at U2.

38. Karen Tumulty, *Abortion Funds Ban Retained in House Test*, L.A. TIMES, July 1, 1993, at A1, A21.

39. Karen Tumulty, *States' Role in Abortion Aid Reaffirmed; Health: Administration Stands By Its Directive that Spells Out Funding Mechanism For Poor Women in Cases of Rape, Incest, Issue Stirs Protests*, L.A. TIMES, Jan. 7, 1994, at A15.

40. *Id.*

41. *Id.* at A21.

However, the Clinton administration was not successful in completely eliminating the Amendment's ban. In July of 1993, Representative Hyde forced a vote and got the provision back into the budget.<sup>42</sup> Congress then easily affirmed the ban.<sup>43</sup> Still, President Clinton and congressional supporters of reproductive freedom were able to expand the exception to the Hyde Amendment. In October 1994, Congress reaffirmed the exception to the ban on federally-funded abortions for situations in which a woman's life is threatened and added another exception where the pregnancy is the result of rape or incest.<sup>44</sup>

Not surprisingly, during the 1994 campaign, the Republican leadership did not emphasize abortion as a major issue. Reproductive choice is an issue which divides the Republican Party.<sup>45</sup>

42. Interestingly, when the issue came up for debate in the House of Representatives, there was considerable controversy. After Representative Hyde gave a fiery anti-abortion speech, Representative Cynthia McKinney, a Democrat from Georgia, spoke:

After hours of listening to well-to-do white men explain their views on an issue involving impoverished women, the first black woman ever elected to Congress from Georgia made an unusually blunt attack: "Quite frankly, I have just about had it with my colleagues who vote against people of color, vote against the poor, vote against women."

Karen Tumulty, *New Voices Shake Up the House*, L.A. TIMES, July 5, 1993, at A1.

43. The Hyde amendment was affirmed by a large margin — 255 to 178. *Id.* The majority of members apparently were not willing to go further on the abortion issue. "Many lawmakers who support a woman's right to abortion draw the line at forcing taxpayers to pay for it. Indeed, on the final vote, 11 women, most of whom call themselves 'pro-choice,' joined Hyde in voting to uphold the ban." *Id.* at A13. Representative Hyde maintains that, "[p]roviding a constitutional right to abortion does not mean society has to subsidize the exercise of that constitutional right." *Roll Call: House of Representatives*, L.A. TIMES, July 22, 1993, at J9. Representative McKinney, perhaps acknowledging the practical effect of such a ban rather than engaging in a remote discussion about rights and society considers the ban "nothing but a discriminatory policy against poor women who happen to be disproportionately black." *Id.* The argument that taxpayers should not have to support abortions for poor women because they are opposed to abortion is not overly sophisticated. All taxpayers end up paying taxes for programs which they do not support: pacifists pay taxes that go to build weapons, anti-smoking advocates indirectly support federal subsidies to tobacco farmers. Nevertheless, when the issue of abortion comes up, pro-choice advocates are unable to mobilize votes. Polls do show that the public overwhelmingly opposes the use of government funds for abortion. Thus, according to Rep. Don Edwards of San Jose, advocates "start to lose when they get into taxpayer dollars. . . . The votes are not there." Karen Tumulty, *President to Propose Return to Tax Funding of Abortion*, L.A. TIMES, Mar. 31, 1993, at A1.

44. *Nation in Brief: Pennsylvania: Parts of Abortion Law Overturned*, L.A. TIMES, Sept. 16, 1994, at A20.

45. A formidable group of Republicans protested against the Republican platform position against abortion at the Republican National Convention in Houston in 1992, and announced their support for the Clinton-Gore ticket. Wayne King, *G.O.P. Defectors: Who and Why?*, N.Y. TIMES, Nov. 1, 1992, § 13NJ, at 1. The abortion

More significant is the fact that abortion not only has been a highly publicized issue in past elections, but also may have been one that contributed to Republican candidate losses in past elections, given that the majority of Americans are pro-choice and the Republican Party is not.<sup>46</sup> Nevertheless, although Republican leaders may not have flaunted their anti-abortion views during the campaign,<sup>47</sup> the fact is that leaders and members of the new Congress do not support women's reproductive freedom.<sup>48</sup> Thus, even though abortion was not a major campaign issue in most races, the results of the 1994 elections are likely to affect the abortion debate. With the influx of many conservative newcomers, the focus of the abortion debate is likely to be on the legitimacy of the abortion procedure itself rather than how re-

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schism is being brought to the forefront of the Republican Party again, despite the Party's attempt to keep it in the shadows, due to the outspoken Presidential hopefuls, like California Governor Pete Wilson, who are pro-choice. Rich, *supra* note 12, at A23.

Additionally, the congressional vote on President Clinton's nomination of Dr. Henry W. Foster, Jr. as Surgeon General is becoming a referendum on abortion with the Republicans highlighting Foster's abortion record. Douglas Jehl, *Dole Suggests Clinton Should Not Force Battle On Surgeon General Nominee*, N.Y. TIMES, Feb. 20, 1995, at A8. "Among Republican senators, only Arlen Specter of Pennsylvania, an abortion-rights supporter who is considering a bid for the presidency, has said he might break with his party and support Dr. Foster's nomination." *Id.*

Several politically active Republican Party members, including Speaker Gingrich's daughter, consider it critical that the Republican Party reject its anti-abortion stance. "If the Republican Party is to appeal to young people in general, and specifically to women, we must throw off this stranglehold that the anti-choice movement has on the apparatus of the party," said Kathy Gingrich Lubbers. Interestingly, according to Ms. Gingrich Lubbers, Newt Gingrich was "very supportive" of her decision to make public her opposition to the anti-abortion provisions of the Republican platform, and Mr. Gingrich "has never, never attempted to silence [Gingrich Lubbers], unlike the current action of the Republican platform committee . . ." *Gingrich's Daughter Decries GOP Anti-Abortion Stance*, L.A. TIMES, July 29, 1992, at A13. Some Republican leaders are also reluctant to make abortion an issue regarding President Clinton's nominee for Surgeon General. See Jehl, *supra* at A8.

46. See Rich, *supra* note 12, at A17.

47. Abortion was an issue that Speaker Gingrich and many Republican candidates wished would "go away" during the 1994 elections. Jim Parsons, *Gingrich Predicts Big Gains for GOP*, STAR TRIB. (Minneapolis), Oct. 27, 1994, at B1.

