

STATEGRAFT IN PUBLIC ASSISTANCE PROGRAMS

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Lawbreaking and resource misuse in public assistance programs receive ample popular and political attention. The bulk of this attention focuses on alleged abuses on the part of programs' clients. This Essay addresses a less-publicized issue: illegal actions on the part of public officials that deprive citizens of resources to which they would otherwise have access. When such actions function to benefit government treasuries, they constitute stategraft.

This Essay focuses on episodes of stategraft in two contexts: state and local officials using public assistance money in ways that violate the spirit or letter of federal law and eligibility determination and rule enforcement interventions that result in improper benefit denials or program disqualifications. Examples in both categories demonstrate the operation of *preemptive stategraft*, in which officials supplement government budgets through failure to transfer resources that should have flowed to individuals and families.

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INTRODUCTION

Professor Bernadette Atuahene's article, "A Theory of Stategraft," highlights an important phenomenon in American governance: illegal state activities that fill government coffers at citizens' expense.¹ Such "stategraft" differs from conventional public corruption in that its proceeds redound to the benefit of governments themselves, rather than

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1. Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1 (2023).
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advancing individual actors' personal interests.² And unlike conventional corruption, actors' intent is irrelevant in episodes of stategraft.³

This Essay addresses stategraft in the context of U.S. public assistance programs. Part I addresses changes in the structure and funding of public assistance programs and their implications for stategraft, focusing specifically on Temporary Assistance for Needy Families (TANF). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced Aid to Families with Dependent Children (AFDC) with TANF, in the process switching the program's funding to a block grant model. This new arrangement gave state governments wide discretion in how to use their block grant allocations. States' decisions on how to use—or not use—federal dollars allocated to them through TANF have shifted resources away from the function of supporting poor families or otherwise advancing TANF's stated purposes. Although such allocation decisions appear to violate the spirit of the law, federal authorities have thus far declined to formally declare many of them to be illegal. In other cases, state actors have shifted TANF funds away from the program's stated purposes and toward preferred government projects in ways that violate the letter of the law. Both categories of violations reflect *preemptive stategraft*—a variety of stategraft in which authorities bolster treasuries through unlawfully *retaining* resources that otherwise would have flowed to citizens, rather than through unlawfully dispossessing citizens of resources they already possess.

In her original formulation of stategraft, Atuahene focuses on situations in which state agents transfer property from individuals.⁴ Preemptive stategraft, by contrast, involves situations in which state agents *fail* to transfer property *to* people. The result is the same: state agents' illegal actions deprive citizens of resources to the benefit of government coffers. Thus, preemptive stategraft merits attention as a different pathway leading to the same outcome. Preemptive stategraft is further notable for its insidiousness. Because many of its victims are unaware that they have experienced unlawful deprivations, it is easier for this type of activity to proceed unopposed or even unnoticed altogether.

Part II shifts attention to governments' efforts to monitor public assistance clients and disqualify them from programs based on determinations of ineligibility or for violations of program rules. To do so, it draws on my original empirical research on welfare fraud investigation units, which included in-depth interviews with welfare

2. *Id.* at 8.

3. *Id.*

4. *Id.* at 13–15.

fraud workers in five diverse U.S. states. Section II.A first describes the predominant focus on limiting errors of spending in public assistance programs and how this focus manifests in fraud control efforts. Section II.B then addresses the contemporary shift toward automation and algorithmic decisionmaking in public assistance administration, specifically highlighting the robust automated fraud detection system created in one of the five case study states from my original data collection.

Lastly, Section II.C goes beyond my primary research to discuss three examples of how these phenomena have engendered episodes of stategraft. The first concerns the late-2000s contracted automation of Indiana's eligibility determination system for SNAP, TANF, and Medicaid.⁵ This experiment in privatization and automation was expressly intended to reduce the number of people participating in these programs. In that goal, it succeeded, but at the cost of illegally foreclosing access to tens of thousands of people, disproportionately people of color. The second example comes from Michigan's unemployment insurance system. Between 2013 and 2015, Michigan's automated protocol for detecting fraud in unemployment claims falsely assessed at least 20,000 people as having committed fraud, resulting in illegal benefit denials and restitution orders.⁶ Section II.C's third example involves the illegal Medicaid disenrollment of half a million people in twenty-nine states and Washington, D.C., as states resumed removing people from the program in the wake of the COVID-19 pandemic.⁷ Like the TANF spending cases addressed in Part I, the Indiana example involved preemptive stategraft, as well stategraft involving removing active clients from public assistance programs for which they legitimately qualified. The Michigan and multi-state Medicaid cases, on the other hand, both involved improperly disenrolling people from programs to which they had legal entitlements.

I. PROGRAM FUNDING AND STATEGRAFT

The history of U.S. public assistance programs is replete with austerity-minded interventions. These include efforts to reduce participation, cut benefit amounts, and enhance capacities to surveil clients and punish them for violations of program rules.⁸ The Personal

5. *Infra* Section II.C.1.

6. *Infra* Section II.C.2.

7. *Infra* Section II.C.3.

8. KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY 51–70 (2011); SPENCER HEADWORTH, POLICING WELFARE: PUNITIVE ADVERSARIALISM IN PUBLIC ASSISTANCE 91–113 (2021). *See*

Responsibility and Work Opportunity Reconciliation Act of 1996 stands out as an especially impactful measure.⁹ PRWORA dramatically reshaped the public assistance system, bringing to the fore new rules, requirements, stipulations, and penalties, and largely succeeding in fulfilling President Bill Clinton’s pledge to “end welfare as we know it.”¹⁰ Transforming Aid to Families with Dependent Children into Temporary Assistance for Needy Families,¹¹ PRWORA imposed a five-year lifetime maximum on program participation and added new requirements to engage in paid work or face sanctions.¹² These work requirements are specifically oriented toward the formal labor market, prioritizing any work outside the home over caregiving for children and other unpaid domestic labor.¹³

Perhaps most consequentially, PRWORA replaced AFDC’s matching grant funding with TANF’s block grant funding, establishing a set annual federal contribution of \$16.5 billion (unchanged since 1996) and ending these benefits’ “entitlement” status.¹⁴ Demonstrating the welfare quality control movement’s hallmark stringency focus,¹⁵ federal incentives such as “high-performance bonuses” and “caseload reduction credit[s],” coupled with prospective funding cuts, encouraged states to limit expenditures and shrink client populations.¹⁶ These measures were

generally FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (Vintage Books 2d Vintage ed. 1993) (1971).

9. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended at 42 U.S.C. § 601).

10. KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA* 21 (Mariner Books 2016) (2015). *See also* GWENDOLYN MINK, *WELFARE’S END* 61–67 (1998); Laura Tach & Kathryn Edin, *The Social Safety Net After Welfare Reform: Recent Developments and Consequences for Household Dynamics*, 43 ANN. REV. SOCIO. 541, 542–49 (2017); CELESTE WATKINS-HAYES, *THE NEW WELFARE BUREAUCRATS: ENTANGLEMENTS OF RACE, CLASS, AND POLICY REFORM* 57–58 (2009).

11. Tach & Edin, *supra* note 10, at 542.

12. MINK, *supra* note 10, at 104.

13. *Id.* at 108–09.

14. CONG. RSCH. SERV., R44668, *THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT: A LEGISLATIVE HISTORY* 12–15 (2024); *Policy Basics: Temporary Assistance for Needy Families*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf> [<https://perma.cc/W7RF-3QWF>] (Mar. 1, 2022).

15. *See* EVELYN Z. BRODKIN, *THE FALSE PROMISE OF ADMINISTRATIVE REFORM: IMPLEMENTING QUALITY CONTROL IN WELFARE* 24–45 (1986); Evelyn Brodtkin & Michael Lipsky, *Quality Control in AFDC as an Administrative Strategy*, SOC. SERV. REV., Mar. 1983, at 1, 6, 18–25; MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* 225–26 (updated ed. 2010) (1980).

16. JOE SOSS, RICHARD C. FORDING & SANFORD F. SCHRAM, *DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE* 122 (2011).

effective. In 1996, sixty-eight percent of poor families received AFDC; in 2020, only twenty-one percent received TANF.¹⁷

TANF's block grant funding structure also had pronounced implications for statecraft. This new arrangement gave state and local governments broad authority to use their federal block grant allocations in whatever way they saw fit. As numerous examples demonstrate, state and local authorities have widely used—or abused—this discretion to redirect TANF dollars away from needy families and toward their preferred projects or their states' general funds. Many of these allocation decisions violate the spirit of the law. Others involve clear violations of the letter of the law.

