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The New Paternalism: War on Poverty or War on Women?

Martha F.
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Theories of poverty are cyclical. During the Progressive Era of the early 20th century, the antiquated notion that poverty was caused by individual moral failings was replaced by a more rational view that poverty was an economic problem to be addressed, at least in part, through state-sponsored public benefit programs. The cycle entered its next phase in the 1950s as poverty was linked with so-called immoral behavior. But by the 1960s, poverty theory had come full circle and lack of opportunity, rather than immorality, was identified as poverty's central cause.¹

This cycle is vividly reflected in state legislation. In the 1950s and early 1960s, access to welfare programs was restricted based on moral turpitude. For example, in the 1950s, some states enacted "suitable home" rules that denied benefits to poor, unmarried mothers whose ability to provide a suitable home environment for children was deemed questionable.² States also attempted to remove illegitimate children from the welfare rolls. However, in the late 1960s and 1970s — a formative period for poverty law — many of these restrictions were

challenged. Cases brought during this time established a number of baseline parameters for welfare recipients' rights vis-à-vis their public assistance benefits.³

In the 1990s, behavioral modification measures aimed at eliminating immorality among poor women are again being touted as sound anti-poverty policy. Denominated as the New Paternalism, today's proposals identify irresponsible childbearing, failure to marry, inadequate parenting, and unwillingness to work as key pathological behaviors of poor women that cause or contribute to their poverty. The "New Paternalism" proposes to address these anti-social behaviors through financial incentives and penalties that link public benefit levels with appropriate conduct.

As they did in the 1950s, state legislators (often with federal encouragement) are passing legislation increasingly directed toward behavioral modification. Some states, notably Wisconsin, Minnesota, California, and New York, have enacted legislation imposing a two-tiered benefit structure designed to deter welfare recipients from moving across state lines to collect higher benefits.⁴ Similarly, some states have implemented (and

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others are considering) programs to deny need-based benefit increases to families with children born on welfare. Several states now provide financial incentives for women to marry, punish families for children's truancy from school, or limit benefits if children fail to receive prescribed immunizations. The two-year time limit on welfare benefits proposed by the Clinton administration is a further step towards a rigid separation between the deserving and undeserving poor.⁵

Today, poverty lawyers have a useful tool for challenging these proposals that was not available in the 1960s: women's rights law. This relatively new corpus of law, which had not been developed when legal services lawyers began defining the practice of poverty law, will be central to challenging the New Paternalism.

The developments in women's rights law in the past two decades have been profound. *Craig v. Boren* established that classifications based on gender warrant intermediate scrutiny under the federal constitution.⁶ Although the Equal Rights Amendment (ERA) was not enacted into federal law, the constitutions of 16 states include ERAs, and at least nine of those mandate *greater* scrutiny of sex-based classifications than required under the federal constitution.⁷ *Roe v. Wade* stated that a woman's right to privacy encompasses a right to choose an abortion.⁸ A number of state constitutions provide greater protection of this right by requiring that publicly funded abortions be available to poor women.⁹ In 1982, *Mississippi University for Women v. Hogan* confirmed that despite social convention, equal rights to education cannot be denied based on sexist stereotypes.¹⁰ Federal and state laws require equal treatment of women in publicly-funded educational and training programs.¹¹ Finally, many states prohibit gender discrimination in public accommodations.¹²

These legal developments provide fertile ground for developing legal and political challenges to the New Paternalism. The task facing lawyers is twofold. First, the sexist and racist classifications, assumptions, and intentions that permeate these new programs must be recognized and defined. Second, legal

theories must be created that expose these discriminatory underpinnings.

