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THE APPEAL OF A REPEAL: ANAYLZING VIRGINIA'S SELF-SABOTAGE OF SUCCESSFUL RE-ENTRY FOR DRUG FELONS

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ABSTRACT

The United States is currently engaged in a battle against poverty. There are many heads to this Hydra, but one of the most significant is the felony drug ban. The felony drug ban prohibits individuals convicted of felony drug offenses from receiving Supplement Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits. This means that, at a time when a former inmate is most vulnerable – when they struggle to find work and support themselves post-release – the government turns a blind eye to that individual’s need, often forcing a former inmate to recidivate and do anything they can to keep food on the table. As a result of this reality, over forty states have taken steps to modify or fully repeal one or both of the bans, but there are still many individuals who have been convicted of drug felonies who struggle to get back on their feet and would benefit from such public benefits. While Virginia has partially repealed the felony drug ban on SNAP, it continues to implement the full felony drug ban for TANF. It is critical that Virginia take action and fully repeal the felony drug bans for both SNAP and TANF in order to provide for the safety and future of both the Commonwealth and all its citizens.

INTRODUCTION

In Roman mythology, Hercules had twelve near impossible tasks to complete. The second labor was to kill a multi-headed beast called Hydra. The monster had a regenerative ability: every time one head was chopped off, another two would grow to take its place. To make matters more difficult, the Hydra's breath was toxic and its blood poisonous. Through teamwork, Hercules defeated the Hydra by chopping each head off while his friend cauterized each neck to prevent the heads from regenerating.¹

This is the battle America faces against poverty. When the nation faces the multi-issued poverty beast, it is easy to become distracted by each of the heads demanding attention. Homelessness, hunger, malnutrition, poor housing conditions, prison reform, jobs, wages; for every attempt at a solution, additional issues arise. Which head do we tackle first?

¹Hydra, ENCYCLOPEDIA BRITANNICA ONLINE (Feb. 14, 2018), <https://www.britannica.com/topic/Hydra-Greek-mythology>.

This Article focuses on the felony drug ban on receiving two public benefits: Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF).² Part I briefly covers the history of poverty in America that led to the creation of SNAP and TANF. The Virginia's felony drug ban on these services and the ways in which it exacerbates poverty in America is discussed in Part II. Next, Part III will outline the role race plays in America's response to drug crimes. Part IV offers a solution to the felony drug ban, namely repealing the ban, and addresses some of the challenges to implementing the solution. This section also explains how Virginia would absorb the fiscal cost of adding people to SNAP and TANF. Part V addresses the arguments made by proponents of the felony drug ban and counters their most common arguments. Finally, this paper concludes with a discussion of the bipartisan movement gaining steam throughout America that has led forty-seven states to repeal the bans either partially or fully for SNAP and thirty-eight states for TANF.³ Virginia is one of the forty-seven states that has partially repealed the ban for SNAP, but continues to have a full ban on TANF. Poverty exists partially due to these economic injustices, and repealing the felony drug ban is an act of justice that will decapitate and cauterize one neck of the Hydra.

I. HOW DID WE GET HERE?

A. The Beginning

The roots of poverty in Virginia date back to the Jamestown settlement established in 1607. In 1616, each white male settler received fifty acres of land.⁴ For every additional family member and servant they brought, they would receive an additional fifty acres.⁵ In 1619, all the adult white male landowners received "a say in the laws and institutions governing the colony."⁶ While economist Daron Acemoglu writes that this was the start of

² Greg Hopkins et al., *HB 828: TANF Eligibility; Drug-Related Felonies*, GRACE E. HARRIS LEADERSHIP INST. VA. COMMONWEALTH U., (2016), https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1041&context=wilder_pubs; Molly Born, *In Some States, Drug Felons Still Face Lifetime Ban On SNAP Benefits*, NAT'L PUB. RADIO (June 20, 2018), <https://www.npr.org/sections/thesalt/2018/06/20/621391895/in-some-states-drug-felons-still-face-lifetime-ban-snap-benefits>.

³ Hopkins et al., *supra* note 2 (noting that fourteen states enforce a full ban on TANF benefits and twenty-four have a partial ban on TANF benefits); Born, *supra* note 2 (noting that three states enforce a lifetime ban on SNAP benefits).

⁴ DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* 26 (2012).

⁵ *Id.*

⁶ *Id.*

democracy in America, it was also the start of poverty, with the many without property being without a voice.⁷

Nearly 250 years later, following the Civil War, states were left with many widowed mothers, who were then helped with “mother’s aid” programs.⁸ These programs “helped widows care for their children in their own homes rather than placing [the children] in orphanages.”⁹ This program provided for the needs of widows and other single mothers until the Great Depression, when states ran out of money.¹⁰ At that point, the Federal Government created “Aid to Dependent Children” (ADC) through the Social Security Act of 1935 to serve the same needs as mother’s aid, enabling many mothers to be able to raise their children at home.¹¹

Thirty years later, in the 1960s, an estimated twenty to twenty-five percent of Americans were living in poverty.¹² President Johnson responded by declaring a War on Poverty.¹³ ADC was renamed to Aid to Families with Dependent Children (AFDC).¹⁴ Enrollment increased from 4.2 million to 11.3 million and the Food Stamps program was created.¹⁵ There was no time limit and no work requirement attached to these welfare programs.¹⁶

Over the next three decades, programs to aid widowed mothers transformed into a narrative of condoning “nonmarital childbearing” because single mothers with no partner or spouse were also receiving AFDC.¹⁷ In the 1980s, throughout the Ronald Reagan and George H.W. Bush years, the number of people using welfare remained flat, due to economic expansion. But that number spiked in the late eighties and early nineties.¹⁸ This spike initiated a drive for welfare reform.¹⁹

⁷ Compare *id.*, with Ed Crews, *Voting in Early America*, COLONIAL WILLIAMSBURG J. (Spring 2007), <http://www.history.org/foundation/journal/spring07/elections.cfm> (“[R]elatively few of the nation's inhabitants were able to participate in elections: among the excluded were most African Americans, Native Americans, women, men who had not attained their majority, and white males who did not own land.”).

⁸ KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA* 11 (2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Social Security Act, 42 U.S.C. § 601 (1935); Linda Gordon & Felice Batlan, *Aid to Dependent Children: The Legal History*, SOC. WELFARE HISTORY PROJECT (2011), <https://socialwelfare.library.vcu.edu/public-welfare/aid-to-dependent-children-the-legal-history/> (stating that “[t]he original purpose of ADC was to allow mothers to stay home with their children.”).

¹² EDIN & SHAEFER, *supra* note 8, at 12.

¹³ See *id.*

¹⁴ *Id.* at 13.

¹⁵ *Id.*

¹⁶ *Id.* at 10.

¹⁷ EDIN & SHAEFER, *supra* note 8, at 11.