A. Violating the Spirit of the Law

PRWORA provides the following statement regarding the objectives of TANF:

- (a) IN GENERAL.—The purpose of this part is to increase the flexibility of States in operating a program designed to—
- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
 - (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
 - (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
 - (4) encourage the formation and maintenance of two-parent families.¹⁸

Like the program's name, purposes (1) and (2) indicate a focus on needy families. Purposes (3) and (4) do not explicitly invoke neediness, but instead suggest a broader objective of reducing unmarried pregnancies and single parenting in general.

Today, only around twenty percent of federal TANF dollars go to the kind of direct support to needy families that people conventionally

17. ADITI SHRIVASTAVA & GINA AZITO THOMPSON, CTR. ON BUDGET & POL'Y PRIORITIES, TANF CASH ASSISTANCE SHOULD REACH MILLIONS MORE FAMILIES TO LESSEN HARDSHIP: ACCESS TO TANF HITS LOWEST POINT AMID PRECARIOUS ECONOMIC CONDITIONS 1-2 (2022).

18. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2112-13 (codified as amended at 42 U.S.C. § 601).

associate with the idea of “welfare.”¹⁹ In fourteen states, that percentage is in the single digits.²⁰ Both conservative and progressive observers have lamented governments’ reallocation of TANF resources away from the program’s stated purposes and toward other projects.²¹ Robert Rector, who worked on the law as a congressional staffer and is now employed at the Heritage Foundation, noted that “[o]verall, the states have radically abused the program,” adding that “[a]lmost every state government has failed to carry out the principal objectives. Promoting work is the key idea of the act and they do virtually nothing – both red and blue states.”²² Kevin Aslanian of the Coalition of California Welfare Rights Organizations said that “TANF is a Christmas tree for the states where they can do all kinds of crazy things with the money It doesn’t really address the needs of the clients. This is Temporary Assistance for Needy Families, not needy states.”²³ Arizona State Representative Mitzi Epstein, a Democrat, described her state’s use of TANF resources as “a shell game It’s plugging holes in the budget by shifting money from one fund to another. It’s not meeting the purposes of TANF of helping people get a job or get a better job and improve their lives.”²⁴ Commenting on similar patterns in her state, the executive director of the Louisiana Budget Project described TANF as “a slush fund When Louisiana started having a budget crisis, TANF became a piggy bank that ended up diverting money from the core original goals of welfare reform.”²⁵

State and local governments have widely used their TANF block grant allocations in ways that deviate from the program’s stated purposes but benefit their budgets.²⁶ Arizona, for example, sends over sixty

19. *State Fact Sheets: How States Spend Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/family-income-support/state-fact-sheets-how-states-have-spent-funds-under-the-tanf-block> (Mar. 17, 2023) [<https://perma.cc/5QKH-8EVJ>].

20. *Id.*

21. See Jenni Bergal, *States Raid Fund Meant for Needy Families To Pay for Other Programs*, STATELINE (July 24, 2020, 12:00 AM), <https://stateline.org/2020/07/24/states-raid-fund-meant-for-needy-families-to-pay-for-other-programs/> [<https://perma.cc/X9A8-A8R3>].

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. This is to say nothing of the huge number of TANF dollars that states have declined to spend at all. As of December 2021, states were holding a total of \$5.2 billion in unused TANF funds. Hannah Dreyfus, *States Are Hoarding \$5.2 Billion in Welfare Funds Even as the Need for Aid Grows*, PROPUBLICA (Dec. 29, 2021, 5:00 AM), <https://www.propublica.org/article/states-are-hoarding-52-billion-in-welfare-funds-even-as-the-need-for-aid-grows> [<https://perma.cc/5URN-CSPA>].

percent of its TANF allocation—totaling over \$150 million annually—to the Arizona Department of Child Safety, the state’s child protective services (CPS) agency.²⁷ This diversion allows Arizona to save money out of its general fund, but it does not seem to meaningfully advance any of TANF’s four stated purposes. Indeed, using TANF dollars to investigate poor families and remove their children into foster care seems to work against purpose (1) by reducing the likelihood that children will be cared for in their own homes or the homes of relatives. This use of TANF funds also seems to work against purpose (4) by undermining the stability of family units.²⁸

The lived experiences of people subjected to these policies demonstrate this reality. For example, ProPublica’s Eli Hager recounted the story of Arianna Bermudez, a low-income mother living in Arizona.²⁹ After moving to Phoenix, Ms. Bermudez found herself working long hours at multiple jobs to try to make ends meet.³⁰ Although she briefly received TANF funds, Ms. Bermudez lost access to this resource because her income made her ineligible.³¹ Her situation required her to live with roommates, whom she relied on to babysit David, her toddler son.³² When Ms. Bermudez learned that a babysitter had allegedly touched David inappropriately, her reaction precipitated an arrest and overnight incarceration for disorderly conduct, followed by a CPS investigation that resulted in David being placed in foster care.³³ Thus, although Ms. Bermudez faced no allegations of personally mistreating or neglecting David, she found the TANF resources that were ostensibly intended to help people meet their basic needs repurposed to break up her family.³⁴ Moreover, such individual injustices emerge from a system characterized by structural injustices. CPS interventions in Arizona (and elsewhere) are highly racialized; recent research estimates that 63.3

27. Eli Hager, *A Mother Needed Welfare. Instead, the State Used Welfare Funds To Take Her Son*, PROPUBLICA (Dec. 23, 2021, 5:00 AM), <https://www.propublica.org/article/a-mother-needed-welfare-instead-the-state-used-welfare-funds-to-take-her-son> [https://perma.cc/L5E7-8XDT].

28. *See generally* DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022).

29. Hager, *supra* note 27.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

percent of Black children in Phoenix's Maricopa County experience such an investigation by the time they reach eighteen years old.³⁵

Another example of states using TANF money in ways that deviate from the program's stated purposes comes from Michigan. When that state was experiencing severe budget shortfalls in the late 2000s, state policymakers directed millions of dollars of TANF funds into college tuition grants.³⁶ The state was required to continue higher education funding to remain eligible for federal stimulus resources but faced pronounced shortages in available funds.³⁷ In response, the state reallocated TANF dollars into tuition grant programs that the state government had previously financed.³⁸ Since that initial reallocation, reliance on TANF funds has become a staple of the state's support for higher education.³⁹ As of 2016, over \$93 million of Michigan's TANF funds went to tuition grants.⁴⁰ Of that total, about half was limited to students from Medicaid-eligible families,⁴¹ giving that portion of the expenditure a plausible connection to TANF purpose (2). The other half, however, was available to students from better-off backgrounds, including middle- and upper-class students attending expensive private institutions.⁴² Indeed, over \$40 million of Michigan's 2016 TANF allocation flowed to private schools.⁴³ Altogether, this budgetary maneuver functionally gave Michigan tens of millions of dollars in its annual state budgets that it otherwise would not have had, but at the expense of needy families that could have benefited from TANF support.

Until 2019, Michigan was also one of at least ten states that used TANF funds to support government-funded anti-abortion centers.⁴⁴ Often

35. Frank Edwards, Sara Wakefield, Kieran Healy & Christopher Wildeman, *Contact with Child Protective Services Is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties*, PROC. NAT'L ACAD. SCI. U.S. AM., July 19, 2021, at 1, 1.

36. Andrew Kreighbaum, *Welfare Funds for Students Far from Welfare*, INSIDE HIGHER ED (Oct. 17, 2016), <https://www.insidehighered.com/news/2016/10/18/michigans-use-welfare-funds-private-college-tuition-grants-gets-new-scrutiny> [<https://perma.cc/9GBC-S5JD>].

37. *Id.*

38. *Id.* See, e.g., MICH. COMP. LAWS. § 390.991 (2023) (establishing state provided tuition grants).

39. Kreighbaum, *supra* note 36.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. Rachel Wormer, *Mapping Deception: A Closer Look at How States' Anti-Abortion Center Programs Operate*, EQUITY FORWARD, <https://equityfwd.org/research/mapping-deception-closer-look-how-states-anti-abortion-center-programs-operate> [<https://perma.cc/8JBF-ZCB3>] (Sept. 2021).

labeled “crisis pregnancy centers” or “pregnancy resource centers,” these facilities mimic healthcare providers that offer abortion services.⁴⁵ In reality, these organizations do not provide reproductive health care, but rather seek to dissuade their visitors from aborting pregnancies.⁴⁶ To do so, they rely on tactics like presenting inaccurate information and conducting medically unnecessary ultrasounds to frighten and shame people considering abortion.⁴⁷ Using TANF dollars to support these facilities amounts to policymakers diverting resources away from needy people and toward programs designed to advance their ideological agendas that they would otherwise need to support out of their states’ general funds.⁴⁸ Moreover, at least insofar as they convince unmarried people to carry to term pregnancies they otherwise would have terminated, these initiatives appear to work directly against TANF purpose (3), while also failing to advance purposes (1), (2), or (4).