Feminism, the New Paternalism, and Aid to Families with Dependent Children

Feminists have long recognized the ways in which poverty programs are designed to regulate poor women's lives.¹³ The program most popularly identified as female is Aid to Families with Dependent Children (AFDC). Given this gendered perception, it is no accident that the New Paternalism, with its emphasis on marriage and social control, has focused primarily on AFDC. Although AFDC is no longer formally gender specific — both single men and two-parent families may be eligible — women more often assume the role of family caretakers. Ninety-two percent of AFDC families are headed by single mothers.¹⁴

AFDC was created in 1935 to support widows with children and to encourage women to stay out of the workforce while raising families as single parents. At its outset, white widows found the program accessible and moderately supportive while unmarried mothers and poor black women — the undeserving poor — were discouraged from participating.¹⁵ As the percentage of nonmarital children born to both whites and blacks increased during and after the 1950s¹⁶ and the civil rights movement undermined local efforts to deny benefits to African Americans, the demographics of the AFDC program shifted to serve more nonmarital families and more black women. The notion that these women are undeserving, however, persists and forms the basis for the stigma associated with AFDC.

The New Paternalism is premised on the stereotypical notion that AFDC recipients are black women with too many children who have never worked and are unable to properly care for their children. This stereotype is not a valid generalization. In fact, about one-half of AFDC recipients nationwide are white; the average family has 1.9 children; and almost one-half of AFDC recipients either work while receiving welfare or cycle on and off the program as economic

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necessity dictates.¹⁷ Studies that have examined children's truancy and graduation rates have found little difference between AFDC recipients and non-AFDC recipients.¹⁸ Nevertheless, the stereotypes persist and fuel interest in punitive programs intended to address welfare recipients' behavior. Three examples of the kind of programs the New Paternalists advocate are described below.

The Family Cap Proposals

New Jersey has enacted, and other states are considering, a cap on welfare benefits that eliminates the incremental benefit increases for children born on welfare.¹⁹ The underlying assumptions are that poor women have children in order to collect additional benefits and that denying such incremental increases will not only deter childbirth, but will encourage poor women to work.²⁰

Feminists and civil rights advocates have argued that these capping proposals rest on both racial and gender stereotypes. As stated in a complaint letter challenging the New Jersey law, filed with the Office of Civil Rights of the Department of Health and Human Services [hereinafter the OCR Complaint],

African American and Latino welfare recipients are often characterized as sexually irresponsible, inclined to bear children outside of marriage, and encouraged by AFDC benefits to bear numerous children. These stereotypical traits are linked to the offensive idea of a moral deficiency among African American and Latino welfare recipients which causes them to reject marriage, legitimate births and limited family size. It is this racial stereotype of a lack of 'family values' that is rarely applied to poor whites and which is often blamed for the poverty of Latino and African American communities.²¹

These stereotypes are particularly invidious and destructive in New Jersey where, in contrast to many states, African American women and Latinas make up a majority of welfare recipients.

Significantly, substantial experimental data contradicts the stereotypical image on

which family caps are based. As summarized in the OCR Complaint,

[n]ational and local studies have demonstrated no positive relationship between the level of welfare benefits and pregnancy...In fact, contemporary research indicates the contrary. As one study commissioned by HHS [Department of Health and Human Services] concluded, 'welfare simply does not appear to be the underlying cause in the dramatic changes in family structure of the past few decades.'²²

To date, however, this data has been all but ignored by advocates of family caps.

In fact, the importance of sexual and racial stereotypes in selling these proposals is readily apparent from the statements of proponents of family caps. For example, New Jersey Assemblyman Wayne Bryant, chief sponsor of the New Jersey plan, consistently stated that the purpose of the provision was to influence the behavior of African Americans. As one of the Act's supporters noted, "[i]t would be very difficult for a white to raise [these issues]. A white raising the same concerns would be called racist. [Wayne Bryant] is doing us all a favor by focusing the debate."²³ Wisconsin Governor Tommy Thompson has urged that a similar benefit-capping program for teen mothers is necessary in Wisconsin to "reduce unintended pregnancy...by no longer 'rewarding' AFDC recipients with more money each time a baby is born."²⁴

Finally, it is apparent that both the Wisconsin and New Jersey programs are specifically intended to target women. When both programs were introduced, they applied exclusively to women having additional children while on welfare. Only when advocates pointed out that such a gender-specific program would be blatantly unconstitutional did proponents of the caps revise their proposals to apply to all families with children born on welfare. Nevertheless, the programs still have a disparate effect on the mother-only families that make up the great majority of AFDC recipients.