¹⁸ U.S. Bureau of Econ. Analysis, *Government Social Benefits: To Persons: Federal Supplemental Nu-*

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B. The Reformation

In 1993, President Bill Clinton set a goal “to end welfare as we know it.”²⁰ Three years and a series of compromises later, the nation heralded the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).²¹ The Clinton Compromise resulted in time limits being placed on federal programs for the poor, turned the AFDC into a block grant and called it Temporary Assistance for Needy Families (TANF), and continued Food Stamps.²² In 2008, Food Stamps was renamed the Supplemental Nutrition Assistance Program (SNAP).²³ The felony drug ban nestled itself in the PRWORA.

II. THE FELONY DRUG BAN

A. The Ban

The felony drug ban subjects drug felons to a lifetime ban for SNAP and TANF eligibility.²⁴ This provision is applicable only if the underlying drug upon which the felony conviction is based on is a controlled substance as defined in the Controlled Substances Act.²⁵ Whereas the person convicted of a felony drug offense cannot receive SNAP or TANF, they may apply for eligible family members and receive the benefits for them.²⁶ United States Senator Phil Gramm (R-Texas), who introduced this provision, stated, “If we are serious about our drug laws, we ought not give people welfare bene-

trition Assistance Program (SNAP), FRED (Aug. 8, 2018), <https://fred.stlouisfed.org/series/TRP6001A027NBEA>.

¹⁹ See Ron Haskins & Wendell Primus, *Welfare Reform and Poverty*, BROOKINGS (July 1, 2001), <https://www.brookings.edu/research/welfare-reform-and-poverty/>.

²⁰ William J. Clinton, President of the U.S., Address Before a Joint Session of Congress on Administration Goals (Feb. 17, 1993) (transcript available with The American Presidency Project).

²¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 105 (establishing major reforms in the United States welfare system).

²² See, e.g., *id.*

²³ Establishment of Supplemental Nutrition Assistance Program, 7 U.S.C. § 2013 (2018) (originally enacted as Food Conservation and Energy Act of 2008, Pub. Law 110-246, 122 Stat. 1651).

²⁴ MAGGIE MCCARTY ET AL., DRUG TESTING AND CRIME-RELATED RESTRICTIONS IN TANF, SNAP, AND HOUSING ASSISTANCE 3 (2016).

²⁵ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(a) (2018); see also 21 U.S.C. § 802(6) (2016) (defining “controlled substance”).

²⁶ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(a)–(b) (2018).

fits who are violating the Nation's drug laws."²⁷ Members of Congress had two minutes to debate the ban, but even that time went unused.²⁸

Despite Gramm's gravitas, PRWORA also contains a provision that permits the states to modify or fully repeal this ban.²⁹ To date, over forty states have modified or fully repealed one or both bans.³⁰ Virginia has partially repealed the felony drug ban on SNAP for drug felons convicted of mere possession.³¹ Virginia continues to have a full felony drug ban for TANF.³²

Under Virginia law, an individual convicted of a drug-related felony for possession does not become ineligible to receive SNAP benefits so long as they comply with all of the obligations imposed by the criminal court and the Department of Social Services (DSS), complete a substance abuse treatment program, and participate in periodic drug screens.³³ In other words, Virginia has opted out of the ineligibility limitation imposed by PRWORA for individuals convicted of felony possession of controlled substances.³⁴ An individual convicted of a non-possession drug-related felony, such as manufacturing or distribution, would not fall into this exception and would remain ineligible for SNAP.³⁵ A 2012 opinion by Virginia's Office of the Attorney General confirms this interpretation.³⁶ The exception applies only to SNAP and does not apply to TANF.³⁷

For twelve years, Virginian legislators have tried to repeal the ban, but have only seen partial success as it relates to SNAP.³⁸ State Senator Barbara Favola (D-Arlington) is the most vocal advocate for repeal of the felony

²⁷ MCCARTY ET AL., *supra* note 24, at 3 (quoting 142 CONG. REC. S8498 (daily ed. July 23, 1996) (statement of Sen. Gramm)).

²⁸ *See id.* (Stating that "[t]his provision was added during Senate floor consideration of the bill and was the subject of only limited debate, with four Senators speaking briefly on the topic.").

²⁹ *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(d)(1) (2018).

³⁰ Cody Tuttle, Snapping Back: Food Stamp Bans and Criminal Recidivism 5 (Mar. 29, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2845435.

³¹ *See* VA. CODE § 63.2-505.2 (2018).

³² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(b) (2018).

³³ VA. CODE § 63.2-505.2 (2018).

³⁴ *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(d)(1)(A) (2018); *id.*; VA. CODE § 18.2-250 (2018).

³⁵ *See* VA. CODE § 63.2-505.2 (2018).

³⁶ Letter from Ken Cuccinelli, Va. Attorney Gen., to Gerald E. Mabe, II, Va. Commonwealth Attorney (Jan. 27, 2012) (available through Westlaw at 2012 WL 339605).

³⁷ *See* VA. CODE § 63.2-505.2 (2018).

³⁸ *See*, e.g., H.B. 945, 2018 Gen. Assemb., Reg. Sess. (Va. 2018); S.B. 552, 2012 Gen. Assemb., Reg. Sess. (Va. 2012); S.B. 240, 2006 Gen. Assemb., Reg. Sess. (Va. 2006) (the General Assembly has attempted to repeal the ban more than three times, these are just a few).

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drug ban. Senator Favola theorizes that the successful partial repeal for SNAP is likely based on the desire to aid the rural, agricultural parts of Virginia and may have something to do with those legislators wanting to help local mom and pop grocery shops.³⁹ While former Delegate James Dillard (R-Fairfax) introduced the bill partially repealing the felony drug ban for SNAP in 2005, practically every bill seeking to repeal the ban on SNAP and TANF since has been introduced by Democrats and voted down by Republicans.⁴⁰

In 2018, there were three attempts to repeal the ban. Two were introduced by Senator Favola, SB 203 (for SNAP) and SB 204 (for TANF).⁴¹ One was pushed by Delegate Alfonso Lopez (D-Arlington), HB 945 (for TANF).⁴² Senator Favola explains her reasoning for introducing these pieces of legislation: “People returning to jail is not helpful. I would like to see the Commonwealth make a concerted effort to really help people re-enter society. They return to jail if they can’t make a living or support their family, they might steal to eat.”⁴³ Delegate Lopez similarly defends his motivation: “The purpose of this bill is to promote public safety by allowing for positive re-integration for ex-offenders, reducing the burden placed on families and local communities, and basically increasing the gainful employment of ex-offenders.”⁴⁴ All three bills failed to pass.⁴⁵

B. The Criminalization of the Poor

The ban on drug-related felonies is unique in that no other crimes attach a ban on SNAP and TANF—be it murder, espionage, or fraud.⁴⁶ It is an unusual punishment because it lasts for life, no matter how much of a model citizen one becomes.⁴⁷ Doug Ammar, Executive Director of the Georgia

³⁹ Interview with Barbara Favola, Senator, Va. Senate, in Richmond, Va. (July 31, 2018) [hereinafter Favola Interview].

