

Statement of Senator Orrin G. Hatch
Remarks on the Obama Administration's Welfare Work Waiver Proposal
United States Senate
December 19, 2012

Mr. President, I rise today to speak about important issues facing us as we work to reauthorize the Temporary Assistance for Needy Families (TANF) program.

Poverty has risen to a crisis level in our country. In 2011, there were 16.1 million children in families with incomes below the poverty level.

The pernicious effects of poverty have implications for children's health, education and well-being. Research has demonstrated that there are significant associations between poverty and problems with children's health, cognitive development, behavior, emotional well-being, and school achievement.

These problems are exacerbated for families in extreme poverty, where the annual income is less than half of the poverty level. In 2011, there were over seven million children in the U.S. living in extreme poverty.

Poverty is also a risk factor for child abuse and neglect.

Data assembled by the Center for Law and Social Policy, reveals that poverty is the single best predictor of child maltreatment. Children living in families with annual incomes below \$15,000 were 22 times more likely to be abused or neglected than those living in families with annual incomes of \$30,000 or more.

According to a report from the Children's Defense Fund, "Children of color continue to suffer disproportionately from poverty."

The Children's Defense Funds cites data showing that more than one in three African American children and more than one in three Hispanic children were poor in 2011, compared to a one-in-eight ration among white, non-Hispanic children.

These families face huge challenges navigating the bare necessities of daily life. Fresh, healthy food can be rare. Unsafe housing contributes to chronic child health issues such as asthma. Transportation to and from work, the grocery store, and the doctor can be infrequent and unreliable.

Programs funded through TANF provide cash assistance to families struggling in deep and persistent poverty. TANF is a block grant to states for their use in ending dependence on government benefits and, more broadly, to promote child well-being.

TANF programs can also provide work supports such as transportation assistance and child care for families working to get themselves out of poverty and into decent paying jobs.

In addition to safety-net and work-support programs, TANF also funds a number of child welfare programs that, when effective, reduce the number of children in foster care and help keep families together.

When TANF was enacted, many states used the funding stream in an effort to move welfare recipients into work. However, over time, the focus of TANF in many of these states has shifted from working with job-

ready adults and preparing them for work, to a funding stream largely dedicated to purposes unconnected to job readiness.

For many years, I have expressed concern over the fact that, nationwide, over 50 percent of able bodied adults receiving cash assistance are reported to have engaged in zero hours of work-related activity.

Additionally, I have raised concerns that most states are not able to meet the federal work participation rate. This work participation rate requires that a state engage half of its cash assistance case load in specified work-related activities for a certain number of hours each week.

If you asked the average middle class American how many able-bodied adults receiving welfare should be engaged in work or work-related activities, my guess is the answer would be: All of them!

It should be shocking to the American people that most states are not able to engage half of their welfare caseloads in such activities.

Furthermore, I have raised concerns that there is a considerable amount of TANF spending on child welfare programs that goes unaccounted for and is not coordinated with possibly duplicative spending administered by state child welfare agencies.

Authority for TANF expired at the end of 2010.

Unfortunately, though this is a matter of serious concern, the Obama Administration has never proposed a five-year reauthorization of the TANF programs. Instead, on July 12, 2012, the Department of Health and Human Services released a document which they inaccurately described as an "Informational Memo" to the states claiming on behalf of the Obama Administration unprecedented waiver authority over TANF work rules.

Mr. President, this action provoked a swift and strong condemnation from members of the Legislative Branch, and rightfully so.

Many members of Congress believe that the welfare waiver document constitutes an excessive and unwarranted overreach on the part of the Executive Branch.

The Government Accountability Office agreed with us and has determined that the July 12, 2012 document is, in fact, a rule as defined by the Administrative Procedures Act and, as such, should have been submitted to the Congress for review.

Since the welfare waiver is considered a rule, it is, like all rules, subject to a joint resolution of disapproval under the Congressional Review Act (CRA). The Senate Parliamentarian agrees with the GAO, and she has advised that, for purposes of the CRA, this rule should be considered to have been received by Congress on September 10, 2012, even though the Administration failed to submit it as required by law.

The CRA provides the Senate with a procedure for expedited consideration and a vote on a Resolution of Disapproval during a certain window of time, so long as at least 30 Senators have signed a discharge petition to bring the resolution to the floor.

I have introduced such a resolution – S.J. Res. 50 – providing for congressional disapproval of the rule submitted by the Department of Health and Human Services relating to the authority to waive federal welfare work requirements under Section 407 of the Social Security Act.

Having introduced it within the required time frame under the CRA and having obtained enough signatures on a discharge petition, it is within my right as a Senator to call for a vote on my resolution prior to the Senate's adjournment this year.

I am not naïve or overly idealistic. I am well aware that the vote on S. J. Res. 50 would likely fall along party lines.

This is disappointing.

It is clear that Administration's purpose in granting themselves this waiver authority is to undermine a work-first approach to getting welfare recipients or clients off the rolls. This has been the desire of many critics of the Clinton-era welfare reforms since they were enacted.

The Administration has not been forthcoming at all about what they want to substitute for a work-first approach. In the past, absent strong federal performance standards, states have allowed activities such as journaling, exercise, or assisting a neighbor to count as work for the purposes of welfare eligibility.

Mr. President, here is why I have such a problem with this shift in policy: I believe most people receiving welfare are unhappy with their situation and want to be able to work. Even with assistance, families trying to survive on cash assistance welfare are living in desperately impoverished circumstances.

The reasons that some families have to go on welfare can be complicated.