Welfare Proposals

Some states, again most notably Wisconsin and New Jersey, have considered offering

financial rewards for marriage. In Wisconsin, legislators proposed an increase of 73 dollars per month in public assistance benefits for welfare recipients who marry. In New Jersey, legislation has been enacted to provide additional earned income allowances for two-parent families that include a stepparent, legislation clearly aimed at encouraging marriage.

Feminists have criticized these proposals because they focus on marriage as an anti-poverty strategy, rather than acknowledging individuals' right to choose whether or not to marry free from governmental coercion. In fact, it is not clear that marriage is a solution to poverty. Although two incomes are clearly better than one, the two-parent household is the fastest growing poverty group in the United States.²⁵ Coercing poor, single women to marry simply does not address the profound issues that contribute to women's poverty: the low minimum wage, gender discrimination in the workplace, lack of adequate child care, and society's unwillingness to value women's family and child care activities. Finally, given the high incidence of wife battering and child abuse in the United States, marriage can hardly be viewed as a panacea for women or their children.²⁶

Proponents of wedfare have not hidden their antagonism toward mother-only families. According to Republicans in the Pennsylvania House of Representatives, mother-only families are merely "mother-child family fragments," that can only be made whole with the addition of a father.²⁷ Similarly, policymakers in Wisconsin view efforts to encourage teen mothers to form a two-parent family as being of primary importance, despite the negative success rate of such teenage unions.²⁸

Learnfare Proposals

Wisconsin, Ohio, Maryland, Missouri, and Virginia have each implemented some variation of learnfare, a program that is also being considered in other states. Under learnfare-type programs, families on welfare are sanctioned through benefit reductions if their children accumulate a specified number of unexcused absences from school.

Like other programs of the New Paternalism, learnfare is fueled by stereotypical images of welfare recipient families and by the notion that, absent intrusive government regulation, poor women cannot properly socialize their children. In fact, as noted above, school attendance by AFDC and non-AFDC children does not appear to differ significantly.²⁹ Further, according to the University of Wisconsin's multi-year learnfare evaluation, neither attendance nor graduation rates of poor children have improved under Wisconsin's learnfare program. Rather, learnfare has shifted authority within the family to the children, who can now control family finances by attending or not attending school.³⁰ Middle class families would not put up with such an intrusion on parental authority, yet this type of regulation is deemed appropriate and even desirable when the parents in question are low-income mothers.

Potential Legal Challenges Based on Feminist Critiques

The feminist critique of the New Paternalism illuminates the intertwined sexist and racist stereotypes on which these programs are based, including poor women's purported irresponsible childbearing and childrearing behavior, their need for a husband, and their inability to properly socialize their children. While an array of more technical legal challenges may be available to advocates opposing these programs on behalf of clients—and must clearly be vigorously employed—it is also important for advocates to use the law creatively in order to expose the sexist and racist myths on which these programs are based, and to educate judges and the public about the realities of women's poverty. Challenges to the root assumptions of the New Paternalism have the unique advantage of giving a voice to the clients' own understanding of these programs, and therefore contributing to recipients' organization and mobilization. A number of welfare rights groups around the country have a clear feminist orientation. They recognize the sexism and racism of punitive, behaviorally based benefits cuts, and have organized to defeat such proposals

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in California and Wisconsin.³¹ It is up to lawyers, however, to translate welfare recipients' rhetoric into legal claims.

One such legal challenge has already been initiated. The OCR Complaint described above, alleges that New Jersey's family capping program rests on sexist and racist stereotypes and is specifically directed at women of color, in violation of Title VI of the Civil Rights Act of 1964,³² and its implementing regulations. The Office of Civil Rights is currently conducting an investigation of these charges.

Both family capping provisions and welfare-type programs may also be susceptible to challenge under the legal theories described below, including the Equal Protection and Due Process clauses of the federal constitution and, in many instances, state constitutions and statutes.

Arguments Based on the Federal Due Process Clause

Sanctioning welfare recipients with the express purpose of deterring their procreation may constitute an impermissible government intrusion on private, family decisions that are protected by the Due Process clause.³³ The inevitable effect of these measures will be to coerce women to have abortions, leading to particularly devastating harm to poor women in those states which do not provide public funding for abortion. Alternatively, poor women may be deterred from having children at all, a policy that some have labelled a form of eugenics. Financial incentives offered to entice welfare recipients to marry — significant incentives relative to overall benefit levels — also violate principles of privacy and autonomy protected by the Due Process clause.