48. Speaker of the House Newt Gingrich is not pro-choice. See Maralee Schwartz & J. Dionne Jr., *Gingrich Faces Familiar Opponent on Abortion Issue*, WASH. POST, July 28, 1992, at A8. In addition, Senate Majority Leader Bob Dole is not pro-choice. See Dan Balz, *Dole's Right Turn: Real or Opportune?: Allies Point to a Consistent Record; Opponents See a Chameleon*, WASH. POST, Apr. 16, 1995, at A9. Finally, House Judiciary Chairman Henry Hyde is not pro-choice, see part I *supra*, and neither is Senate Judiciary Committee Chairman Orrin Hatch. See Joan Biskupic, *Hatch Raises Sensitive Topics With Nominees; Federal Court Candidates Polled on Affirmative Action, Property Rights*, WASH. POST, Mar. 11, 1995, at A9.

productive freedom can be expanded. The anti-abortion Republicans also may alter existing policies.

Republican candidates who signed the *Contract with America* emphasized its provisions to balance the budget, combat crime, and reform welfare. Feminists criticized the *Contract with America* for effectively bringing back the "gag rule," which prohibits counselors and physicians at medical clinics receiving federal funding from discussing abortion as an option with patients.<sup>49</sup> Republican leaders deny that the *Contract with America* restores the "gag rule." According to Representative Dick Armey, the "bill makes no changes to the \$194 million Title X family planning program, which provides health and pregnancy-related services, including abortion counseling and referral."<sup>50</sup> Instead, according to Representative Armey, the *Contract* "continues a policy whereby [Aid to Families with Dependent Children] funds have never been used for family planning."<sup>51</sup>

While it is true that the *Contract* does not call for reinstatement of the "gag rule" on programs connected with Title X, it is somewhat misleading for Representative Armey to state that the *Contract* does not call for a "gag" on abortion counseling. The plan calls for the denial of Aid to Families with Dependent Children (AFDC) financial support and housing benefits to mothers under age eighteen who give birth out of wedlock. The savings generated by this provision are returned to the states.

The state will use the funds for programs to reduce out-of-wedlock pregnancies, to promote adoption, to establish and operate children's group homes, to establish and operate residential group homes for unwed mothers, or for any purpose the state deems appropriate. *None of the taxpayer funds may be used for abortion services or abortion counseling.*<sup>52</sup>

Thus, instead of reviving the old "gag rule" the *Contract* effectively calls for a new gag rule.<sup>53</sup>

49. Feminist leader Gloria Steinem endorsed some Democratic candidates on behalf of NOW and the National Abortion Rights Action League (NARAL), and denounced other candidates for signing the *Contract with America* because, according to Steinem, it pledges to bring back the gag rule. *Kennelly, Putnam Debate Several Topics 1st District*, THE HARTFORD COURANT, Oct. 15, 1994, at A10.

50. Dick Armey, *Letter to the Editor: Gag Rule Isn't Part of GOP 'Contract'*, N.Y. TIMES, Nov. 1, 1994, at A26.

51. *Id.*

52. *CONTRACT WITH AMERICA*, *supra* note 10, at 70 (emphasis added).

53. Some commentators have criticized this as a sort of political sleight-of-hand.

[The *Contract with America*] is dishonest on a defining civil rights issue of the moment — the right of American women to have abortions without Government interference. The contract does not oppose

Even if the *Contract With America* contained no proposal affecting abortion rights, supporters of reproductive freedom have reason to be concerned with the new Congress. Representative Christopher H. Smith of New Jersey, co-chair of the House Pro-Life Caucus, said the elections represent the "biggest victory in the history of the [anti-abortion] movement."<sup>54</sup> Indeed, according to both sides of the abortion debate, opponents of abortion gained at least thirty-nine seats in the House and five in the Senate, giving them a majority or near majority in Congress on many abortion issues.<sup>55</sup> Abortion rights groups consider the new Congress one that will be hostile to reproductive freedom.<sup>56</sup> Kate Michelman of the National Abortion Rights Action League said, "The 104th Congress could well be the most . . . anti-choice Congress in our history . . ."<sup>57</sup> She has also warned, "I don't think we should be fooled by the Republican leadership's attempt to moderate their rhetoric. That's a smoke screen."<sup>58</sup>

Opponents of abortion are optimistic about their chances to restrict abortion rights. Representative Smith of New Jersey concedes that abortion legislation is secondary to tax, welfare, and congressional procedure proposals, but said he believes that opponents of abortion have an "excellent" chance to roll back the Clinton administration's policies on abortion.<sup>59</sup> Indeed, some "[a]nti-abortion activists say they are willing to wait while the Congress disposes of the 100-day contract. But on day 101 'it's our turn,' says Dr. John Wilkie, president of the Life Issues Institute in Cincinnati."<sup>60</sup>

Abortion rights groups do not dispute this. They expect that new House Judiciary Chairman Henry Hyde will seek to repeal

abortion directly, but sneakily espouses a new Federal gag rule on abortion information. In this respect, the Gingrich contract represents a stealthy attempt to install the Reagan-Bush dream of an America where abortion is illegal and available only to people wealthy enough to flee the law or ignore it.

. . . No one should vote for the 'Contract with America' without understanding that it is a vote against freedom of choice.

*Partying with Newt*, N.Y. TIMES, Nov. 6, 1994, § 4, at 14.

54. Spencer Rich, *Congress's Antiabortion Blocs Gain: Interest Groups Count at Least 39 More House Votes, 5 in Senate*, WASH. POST, Dec. 5, 1994, at A1.

55. *Id.*

56. Nirmala Bhat, *Abortion Factions Draw New Battle Lines in Anticipation of GOP-Controlled House*, STAR TRIB. (Minneapolis), Nov. 16, 1994, at A10.