⁴⁰ See H.B. 1761, 2005 Gen. Assemb., Reg. Sess. (Va. 2005).

⁴¹ S.B. 203, 2018 Gen. Assemb., Reg. Sess. (Va. 2018); S.B. 204, Gen. Assemb., Reg. Sess. (Va. 2018).

⁴² H.B. 945, 2018 Gen. Assemb., Reg. Sess. (Va. 2018).

⁴³ Favola Interview, *supra* note 39.

⁴⁴ Interview with Alfonso Lopez, Delegate, Va. House of Delegates, in Richmond, Va. (July 31, 2018) [hereinafter Lopez Interview].

⁴⁵ S.B. 203, 2018 Gen. Assemb., Reg. Sess. (Va. 2018) (failed to report on a 7-8 vote); S.B. 204, 2018 Gen. Assemb., Reg. Sess. (Va. 2018) (failed to report on a 7-8 vote); H.B. 945, 2018 Gen. Assemb., Reg. Sess. (Va. 2018) (committee “lays on the table” in a 5-3 vote).

⁴⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(a) (2018); Teresa Wiltz, *States Ease Access to Welfare and Food Stamps for Convicted Felons*, PBS NEWS HOUR (Aug. 9, 2016), <https://www.pbs.org/newshour/nation/states-ease-access-welfare-food-stamps-convicted-drug-felons>.

⁴⁷ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. § 862a(a) (2018); PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA 41 (2017).

Justice Project, explains, “[t]hat [a drug] record can haunt you and have real-life implications. It’s a lifetime of punishment; how long should your brush with the law impact you and your family?”⁴⁸

It is also unusual because if a drug felon finds better employment and personal opportunities in another state, they may be denied SNAP or TANF simply by moving because not all states have repealed the ban.⁴⁹ Ammar recalled a man he helped: “The man, who’d served time for a drug conviction in the ’60s, moved a few miles across from the state line, from Florida to Georgia, and found that his change of address meant he could no longer receive food stamps.”⁵⁰

A third peculiarity regarding the ban on SNAP and TANF is that it has no relation to the felony drug offense on the individual’s record. As Peter Edelman, author of *Not a Crime to Be Poor: The Criminalization of Poverty in America*, writes, “[i]nstead of the fraud policies that punish people for something connected to the benefit itself, collateral consequences — typically for a drug-related crime — add further punishment to a previous crime by barring access to public benefits.”⁵¹ Criminal convictions have far-reaching consequences on low-income individuals. Edelman continues,

Together with bars to TANF and SNAP in most states, housing, Pell Grants and other higher education financial aid, and of course collateral consequences relating to employment, any kind of criminal conviction effectively shreds the social safety net, almost always ensuring a permanent state of poverty and often leading to convictions on future crimes that emanate from being poor. Collateral consequences are a major force in the criminalization of poverty.⁵²

With all of these barriers to successful re-entry, poverty ends up being “not only a cause of acquiring a criminal record but also a consequence.”⁵³

Additionally, a low-income person typically will not have enough income to pay fines for minor violations that are otherwise general annoyances for those with the means to pay them.⁵⁴ But, if they receive SNAP or TANF, then at least they have funds set aside for some necessities. If that same low-income person had a felony drug conviction on their record and is required to pay even a small fine, then they do not have the benefit of

⁴⁸ Wiltz, *supra* note 46.

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ EDELMAN, *supra* note 47, at 106.

⁵² *Id.* at 107.

⁵³ *Id.* at 106.

⁵⁴ *Id.* at xiii.

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SNAP or TANF to fall back on, meaning that a small fine could be disastrous for them.⁵⁵

Nationally, Republicans are not entirely opposed to fully repealing the felony drug ban on TANF. Fourteen states have no ban on TANF at all, and four of these states have a slight Republican majority.⁵⁶ Meanwhile, ten out of twenty-four states with a partial ban on TANF lean Republican.⁵⁷ With the full repeal being preferred to a partial repeal, the notion that Republicans are typically against welfare programs does not hold water when it comes to this issue. So why is Virginia, currently a state with a Republican majority in the legislature and a Democratic governor, unable to make progress in this endeavor? Delegate Riley Ingram (R-Hopewell), who sits on the Appropriations Subcommittee of the Health and Human Resources Committee, says, "...Virginia for the most part is a conservative state...Virginia...may change it but...I don't see them changing it."⁵⁸ State Senator Jennifer McClellan (D-Richmond) says,

It's the appropriators that always kill it. I think, particularly, when we were...coming out of the recession, it's always 'well, this is just not the priority' so that's a huge part of it. And then I think, on the substance, because if I remember correctly...a lot of them got out of the policy committees and failed in the appropriations committees. [S]o I think there is still that 'I'm gonna be tough on crime' you know, a resistance to welfare or public assistance in general, but I think the bigger issue is just, we have a lot of funding needs, and this is just not a top priority.⁵⁹

In 2016, Alabama repealed the felony drug ban as part of a bigger prison reform bill.⁶⁰ Carol Gundlach, a tax and budget policy analyst for ARISE Citizens Policy Project, said, "[t]he policy change will help cut corrections cost in the cash-strapped General Fund budget by making it easier for released prisoners to reintegrate into the community, which will help reduce recidivism."⁶¹ Georgia has also repealed the ban.⁶² Georgian Representative Rich Golick (R-Smyrna) explained, "You're increasing the chances that

⁵⁵ *See Id.*

⁵⁶ Hopkins et al., *supra* note 2.

⁵⁷ *Id.*

⁵⁸ Interview with Riley Ingram, Delegate, Va. House of Delegates, in Richmond, Va. (Aug. 15, 2018) [hereinafter Ingram Interview].

⁵⁹ Interview with Jennifer McClellan, Senator, Va. Senate, in Richmond, Va. (Aug. 13, 2018) [hereinafter McClellan Interview].

⁶⁰ *See* Leada Gore, *Alabamians with Drug Convictions Now Eligible for Food Stamps, Other Benefits*, ALA. MEDIA GROUP (Feb. 2, 2016), http://www.al.com/news/index.ssf/2016/02/alabamians_with_drug_convictio.html.