Arguments Based on the Federal Equal Protection Clause

Equal Protection clause challenges should also be considered by advocates, particularly with regard to those proposals (such as family capping) that ignore authoritative, expert data. For example, by providing different benefits to families of the same size because children were born on or off welfare, family

capping laws create irrational distinctions that are unrelated to a permissible state goal, in violation of the Equal Protection clause.³⁴

This argument is not barred by the Supreme Court's ruling in *Dandridge v. Williams*.³⁵ Although in *Dandridge* the state gave its desire to deter childbirth as one rationale for capping benefits at six family members, the U.S. Supreme Court did not address that purported ground for the program, instead upholding the program as a cost-saving measure. Further, unlike *Dandridge*, where the state offered behavioral modification as only one of several rationales, states currently considering these programs have focused exclusively on their desire to deter childbirth and encourage marriage. Since the law protecting family privacy, particularly with regard to procreation, has developed significantly since 1973, *Dandridge* does not resolve all possible Equal Protection clause claims.

State Law Arguments

In addition to federal constitutional arguments, state ERAs may provide an opportunity to raise claims based on the sexism implicit in the New Paternalism. At least one state, Maryland, has recognized that its state ERA may be violated by programs that have a disparate impact on women.³⁶ A disparate impact theory could support a challenge to a welfare-type program which singles out AFDC families — almost all of which are mother-only — for financial sanctions based on truancy. Similarly, many of the new programs involve not only social service agencies but schools, clinics, and other institutions in reporting welfare recipients' compliance with an array of behavioral requirements. With welfare-type programs, for example, social service agencies have begun performing an educational function — taking attendance — that was previously the sole province of the school system. Since classifications based on AFDC disparately impact mother-only families, such reporting requirements may implicate public accommodations laws or state laws equivalent to Title IX.³⁷ Furthermore, proof of discriminatory *intent* may not be necessary when a challenge is based on Title IX's

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regulations. Instead, the plaintiff may prove a discriminatory *effect* based on sex.³⁸

Conclusion

The current cycle of anti-poverty initiatives focusing on welfare recipients' behavior and morality presents an opportunity to educate the public and the legal profession about the intertwined sexism and racism inherent in proposals that focus on poor women's reproduction, marriage decisions, and childrearing. Legal theories that expose these sexist and racist assumptions should be an important component of any effort to defeat the proposals. Few of these legal theories have been tested since they reflect developments in women's rights law that post date the punitive programs of the early 1960s that were previously challenged by legal services lawyers. The challenge that the New Paternalism poses to poor people's advocates is to be creative in using this developing body of law, to use legal theories to educate as well as to litigate, and to use law to unmask the underlying roots of programs that rest on sexist and racist assumptions about poor women.

NOTES

¹ See generally MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* (3d ed. 1991); MICHAEL B. KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* (1989).

² See generally RICKIE SOLINGER, *WAKE UP LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE ROE V. WADE* (1992).

³ See *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969) (one-year state residency requirements for welfare benefits held to violate federal Equal Protection Clause). See also *Dandridge v. Williams*, 397 U.S. 471, 486 (1970) (as a cost-saving measure, states may legally cap benefits at a family size of six). See generally Barbara Sard, *The Role of the Courts in Welfare Reform*, 22 *CLEARINGHOUSE REV.* 367 (1988).

⁴ These schemes are generally similar to the benefit structure successfully challenged in *Shapiro* in 1968. *Shapiro*, *supra* note 3. In a challenge based on *Shapiro* the Wisconsin program was recently upheld by the Wisconsin Supreme Court, which distinguished *Shapiro* and found that the 60 day delay of benefits mandated by the Wisconsin law (as opposed to the denial of benefits in *Shapiro*) did not impair the right to travel sufficiently to violate the constitution. *Jones v. Milwau-*

kee Co., 485 N.W.2d 21 (Wis. 1992). In contrast, the Minnesota scheme was struck down as unconstitutional by an intermediate appellate court in *Mitchell v. Steffen*, 487 N.W.2d 896 (Minn. Ct. App. 1992). A California federal district court recently reached a similar conclusion. *Green v. Anderson*, 92-CV-2118 (E.D.Cal. Jan. 28, 1993).