57. *Id.*

58. Turque, *supra* note 22, at 40.

59. Rich, *supra* note 12, at A1.

60. Turque, *supra* note 22, at 40.



the rape and incest exception to the ban on federally funded abortions instituted by the Clinton administration.<sup>61</sup> Conservatives may also try to weaken the language in the new federal law protecting access to abortion clinics.<sup>62</sup> Similarly, new Senate Foreign Relations Committee Chairman Jesse Helms is likely to propose cutting off funds for international family planning organizations which anti-abortion groups argue use public funds directly or indirectly to establish the legalization of abortion in foreign countries. Senator Helms proposed such a measure last year, but it was defeated.<sup>63</sup> It may be more successful with the new Republican majority in the Senate. Other measures congressional opponents of abortion see as possibilities include: barring federal support for research on the use of transplanted tissue from aborted fetuses to combat the effects of Parkinson's disease; restricting the research and the sale of the abortion pill, RU-486; reviving the old "gag rule" for federally funded family planning clinics; and barring the Federal Employees Health Benefits Program, military hospitals overseas, and the District of Columbia (even if using its own money) from providing abortions.<sup>64</sup> Finally, conservatives may use their gains to force "showcase" hearings on the "consequences" of having an abortion. "[Representative] Christopher Smith . . . wants hearings on possible links between [having an] abortion and [developing] breast cancer. 'I have absolutely no doubt that these issues will be aired,' says Smith."<sup>65</sup>

Some limits do exist on what the anti-abortion movement can accomplish in the 104th Congress. The presidential veto and a public more interested in broad reform elsewhere may limit what opponents of abortion will be able to do. Additionally, some key Republican leaders are not eager to get involved in this issue.<sup>66</sup> At the very least, this ostensibly anti-abortion Congress

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61. Michael Kranish, *From Taxes to Ecology: Congressional Forecast*, BOSTON GLOBE, Nov. 13, 1994, § National/Foreign, at 1.

62. See Turque, *supra* note 22, at 40.

63. Rich, *supra* note 12, at A1.

64. *Id.*

65. Turque, *supra* note 22, at 40.

66. A complete ban on abortion services does not seem to be a priority for Speaker Gingrich:

"It's very, very hard . . . to bring something up against a Speaker that doesn't want it to be brought up," Gingrich said. Asked whether he would permit legislation making all abortions illegal — a measure fervently backed by some Republicans but which is a divisive issue in the party — he said flatly: "That won't happen."

is not likely to expand the reproductive rights of women or their access to abortion. Representative Hyde has said that the Republican control of Congress will make it easier for abortion opponents to block federal legislation promoting abortion rights.<sup>67</sup> Hyde stated that he does not "think legislation advancing abortion has a bright future. . . . We can slow down, if not stop, a pro-choice agenda . . . ."<sup>68</sup> Thus, rather than directly attacking the concept of choice, the new Congress may be more likely to slowly eradicate recent gains won by the pro-choice movement.

## II. FAMILY MEDICAL LEAVE ACT

The Clinton-backed Family Medical Leave Act ("the Act"),<sup>69</sup> widely regarded as an advancement for women, is another area which may be challenged by the new Republican Congress. President Clinton signed the Act into law on February 5, 1993.<sup>70</sup> The Act allows eligible workers (both men and women) to take twelve weeks of unpaid leave for reasons such as the birth or the adoption of a child, or a serious illness affecting themselves or a family member.<sup>71</sup> Upon return, the employee is guaranteed his or her previous job or an "equivalent position with equivalent benefits, pay and other terms and conditions of employment."<sup>72</sup> Employers must also maintain health care benefits

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Healy, *supra* note 3, at A1, A25.

However, while abortion may not be a top priority for Newt Gingrich, it is on the agenda of other key Republican leaders. For example, Representative Dick Armey, the second-ranking House Republican has "pledged to cut funding for abortion and abortion related services." Edwin Chen, *Clinton Veto Threat Raised by Panetta; Congress: Staff Chief Says President to Draw Line on House GOP Welfare Reform, Capital Gains and Crime Plans*, L.A. TIMES, Mar. 27, 1995, at A1. Representative Armey said, "All the 10 years I have been here we have been losing votes on federal funding for abortion. . . . I think we have to look at that to begin with. Where [are the] programs in place now in current law [that provide] taxpayer subsidies to abortion and abortion-related activities? We can begin with those, and I intend to roll back those legislative areas, as much as many others." *Id.*

67. Kevin Duchscher, *Election Rout Aids Fight Against Abortion-Rights Legislation, Hyde Says*, STAR TRIB. (Minneapolis), Nov. 19, 1994, at B4.

68. *Id.*

69. 29 U.S.C.A. §§ 2601-2654 (West Supp. 1995).

70. See Paul Richter & Gebe Martinez, *Clinton Signs Family Leave Bill Into Law*, L.A. TIMES, Feb. 6, 1993, at A22.

71. Adam Clymer, *Congress Passes Measure Providing Emergency Leaves*, N.Y. TIMES, Feb. 5, 1993, at A1; Jo Mannies, *Dole Wants to Dismantle Family Leave*, ST. LOUIS POST-DISPATCH, Jan. 10, 1995, at A1; Nancy Mathis, *Family Leave Wins Approval in the Senate; Republicans' Effort to Defeat Clinton on Gay Ban Falls Short*, HOUS. CHRON., Feb. 5, 1993, at A1, A4.

72. Myron S. Waldman & Jack Sirica, *Family Leave Bill Threatened; Senate GOP Aim to Tie Vote to Gay Ban*, NEWSDAY, Feb 4., 1993, at 101; see Clymer, *supra*

for employees on leave. The law applies to businesses employing more than fifty people, as well as federal and state employees,<sup>73</sup> covering between forty and fifty percent of the work force.<sup>74</sup> Although the Act is criticized as underinclusive because it does not apply to same sex couples or to families, often ethnic minorities, who might rely on extended family caretakers, the passage of the Act does signify the Clinton administration's commitment to the working person and family.<sup>75</sup>

The partisan battle lines on the Act were clear. Democrats argued that without a family leave law, workers would continue to be forced to choose between keeping their jobs and caring for loved ones.<sup>76</sup> Democrats also cited the Act's financial impact, noting that "workers who do not have parental and medical leave and need it, end up receiving a greater share of public assistance, resulting in costs to taxpayers and other workers."<sup>77</sup>

The Act garnered much public support by the time of its passage in 1993.<sup>78</sup> Nonetheless, Republicans stood strongly against the Act in 1993 and continue to criticize it, even though "every [other] industrialized nation in the world has adopted a

note 71, at A6, A14. An employee may take twelve weeks of unpaid leave per year. 29 U.S.C.A. § 2612(a)(1) (West Supp. 1995). An employee may take leave for the following reasons: the birth of a child, § 2612(a)(1)(A), where the employee becomes an adoptive or foster parent, § 2612(a)(1)(B), to care for a child, parent, or a spouse, § 2612(a)(1)(C), or where a serious health condition makes the employee unable to perform his or her job, § 2612(a)(1)(D). Employees will retain health benefits during the leave period. Employees are guaranteed the same or an equivalent position when they return. 29 U.S.C.A. § 2614(a)(1) (West Supp. 1995). The act does not apply where there are fewer than 50 employees. 29 U.S.C.A. §§ 2611(2)(B)(ii), 2611(4)(A)(i) (West Supp. 1995). The act does not apply to part-time employees. § 2611(2)(A)(ii).