⁶¹ *Id.*

⁶² Teresa Wiltz, *More States Lift Welfare Restrictions for Drug Felons*, PEW CHARITABLE TRUSTS (Aug. 9, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/08/09/more-states-lift-welfare-restrictions-for-drug-felons>.

they may reoffend because they don't have the ability to make ends meet. Doesn't this go against what we're trying to achieve as they re-enter society?"⁶³

The recidivism argument is poignant and one all too familiar to Antoine, a black male from Chester, Virginia. Antoine was nineteen-years old when he decided to stop selling drugs.⁶⁴ His lawyer had told him he was under federal investigation and he knew it was time to "get out of the game."⁶⁵ A year later, when he was twenty-years old, he was a passenger in a friend's car getting a ride home.⁶⁶ They were pulled over for a busted headlight.⁶⁷ When the police officer arrived at the driver's window, he noticed a rock of cocaine on the floor of the vehicle. Antoine's friend was arrested and was looking at twenty-two years in prison. Antoine wanted to help his friend out and since he had no felony record, he took the charge at his trial, not knowing what this meant for his future beyond the five years suspended probation sentence.⁶⁸

Very quickly, Antoine realized the realities of living with a felony conviction. He could not find gainful employment because nobody wants to hire a felon.⁶⁹ When he needed food and help with bills, he could not apply for SNAP or TANF, due to the felony drug ban.⁷⁰ As a result of his inability to make ends meet and out of desperation, Antoine returned to selling drugs again so that he could have the money to buy food and necessities. Not too long after Antoine began selling again, he was back in jail.⁷¹

This is not surprising. Studies show that "denying drug offenders SNAP benefits has increased their likelihood of recidivism."⁷² Beyond that, the crimes are driven by a "monetary motive (property crimes, selling drugs, etc.) rather than crimes like drug possession or violent crimes."⁷³ These studies show that putting drug felons in this place of desperation poses a public health and safety issue.⁷⁴ Additionally, "eligibility for welfare and

⁶³ *Id.*

⁶⁴ Telephone Interview with Antoine Branch (Aug. 15, 2018) [hereinafter Branch Interview].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Antoine claims that the headlight was not broken, explaining that he would have seen it as he passed in front of the car when getting in. *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See id.*; *see also* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. §862(a) (2018) (establishing the drug felon ban for federal benefits).

⁷¹ *See* Branch Interview, *supra* note 64.

⁷² Tuttle, *supra* note 30, at 26.

⁷³ *Id.*

⁷⁴ *See id.* at 48, 49 (indicating that financial motivations often underlie criminal behavior).

food stamps significantly decreases recidivism among newly released drug offenders, potentially because public assistance helps ex-offenders make ends meet when other economic prospects are dire.”⁷⁵ It does not matter that Antoine’s sentence was “five years suspended.”⁷⁶ Antoine, as Professor Michelle Alexander says in her book *The New Jim Crow*, has been “relegated to a permanent second-class status upon [his] release, no matter how much (or how little) time [he spent] behind bars. The system of mass incarceration is based on the prison label, not prison time.”⁷⁷

Nearly twenty years after he pled guilty for his friend, Antoine, now thirty-eight-years old, has not been able to find a steady job and cycles through temporary employment.⁷⁸ He does not have a social circle that can help get him a more permanent job or a career. Truly, “the added punishment, including the barriers to employment, often turns a sentence of time behind bars into a lifetime sentence of poverty.”⁷⁹ When asked, knowing what he knew now, if he would he have taken his friend’s charge, Antoine said, “he would have worn his own charge. Heck naw...now that I know what I know, nah, he would have had to go to prison...It’s so hard out here.”⁸⁰

III. BLACK AND WHITE RACISM IN BLACK AND WHITE PRINT

America has a long history marked by racism and discrimination.⁸¹ This has appeared in both overt and latent ways. Earlier, this Article mentioned the Aid to Families with Dependent Children (AFDC) program, a welfare program designed to help single mothers take care of their children at home. In 1960, seventy-nine out of every 1000 children needed AFDC’s support, but only thirty received assistance because the case workers had broad au-

⁷⁵ Crystal S. Yang, *Does Public Assistance Reduce Recidivism?*, 107 AM. ECON. REV.: PAPERS & PROC. 551, 554 (2017).

⁷⁶ See Branch Interview, *supra* note 64.

⁷⁷ See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 14 (2010).

⁷⁸ See Branch Interview, *supra* note 64.

⁷⁹ EDELMAN, *supra* note 47, at 106.

⁸⁰ See Branch Interview, *supra* note 64.

⁸¹ See Denny Chin & Kathy Hirata Chin, *Asian Americans and the Law*, 11 JUD. NOTICE 6, 7–8 (2016) (describing many different controversies in America’s history involving Asian Americans, including segregation, Alien land laws, and Japanese curfews and internment); Erika Wilson, *The Great American Dilemma: Law and the Intransigence of Racism*, 20 CUNY L. REV. 513, 513 (2017) (“The subordination and marginalization of people of color is embedded into the very fabric of America’s political and social arrangements.”); Lindsay Glauner, Comment, *The Need for Accountability and Reparation: 1830-1976*, 51 DEPAUL L. REV. 911, 912 (2002) (“The extreme disparity in the number of Native American people living within the United States’ border at the time Columbus arrived, approximately ten million compared to the approximate 2.4 million Indians and Eskimos alive in the United States today, is but one factor that illustrates the success of the government’s plan of ‘Manifest Destiny.’”).

thority to restrict coverage as they wished.⁸² As a result, many case workers denied assistance to people of color.⁸³

The overt mechanisms have all but evolved into latent methods. The Thirteenth Amendment repealed slavery and created a new type of servitude, changing one's slave chains to prison chains.⁸⁴ In 1971, President Nixon declared a War on Drugs.⁸⁵ Towards the beginning of the war, there were approximately 300,000 people in prison.⁸⁶ Within thirty years, that number had exploded to two million people.⁸⁷ John Ehrlichman, President Nixon's domestic policy advisor, states:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.⁸⁸

The War on Drugs was a ruse. After all, "drug crime was declining, not rising, when a drug war was declared."⁸⁹ Unfortunately, this revelation from Ehrlichman has not scaled back this war's effects. The racist ramifications of the War on Drugs are still felt to this day. Statistics show that whites and blacks have a fairly equal level of drug use.⁹⁰ For example, between the ages of twelve and seventeen, whites are more likely to use drugs or develop a substance abuse disorder than blacks.⁹¹ Other research shows that blacks who are twelve and older have a slightly higher drug use rate than whites.⁹² Despite this close proximity in drug use between the two races, the National

⁸² Gordon & Batlan, *supra* note 11.

⁸³ *Id.*

⁸⁴ See U.S. CONST. amend. XIII, § 1; see also 13th (Netflix 2016) (asserting that although the thirteenth amendment repealed slavery, the allowance of involuntary servitude as a punishment for crime has been relied on to continue to force African-Americans into a system of providing free and involuntary labor).

⁸⁵ Ed Vulliamy, *Nixon's 'War on Drugs' Began 40 Years Ago, and the Battle Is Still Raging*, GUARDIAN (July 23, 2011), <https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years>.