B. Violating the Letter of the Law

Despite their apparent failure to advance any of TANF’s stated purposes—or their tendency to work against these purposes—federal authorities have heretofore largely declined to identify practices of the sort described above as illegal. Other abuses of TANF resources, however, have precipitated official determinations of lawbreaking.

A recent high profile instance of illegal activity involving TANF funds occurred in Mississippi, the country’s poorest state.⁴⁹ Beginning in summer 2017, former NFL quarterback Brett Favre began soliciting Governor Phil Bryant for money to construct a volleyball arena at the public University of Southern Mississippi.⁵⁰ Favre played college football

45. See Melissa N. Montoya, Colleen Judge-Golden & Jones J. Schwartz, *The Problems with Crisis Pregnancy Centers: Reviewing the Literature and Identifying New Directions for Future Research*, 14 INT’L J. WOMEN’S HEALTH 757, 757 (2022).

46. *Id.* at 757–58.

47. Sonya Borrero, Susan Frietsche & Christine Dehlendorf, *Crisis Pregnancy Centers: Faith Centers Operating in Bad Faith*, 34 J. GEN. INTERNAL MED. 144, 144 (2019); Melanie Conklin, *Pregnancy Resource Centers “Designed To Mislead Women,”* WIS. EXAM’R (Sept. 9, 2019, 5:49 AM), <https://wisconsinexaminer.com/2019/09/09/pregnancy-resource-centers-designed-to-mislead-women/> [https://perma.cc/Q8KJ-VM5R].

48. Borrero, Frietsche & Dehlendorf, *supra* note 47, at 145.

49. Tony Pierce, *The 10 Poorest States in America*, CNBC, <https://www.cnbc.com/2013/09/27/the-10-poorest-states-in-america.html> [https://perma.cc/E8RP-JWJV] (Sept. 27, 2013, 2:41 PM).

50. Isabel Gonzalez & Steven Taranto, *Brett Favre Scandal Explained: Ex-NFL QB Accused of Misusing Mississippi State Welfare Funds*, CBS SPORTS (Aug. 10, 2023, 4:03 PM), <https://www.cbssports.com/nfl/news/brett-favre-scandal-explained-ex-nfl-qb->

for the university, and his daughter began playing volleyball at the school in 2017.⁵¹ Now officially known as the “Southern Miss Volleyball Wellness Center,” the building cost approximately \$7 million to construct.⁵² Of that total, \$5 million came from misappropriated TANF funds.⁵³ Here, Mississippi officials demonstrated their willingness to redirect money away from needy families and toward projects they preferred (in this case, one championed by a wealthy and famous citizen). Ultimately, the redirection of TANF dollars to the Southern Mississippi volleyball facility proved to be only the tip of the iceberg. A 2020 audit of the Mississippi Department of Human Services found that Mississippi officials illegally misappropriated around \$77 million in TANF funds between 2016 and 2019.⁵⁴

Like some other episodes of stategraft, this illegal misappropriation involved a mix of actions benefiting the public coffers and more conventional public corruption benefiting individuals. Of the various misuses, providing fiscal relief to the state government by diverting TANF money to support an athletics expenditure at a public university is the closest to true stategraft. Other illegal uses of Mississippi’s block grant allocation involved activities directly benefiting individuals. Favre himself received over \$1 million in TANF funds for no-show speaking engagements and benefited from Mississippi sending over \$2 million TANF dollars to a pharmaceutical company in which he was a major investor.⁵⁵ TANF money also went toward “luxury travel for [John Davis, the former Executive Director of the Mississippi Human Services Department,] and people close to him, drug rehab for a former pro wrestler and boot camp-style gym classes for public officials.”⁵⁶ In response to the sweeping scandal, prosecutors have filed criminal charges

is-accused-of-misusing-of-mississippi-state-welfare-funds/ [https://perma.cc/B5VP-8Q4T].

51. *Id.*; Brett Favre, PROF. FOOTBALL HALL FAME, <https://www.profootballhof.com/players/brett-favre/> [https://perma.cc/4NEH-KTVA].

52. David Eckert, *What \$5 Million in Welfare Money Bought Southern Miss Volleyball*, HATTIESBURG AM. (Oct. 1, 2022, 8:18 PM), <https://www.hattiesburgamerican.com/story/sports/college/southern-miss/2022/10/02/what-5-million-in-welfare-dollars-bought-southern-miss-volleyball/69494814007/> [https://perma.cc/F87Q-RJRJ].

53. *Id.* See also Emily Wagster Pettus, *Welfare Misuse Scandal Highlights Wealth Divide in Mississippi*, PBS: NEWSHOUR (Jan. 3, 2023, 2:46 PM), <https://www.pbs.org/newshour/nation/welfare-misuse-scandal-highlights-wealth-divide-in-mississippi>.

54. MISS. OFF. OF THE STATE AUDITOR, SINGLE AUDIT FOR THE YEAR ENDING JUNE 30, 2019 (2020). See also Gonzalez & Taranto, *supra* note 50; Pettus, *supra* note 53.

55. Gonzalez & Taranto, *supra* note 50.

56. Pettus, *supra* note 53.

against six people and obtained multiple guilty pleas, including from John Davis.⁵⁷ Although Favre has not been criminally charged, he is one of thirty-eight defendants in an ongoing civil suit filed by Mississippi, and he has so far repeatedly failed to remove his name from the lawsuit.⁵⁸

Despite this prominent scandal garnering national attention, Mississippi Republicans have stridently opposed efforts to strengthen oversight of administration of the state's public assistance programs. In a recent legislative session, Republican committee chairs killed at least eleven bills introduced by Democratic legislators intended to address the misuse of public assistance resources, and Republican lawmakers voted down at least five similar Democrat-proposed amendments.⁵⁹ Indeed, Mississippi continues to use TANF funds in ways that are dubiously connected to the program's stated purposes, including for "IT contracts, a contract with the company who conducts drug testing of welfare applicants, interagency transfers to the state auditor's office or payments to the attorneys crafting the civil case against NFL legend Brett Favre and others," as well as annually directing around \$30 million to the state's Department of Child Protection Services.⁶⁰ Although it appears to be technically permissible under current federal law, the state's tactic of using TANF money to cover legal expenses incurred while attempting to recover its own officials' illegal misappropriations of TANF money is particularly bold.⁶¹ Further, the state continues to resist transparency at every turn, refusing to release details on its use of TANF funds and declining to explain discrepancies between the numbers that are released

57. Emily Wagster Pettus, *Former Mississippi Welfare Agency Director Pleads Guilty to Fraud*, PBS: NEWSHOUR (Sept. 22, 2022, 4:44 PM), <https://www.pbs.org/newshour/politics/former-mississippi-welfare-agency-director-pleads-guilty-to-fraud> [https://perma.cc/2VMS-G26K]; Anna Wolfe, *Welfare Head Pleaded Guilty to Federal Charges One Year Ago. What's Happened Since?*, MISS. TODAY (Sept. 22, 2023), <https://mississippitoday.org/2023/09/22/federal-welfare-scandal-investigation-update/> [https://perma.cc/RM2B-NTW4].

58. Gonzalez & Taranto, *supra* note 50; Isabel Gonzalez, *Brett Favre Will Not Be Removed from Civil Lawsuit Stemming from Mississippi Welfare Funds Misuse Scandal*, CBS SPORTS (Aug. 10, 2023, 3:18 PM), <https://www.cbssports.com/nfl/news/brett-favre-will-not-be-removed-from-civil-lawsuit-stemming-from-mississippi-welfare-funds-misuse-scandal/> [https://perma.cc/74TK-PUQC].

59. Anna Wolfe, *State Leaders Still Won't Fix Scandalous Welfare Program that Serves Few Poor Families*, MISS. TODAY (Feb. 17, 2023), <https://mississippitoday.org/2023/02/17/poor-families-welfare-scandal/> [https://perma.cc/796Z-MFW7].