73. See Mathis, *supra* note 71, at A1.

74. Waldman & Sirica, *supra* note 72, at 101; Lawrence M. O'Rourke, *Family Leave Snagged After House OK*, SACRAMENTO BEE, Feb. 4, 1993, at A1. The District of Columbia and states including California have family leave laws. *Id.*

75. Clymer, *supra* note 71, at A14. Vice President Gore, commenting on the Act's passage, stated: "American parents will no longer have to choose between their families and their jobs." *Id.* at A14.

76. See William J. Eaton, *Military - Gay Issue May Stall Family Bill*, L.A. TIMES, Feb. 3, 1993, at A9. Senator Dianne Feinstein (D-CA) commented:

[t]he fact is that the day when one parent could stay home with the children is over for most American families. . . . The harsh reality is that women work because they must earn a living. . . . Today we have an opportunity to allow a mother to keep her job and care for a sick child or an elderly parent.

*Id.*; Mathis, *supra* note 71, at A1.

77. O'Rourke, *supra* note 74, at A1 (quoting Representative Vic Fazio (D-CA)).

78. See Catherine Fenton, *Dole Doesn't Get It*, NEWSDAY, Feb. 6, 1993, at 18.

policy allowing workers time off to care for a new baby or an ill family member.”<sup>79</sup> During his term, President Bush twice vetoed a similar bill despite his campaign’s emphasis on family values.<sup>80</sup> Republicans argued that the Act costs jobs, especially for young women, due to the employers’ fears that they would take advantage of the Act.<sup>81</sup> Republicans, notably Senator Bob Dole, maintained that businesses would suffer. “We have no idea how much it would cost business. We are talking about tens of thousands of jobs being lost or not created because of this bill.”<sup>82</sup> He called it an example of “ ‘unfunded federal mandates’ that the GOP-controlled Congress wants to eliminate.”<sup>83</sup> Dole was criticized for “playing politics” because he threatened to lead the Republicans in a filibuster against the Act. Democrats agreed to debate a Republican proposal on wholly different legislation — the proposal for a continued ban of gays and lesbians from military service.<sup>84</sup> Reportedly, a spokesperson for Dole commented that the Sena-

79. Waldman & Sirica, *supra* note 72, at 101.

80. Michael Kranish, *Family Leave Bill Is Sent to President*, BOSTON GLOBE, Sept. 11, 1992, § National/Foreign, at 1; Clifford Krauss, *Senate Passes Bill Setting Up Leaves For Family Needs*, N.Y. TIMES, Oct. 3, 1991, at A1. The bill was vetoed on September 22, 1992. Michael Wines, *Bush Vetoes Bill Making Employers Give Family Leave*, N.Y. TIMES, Sept. 23, 1992, at A1.

The sole outspoken Republican supporter of the Act was Representative Hyde, who said that his concern for the “traditional family” and his belief that the government should support it whenever possible spurred his sponsorship of the bill. Nina Burleigh, *Family Man: Henry Hyde Becomes a Champion for Women and Children’s Rights*, CHI. TRIB., Dec. 19, 1993, (Womanews), at 4. Hyde criticized Bush’s veto stating, “To assert that you are for ‘family values’ requires that you support this bill.” Kranish, *supra* at 1.

81. O’Rourke, *supra* note 74. Representative Jennifer Dunn (R-Wash.) “estimated sixty-thousand jobs would be lost.” *Id.*

82. Clymer, *supra* note 71, at A1.

83. Mannies, *supra* note 71, at A1. The position behind eliminating unfunded federal mandates is the belief that the federal government should not impose regulations on the states unless it provides the funding to pay for the implementation of the regulations. Anthony Lewis, *The Lost Leader*, N.Y. TIMES, Feb. 6, 1995, at A17. The 104th Congress easily passed a bill that makes it difficult for Congress to approve unfunded mandates, except for mandates regarding safety and civil rights. President Clinton has indicated that he will sign the bills. See, *The Next Environmental Threat*, N.Y. TIMES, Feb. 12, 1995, § 4, at 14; William Safire, *Comes the Devolution*, N.Y. TIMES, Feb. 9, 1995, at A23.

84. Elizabeth Neuffer, *Senate Debates Family Leave Bill; G.O.P. Declines to Tie it to Gay Ban*, BOSTON GLOBE, Feb. 3, 1993, § National/Foreign, at 3; O’Rourke, *supra* note 74; Waldman & Sirica, *supra* note 72, at 101. In the end, the Republicans declined to add an amendment to the Act that would enforce the current ban on gays and lesbians in the military. Nonetheless, the debate over the Act dragged on, consistently opposed by Republicans. The Republicans offered a substitute that would provide a 20% credit to employers who voluntarily gave such leave to employees. Neuffer, *supra*, at 3.

tor does not presently intend to repeal the Act and eliminate mandated family leave. However, he may leave it up to the states to decide if they will carry out the Act's provisions. Dole noted, "I'm not opposed to family leave. If you don't take care of your employees they're going to leave." But he questioned whether it was the responsibility of the federal government.<sup>85</sup>

Speaker of the House Newt Gingrich also staunchly opposed the Act. Gingrich has been accused of being out of touch with American families who primarily want help balancing work and family.<sup>86</sup> Gingrich has noted that attacking the Act is "high on right-wing wish lists."<sup>87</sup> However, he stated that it is not on the immediate agenda.<sup>88</sup>

The Republicans have not announced their intentions regarding the Act.<sup>89</sup> Calling it an "unfunded federal mandate," Republicans may aim to remove the Act from the federal realm and leave it up to the individual states to adopt.<sup>90</sup> What is certain is that this Republican Congress will not expand the Act or move to solidify some form of federal funding for it. Moreover, given the general Republican aversion to extending rights to gays and lesbians,<sup>91</sup> and the Party's opposition to the Act itself, it is unlikely that the Republican-led Congress will extend the Act to amend its underinclusiveness of nontraditional family structures.