⁸⁶ ALEXANDER, *supra* note 77, at 6.

⁸⁷ *Id.*

⁸⁸ Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER'S MAG. (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all/>.

⁸⁹ ALEXANDER, *supra* note 77, at 7.

⁹⁰ See Maia Szalavitz, *Study: Whites More Likely to Abuse Drugs Than Blacks*, TIME (Nov. 7, 2011) <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks/>.

⁹¹ See *id.*

⁹² U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2013 NATIONAL SURVEY ON DRUG USE AND HEALTH (2013), <https://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>.

Research Council reports that "[i]n recent years, drug-related arrest rates for blacks have been three to four times higher than those for whites."⁹³ Meanwhile, nationwide, blacks are arrested five times as much as whites, despite there being 5.6 times more white people than black people in America.⁹⁴ Nationally, "by age twenty-three, at least half of African American men have been arrested at least once."⁹⁵

In Virginia, blacks are incarcerated at five times the rate of whites, despite the fact that there are three and a half times more whites than blacks in Virginia.⁹⁶ Blacks make up 19% of Virginia's population but account for 58% of Virginia's prison population.⁹⁷ Additionally, 19.1% of black Virginians live in poverty, compared to 9.1% of white Virginians.⁹⁸ These numbers together show that there is a greater likelihood that the Virginians being arrested are poor, black people. The once latent and now manifest tragedy is that "[t]hese young men are part of a growing undercaste, permanently locked up and locked out of mainstream society."⁹⁹

Clearly, there is something wrong not only with the justice system, but with its intersection with the public benefits system. Senator McClellan elaborates,

At the time welfare reform was enacted at the federal level, there was and today there still is a stereotype that people on welfare or public assistance are lazy, black, able-bodied men. It had and continues to have a disproportionate impact on people of color because patterns of poverty historically track the legacy impact of Jim Crow and slavery. I don't think the people who put this policy in place think they are necessarily targeting black people but they are.¹⁰⁰

Senator Favola agrees,

There are racial, prejudicial and values-based themes that underpin this country's welfare programs. For example, studies indicate that many lawmakers believe individuals of a different race are those who need the assistance, consequently, these lawmakers create punitive or stingy programs intended to barely

⁹³ COMM. ON CAUSES & CONSEQUENCES OF HIGH RATES OF INCARCERATION, THE GROWTH OF INCARCERATION IN THE UNITED STATES 60 (Jeremy Travis et al. eds., 2014).

⁹⁴ John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison is Shrinking*, PEW RES. CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>.

⁹⁵ EDELMAN, *supra* note 47, at 39.

⁹⁶ ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 16 (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

⁹⁷ Leah Sakala, *Overrepresentation of Blacks in Virginia*, PRISON POL'Y INITIATIVE (May 2014), https://www.prisonpolicy.org/graphs/2010percent/VA_Blacks_2010.html.

⁹⁸ *Talk Poverty: Virginia Report*, CTR. FOR AM. PROGRESS (2018), <https://talkpoverty.org/state-year-report/virginia-2016-report/>.

⁹⁹ ALEXANDER, *supra* note 77, at 7.

¹⁰⁰ McClellan Interview, *supra* note 59.

cover the necessary essentials. Unfortunately, this belief prevails even when the facts indicate otherwise.¹⁰¹

While blacks are being locked up for drug felonies and exiting prison without a hand-up, President Trump has declared a public health emergency over the opioid crisis.¹⁰² Nationwide, the opioid crisis affects white people more than it affects black people.¹⁰³ In 2016, nationally, 7.6 times more white people died from opioid overdose than black people. In the same year, in Virginia, 886 white people died from an opioid overdose while 188 black people died from an opioid overdose, which is a proportion similar to the national average.¹⁰⁴ Dr. Andrew Kolodny, a drug abuse expert, says, “[w]hat we’re seeing now is a very different response now that we’ve got an addiction epidemic that’s disproportionately white.”¹⁰⁵ Senator McClellan explains, “Policy makers didn’t know anyone when it came to War on Drugs. The difference now is the opioid crisis is affecting people they know.”¹⁰⁶

Poverty has reached a critical juncture in America, such that “[i]ndividuals released from prison are at high risk for food insecurity,’ and that the level of food insecurity among recently released prisoners uncovered by the study ‘mirror[s] the magnitude of food insecurity in developing countries.’”¹⁰⁷ The level of food insecurity among recently released prisoners has become so concerning that in 2017 the United Nations Special Rapporteur on Extreme Poverty and Human Rights visited America.¹⁰⁸ In the past decade, Phillip G. Alston, the Special Rapporteur, has visited developing nations like Bangladesh, Zambia, Mongolia, and Romania.¹⁰⁹ These developing nations are where one would expect an expert on

¹⁰¹ Email from Senator Barbara Favola, Senator, Va. Senate, to Salaam Bhatti, Pub. Benefits Attorney, Va. Poverty Law Ctr. (Oct. 29, 2018) (on file with author).

¹⁰² See *All Things Considered: Why is the Opioid Epidemic Overwhelmingly White?*, NAT’L PUB. RADIO (Nov. 4, 2009) (transcript available at <https://www.npr.org/2017/11/04/562137082/why-is-the-opioid-epidemic-overwhelmingly-white>) [hereinafter *All Things Considered*].

¹⁰³ See *Opioid Overdose Deaths by Race/Ethnicity*, KAISER FAM. FOUND. (Sept. 29, 2018), <https://www.kff.org/other/state-indicator/opioid-overdose-deaths-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹⁰⁴ *Id.*

¹⁰⁵ See *All Things Considered*, *supra* note 102.

¹⁰⁶ McClellan Interview, *supra* note 59.

¹⁰⁷ MARC MAUER, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FELONY DRUG BAN ON WELFARE BENEFITS 1, 8 (2015) (quoting EMILY A. WANG ET AL., A PILOT STUDY EXAMINING FOOD INSECURITY AND HIV RISK BEHAVIORS AMONG INDIVIDUALS RECENTLY RELEASED FROM PRISON 112–13 (2013)).