60. *Id.*

61. Ashton Pittman, *Mississippi Is Paying Lawyers TANF Funds To Recover Misspent TANF Funds*, MISS. FREE PRESS (May 18, 2023), <https://www.mississippifreepress.org/33192/mississippi-is-paying-lawyers-tanf-funds-to-recover-misspent-tanf-funds> [https://perma.cc/6ZEK-PN7U].

to the public and information contained in the state's reports to the federal government.⁶²

This lack of transparency is a consistent theme in how states approach their TANF programs. It is also a key precursor to stategraft. With tens of millions of dollars sloshing around in loosely regulated and largely obscure “slush fund[s],”⁶³ opportunities abound to redirect money away from needy families and toward preferred state projects.⁶⁴ Indeed, even with the broad leeway that federal regulations provide states in using TANF funds, Mississippi is not the only place where officials have been caught in clear examples of stategraft connected to TANF.

For instance, Alaska's Association of Village Council Presidents (AVCP) used more than \$1 million in TANF funds to support their aircraft maintenance and flight school, despite repeated communications from federal officials indicating that this was not a legal use of TANF resources.⁶⁵ Documents and emails revealed this misuse of TANF dollars as a deliberate tactic intended to “allow funding to be spent and not returned to the Federal Government” and that the funds would “cover operational costs that student revenue [would not] cover.”⁶⁶ In a prior incident, after one of the instances in which federal officials told the AVCP they could not use TANF funds to cover the flight school's operating expenses, the AVCP changed tactics and instead sought to use the funds to offset tuition costs for TANF-eligible students.⁶⁷ However, Jolene Geerhart, the director of AVCP's TANF program at the time, noticed that the dollars appropriated to the tuition plan misaligned with the number of eligible students.⁶⁸ When the AVCP fired Geerhart in 2013, the official justification was insubordination.⁶⁹ Geerhart, however, saw things differently. In an interview, she stated, “I continued to let my supervisor know these are inappropriate uses and it needs to stop . . . and I believe I was terminated because I didn't stop and keep my mouth quiet and walk away and let it continue to happen.”⁷⁰ In addition to repeatedly violating federal regulations in connection to the flight school, the AVCP

62. Wolfe, *supra* note 59.

63. Bergal, *supra* note 21.

64. MICHAEL L. BENSON & SALLY S. SIMPSON, *WHITE-COLLAR CRIME: AN OPPORTUNITY PERSPECTIVE* (3d ed. 2018).

65. Lakeidra Chavis, *Documents Reveal AVCP Misappropriated Grant Funds for Years*, KDLG (Jan. 12, 2016, 12:24 PM), <https://www.kdlg.org/politics/2016-01-12/documents-reveal-avcp-misappropriated-grant-funds-for-years> [<https://perma.cc/84UB-TSTE>].

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

appears to have illegally used TANF funds to help pay the salary of an administrator who did not work for TANF programs.⁷¹ Here too, authorities misdirected TANF funds to cover other government expenses.

The Maine Department of Health and Human Services was also caught illegally using TANF funds. Between 2015 and 2016, the state agency unlawfully used \$13.4 million in TANF funds “on services for elderly and disabled Mainers, including in-home care and Meals on Wheels.”⁷² Although these programs are certainly closer in spirit to “welfare” than many of the other things that state and local governments use TANF money to fund, the state broke federal law by transferring funds from their TANF grant account to another grant account that supported the initiatives for older and disabled residents.⁷³ Following a *Bangor Daily News* article on the matter, Maine’s state auditor released a report that brought the issue to federal authorities’ attention.⁷⁴ Maine, however, avoided federal penalties by retroactively repaying the misappropriated federal dollars out the state’s general fund.⁷⁵ Thus, in this case, the benefit to state coffers facilitated by stategraft proved temporary (although Maine, like other states, continues to creatively use federal TANF funds to supplement its budget).⁷⁶ It is also significant that, given weak federal oversight in this area, the state very well may have been able to permanently realize the budgetary boon of the misappropriated \$13.4 million absent the investigative journalism of the *Bangor Daily News*.⁷⁷ Indeed, with the latitude granted to states in using TANF money and the shadowy environments in which much of this spending transpires, it is notable when these episodes come to light at all. Given these circumstances, there is a strong likelihood that many instances of stategraft connected to TANF go undetected.

In Utah, on the other hand, a longstanding practice in TANF administration is far from unknown but has been allowed to persist despite pronounced reason to doubt its constitutionality. The First Amendment’s Establishment Clause—the very first clause in the Bill of Rights—states that “Congress shall make no law respecting an establishment of religion.”⁷⁸ The Establishment Clause is the core

71. *Id.*

72. Matthew Stone, *DHHS Misspent \$13.4M in Federal Welfare Funds but Likely Won’t Face a Penalty*, BANGOR DAILY NEWS (Nov. 9, 2017), <https://www.bangordailynews.com/2017/11/09/news/dhhs-misspent-13-4m-in-federal-welfare-funds-but-likely-wont-face-a-penalty/> [<https://perma.cc/KTB8-YYPR>].

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *See id.*

78. U.S. CONST. amend. I.

constitutional provision underlying the separation of church and state. Although interpretations differ, the clause has generally been understood to preclude the government not only from establishing an official religion, but also from enacting policies that unduly favor one religion over another, favor religious adherence over non-religion, or coerce participation in religious activities.⁷⁹

Utah's welfare system demonstrates disregard for the Establishment Clause. Following PRWORA, a state government dominated by adherents to the Church of Jesus Christ of Latter-day Saints (LDS) aggressively moved to curtail direct support to poor families through TANF funds.⁸⁰ Instead of using TANF money, the state government relies on charity provided by the LDS Church to help needy families make ends meet. Government officials commonly direct public assistance applicants to instead seek help from the church, and the state counts a share of the church's charitable spending toward the maintenance-of-effort mandate requiring states to supplement their federal block grant allocation with some of their own money.⁸¹ This approach is highly beneficial to Utah's treasury: between 2011 and 2021, "the Utah State Legislature has been able to get out of spending at least \$75 million on fighting poverty that it otherwise would have had to spend under federal law."⁸²

The story is different for the poor Utahans functionally denied government aid under this arrangement. Accessing LDS-based assistance requires the approval of a local bishop.⁸³ Receiving that approval, in turn, may require applicants to volunteer labor to the church, tithe to the church, consume LDS promotional materials, recite passages from the Book of Mormon, attend LDS services, or even agree to be baptized into the church.⁸⁴ This arrangement creates additional barriers for Utahans seeking assistance with financial difficulties and invests LDS bishops with the power to reject claims with negligible oversight or

79. See generally Philip B. Kurland, *Of Church and State and the Supreme Court*, 29 U. CHI. L. REV. 1 (1961); LEONARD W. LEVY, *THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT* (Univ. of N.C. Press 2d ed. rev. 1994) (1986); Alan Schwarz, *No Imposition of Religion: The Establishment Clause Value*, 77 YALE L.J. 692 (1968).

80. Eli Hager, *Utah Makes Welfare So Hard To Get, Some Feel They Must Join the LDS Church To Get Aid*, PROPUBLICA (Dec. 2, 2021, 5:00 AM), <https://www.propublica.org/article/utahs-social-safety-net-is-the-church-of-jesus-christ-of-latter-day-saints-what-does-that-mean-if-youre-not-one> [https://perma.cc/K83B-EBSQ].

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

accountability. Although Utah officials insist that their program is legal, requiring participation in religious activities to access aid that otherwise would be supported by government money flies in the face of the First Amendment.⁸⁵ Further, with religious authorities overseeing the distribution of resources that would otherwise be governmentally administered, Utahans—especially women—report being denied LDS assistance based on their sexual history, marital status, sexual orientation, and even their attire or personal appearance.⁸⁶ Beyond the arrangement’s manifest Establishment Clause issues, these experiences implicate Utah policymakers in enabling actions that would violate federal antidiscrimination law if carried out by public officials.

II. FRAUD CONTROL, AUTOMATION, AND STATEGRAFT

U.S. public benefit programs lean toward austerity. This tilt is evident in the policies themselves. Compared to those of other industrialized democracies, U.S. public benefits are narrow in scope, limited in duration, and meager in value.⁸⁷ Relative to its international counterparts, the U.S. public benefit system is also more difficult to navigate and less hospitable. In other words, it is characterized by substantial “administrative burdens”: the various hassles and obstacles that make it harder to access all kinds of public programs.⁸⁸ When administrative burdens are heavy enough, they can result in “administrative exclusion”: the process by which otherwise interested and eligible people are pushed out of programs or actively discouraged from applying in the first place.⁸⁹

The administration of U.S. public benefit programs demonstrates their general orientation toward austerity and the tendency to impose administrative burdens and exclusions. Comparatively high bars for eligibility prevent many people from accessing programs. For those who

85. *See id.* (“[U]nlike the government, a church is often allowed to discriminate based on religion.”).