### III. GAYS AND LESBIANS IN THE MILITARY

The Republicans' continued effort to keep gays and lesbians out of the military is certain despite President Clinton's attempts

85. Mannies, *supra* note 71, at A4.

86. "A quarter million women who responded to a recent survey from the Department of Labor Women's Bureau laid out what they want: decent pay, health insurance, an end to discrimination, opportunities for advancement and help balancing work and family, specifically paid leave and assistance with child care." Ellen Bravo, *Poor Families Will Pay For the GOP Victory*, N.Y. TIMES, Nov. 21, 1994, at A14.

Mr. Gingrich is perfectly happy to tear families apart, if they happen to be poor and the parents are unable to find work. When informed that forcing women off welfare after a time with no program to guarantee jobs, child care or health insurance would hurt children, Mr. Gingrich proposed orphanages and group homes.

*Id.*

87. *Reality Bites*, *supra* note 30, at A14.

88. *Id.*

89. The Act was not discussed in the *Contract With America*, despite its classification as being high on the right-wing wish lists.

90. *See supra* note 83.

91. *See infra* notes 97-99 and accompanying text and part III.

to erode the ban. President Clinton's campaign promise to "end the ban" and allow homosexuals to serve in the military resulted in only a slight change. At the core, the difference in the new policy is that military recruits will no longer be preemptively questioned as to their sexual orientation.<sup>92</sup>

The military may be one of the few institutions in our society which continues to openly practice discrimination against gays and lesbians, and it continues to fight hard to maintain this policy.<sup>93</sup> The ban against gay men and lesbians serving in the military existed de facto until 1942 when the armed services officially announced its position that gay men and lesbians were unsuitable for military service.<sup>94</sup> In 1943, it issued regulations completely banning gay men and lesbians from all branches of the military.<sup>95</sup> These regulations remained fundamentally unchanged until President Clinton's "Don't Ask; Don't Tell Policy."<sup>96</sup>

The Republican Party, strongly endorsed by military leaders, has stood against lifting the ban.<sup>97</sup> Finding gay and lesbian lifestyles morally reprehensible and a threat to "traditional family values," the 1992 Republican platform announced that "sexual preference" was not a civil right, but rather claimed a "right of heterosexual families to be free of the threat of homosexuals promoting their lifestyle by appearing to lead normal lives."<sup>98</sup> Speaker Gingrich recently echoed this long-held Republican belief that gays and lesbians are a threat to the "traditional family," and argued that they should not be afforded access to the mili-

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92. Pub. L. No. 103-160, § 571, 107 Stat. 1547, 1673 (1993).

93. See Mary C. Dunlap, *Gay Men and Lesbians Down By Law in the 1990's USA: The Continuing Toll of Bowers v. Hardwick*, 24 GOLDEN GATE U. L. REV. 1, 19-29 (1994); LESBIANS, GAY MEN, AND THE LAW, 334-75 (William B. Rebenstein ed. 1993) (for a discussion of litigation challenges to the ban against gay men and lesbians in the military); see generally RANDY SHILTS, CONDUCT UNBECOMING: LESBIANS AND GAYS IN THE U.S. MILITARY, VIETNAM TO THE PERSIAN GULF (1993) (for an extensive history of gays and lesbians in the military).

94. SHILTS, *supra* note 93, at 16-17.

95. *Id.* The regulations banning homosexuals from military service were codified in 1982 at "Enlisted Administration Separations." 32 C.F.R. pt. 41 (1982).

96. *Id.*

97. Philip Gailey, *Where Fussy Compromises Won't Work*, ST. PETERSBURG TIMES, Nov. 22, 1992, at D2. General Colin Powell, the Chairman of the Joint Chiefs of Staff, and Retired Army General Norman Schwarzkopf are against lifting the ban. General Powell argued that allowing gays and lesbians into the military would be "prejudicial to good order and discipline." *Id.*

98. Robert Scheer, *Military Policy, Gay Epithets — No Big Deal*, L.A. TIMES, Feb. 5, 1995, at M5.

tary because such access would project a belief that homosexuality was normal and accepted.<sup>99</sup>

Senior Republican Party leader Senator Dole urged President Clinton to "proceed cautiously" in lifting the military ban against gay men and lesbians,<sup>100</sup> and threatened that Congress would stand in Clinton's way.<sup>101</sup> Dole argued that President Clinton could not simply write an executive order to repeal the ban because Congress would have to repeal the military code section which prohibits sodomy in order for the ban to be lifted. Dole concluded that the ban would therefore not be lifted because it was doubtful that Congress would agree to repeal this section of the Uniformed Code of Military Justice. However, the code section prohibits "unnatural carnal copulation with another person of the same or opposite sex,"<sup>102</sup> and certainly heterosexuals have violated and are likely to continue to violate this code. Thus, this ban, which is selectively enforced against gay men and lesbians, is clearly maintained due to persistent homophobic notions that gay men and lesbians are aberrant individuals unfit to function as full citizens in society.<sup>103</sup> The determination of the Republican Party to keep gays and lesbians out of the military and prevent the Clinton administration from moving forward on

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99. *Id.* Gingrich announced that he was going to expose "how AIDS education programs promote homosexuality because 'taxpayers should not pay a program to teach you effective methods of sadomasochistic interaction.'" *Id.*

100. Phil McCombs, *Two Gay Men in the Line of Fire; the Aides Sen. Sam Nunn Dismissed*, WASH. POST, Dec. 23, 1992, at C1. Democratic Senator San Nunn of Georgia also spoke out against President Clinton's lifting the ban, similarly warning the President to "proceed cautiously" on the issue. Senator Nunn, former chairman of the Senate Armed Services Committee, was at the time in position to be appointed as President Clinton's Secretary of Defense. During this period, Nunn was labeled homophobic, stemming from accusations that he fired two staffers only because he found out that they were gay. President Clinton, faced with gay men and lesbian protestors at Nunn's hearings, appointed House Armed Services Committee Chairman Les Aspin (D.-Wis.) to the post of Secretary of Defense. *Id.* at C1, C3.

101. *Viewpoints, All Deliberate Speed*, NEWSDAY, Nov. 17, 1992, at 48. Dole said, "Overall it's a very sensitive area, sensitive on both sides. . . . And I can't give him any advice except to say go slow. There are other things you can do by executive order that wouldn't blow the lid off the Capitol. I think this one might come close." Cragg Hines, *Two Key Senators Object to Letting Gays in Military*, HOUS. CHRON., Nov. 16, 1992, at A1. Dole tied President Clinton's proposal to lift the ban to Clinton's lack of military service. "I think had he served, he might be a little more sensitive to the issue [of homosexuals in the military]." *Id.* at A1.