¹⁰⁸ See U.N. GAOR, Human Rights Council, 38th Sess., Report on the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

¹⁰⁹ U.N. Human Rights.: Office of the High Comm’r, *Country Visits*,

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extreme poverty to visit. Americans were shocked at his findings.¹¹⁰ Alston reported, “[t]he urge to punish rather than assist the poor often also has racial undertones, as in the contrast between the huge sentences handed down to those using drugs such as crack cocaine (predominantly Black) and those using opioids (overwhelmingly White).”¹¹¹

IV. REPEALING THE BAN

A. Solution

The direct solution is to repeal the ban entirely. This is the most direct solution for states until Congress repeals it. But Senator Favola understands the uphill nature of the battle. She states,

Once again, there is a values-based belief that dictates policy. The belief here is that drug users or those intending to distribute made bad choices, completely voluntarily, and they don't deserve a second chance. You have to realize that possession of as little as a half ounce of an illegal substance in Virginia constitutes “intent to distribute.” The “War of Drugs” was another public policy strategy that essentially filled our jails, disproportionately, with African Americans and people of color.¹¹²

Delegate Alfonso Lopez notes that it costs \$23,000 to house an inmate in Virginia.¹¹³ A Yale study “found that 91 percent of people recently released from prison didn't have reliable access to food.”¹¹⁴ As stated earlier, “public assistance helps ex-offenders make ends meet when other economic prospects are dire.”¹¹⁵ A blanket repeal of the ban would ensure that drug felons no longer have to search for a reliable source for food. The cost savings from housing inmates greatly outweigh what it would cost for former drug felons to receive SNAP and TANF. Ultimately, the repeal would reduce recidivism, reduce Virginia's incarceration spending, and save money overall.

Virginia's Parole Board has come out in favor of repealing the ban on TANF.¹¹⁶ The Board reasons that doing so “allows children to be cared for

<https://www.ohchr.org/EN/Issues/Poverty/Pages/CountryVisits.aspx> (last visited Sept. 8, 2018).

¹¹⁰ See Mary Leah Plante, *A U.N. Report on Extreme Poverty in the U.S. Ought to Serve as a Wake-Up Call to Vote*, L.A. TIMES, (June 7, 2018), <http://www.latimes.com/opinion/readersreact/la-ol-le-un-report-poverty-20180607-story.html#>.

¹¹¹ See U.N. GAOR, *supra* note 108.

¹¹² Email from Senator Barbara Favola, Senator, Va. Senate, to Salaam Bhatti, Pub. Benefits Attorney, Va. Poverty Law Ctr. (Oct. 29, 2018) (on file with author).

¹¹³ Lopez Interview, *supra* note 44.

¹¹⁴ Wiltz, *supra* note 62.

¹¹⁵ Yang, *supra* note 75, at 554.

¹¹⁶ Va. Comm'n on Parole Review, Slide Presentation: Public Assistance for Former Drug Felons: Attempts to Lift the Federal Ban, slide 11, (Sept. 28, 2015),

in their own homes. It provides the former felon with work supports needed to gain employment.”¹¹⁷ This makes sense because TANF is not simply cash assistance.¹¹⁸ Being part of the TANF program also provides the recipient with access to “job skills training, work experience, job readiness training...transportation and other work-related expenses.”¹¹⁹ These are critical programs that help ensure a successful re-entry into society. Because the cash assistance is modest, a single-parent family of three receives \$419 a month; these additional benefits are extremely helpful.¹²⁰

Although repealing the ban would lessen the burden on drug felons as they re-enter the community, drug felons still face the arduous task of finding gainful employment due to having a felony conviction on their record. Douglas Holtz-Eakin, who served on President George W. Bush’s Council of Economic Advisors, observed that “we are in the midst of a ‘rare public-policy moment’ in which both political parties agree that different policies concerning imprisonment could save taxpayers money, strengthen families, reduce unemployment and diminish poverty.”¹²¹ This, again, is one of the heads of the Hydra which demands our attention but must be dealt with another day.

B. The Fiscal Impact

The Virginia Department of Social Services (DSS) estimates that at least forty-three people would be added to the SNAP rolls if the partial ban on SNAP benefits was fully repealed.¹²² One-time modification costs to the Virginia Case Management System would total \$75,000.¹²³ There would be no need to hire new case workers to take care of forty-three new people statewide.¹²⁴

<https://parolecommission.virginia.gov/resources/september-28/public-assistance-former-drug-felons.pdf>.

¹¹⁷ *Id.* at slide 10.

¹¹⁸ See *Temporary Assistance for Needy Families*, VA. DEP’T SOC. SERVS., <http://www.dss.virginia.gov/benefit/tanf/> (last visited Sept. 23, 2018) [hereinafter VDSS].

¹¹⁹ See *id.*

¹²⁰ IFE FLOYD, TANF CASH BENEFITS HAVE FALLEN BY MORE THAN 20 PERCENT IN MOST STATES AND CONTINUE TO ERODE 13 (2017).

¹²¹ OLD DOMINION UNIV., PRISONS AND PRISONERS: THE VIRGINIA WAY AND THE ALTERNATIVES 97 (2016) (quoting *When Economists Turn to Crime*, THE ECONOMIST (Apr. 30 2016), <https://www.economist.com/united-states/2016/04/28/when-economists-turn-to-crime>).

¹²² DEP’T OF PLANNING AND BUDGET, 2018 FISCAL IMPACT STATEMENT, S. 181-203, Reg. Sess., at 2 (Va. 2018).

¹²³ *Id.* at 2.

¹²⁴ *Id.*

DSS estimates that 467 people could be newly eligible for TANF if the felony drug ban was fully repealed.¹²⁵ The Department concluded that it would cost \$204,750 in the first year with subsequent annual costs totaling \$412,750 as the caseloads grow.¹²⁶ DSS does not report as to whether or not new case workers will be needed.¹²⁷ This money would come from the TANF block grant provided by the federal government. The TANF block grant currently has and historically maintains a surplus.¹²⁸ Delegate Lopez said, “There is plenty of money for this from the TANF block grant to cover the cost of this legislation.”¹²⁹

V. ADDRESSING THOSE WHO SUPPORT THE FELONY DRUG BAN

A. State Senator Tommy Norment (R-James City)

State Senator Tommy Norment, Senate Majority Leader and Co-Chair of the Senate Finance Committee, stated within the Finance Committee when SB 203 and SB 204 were up for vote: “[i]t’s not a fiscal issue so much as it is a policy issue.”¹³⁰ Senator Norment called attention to this being a policy issue in the Finance Committee when it passed out of the previous policy committee.¹³¹ This is not the first time Senator Norment has been against something benefiting felons who have served their sentences. He also came out strongly against former Governor Terry McAuliffe’s efforts to restore felon’s rights to vote, calling it “unconstitutional” and “executive over-reach.”¹³²

B. Delegate Riley Ingram (R-Hopewell)

Delegate Riley Ingram is against TANF going to drug felons who have served their sentences because he believes they will use the funds on gam-

¹²⁵ *Id.* at 1.

¹²⁶ *Id.* at 1–2.

¹²⁷ *Id.* at 2.

¹²⁸ *Id.* at 3.

¹²⁹ Lopez Interview, *supra* note 44.

¹³⁰ *Finance (Comm. Room B) – Virginia Senate Live Session Video Stream*, VA. GEN. ASSEMBLY (Jan. 31, 2018), http://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=2012 [hereinafter Va. Senate Livestream]; see also S.B. 203, 2018 Gen. Assemb., Reg. Sess. (Va. 2018); S.B. 204, 2018 Gen. Assemb., Reg. Sess. (Va. 2018).