86. *Id.*

87. *See* Anne Penketh, Kate Connolly, Stephanie Kirchgassner, Henry McDonald, Justin McCurry et al., *Which Are the Best Countries in the World To Live in if You Are Unemployed or Disabled?*, *GUARDIAN*, <https://www.theguardian.com/politics/2015/apr/15/which-best-countries-live-unemployed-disabled-benefits> [<https://perma.cc/YXZ2-MKXA>] (Nov. 29, 2017, 3:04 PM).

88. PAMELA HERD & DONALD P. MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 2* (2018).

89. Evelyn Z. Brodtkin & Malay Majmundar, *Administrative Exclusion: Organizations and the Hidden Costs of Welfare Claiming*, 20 *J. PUB. ADMIN. RSCH. & THEORY* 827 (2010).

do qualify, complicated rules and demanding information-provision obligations make it easy to fall out of compliance, either unintentionally or due to exigent life circumstances.⁹⁰ In program oversight, state agencies tend to prioritize identifying errors of spending over other types of errors.⁹¹ That is, they are particularly inclined to invest in oversight enterprises designed to detect (and try to remedy) instances in which people accessed resources in violation of official strictures and stipulations.

Agencies responsible for the administration of public benefits increasingly rely on automated and algorithm-driven assessment systems to make these sorts of determinations. These initiatives include both front-end protocols, which employ automation to make determinations about program eligibility, and back-end protocols, which scrutinize participant populations for evidence of rule-breaking.⁹² At a basic level, these interventions are digital age outgrowths of the robust history of suspicion, surveillance, and sanctioning of people who participate in public assistance. Government programs nominally dedicated to relieving poverty have long included intrusive and coercive elements.⁹³ Poor people have long “paid” for aid through sacrifices of time, privacy, and even dignity that authorities compel as conditions of participation. Today, federal, state, and local governments in the United States continue to impose such burdens on disadvantaged Americans who seek to participate in public benefit programs, burdens which fall hardest on poor women and mothers of color.⁹⁴

These themes manifested notably in my qualitative study of welfare fraud enforcement units.⁹⁵ The data collection for this research began with a review of relevant federal law and a national overview of dedicated fraud control units within the fifty U.S. states’ and the District of Columbia’s SNAP and TANF administration bureaucracies.⁹⁶ This national overview comprised compiling publicly available reports of fraud units’ characteristics and activities, as well as soliciting further

90. See GUSTAFSON, *supra* note 8; Spencer Headworth, *Broke People, Broken Rules: Explaining Welfare Fraud Investigators’ Attributions*, 23 PUNISHMENT & SOC’Y 24 (2021).

91. HEADWORTH, *supra* note 8, at 155–58.

92. See HEADWORTH, *supra* note 8, at 63–65.

93. See GUSTAFSON, *supra* note 8, at 1–3; Austin Sarat, “. . . *The Law Is All Over*”: *Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J. L. & HUMANS. 343 (1990); Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 FLA. L. REV. 391, 399–412 (2003).

94. See generally KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017).

95. For a comprehensive overview, see HEADWORTH, *supra* note 8.

96. *Id.* at 15.

information from agency representatives.⁹⁷ Based on its results, I selected five case study states in which to conduct interviews with fraud workers.⁹⁸ Sampling for range,⁹⁹ I selected case study states to provide variation on three variables with theoretical bearing on fraud control: dominant political party (Democrat vs. Republican), public benefit system size, and criminal legal punitiveness, operationalized as incarceration rate.¹⁰⁰ I anonymize these five sites with identifiers denoting their regional locations within the United States: “Eastcoast,” “Midatlantic,” “Northeast,” “Southeast,” and “Southwest.”¹⁰¹

I conducted in-depth, semi-structured interviews with forty-two fraud workers across the five states.¹⁰² “[P]articipants per state ranged from a high of fifteen in Eastcoast to a low of four in Midatlantic.”¹⁰³ The interviewees include a range of those involved in fraud control efforts, including investigators, analysts, supervisors, and managers, as well as a handful of administrators with broader responsibilities; all names used here are pseudonyms.¹⁰⁴ I recruited voluntary participants via a recruitment message shared by organizational gatekeepers in each state.¹⁰⁵ The interviews “ranged from forty-five minutes to two and a half hours” and occurred in “private areas (usually closed-door offices or meeting rooms) within public assistance agency buildings.”¹⁰⁶ Each interview covered a range of topics related to the substance and significance of fraud control work. To build rapport and encourage expansive responses, I allowed topics to flow naturally with the course of conversation.¹⁰⁷

I began my data analysis by reading through the interview transcripts and applying broad index codes to identify major thematic currents. Drawing preliminarily on my review of relevant theory and prior empirical studies, I used these codes to create topical subdivisions on different subjects within the corpus of interview data, which I then

97. *Id.*

98. *Id.*

99. For an explanation of sampling for range, see Mario Luis Small, ‘How Many Cases Do I Need?’: *On Science and the Logic of Case Selection in Field-Based Research*, 10 *ETHNOGRAPHY* 5, 13 (2009); ROBERT S. WEISS, *LEARNING FROM STRANGERS: THE ART AND METHOD OF QUALITATIVE INTERVIEW STUDIES* 22–24 (1994).

100. HEADWORTH, *supra* note 8, at 15–16.

101. *Id.* at 15.

102. *Id.* at 247 app. 1.

103. *Id.* at 17.

104. *Id.* at 16–17.

105. *Id.*

106. *Id.* at 16.

107. *Id.* at 16–17.

revisited for multiple rounds of narrower analytic coding.¹⁰⁸ Previous research informed my initial analytic coding of themes and concepts, and emergent findings guided further concept identification and specification.¹⁰⁹

A. *The Overpayment Focus*

The focus on overpayments is prominent in bureaucratic units within state-level public benefit agencies dedicated to catching clients' rule violations. Client surveillance and scrutiny recur throughout the histories of organized public benefit systems, dating back at least to fourteenth century English Poor Law.¹¹⁰ Racialized, classed, and gendered suspicions about clients have consistently characterized public assistance in the United States.¹¹¹ In the latter twentieth century, changes to law and policy formalized and intensified longstanding patterns of closely monitoring clients and punishing deviations from program rules.¹¹² Dedicated welfare fraud investigation units proliferated in the 1970s, increasing rates of client investigation and punishment.¹¹³ Maintaining such units became required for state governments with the Food Security Act of 1985.¹¹⁴ This federal law mandated specialized fraud control units in the state-level agencies that administered the food stamp program (now known as the Supplemental Nutrition Assistance Program, or SNAP).¹¹⁵ PRWORA further imposed on states to implement fraud control measures.¹¹⁶ In every state except Wisconsin, the agency that administers

108. For a suggested framework of “rigorous, transparent, and flexible data analysis,” including index and analytic coding, see Nicole M. Deterding & Mary C. Waters, *Flexible Coding of In-Depth Interviews: A Twenty-First-Century Approach*, 50 SOCIO. METHODS & RSCH. 708, 708, 725–30 (2021).

109. For an in-depth discussion of identifying themes from data throughout research, see HOWARD S. BECKER, TRICKS OF THE TRADE: HOW TO THINK ABOUT YOUR RESEARCH WHILE YOU'RE DOING IT 109–45 (1998).

110. HEADWORTH, *supra* note 8, at 9.

111. See PIVEN & CLOWARD, *supra* note 8, at 422–27; GUSTAFSON, *supra* note 8.

112. HEADWORTH, *supra* note 8, at 10–11.

113. *Id.* at 10.

114. Food Security Act of 1985, Pub. L. No. 99-198, § 1526, 99 Stat. 1354, 1580 (codified as amended at 7 U.S.C. § 2020(e)(20)).

115. *Id.*

116. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 402(a)(6), 110 Stat. 2105, 2113 (codified as amended at 42 U.S.C. § 602(a)(6)). See also HEADWORTH, *supra* note 8, at 26.

SNAP also administers TANF.¹¹⁷ Dedicated investigatory staff generally attend to both programs' clients but spend most of their time on SNAP.¹¹⁸

The outcomes of states' oversight efforts in SNAP demonstrate their prioritization of identifying errors of spending. States are required to report both overpayments and underpayments to the United States Department of Agriculture, but identify far greater rates of overpayment.¹¹⁹ In part, this disparity may reflect differences in the actual rates at which overpayments occur relative to underpayments. However, it also reflects how states organize their oversight efforts. Whole teams of agency employees are tasked specifically with identifying overpayments, particularly overpayments that enforcement authorities can substantiate as resulting from intentional fraud.¹²⁰ Beyond compelling bureaucratic structures that dedicate workforces to hunting down overpayments, federal policy financially incentivizes such activity. The federal government authorizes states to retain significant percentages of federal SNAP funds that they recover as a result of pursuing overpayments.¹²¹ Jack, a fraud unit manager working in the Southeast, explained this in an interview:

Jack: Money in [our overpayment recovery incentivization account] is to be used for buying equipment, for training, other things related to fraud.