102. Clarence Page, *The Military's Ban on Gays Definitely Is On Its Way Out*, CHI. TRIB., Nov. 25, 1992, at C13.

103. *See id.*

the issue was clearly evidenced by their willingness to hold up wholly different legislation in order to defend the ban.<sup>104</sup>

While it is not certain how the Republican leaders can defeat President Clinton's attempt to tear down the ban, it is likely, in light of their fervent opposition to recognizing gay men and lesbians as equal members of society, that these Republican leaders will guide their party to staunchly oppose any further legal advancements for gay and lesbians in the military.<sup>105</sup>

#### IV. "WELFARE REFORM"

Welfare was the one major issue significantly and directly affecting women that the Republican candidates were willing and even eager to discuss during the 1994 campaign. In addition, "welfare reform" is a major component of the *Contract with America*. The issue of welfare reform became a media lightning rod because of some of the proposed changes to the current system described in the *Contract*. Pledging to solve the welfare crisis is by no means a new political promise.<sup>106</sup> In fact, the Democrats, through President Clinton, also have stated that welfare reform is a major priority.<sup>107</sup> It seems that when it comes to welfare, both liberals and conservatives agree that the system is in need of change.<sup>108</sup> Nonetheless, though President Clinton and the Republican congressional leaders are in agreement that the welfare system needs change, they are not in agreement over how to solve the problems in the system.<sup>109</sup>

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104. The Republicans, lead by Senator Dole, intended to create a filibuster preventing the passage of the Family Medical Leave Act until their demands to uphold the military ban on gays and lesbians was addressed. Neuffer, *supra* note 84, at 3; O'Rourke, *supra* note 74, at A1; Waldman & Sirica, *supra* note 72, at 101; *see also supra* notes 101-02 and accompanying text.

105. *See Gay Bashing by Senator Helms*, N.Y. TIMES, Feb. 21, 1995, at A14; Frank Rich, *Closet Clout*, N.Y. TIMES, Feb. 2, 1995, at A23.

106. During the 1960s, politicians promised to solve the problems of the poor with the Work Incentive (WIN) Program. WIN eventually became the Job Opportunities and Basic Skills Program during the 1990s. President Nixon's program was the Family Assistance Plan (FAP) which, in varying degrees, was also part of both President Ford's and President Carter's plans to deal with poverty. *See* Jodie T. Allen, *Welfare Terminator II: How Clinton Can End Reform as We've Known It*, WASH. POST, June 19, 1994, at C1, C4.

107. Barbara Vobejda, *Welfare Reform: Debate is Shifting to Radical Changes*, WASH. POST, Nov. 17, 1994, at A1.

108. Morganthau et al., *supra* note 17, at 28.

109. In June 1994, President Clinton presented his welfare reform proposal, vowing to "end welfare as we have come to know it." Allen, *supra* note 106, at C1. Both Speaker Gingrich and Senate Majority Leader Dole view welfare as a critically important issue. *See* Vobejda, *supra* note 107, at A1. Speaker Gingrich has said that



Although President Clinton has presented a plan for welfare reform, currently the most relevant plan is the House Republicans' plan detailed in the *Contract with America*. The House recently voted to pass this plan.<sup>110</sup> Whether this proposal will be passed by the Senate and signed into law by President Clinton is not clear. Few senators have aligned themselves closely with the *Contract*, and Senator Nancy Kassebaum, chair of the Senate Labor and Human Resources Committee, has offered her own proposal for reform.<sup>111</sup> Thus, it is unlikely that a welfare reform bill will be identical to the proposal offered in the *Contract*. Nevertheless, the plan in the *Contract* is worth analyzing because it is the proposal endorsed by the new House leadership and as part of the Republican platform in the 1994 campaign, it is at least implicitly supported by some voters. Additionally, even accounting for the changes and bargaining during the legislative process, some major components of the *Contract* plan are likely to be part of a welfare reform bill sent to the President.<sup>112</sup>

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he believes that much of the welfare burden should be shifted to private charities. *Id.* at A8. Senator Dole also has called for a "radical change in welfare." *Id.*

110. Robert Pear, *Clinton Objects to Key Elements of Welfare Bill*, N.Y. TIMES, Mar. 26, 1995, § 1, at 1. The bill passed by a vote of 234 to 199. *Id.*

111. Senator Kassebaum proposes to hand welfare programs, AFDC, food stamps, and nutrition programs for women and children over to the states. Under this proposal, the federal government would still be responsible for Medicaid programs. Senator Kassebaum also has said that "Republicans should avoid a 'kamikaze' approach to dismantling existing government programs. 'I want us to be constructive,' she said at the Republican conference. 'We want to make dramatic change where we can, but we have to make sure it will work.'" Vobejda, *supra* note 107, at A9.

After the welfare bill passed the House, some Senate Republican leaders emphasized their approval of important parts of the plan. See Robert Pear, *Welfare Bill Gets Key Endorsement by GOP Senators*, N.Y. TIMES, Mar. 28, 1995, § 1, at 1 (noting that Senators Bob Packwood, John Chafee, and Don Nickles approved the block grant proposals). Previously, however, senators of both parties vowed to relax some of the more stringent proposals in the bill. See Robert Pear, *House Backs Bill Undoing Decades of Welfare Policy*, N.Y. TIMES, Mar. 25, 1995, § 1, at 1. Speaker Gingrich also has said that he expects to negotiate with President Clinton on welfare. See Pear, *Clinton Objects*, *supra* note 110. Nevertheless, House Republican leader Dick Armey expects the House version of the welfare bill to remain largely intact in the Senate and to be sent to the President. See Chen, *supra* note 66.

112. Interestingly, President Clinton's administration has criticized many aspects of the *Contract with America* plan. He has not, however, threatened to veto the proposals. Celia W. Dugger, *Child's Portion: Displaced by the Welfare Wars*, N.Y. TIMES, Feb. 26, 1995, § 4, at 1. Additionally, "[t]he Republicans have set forth the kind of hard-nosed proposals that could be wildly popular. Some of them may work, and some may even be embraced by [D]emocrats." Judy Mann, *Let's Refrain From Attacking the Poor*, WASH. POST, Nov. 23, 1994, at D19.