¹³¹ See Va. Senate Livestream, *supra* note 130.

¹³² Laura Vozzella, *McAuliffe Restores Voting Rights to 13,000 Felons*, WASH. POST (Aug. 22, 2016), https://www.washingtonpost.com/local/virginia-politics/mcauliffe-restores-voting-rights-to-13000-felons/2016/08/22/2372bb72-6878-11e6-99bf-f0cf3a6449a6_story.html?utm_term=.019332cb1a05.

bling and strip clubs.¹³³ He voted to lay HB 945, a bill to give drug felons TANF benefits, on the table.¹³⁴ He explains,

TANF money was getting cashed at [race tracks] and [other forms of entertainment]. That's not helping people. They're taking money that was supposed to be helping people and are spending it on gambling and other forms of entertainment. That's why we left this bill in committee because I don't think it's a good bill.¹³⁵

Delegate Ingram feels so strongly about this that he introduced a bill in 2013 to restrict TANF funds from being used on alcohol, tobacco, gambling and strip clubs.¹³⁶ Delegate Ingram's bill was incorporated into HB 1577, which was ultimately signed by the Governor.¹³⁷ Tom Steinhauer, former director of Benefit Services at Virginia's DSS, countered, "[i]t's a pretty limited amount of cash they have, so if they are using it for purchasing cigarettes and things, then they really don't have enough to do (for) what's needed for rent and utilities."¹³⁸ This is a fair statement from Mr. Steinhauer because the average family of three is receiving about \$419 a month, with a maximum income of \$776 a month.¹³⁹

Further, the studies do not corroborate Delegate Ingram's desire to control spending.¹⁴⁰ His concern is similar to the concerns of those who seek to limit what SNAP recipients can buy with their SNAP benefits. Studies show that SNAP recipients have dietary habits like everyone else.¹⁴¹ Studies also show that, as a whole, low-income people spend less on everything across the board.¹⁴² Are there extreme cases where someone uses SNAP to

¹³³ See Ingram Interview, *supra* note 58.

¹³⁴ See H.B. 945, 2018 Gen. Assemb., Reg. Sess. (Va. 2018); *see id.*

¹³⁵ Ingram Interview, *supra* note 58.

¹³⁶ Carten Cordell, VA: *New Bill Aims to Take Alcohol, Smokes, Strip Clubs out of Welfare*, WATCHDOG.ORG (Dec. 14, 2012), https://www.watchdog.org/issues/accountability/va-new-bill-aims-to-take-alcohol-smokes-stripclubs/article_aba48c10-b2e7-5793-8a54-99be0b75d54e.html.

¹³⁷ *H.B. 1577 TANF; Restrictions on Use of Cash Assistance, Not to Access Cash Through Electronic Transaction*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?131+sum+HB1577> (last visited Nov. 5, 2018).

¹³⁸ Cordell, *supra* note 136.

¹³⁹ See FLOYD, *supra* note 120, at 13–14.

¹⁴⁰ See Jordan Weissman, *Forget Steak and Seafood: Here's How Welfare Recipients Actually Spend Their Money*, SLATE (Apr. 15, 2015), http://www.slate.com/blogs/moneybox/2015/04/15/how_welfare_recipients_spend_their_money_it_s_not_steak_and_seafood.html; Jordan Weissman, *This Chart Blows Up the Myth of the Welfare Queen*, ATLANTIC (Dec. 17, 2013), <https://www.theatlantic.com/business/archive/2013/12/this-chart-blows-up-the-myth-of-the-welfarequeen/282452/> [hereinafter Weissman, ATLANTIC].

¹⁴¹ See Diane W. Schanzenbach, *Should Government Control What Low-Income People Eat?*, REAL CLEAR MARKETS (Jan. 25, 2017), https://www.realclearmarkets.com/articles/2017/01/25/should_government_control_what_low-income_people_eat_102515.html.

¹⁴² Weissman, ATLANTIC, *supra* note 140.

buy crab legs? Sure.¹⁴³ Are there extreme cases where someone cashes their TANF benefits at an ATM to use on unnecessary things? Probably. But are these the norm? No, and exceptions prove the rule that the overwhelming majority of people use SNAP and TANF benefits as the law intended.¹⁴⁴ The government should not punish the poor who work hard and use the public benefits wisely. As Omarosa Manigault Newman pointed out, “The United States is the only country in the world that has created a separate currency for its poor.”¹⁴⁵ It is humiliating enough for many to use the programs; further restrictions would simply add salt to the wound.

Delegate Ingram is also concerned about people abusing the system.

We have so much abuse in the systems now that's going on. I'm talking about TANF funds. We did a study one time on TANF funds, it's supposed to be temporary assistance to needy families and it's not temporary. We need to follow up and see where this money is going. There are some cases where people have completely turned around and if it's administered through the courts then I don't have a problem with it.¹⁴⁶

Although the delegate did not mention specifics from the study, it appears the study may be inaccurate. DSS data shows that the TANF rolls are decreasing year after year.¹⁴⁷ Delegate Ingram continued,

In certain cases, I could support [drug felons receiving TANF]...I don't want to see a blanket thing. Let's say that someone has completely changed their life around, they now have a family, they're going to church, they're a changed person - that's different. I'd have to look at each individual myself in order to be able to justify what we spend on who, when, and where.¹⁴⁸

When asked how exactly this would be legislated, Delegate Ingram responded that it's not possible to be legislated.¹⁴⁹ This is an accurate statement; it cannot be legislated. This is why courts have standards which former drug felons must abide by. Those standards should be sufficient for the legislature to repeal the felony drug ban without needing to add new parameters.

¹⁴³ See Liz Halloran, *Lobster Boy Looms Large In Food Stamp Debate*, NAT'L PUBLIC RADIO (Sept. 19, 2013), <https://www.npr.org/sections/itsallpolitics/2013/09/19/223796325/lobster-boy-looms-large-in-food-stamp-debate>.

¹⁴⁴ See Weissman, ATLANTIC, *supra* note 140.

¹⁴⁵ Isaac Stanley-Becker, *Sixteen Unexpected Insights Into the Human Condition in Omarosa's Tell-All Memoir*, WASH. POST (Aug. 14, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/08/14/sixteen-unexpected-insights-into-the-human-condition-in-omarosas-tell-all-memoir/?noredirect=on&utm_term=.37e5910a8ce5.

¹⁴⁶ Ingram Interview, *supra* note 58.

¹⁴⁷ VDSS, *supra* note 118.

¹⁴⁸ Ingram Interview, *supra* note 58.