117. HEADWORTH, *supra* note 8, at 253 n.21.

118. *Id.* at 27. There are several reasons why "SNAP gets the lion's share of fraud units'" attention. *Id.* "Fundamentally, SNAP is simply far larger, particularly since the dramatic post-PRWORA drop in TANF-funded program participation." *Id.* Further, the limited TANF-funded income support to families means that there are fewer direct recipients of TANF resources to investigate. *Id.* at 28.

Although cash assistance through TANF is the most widely criticized type of welfare, each state's population of SNAP recipients is far larger than its TANF caseload, providing a much bigger group of clients to scrutinize. This larger pool of potentially fruitful investigations provides more opportunities for impactful symbolic interventions: identifying and punishing rule-violating clients and making examples out of them.

Id. Federal authorities also provide direct financial incentives for identifying client fraud that are specific to SNAP. "[B]ased on eligibility rules and participation patterns," direct TANF recipients "are largely a subset of SNAP's clientele." *Id.* "Investigations initiated in connection with SNAP cases therefore carry over to TANF participation, with evidence gathered regarding SNAP eligibility also pertinent to TANF eligibility." *Id.*

119. *Id.* at 31–32. Previously, SNAP error rate calculations excluded underpayments altogether, demonstrating the prioritization of overpayments particularly clearly. *See* Food Stamp Act of 1977, Pub. L. No. 95-113, §§ 1301(16)(c)–(d), 91 Stat. 958, 976–77 (codified as amended at 7 U.S.C. § 2025).

120. HEADWORTH, *supra* note 8, at 30.

121. *Id.*

Interviewer: And that fills up based on your recoveries, right? You get to keep a share of recovered funds? What is it, 30 percent?

Jack: We keep 35 percent for [Intentional Program Violations], 20 percent for [unintentional] cases. And if there's an agency error that caused a loss we don't keep anything [*chuckles*]. We don't get anything for that.¹²²

Next, Jack affected a conspiratorial tone, speaking in a stage whisper and looking over the top of his reading glasses, and added: "Cause we'd be making money, you know."¹²³

Jack's comments illustrate the on-the-ground consequences of federal pressure to give errors of spending top priority. In his view, a different set of dictates and incentives would yield markedly different outcomes. He suggests that focusing on agency errors that caused losses—rather than client errors—would yield greater results than focusing on clients. Of course, there are also comparatively fewer institutional structures and incentives dedicated to identifying underpayments resulting from either client mistakes or agency errors.

These basic trends suffuse public benefit program oversight.¹²⁴ Administrative higher-ups at the federal and state levels emphasize detecting errors of spending, especially those that can be attributed to clients' intentional rule violations. This focus has sweeping implications for people's experiences in public benefit programs and broader perceptions of programs and their clients. Moreover, this orientation constitutes a crucial precursor for episodes of stategraft in public assistance.

B. Automation and Algorithms

Public sector organizations have embraced "digital-era governance."¹²⁵ Recent trends include agencies adopting predictive algorithms and supplementing or replacing human decisionmaking with automated protocols.¹²⁶ In public benefit agencies, these trends manifest in the implementation of automated systems serving multiple functions.

122. *Id.* at 30–31 (first alteration added).

123. *Id.* at 31.

124. *See* Headworth, *supra* note 90.

125. Patrick Dunleavy, Helen Margetts, Simon Bastow & Jane Tinkler, *New Public Management Is Dead—Long Live Digital-Era Governance*, 16 J. PUB. ADMIN. RSCH. & THEORY 467 (2006).

126. *See* Karen Levy, Kyla E. Chasalow & Sarah Riley, *Algorithms and Decision-Making in the Public Sector*, 17 ANN. REV. L. & SOC. SCI. 309, 312, 315 (2021).

On the “front end,” automation aids in determining program eligibility and identifying mismatches between what applicants report and information recorded in various databases.¹²⁷ On the “back end,” fraud detection algorithms flag cases as suspicious and precipitate formal charges against clients.¹²⁸

In my interviews with welfare fraud workers across the United States, one state emerged as a leading example of these trends. This state, Eastcoast, recently received an influx of resources to strengthen their SNAP and TANF oversight protocols.¹²⁹ The resulting overhaul centered on database-driven and automated program oversight initiatives.¹³⁰ Personnel decisions evince this orientation. The unit has hired people with education and experience in database work and placed them in positions dedicated to these tasks.¹³¹ One new hire, for instance, previously managed the subscriber database for a national periodical, where he developed skills he now employs in overseeing public benefits.¹³²

Eastcoast has rolled out a robust automated system designed to weed out ineligible applicants and detect fraud on the front end, before benefits are disbursed. In this state, as people seeking aid from SNAP or TANF provide information about their household resources, how they make money, and with whom they live, eligibility workers enter this information into their computer system.¹³³ Simultaneously, an automated process cross-references the information with over twenty governmental and private sector databases.¹³⁴ The system notifies eligibility workers of any conflicts, prompting them to attempt reconciliation.¹³⁵ If conflicts persist at the end of the eligibility determination protocol, eligibility workers can override the system and proceed to approve the application.¹³⁶ Workers, however, are required to explain and justify any such overrides.¹³⁷

Eastcoast’s preferred methods for overseeing admitted program participants and monitoring for rule violations similarly center database searches and matches. Their reconfigured program integrity division

127. HEADWORTH, *supra* note 8, at 63–65.

128. *Id.*

129. *Id.* at 36–37.

130. *Id.* at 38.

131. *Id.*

132. *Id.*

133. *Id.* at 33–34.

134. *Id.* at 34.

135. *Id.*

136. *Id.*

137. *Id.*

includes specialized data analysis roles and heavily emphasizes database-driven investigative techniques relative to more conventional “shoe-leather” methods.¹³⁸ Although Eastcoast exemplifies the push toward these tactics, they are certainly not alone. To varying degrees, welfare fraud investigators around the country embrace databases as expedient resources for finding evidence to incriminate clients.¹³⁹

C. Crossing into Stategraft

U.S. public benefit systems’ characteristic focus on spending errors and increasing embrace of automation and database-driven program integrity initiatives create conditions conducive to instances of stategraft. In 1970’s *Goldberg v. Kelly*,¹⁴⁰ the U.S. Supreme Court ruled that welfare clients had property interests in benefits to which they were legally entitled.¹⁴¹ Accordingly, the Court held that procedural due process required agencies to offer clients hearings before agencies could terminate their welfare benefits due to ineligibility.¹⁴² Although PRWORA’s replacement of AFDC with TANF ended that program’s “entitlement” status, benefits offered through public assistance programs like SNAP, Medicaid, and unemployment insurance retain the legal entitlement dimension triggering the protections established under *Goldberg v. Kelly*.¹⁴³

The rise of automation in public assistance administration has engendered situations in which participants are removed from entitlement programs not just without procedural due process, but also in violation of programs’ own rules. Three recent examples demonstrate how automation and algorithms beget stategraft in contemporary assistance programs. The first, from Indiana, pertains to front-end eligibility determination: the process by which administrative agencies evaluate applicants to determine if they meet the criteria to qualify for programs. The second, from Michigan, pertains to both eligibility assessments and back-end fraud detection: the processes administrative agencies employ to determine whether participants in public benefit programs have committed rule violations. The third episode is most recent and broadest

138. *See id.* at 81–83.

139. *Id.* at 83–84.

140. 397 U.S. 254 (1970).

141. *Id.* at 261–62, 262 n.8.

142. *Id.* at 261.

143. *See also* 45 C.F.R. § 205.10 (extending *Goldberg*’s due process standard to Social Security reduction determinations); 42 C.F.R. pt. 431, subpart E (applying *Goldberg* to Medicaid’s hearing system); 7 C.F.R. §§ 273.10–.15 (imposing similar *Goldberg* due process requirements on SNAP eligibility notices, reduction notices, and hearings).

in scope, with flawed protocols for assessing Medicaid eligibility resulting in the illegal disenrollment of 500,000 people across twenty-nine states and Washington, D.C.