⁵ *An Unrealistic Welfare Plan*, *BOSTON GLOBE*, Feb. 4, 1993, at A18.

⁶ See, e.g., *Craig v. Boren*, 429 U.S. 190, 210 n.* (1976) (Powell, J., concurring).

⁷ See generally Phillip Hassman, Annotation, *Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based On Sex*, 90 A.L.R.3d 158 (Supp. 1992). Maryland, Pennsylvania, Colorado, Washington, Texas, Montana, Massachusetts, Connecticut, and Illinois all subject gender-based classifications to higher scrutiny than that afforded under the federal equal protection clause. *Id.* In addition, California's equal protection clause requires higher scrutiny of sex-based classifications. See JENNIFER FRIESEN, *STATE CONSTITUTIONAL LAW: LITIGATING INDIVIDUAL RIGHTS, CLAIMS AND DEFENSES*, Ch. 3.02 (1992).

⁸ *Roe v. Wade*, 410 U.S. 113, 154 (1973).

⁹ See, e.g., *Committee to Defend Reproductive Rights v. Myers*, 625 P.2d 779, 799 (Cal. 1981) (budget act that limits MediCal funding for abortions for indigent women violates the California Constitution); *Right to Choose v. Byrne*, 450 A.2d 925, 941 (N.J. 1982) (state that provides medically necessary care for the indigent may not exclude medically necessary abortions); *Doe v. Maher*, 515 A.2d 134, 151 (Conn.Super.Ct. 1986) (regulation restricting funding for medically necessary abortions violates Connecticut Constitution).

¹⁰ *Mississippi University for Women v. Hogan*, 458 U.S. 718, 731 (1982).

¹¹ See 20 U.S.C. §§ 1681-1686 (Title IX of the Education Amendments of 1972). See also PROJECT ON EQUAL EDUCATION RIGHTS, *NOW LEGAL DEFENSE AND EDUCATION FUND, BEYOND TITLE IX: PEER'S STATE-BY-STATE GUIDE TO WOMEN'S EDUCATIONAL EQUITY LAWS* (1987) (discussing state equivalents to federal Title IX).

¹² See, e.g., MD. ANN. CODE ART. 49B, § 8 (Supp. 1992).

¹³ See Mimi Abramovitz, *supra* note 1; Diana Pearce, *Welfare Is Not for Women: Why the War on Poverty Cannot Conquer the Feminization of Poverty*, in *WOMEN, THE STATE AND WELFARE* (Linda Gordon, ed., 1990); Sylvia A. Law, *Women, Work, Welfare and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249 (1983).

¹⁴ HOUSE COMMITTEE ON WAYS & MEANS, 102ND CONG., 2d Sess., *OVERVIEW OF ENTITLEMENT PROGRAMS* 670 (Comm. Print 1992).

¹⁵ See Gwendolyn Mink, *The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State*, in *WOMEN, THE STATE AND WELFARE*, *supra* note 13, at 111-14.

¹⁶ See ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 80 (1992).

¹⁷ MIMI ABRAMOVITZ, SPREADING THE WORD ABOUT LOW-INCOME WOMEN'S ACTIVISM: CHALLENGING THE MYTHS OF WELFARE REFORM (1992) [hereinafter SPREADING THE WORD]; ROBERTA M. SPALTER-ROTH ET AL., COMBINING WORK AND WELFARE: AN ANTI-POVERTY STRATEGY (1992).

¹⁸ See, e.g., Urban Research Center, *Do School Attendance Rates Vary Between AFDC and Non-AFDC Supported Children?* (1989) (finding that "[f]or all students in grades two through five only three median attendance days and 3.9 mean attendance days, separate non-AFDC students from AFDC students"); John Pawasarat et al., *Evaluation of the Impact of Wisconsin's Learnfare Experiment on the School Attendance of Teenagers Receiving AFDC* (1992) (graduation rates of AFDC recipients same as rates for low income youth not subject to learnfare).