¹⁴⁹ *Id.*

As for turning one's life around, felony convictions severely limit job opportunities, so work effort to turn one's life around is stifled.¹⁵⁰ Moreover, as Professor Michelle Alexander reports:

A huge percentage of [African Americans] are not free to move up at all. It is not just that they lack opportunity, attend poor schools, or are plagued by poverty. They are barred by law from doing so...The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy.¹⁵¹

The drug felony laws are an additional head of the Hydra that need to be resolved. Otherwise, those with non-violent drug felony convictions will continue to remain in a sunken place.

Delegate Ingram continued, "There are abuses in everything you do...there are going to be people who abuse the system. And it's the same everywhere you go."¹⁵² The data shows quite the opposite. The U.S. Department of Agriculture (USDA), the department that administers SNAP, defines SNAP fraud as follows:

SNAP fraud is when SNAP benefits are exchanged for cash. This is called trafficking and it is against the law. SNAP fraud also happens when someone lies on their application to get benefits or to get more benefits than they are supposed to get. SNAP fraud also happens when a retailer has been disqualified from the program for past abuse and lies on the application to get in the program again.¹⁵³

SNAP shows a low fraud rate, where the trafficking rate has decreased from four cents on the dollar in 1993 to one cent in 2008.¹⁵⁴ The USDA has strong penalties for those who are guilty of SNAP fraud: a first offense of fraud is punishable with one year of ineligibility, a second offense is punishable with two years of ineligibility, and a third offense results in a permanent ban.¹⁵⁵ When it comes to this type of punishment, a permanent ban from SNAP is sensible when one is guilty of SNAP fraud. The Sentencing Project explains:

This provision is more closely tailored to the purpose of deterring food stamp fraud than the blanket ban on receipt of food stamps for individuals with felony

¹⁵⁰ See, e.g., JOHN SCHMITT & KRIS WARNER, EX-OFFENDERS AND THE LABOR MARKET 8 (Nov. 2010) (noting that felony convictions may lead to a deterioration of "human capital" which makes employment difficult and recidivism more likely); Michael Hopkins, *Banning the Box: The Solution to High Ex-Offender Unemployment*, 49 MCGEORGE L. REV. 513, 521 (2018) (explaining that in one study, only 40% of surveyed employers would consider hiring a convicted felon).

¹⁵¹ ALEXANDER, *supra* note 77, at 13.

¹⁵² Ingram Interview, *supra* note 58.

¹⁵³ *What is SNAP Fraud?*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV. (Jan. 20, 2017), <http://www.fns.usda.gov/fraud/what-snap-fraud>.

¹⁵⁴ *Id.*

¹⁵⁵ 7 U.S.C. § 2015(b)(1) (2018).

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drug convictions, because it is responsive to actual misuse of benefits regardless of whether the recipient has a history of criminal or drug involvement. In contrast, the ban on receipt of benefits for individuals with felony drug offenses is over-inclusive, because it disallows SNAP benefits to people who have never and would never engage in fraudulent use of SNAP or TANF benefits - for life.¹⁵⁶

Ultimately, Delegate Ingram says,

I am all for turning it around so that drug offenders should have every opportunity to start their life over, but I don't think they're entitled to TANF.... I want to give everybody a chance. I support drug courts, I think they're wonderful. I'm all for rehabilitation, but we're talking about TANF funds, we're talking about temporary assistance to needy families. It's not about rehabilitation, we're talking about temporary assistance for needy families for felons, which I don't agree with. I don't think if you're a convicted felon why should you be on the government's payroll with taxpayers to help you? I just don't think it's right.¹⁵⁷

It appears that Delegate Ingram misses some important elements of the scope of TANF. TANF is more than just cash assistance. As previously mentioned, TANF includes, "job skills training, work experience, job readiness training...transportation and other work-related expenses."¹⁵⁸ This goes beyond the rehabilitation that Delegate Ingram wants and works towards a successful re-entry. Senator Favola affirms,

Virginia should make a concerted effort to create re-entry programs that are generous enough to support a family without sentencing that family to a life of poverty. These programs should have educational or job training requirements and allocate sufficient resources to create such opportunities. Re-entry programs have enjoyed bi-partisan support in the Virginia General Assembly but one category of individuals not able to participate in all re-entry programs is first-time felony drug [distribution] candidates.¹⁵⁹

As for turning one's life around, Antoine has this to say,

How can you be working if nobody is going to hire them? I have my forklift certification, electrician certification, I have the training, I'm a good painter, I know how to clean and move furniture, but who is going to give me the opportunity? When we talk about when someone gets a job, when will that opportunity be provided?¹⁶⁰

¹⁵⁶ MAUER, *supra* note 107, at 7.

¹⁵⁷ Ingram Interview, *supra* note 58.

¹⁵⁸ VDSS, *supra* note 118.

¹⁵⁹ Email from Senator Barbara Favola, Senator, Va. Senate, to Salaam Bhatti, Pub. Benefits Attorney, Va. Poverty Law Ctr. (Oct. 29, 2018) (on file with author).

¹⁶⁰ Branch Interview, *supra* note 64.

C. Former US Senator Phil Gramm (R-Texas)

Former U.S. Senator Phil Gramm created the felony drug bans on SNAP and TANF.¹⁶¹ He said “[i]f we are serious about our drug laws, we ought not give people welfare benefits who are violating the Nation’s drug laws.”¹⁶² Ultimately, this is bad logic because we should be serious about all of our laws, which would end up meaning that no criminal should be permitted to receive public benefits after their arrest. However, that rationale is poorly thought out because of the aforementioned connection between crime and poverty. Denying benefits to the poor, especially those with a criminal record, is setting them up to fail, increasing recidivism, and destabilizing the weakest in our society.

CONCLUSION

This Article began with a look at welfare’s journey from creation through reformation to a present-day problem plaguing the poor. With each passing attempt at solving poverty, band-aids were put on broken bones and other broken bones were left ignored. Policymakers need to understand that poverty’s reach is long, and its fingers have touched many aspects of society. Poverty is connected to injustice, injustice is connected to racism, racism is connected to unemployment, unemployment is connected to crime, crime is connected to for-profit prisons, and it is all part of a monstrous cycle of never-ending poverty.

It can feel overwhelming to tackle this beast. And, unfortunately, it will be overwhelming because America has fed this behemoth since Jamestown was founded over four hundred years ago. Virginia may be one of the birthplaces of poverty in modern-day America, but it should not be a state that perpetuates it. To solve poverty, Virginia needs innovative approaches to tackle the Hydra that involve cooperation, not isolation. A great place to start is by cutting off the heads we are responsible for, starting with the felony drug ban.

¹⁶¹ MCCARTY ET AL., *supra* note 24, at 3.

¹⁶² *Id.* (quoting 142 CONG. REC. S8498 (daily ed. July 23, 1996) (statement of Sen. Gramm)).