1. ELIGIBILITY DETERMINATION IN INDIANA

Political scientist Virginia Eubanks details the automation of Indiana's eligibility determination system for SNAP, TANF, and Medicaid in her book *Automating Inequality*.¹⁴⁴ Under Republican Governor Mitch Daniels, the state began the process of automating their public benefit eligibility determination system in 2006.¹⁴⁵ Seeking to contract a private company to run the system, the state explicitly prioritized cutting costs and shrinking participation. The request for proposals they put out "set very clear goals: reduce fraud, curtail spending, and move clients off the welfare rolls."¹⁴⁶ After receiving only two bids, the state awarded a ten-year contract worth more than \$1 billion to a group of businesses led by IBM and Affiliated Computer Services (ACS).¹⁴⁷

The new privatized, automated eligibility system was initially rolled out in twelve counties.¹⁴⁸ It immediately proved disastrous. Applicants faced long delays, phone interview processes were difficult or impossible to navigate, and the processing center lost hundreds of thousands of personal documents.¹⁴⁹ All of these issues produced illegitimate benefit denials. Moreover, the humans working in the system were incentivized to err on the side of denying benefits.¹⁵⁰ Benefit denials increased more than 50% compared to previous years' rates.¹⁵¹ Many of these denials were erroneous. During the pilot rollout, Indiana's SNAP error rate increased three-fold, with over 12% of all SNAP applicants incorrectly denied benefits in violation of federal law and policy.¹⁵² Despite the fact that the initial rollout happened in predominantly White counties, denials disproportionately fell on Black Hoosiers. In 2000, Indiana's TANF

144. VIRGINIA EUBANKS, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (2017).

145. *Id.* at 45–48.

146. *Id.* at 46.

147. *Id.* at 48. Mitch Roob, Secretary of the Family and Social Services Administration under Governor Daniels, was formerly a vice president at ACS. *Id.* at 45.

148. *Id.* at 49.

149. *Id.* at 49–50.

150. *Id.* at 50–51.

151. *Id.* at 51.

152. *Id.* at 63.

client population was 46.5% Black and 47.2% White.¹⁵³ By 2010, these percentages were 32.1% and 54.2%, respectively.¹⁵⁴

Ultimately, the system's manifest failures became too much for even the austerity-minded Daniels Administration to ignore. The state canceled the contract in 2009, leading to a lawsuit, a countersuit, and a lengthy appeals process.¹⁵⁵ Despite the governor's displeasure with the optics, however, it is notable that the automation and privatization venture "delivered exactly what Indiana officials had asked for: smaller welfare rolls, whatever the cost."¹⁵⁶ In this case, government actors' enthusiastic embrace of imposing austerity via automation came at the cost of stategraft.

2. FRAUD DETECTION IN MICHIGAN

States also demonstrate growing interest in using algorithms and automation to detect rule violations among their populations of approved public benefit program participants.¹⁵⁷ Overly aggressive iterations of this tendency can cross into the terrain of stategraft. One example comes from Michigan's 2013 to 2015 deployment of the Michigan Integrated Data Automated System (MiDAS) to process claims and detect fraud in their unemployment benefit system.¹⁵⁸ Like Indiana's venture in automating their system for determining eligibility for means-tested assistance programs, MiDAS involved contracting a private company, Fast Enterprises, to the tune of \$47 million.¹⁵⁹

Paralleling Indiana's experience, Michigan saw dramatic increases in benefit denials with the new system. Under MiDAS, fraud allegations increased 400 percent.¹⁶⁰ These allegations led to disqualifications, as well as wage garnishments, interceptions of income tax refunds, and other financial penalties.¹⁶¹ In total, citizens were charged almost \$57

153. *Id.* at 80.

154. *Id.*

155. *Id.* at 72–75.

156. *Id.* at 74.

157. See HEADWORTH, *supra* note 8, at 83–84.

158. See Sonia M. Gipson Rankin, *The Midas Touch: Atuahene's "Stategraft" and Unregulated Artificial Intelligence*, 98 N.Y.U. L. REV. ONLINE 225, 228 (2023).

159. Sarah N. Giest & Bram Klievink, *More than a Digital System: How AI Is Changing the Role of Bureaucrats in Different Organizational Contexts*, 26 PUB. MGMT. REV. 379, 390 (2024). See also Sonia M. Gipson Rankin, Melanie Moses & Kathy L. Powers, *Automated Stategraft: Electronic Enforcement Technology and the Economic Predation of Black Communities*, 2024 WIS. L. REV. 665.

160. Giest & Bram Klievink, *supra* note 158, at 390–91.

161. *Id.*

million.¹⁶² Citizens and their attorneys claimed that many of these disqualifications and charges were improper, ultimately leading to a 2016 audit, which concluded that only eight percent of appealed fraud charges involved actual violations.¹⁶³ The following year, the Michigan legislature passed a statute disallowing fraud determinations solely through the automated system (*i.e.*, without the input of a human decisionmaker).¹⁶⁴ Ultimately, the state government paid back more than \$20 million in funds illegally extracted via the automated oversight system.¹⁶⁵

3. POST-COVID-19 MEDICAID REMOVALS

Among the many provisions of the Families First Coronavirus Response Act¹⁶⁶ was a requirement that states maintain all current Medicaid enrollees in exchange for an increase in federal dollars.¹⁶⁷ Beginning when the law took effect in April 2020, this requirement was originally linked to the duration of the declared COVID-19 Public Health Emergency (PHE).¹⁶⁸ The Consolidated Appropriations Act, 2023¹⁶⁹ separated the continuous enrollment requirement from the PHE and scheduled the rule to end on March 31, 2023, allowing states to resume removing Medicaid participants from the program on April 1, 2023.¹⁷⁰ Numerous states moved aggressively to disenroll Medicaid participants upon the termination of the continuous enrollment provision. By September 22, 2023, forty-eight states and Washington, D.C., had disenrolled at least 7.4 million people, but because of missing data from some states, the true total is some unknown amount higher.¹⁷¹ Removal

162. *Id.* at 391.

163. *Id.*

164. *Id.*

165. *Id.*

166. Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020).

167. Rachel Dolan, MaryBeth Musumeci, Jennifer Tolbert & Rubin Rudowitz, *Medicaid Maintenance of Eligibility (MOE) Requirements: Issues To Watch*, KFF (Dec. 17, 2020), <https://www.kff.org/medicaid/issue-brief/medicaid-maintenance-of-eligibility-moe-requirements-issues-to-watch/> [https://perma.cc/JK26-92XY].

168. *Id.*

169. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (2022).

170. Jennifer Tolbert & Meghana Ammula, *10 Things To Know About the Unwinding of the Medicaid Continuous Enrollment Provision*, KFF (June 9, 2023), <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicare-continuous-enrollment-provision/> [https://perma.cc/9Hfy-K3U4].

171. *Medicaid Enrollment and Unwinding Tracker*, KFF,

rates vary greatly across jurisdictions, from a low of thirteen percent in Maine to a high of fifty-nine percent in Arkansas.¹⁷² According to estimates from KFF, a total of eight to twenty-four million people will be disenrolled during the Medicaid “unwinding” period.¹⁷³

Recent revelations indicate that hundreds of thousands of people disenrolled in the first few months of the unwinding were removed from the program illegally. Due to what Centers for Medicare and Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure called a “systems glitch,” twenty-nine states and the District of Columbia improperly disqualified a total of around 500,000 people.¹⁷⁴ The improper disenrollments derived from an error in the affected jurisdictions’ automated systems for evaluating renewals, which were improperly assessing cases at the household level rather than the individual level.¹⁷⁵ A primary aspect of the “glitch” was wrongfully disenrolling children who retained eligibility even if their parents did not. Thus, kids figure prominently among the half-million improper removals, along with people living in households with varied immigration statuses and households containing disabled adults.¹⁷⁶ After CMS discovered the sweeping problem, federal officials required the affected states to pause their unwinding processes and instructed them to begin reinstating the illegally removed participants.¹⁷⁷ In some states, the reinstatement process will take months.¹⁷⁸

<https://web.archive.org/web/20230925032106/https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-overview/> (Sept. 22, 2023).

172. *Medicaid Enrollment and Unwinding Tracker*, KFF, <https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-overview/> [<https://perma.cc/CR6E-JK59>] (Feb. 22, 2024).

173. Tolbert & Ammula, *supra* note 170.

174. Megan Messerly, *Half a Million People, Including Kids, Mistakenly Dropped from Medicaid*, POLITICO (Sept. 21, 2023, 5:04 PM), <https://www.politico.com/news/2023/09/21/half-million-dropped-from-medicaid-00117419>.

175. Amy Goldstein, *Half a Million Children, Others Being Reinstated After Removal from Medicaid*, WASH. POST, <https://www.washingtonpost.com/health/2023/09/21/medicaid-children-cut-off/> [<https://perma.cc/53TT-56MC>] (Sept. 21, 2023, 6:30 PM).