¹⁹ See, e.g., N.J. STAT. ANN. § 44:10-3.5 (West 1991).

²⁰ In New Jersey, the amount is approximately \$64 per month. In Arkansas, the amount for an additional child is even less, approximately \$42 per month.

²¹ Letter from the NAACP Legal Defense and Educational Fund, the NOW Legal Defense and Education Fund, and the Puerto Rican Legal Defense and Education Fund to Louis Sullivan, Secretary, Health & Human Services, et al., June 26, 1992, at 11-12 (on file with the *Journal*).

²² *Id.* at 15-16, citing David Ellwood & Mary Jo Bane, *The Impact of AFDC on Family Structure and Living Arrangements* (working paper prepared for the U.S. Dep't of Health and Human Serv. under Grant No. 92A-82, 1984). See also Cong. Budget Office, *Sources of Support for Adolescent Mothers* 43 (1990) (studies of the effects of AFDC on fertility of female teenagers find no evidence that benefit levels encourage childbearing); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* 77-81 (1987).

²³ Les Payne, *At \$64 That Baby's a Steal*, *NEWSDAY*, Jan. 26, 1992, at 30.

²⁴ WISCONSIN DEP'T OF HEALTH AND SOCIAL SERV., *PARENTAL AND FAMILY RESPONSIBILITY INITIATIVE 2* (Executive Summary) (Nov. 1990).

²⁵ SPREADING THE WORD, *supra* note 17.

²⁶ An estimated three to four million American women are battered each year by their husbands or partners. Patricia Horn, *Beating Back the Revolution: Domestic*

Violence's Economic Toll on Women, *DOLLARS & SENSE* 12 (Dec. 1992).

²⁷ PENNSYLVANIA HOUSE REPUBLICANS, *DEPENDENCE TO DIGNITY: FREEDOM FROM WELFARE, A PROPOSAL BY PENNSYLVANIA HOUSE REPUBLICANS* (Mar. 1992).

²⁸ WISCONSIN DEP'T OF HEALTH AND SOCIAL SERV., *supra* note 24.

²⁹ See Urban Research Center, *supra* note 18.

³⁰ See Pat Gowens, *Welfare, Learnfare — Unfair!: A Letter to My Governor*, *MS.*, Sept./Oct. 1991, at 90; see also Pawasarat et al., *supra* note 18.

³¹ See, e.g., Resolutions of the National Women's Survival Summit, Poor Women's Convention, May 27-31, 1992, Oakland, California, sponsored by Women's Economic Agenda Project. The Welfare Warriors, based in Madison, Wisconsin, is another explicitly feminist welfare mothers' organization.

³² 42 U.S.C. § 2000(d) (1988).

³³ See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 388-91 (1978) (recognizing right to privacy with respect to family decisions such as procreation, childbirth and childrearing); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40 (1974) ("freedom of personal choice in matters of marriage and family life is . . . protected by the Due Process Clause").

³⁴ See *Jimenez v. Weinberger*, 417 U.S. 628, 633 (1973) (distinguishing *Dandridge* from a regulation that irrationally and discriminatorily punished children for parent's behavior).

³⁵ *Supra* note 3.

³⁶ See, e.g., *Peppin v. Woodside Delicatessen*, 506 A.2d 263, 267-68 (Md.App. 1986) (restaurant's Skirt and Gown night constitutes gender classification violating state ERA).

³⁷ See, e.g., *Prudential Ins. Co. v. Iowa Civil Rights Comm.*, No. AA1529 (D.Ct. Polk Co. Iowa, March 8, 1990) (refusal to insure AFDC recipients constitutes sex discrimination in violation of state public accommodations law) (a copy of this case is available from the National Clearinghouse for Legal Services, 407 S. Dearborn, Suite 400, Chicago, IL 60605; Clearinghouse File No. 39-669-I); *Peppin*, *supra* note 36, 506 A.2d at 267-68.

³⁸ See, e.g., *Sharif v. New York State Dep't of Educ.*, 709 F. Supp. 345 (S.D.N.Y. 1989).