President Clinton presented a plan for welfare reform in June 1994, which proposes to force 400,000 welfare recipients into work programs by the year 2000.<sup>113</sup> President Clinton's plan focuses on job training and workfare requirements for young mothers. After two years of receiving aid, welfare recipients would be required to work or join job training programs. If they cannot find private sector jobs, the government would provide recipients with community-service jobs.<sup>114</sup> The proposal would provide child care to participants in the training and education programs and to those employed in community service jobs.

President Clinton's plan also requires an unwed mother on welfare to supply the name and address of the child's father to establish paternity immediately after giving birth. The plan reaffirms that all absent parents must pay child support. The plan proposes increasing the use of computerized child support registries and tracking of non-payers across states lines. If a parent fails to provide the support payment, states could threaten the revocation of professional, occupational, or driver's licenses or deduct payments from paychecks.<sup>115</sup> Additionally, President Clinton's plan prohibits *legal* immigrants from receiving welfare until five years after their arrival in the country. If the immigrant's sponsor has an income above \$39,500, the sponsor would be responsible for supporting the immigrant until the immigrant becomes a citizen.<sup>116</sup>

To combat the problem of illegitimate births and teen pregnancy, President Clinton's plan calls for grants to set up pregnancy prevention programs at high schools. In addition, in order for unwed mothers under age 18 to receive benefits, they must live at home or stay in school. The plan allows states to reduce payments to women who have additional children out of wedlock.<sup>117</sup>

Republicans have been critical of President Clinton's plan for "not going far enough."<sup>118</sup> The House bill, modeled after the

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113. This part of the plan focuses on those receiving Aid to Families with Dependent Children (AFDC).

114. See Editorial, *Breaking the Bonds of Dependency*, WASH. POST, Aug. 21, 1994, at C10.

115. See *Both Sides of Coin: Comparing the Plans*, USA TODAY, Jan. 3, 1995, at A6.

116. See *id.*

117. See *id.*

118. Representative Clay E. Shaw, Jr. of Florida has said, "My main criticism of the administration bill is it didn't go far enough." Barbara Vobejda, *Republican*

proposal in the *Contract* is thus a more extensive plan for changing the welfare system. The Republican plan would force 1.5 million welfare recipients, as compared to 400,000 under President Clinton's plan, to work by the year 2000.<sup>119</sup> According to the *Contract's* authors, current government welfare programs breed illegitimacy, crime, illiteracy, and more poverty. The *Contract* promises to "change this destructive social behavior by requiring welfare recipients to take personal responsibility for the decisions they make" and thus to "reduce illegitimacy, require work, and save taxpayers money."<sup>120</sup> The House Republicans are serious enough about this proposal that they have pledged to vote on welfare legislation within the first 100 days of the Republican Congress.<sup>121</sup>

The Republican plan for ending welfare is titled the "Personal Responsibility Act." The proposal aims to change the structure for AFDC payments. To reduce the total number of people on welfare, the Personal Responsibility Act requires states to move welfare recipients into work programs if they have received welfare for two years. States are to design their own work programs and determine who is required to participate. The proposal contains no provisions for child care. However, welfare recipients must work an average of thirty-five hours a week or enroll in work training programs. Unlike President Clinton's proposal, states have the *option* of eliminating families' AFDC benefits after they have received welfare for two years if at least one year has been spent in a work program. More significant is another provision absent from President Clinton's plan which dictates that states *must* drop families from the program after they have received a total of five years of AFDC benefits.<sup>122</sup> Finally, the Republican plan bars *legal* immigrants from receiving federal benefits such as school lunches, job training, adoption assistance, and student loans.<sup>123</sup>

Speaker Gingrich expects private charities to provide for people who lose their benefits and are unable to find work.<sup>124</sup>

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*Welfare Plan is Termed 'Indefensible'; Shalala Contrasts Two Parties' Provisions*, WASH. POST, Jan. 11, 1995, at A4.

119. *Id.*

120. CONTRACT WITH AMERICA, *supra* note 10, at 65.

121. *Id.*

122. *Id.* at 66.

123. Steven Waldman et al., *Welfare Booby Traps*, NEWSWEEK, Dec. 12, 1994, at 34, 35.

124. *See supra* note 106.

This outcome seems unlikely.<sup>125</sup> The Republican proposal would affect over a million people, resulting in an enormous increase in the number of people who might seek help from charities.<sup>126</sup> Thus, while the plan may significantly reduce the number of people on welfare, it is not likely to decrease the number of people living in poverty.

To combat illegitimacy, the *Contract's* plan would deny AFDC payments and housing benefits to unwed mothers under age eighteen. The plan allows states to similarly refuse to provide AFDC payments and housing benefits to mothers who are ages eighteen, nineteen, and twenty. Unwed mothers who are eighteen years when they give birth must live at home in order to receive aid — unless the mother marries the biological father of the child or marries an individual who legally adopts the child.<sup>127</sup> Unwed mothers who are legal adults must identify the father of the child as a condition for receiving AFDC payments except in cases of rape and incest. The plan contains no provisions for increasing enforcement against absent parents for child support payments. In addition, mothers already receiving AFDC will not receive an increase in benefits if additional children are born out of wedlock.<sup>128</sup>

As mentioned above, one way the *Contract's* "Personal Responsibility Act" proposes to reduce welfare dependency is by denying benefits to teenage mothers. The savings generated from this denial of benefits is returned to the states. The states are to use the funds in programs aimed at reducing out-of-wedlock pregnancy, promoting adoption, establishing and operating children's "group homes,"<sup>129</sup> and operating residential group

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125. Tom Kingston, president of the Wilder Foundation, which runs more than 100 social service programs in the St. Paul area said, "It's a romantic, simplistic notion that by eliminating these [federal] programs, the problem will go away." Jean Hopfensperger, *Republicans Proposals for Welfare Reduction Worry Charities*, STAR TRIB. (Minneapolis), Dec. 7, 1994, at A1.

126. " 'If other programs are cut, we'd be inundated,' said [Tim] Gothman, acting director of Catholic Charities' Dorothy Day Center. 'The number of meals we served has gone up by 20 percent in the past year alone. I don't know if we can count on increased generosity of the public [to pay for it].' " *Id.*

127. CONTRACT WITH AMERICA, *supra* note 10, at 70-71.

128. *Id.* at 71.