176. *Id.*

177. Emily Olsen, *CMS Requires 30 States To Pause Medicaid Disenrollments After Systems Error*, HEALTHCARE DIVE (Sept. 22, 2023), <https://www.healthcarediver.com/news/cms-pauses-medicaid-redeterminations-30-states/694485/> [<https://perma.cc/T3QW-YK5D>].

178. Goldstein, *supra* note 175.

CONCLUSION

A longstanding tendency toward austerity in U.S. public assistance programs intensified in recent decades. In the 1980s and 1990s, policymakers took numerous steps to make public assistance programs less generous, less hospitable, and more punitive, including through enacting a federal mandate that the state agencies responsible for administering SNAP and AFDC (now TANF) maintain specialized units dedicated to detecting, substantiating, and punishing clients' rule violations. In 1996, PRWORA largely fulfilled President Bill Clinton's pledge to "end welfare as we know it,"¹⁷⁹ ushering in a fundamentally reconfigured federal social safety net. In subsequent years, public assistance agencies have continued to aggressively pursue suspected rule breakers and increasingly introduced automated systems intended to more efficiently identify clients who may be in violation of program rules and proactively reject applicants who may be ineligible.

These developments have created new opportunities for stategraft. TANF's block grant funding structure gave state and local governments wide latitude to use their funding allocations as they saw fit. Numerous episodes illustrate how governments have violated the spirit of the law by using these funds in ways that do nothing to advance any of TANF's four stated purposes, or even work against those purposes. States have also regularly elected to hoard resources received through their TANF block grant allocations rather than spend them on anything at all. In some cases, state and local authorities have been caught abusing TANF funds in ways federal authorities explicitly designate as illegal. By functionally diverting resources away from families who could otherwise benefit from them to offset the costs of preferred government projects, misallocations of TANF money constitute preemptive stategraft.

Throughout the country's social safety net, the influence of austerity-minded policymakers has engendered an intense focus on identifying errors of overpayment and disqualifying participants who break program rules. This focus is particularly evident in the specialized fraud control units that federal law requires state governments to operate in their social service agencies. In combination with recent trends toward automation in the administration of public assistance programs, enthusiasm for identifying purportedly ineligible people and denying them access to benefits has produced a new wave of stategraft incidents. When such unlawful foreclosures of program access result from improper denials of initial applications, they constitute preemptive stategraft. On the other hand, unlawfully removing people's existing access to benefits

179. See *supra* note 10 and accompanying text.

to which they are legally entitled constitutes the type of dispossession characteristic of standard stategraft.

Several of the episodes described before demonstrate a noteworthy lack of governmental interest in preventing or penalizing stategraft. Despite widespread and repeated instances of state and local governments using TANF funds in ways that violate the spirit or letter of the law, federal policymakers went decades without meaningful steps toward requiring that TANF dollars go to initiatives that correspond to the program's stated purposes. Moreover, when state and local authorities have been caught using TANF funds in clearly illegal ways, federal officials have often failed to pursue responsive legal action, as in the Alaska and Maine cases described before. The comparatively aggressive responses to the sweeping Mississippi fraud case are distinct in crucial ways. First, the extraordinarily high public profile of this case introduced unprecedented pressure on civil and criminal authorities to act. Second, most of the misallocated money benefited individuals, not the state treasury; thus, the ongoing civil litigation principally seeks to return money to the government, not remedy the kind of illegal acts benefiting state coffers which characterize stategraft. Lastly, as noted before, Mississippi is using TANF money to fund its response to its officials' misallocations of TANF money, in a sense doubling down on TANF-related activities that violate the spirit of the law. Overall, government officials seem less motivated to catch and punish legal violations that benefit state coffers at individuals' expense than they are to catch and punish legal violations that benefit individuals at government's expense.

Tools like automation and algorithmic assessment protocols are new ways to pursue longstanding goals of closely monitoring welfare applicants and clients and aggressively moving to foreclose access for people deemed ineligible. "Old-school," embodied forms of scrutinizing public assistance participants include tactics like home visits and intensive interviewing. These investigative techniques have certainly not disappeared. Indeed, welfare fraud control authorities still visit clients' residences for inspections and questioning and actively solicit incriminating information from people in clients' social networks.¹⁸⁰ High-tech tools supplement such methods, facilitating more intensive and farther-reaching program oversight interventions. Welfare fraud investigators, for instance, surveil social media to capitalize on information they can glean from clients' online social networks;¹⁸¹ this

180. See HEADWORTH, *supra* note 8, at 80–81; Spencer Headworth, *Getting To Know You: Welfare Fraud Investigation and the Appropriation of Social Ties*, 84 AM. SOCIO. REV. 171 (2019).

181. Headworth, *supra* note 180, at 189.

evidence constitutes a digital age addition to what investigators can extract from clients' "real world" social networks.

Without question, clients experience much of government's public benefit oversight work as intrusive, even oppressive.¹⁸² Many of these oversight efforts, however, are legal; indeed, officially sanctioned inferior treatment under the law is a defining characteristic of living under socioeconomic deprivation in the United States.¹⁸³ But these interventions can cross into statecraft when zeal for cutting spending on public benefits, empowering state and local political actors to tailor programs according to their ideological preferences, and charging clients with rule violations leads authorities to reshape programs and winnow their participant populations in ways that exceed the bounds of legality.

As the examples discussed before demonstrate, automation and algorithms can create conditions in which statecraft in public benefits programs is both more likely and more broadly impactful. The episodes in question garnered enough criticism—and generated enough embarrassment for public officials—to induce governmental responses intended to rein in their worst excesses. It is difficult to gauge the commonality of similar situations that have not received similar public attention. Almost certainly, the ongoing proliferation of technologically sophisticated tools of surveillance and assessment will continue to engender statecraft in U.S. public benefit programs.

Similarly, TANF's devolution of authority and discretion to state and local authorities creates massive new opportunities for statecraft. Although widespread practices of using TANF resources to support state activities that have nothing to do with TANF's stated purposes violate the spirit of the law, federal authorities have declined to formally declare these practices to be illegal. As of December 2023, however, a change may be in the offing. On October 2, 2023, the Biden Administration published a proposed rule encompassing a number of significant reforms to TANF.¹⁸⁴ The proposed changes include specifying that families making more than double the federal poverty rate do not qualify as "needy,"¹⁸⁵ establishing that state uses of TANF funds need to satisfy a "reasonable person" standard of connection to TANF's statutorily defined purposes,¹⁸⁶ and barring states from counting spending by

182. See sources cited *supra* note 93.

183. See Spencer Headworth & Shaun Ossei-Owusu, *The Accused Poor*, Soc. JUST., nos. 2/3, 2017, at 55.

184. Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program, 88 Fed. Reg. 67697 (Oct. 2, 2023) (to be codified at 45 C.F.R. pts. 205, 260–61, 263).

185. *Id.* at 67700–02.

186. *Id.* at 67702–06.

non-governmental groups toward their maintenance-of-effort requirements.¹⁸⁷ Republican lawmakers have voiced opposition to these changes.¹⁸⁸ Public comment on the proposed rule closed December 1, 2023, and some version of the proposed reforms could take effect in 2024.

These changes would recategorize certain practices from violations of the spirit of the law to violations of the letter of the law. Even under current rules, some misuses of TANF funds by state and local officials have been sufficiently egregious to trigger formal designation as unlawful. However, the lack of oversight and accountability that has plagued TANF has curtailed the likelihood of violations resulting in meaningful consequences, or even coming to light at all. Reforms in the vein of the current proposed rule are necessary to alter circumstances conducive to illicit conduct that imposes deprivations on citizens for governments' benefit.

187. *Id.* at 67706–07.

188. Press Release, John Kennedy, U.S. Sen. for La., Kennedy, Hyde-Smith Demand Biden HHS Withdrawal Proposed Rule Targeting Pregnancy Centers (Dec. 4, 2023), <https://www.kennedy.senate.gov/public/2023/12/kennedy-hyde-smith-demand-biden-hhs-withdrawal-proposed-rule-targeting-pregnancy-centers> [https://perma.cc/8ZWB-9FG5]; Press Release, Jason Smith, Chairman, Comm. on Ways & Means, Chairmen Smith, LaHood Demand Biden Administration Withdraw Rule that Sidesteps Congress and Weakens Recent Bipartisan Welfare Reforms (Nov. 28, 2023), <https://gop-waysandmeans.house.gov/chairmen-smith-lahood-demand-biden-administration-withdraw-rule-that-sidesteps-congress-and-weakens-recent-bipartisan-welfare-reforms/> [https://perma.cc/Z9QZ-NYAL].