129. These "group homes" have garnered considerable media attention. Essentially, Gingrich's suggestion is that, "If these young women can no longer look after their children . . . they can send them to orphanages." Carol Goar, *We, Too, Could Fall for Dickensian Ideas*, TORONTO STAR, Jan. 7, 1995, at B4.

homes for unwed mothers. None of these funds may be used for abortion or abortion counseling.<sup>130</sup>

The underlying assumption of the plan is that teenage girls decide to have children in order to "cash-in" on welfare benefits. This implies that welfare is the *reason* these girls become pregnant. Indeed, according to the *Contract*:

Republicans understand one important thing ignored by most Democrats — incentives affect behavior. Currently, the federal government provides young girls the following deal: Have an illegitimate baby and taxpayers will guarantee you cash, food stamps, and medical care, plus a host of other benefits . . . . It's time to change the incentives and make responsible parenthood the norm and not the exception.<sup>131</sup>

Speaker Gingrich even has sketched a composite teenage girl on welfare: a thirteen-year-old girl who is a drug addict and pregnant and whose child will end up in a dumpster if the state does not intervene and put the child in an orphanage.<sup>132</sup>

This plan for reducing illegitimacy is both simplistic and suspect because it wrongfully blames mothers for the welfare crisis. Labelling teenage mothers as the culprits for the welfare crisis ignores statistics and history. Although single motherhood has increased, the most dramatic increases have been among adult white women, particularly those in professional and managerial jobs.<sup>133</sup> The teenage child-bearing rate, by contrast, has been falling since the 1950s. In addition, teenage mothers account for approximately five percent of AFDC recipients.<sup>134</sup> Thus, implying that teenage pregnancy threatens the very "social fabric" of the United States is misleading.

130. CONTRACT WITH AMERICA, *supra* note 10, at 70.

131. *Id.* at 75; *see also supra* part I.

132. Ellen Goodman, *Backwards to the Future; Poverty as Population Control: The Republican's Bad Old Idea*, PITT. POST-GAZETTE, Dec. 14, 1994, at B3.

133. *See* Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 CONN. L. REV. 879, 895 (1994). Mink explains,

Although single pregnancy has increased, accounting for twenty-eight percent of all births in 1990, the most dramatic increases have been among *adult white women* generally, and among college graduates and women in professional and managerial jobs. Meanwhile, the teenage child[-]bearing rate has been falling since the 1950s among both black and white Americans: in 1960, the teen birthrate was 89.1 per 1,000; in 1970 it was 68.3; and in 1989, it was 58.1.

*Id.* (citing STAFF OF THE HOUSE WAYS AND MEANS COMM., OVERVIEW OF ENTITLEMENT PROGRAMS: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMM. ON WAYS AND MEANS, 102d Cong., 2d Sess. 108 (1992)).

134. *Id.*

While the illegitimacy problem may not be as monumental as the authors of the *Contract* suggest, few would disagree that reducing teenage pregnancy is a legitimate and worthy goal. The Personal Responsibility Act, however, is not likely to eliminate teenage pregnancy. The theory behind this proposal is that cutting off aid to these young mothers will teach them "responsibility." Presumably, after the Personal Responsibility Act passes, the thirteen-year-old girl will recalculate her options and realize that it is "no longer fiscally sound to get pregnant."<sup>135</sup> However, the Personal Responsibility Act's underlying assumption, that most teenage girls get pregnant to obtain welfare benefits, is mistaken. Studies illustrate that teenage motherhood varies inversely with AFDC benefits levels; Mississippi offers the lowest welfare benefits yet has the second highest rate of unwed pregnancy.<sup>136</sup> The existence of welfare did not create the problem of teenage pregnancy. There are complex economic, psychological, and cultural reasons for this phenomena.<sup>137</sup> In addition, many of these girls may have been pressured or even forced into engaging in sex. Therefore, because teenage pregnancy is the product of several of society's shortcomings, eliminating welfare is not likely to eradicate its existence.

The Personal Responsibility Act's focus on teenage girls gives the impression that these girls just happened to become pregnant because they were not "responsible." Conspicuously absent from the Personal Responsibility Act is any provision providing these girls with the tools with which to exercise some control over their bodies to stop pregnancy from occurring in the first place. There are no provisions for teaching proper methods of birth control or for providing access to family planning clinics. Provisions for birth control would deny the underlying assumption of the Act: that girls are trying to become pregnant. The plan also fails to acknowledge the fact that these girls do not become pregnant on their own. There is no condemning declaration, much less any provision, affecting the fathers of these "illegitimate" children. The plan does not mention anything

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135. Goodman, *supra* note 132.

136. See Mink, *supra* note 133, at 896 n.39 (1994) (citing U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FAMILY SUPPORT ADMINISTRATION, AFDC RECIPIENT CHARACTERISTICS STUDY, 1989, at table 6 (1991)); Mark R. Rank, *Fertility Among Women on Welfare*, 54 AM. SOC. REV. 296, 303 (1989).

137. Waldman & Sirica, *supra* note 72, at 34.

about the "responsibilities" of those who have sex with teenage girls.

The bottom line is that even if no benefits exist, teenagers will still become pregnant. If the *Contract* were in effect today, millions of children would lose their financial support.<sup>138</sup> Conservatives argue that these children can be fed and housed by relatives. Some teenage mothers probably would be able to live with relatives; however, many others would not. Some mothers may succumb to the mounting financial pressure and give up their children. If this happens, their children will need some kind of state-provided care. This solution is questionable and is likely to be extremely costly. Historically, orphanages have hardly been the ideal place to raise children. Mothers may refuse to do this and accept a life of poverty and possibly homelessness with their children rather than a life without their children. Still other teenage girls, upon discovering their pregnancies and realizing their limited options, may choose to terminate their pregnancies. This would definitely be an unintended consequence of the Republican plan, in light of the Republican Party's fervent opposition to abortion.

#### CONCLUSION

The Republican leadership is currently in a position to use its majority status to change the course and terms of the political debate. What will actually be accomplished by the new Congress cannot be stated with certainty. However, we predict that the new Republican Congress will challenge reproductive freedom by eradicating the recent advances made by the pro-choice movement and by instituting a new gag rule. In addition, the new Congress will not expand the Family Medical Leave Act, nor cure the Act's underinclusiveness of nontraditional family structures. Further, the Republican Congress will dramatically cut welfare and force millions of children to lose financial support. Clearly then, while the 1994 Republican victories may not be a cause for alarm, they are certainly a cause for concern.

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138. Morganthau et al., *supra* note 17, at 32.