Many adults on welfare struggle with mental health and substance abuse issues. These barriers to work prevent adults on welfare from having work readiness skills. Additionally, inactivity and a lack of attachment to the workforce can exacerbate existing mental health and self-medicating tendencies and create a downward spiral for these families and it can be very hard to reverse course.

Over the years, research has consistently revealed that a work-first approach to welfare, combining an intense effort to engage recipients in work-related activities to foster an attachment to work, with a blended array of work supports, education, and training has the greatest degree of success in getting clients off of welfare.

The reason that I am so vehemently opposed to the Administration's scheme to undermine the welfare work requirements is that I believe it will hinder – not help – the effort to get adults off of welfare and into the workforce.

Put simply, allowing activities that are not work to count as work will not get people off of welfare.

The Administration and their apologists have not even tried to make a policy case for a non-work-first approach.

Instead, apologists of the Administration's welfare waiver rule generally attempt to obfuscate and distract from the fact that the Obama Administration granted themselves waiver authority to bypass the Legislative Branch with the goal of weakening welfare work requirements.

Let's take a look at some of their arguments.

Right out of the gate, supporters of the Administration's policy argued that members of Legislative Branch asserting their rights in the face of executive overreach were simply trying to give the Romney/Ryan campaign an issue.

Well, Mr. President, in case you hadn't heard, the country recently held an election and President Obama was reelected. There is no longer a Romney/Ryan campaign.

So, that distraction falls away.

Apologists of the executive overreach have also tried to muddy the issue by suggesting that the administration is merely giving the states what they've asked for.

For example – and I take this a little personally – in an effort to create a false justification for their power grab, the Obama Administration has repeatedly misrepresented the views of the State of Utah.

It is true that, when ASKED by the Administration what they wanted in a TANF reauthorization, some States indicated a desire for more flexibility. But there was never any indication that the states wanted the Administration to go around Congress to provide this flexibility.

According to the Government Accountability Office, between 2000 and 2009 – during the Clinton, Bush and even the Obama Administration – HHS consistently told states that they had no wavier authority under TANF. So, states naturally – and rightly – assumed that any request for waivers would have to go through Congress.

This is evidenced by the fact that, in the five months since HHS granted themselves authority to waive welfare work requirements, not a single state has applied for one of these waivers.

So, in other words, any argument that the need for state flexibility is so urgent that the Administration had to bypass Congress to give it falls by the wayside.

Once again, we see a distraction crumble under the weight of the facts.

Another distraction raised by supporters of the Administration are comments from former House Ways and Means staffer to the press indicating that he thought additional flexibility for states might not be a bad idea. Of course, this same staffer also said that unilaterally establishing these waivers without consulting Congress was not the way to go.

If that's the best expert opinion supporters of the Administration can come up with to support this shift in policy, they've clearly failed to make their case.

Once we cut through all of these distractions that the Administration and its allies have tried to throw in our path, we are left again with the heart of the matter. The Obama Administration is trying to bypass Congress and enact policies that are not provided for under current law.

Whether you agree with the Administration's change in policy or not, that simple fact remains.

As a Member of the Senate, I simply cannot stand by and watch the Administration undermine the relevance of the Legislative Branch. I cannot stand by and see Senators and Members of the House of Representatives who have worked for years to develop expertise on welfare policy turned into potted plants.

But, there is more than one way to stand up for the United States Congress.

Mr. President, the country has been through an exhaustive and highly partisan election.

Some call it a status quo election. The country has elected a Democrat to the White House and sent back a divided Congress. No one side can claim a mandate.

What the American people want is for Democrats and Republicans and the President to work together to get things done for the American people.

One of the things we need to get done is a comprehensive overhaul and reauthorization of TANF. Welfare work requirements need to be updated and strengthened, certain loopholes need to be closed and there must be increased transparency and accountability relative to TANF spending on child welfare programs and services.

In order to begin bringing all sides together, particularly after such an acrimonious political period, someone must make the first move.

Therefore, as an act of good faith, in order to facilitate a collegial bipartisan working relationship on TANF, I am putting my colleagues on notice that earlier today I sent President Obama a letter informing him that I will not insist on a vote on my Resolution of Disapproval during this session of Congress.

In the spirit of compromise and bipartisanship, I have asked President Obama to respond to my action by instructing Health and Human Services Secretary Kathleen Sebelius to withdraw the welfare waiver rule and submit a five-year TANF reauthorization proposal to the Congress.

If there are aspects of the welfare waiver rule that the Administration would like us to consider, I hope they will include them in their proposal so that they can be debated and negotiated here in Congress.

I have written to President Obama and have told him that I am committed to working with his administration, as well as with Chairman Camp and Chairman Baucus to enact comprehensive and meaningful welfare reauthorization early on in the 113th Congress.

I made this offer to President Obama with goodwill and in good faith.

However, if the President rebuffs my overture, the Congressional Review Act will afford me the opportunity for another vote on a Resolution of Disapproval next year.

This is because, even if the Senate meets in legislative session every day until January 3rd – including Christmas Eve, Christmas Day, New Year's Eve, New Year's Day and all weekends – there will not have been 60 Senate session days between the date the welfare waiver rule is deemed to have been submitted to the Senate and the convening of the 113th Congress.

Since the 112th Congress will end before the full 60-session-day period has elapsed, the Congressional Review Act provides for another 60-day period to act on a disapproval resolution regarding this rule in 2013.

Therefore, if President Obama does not withdraw the welfare waiver rule, submit a five-year TANF reauthorization plan, and then work with Congress to enact meaningful, comprehensive welfare reform that strengthens work requirements and provides for improved accountability of TANF spending, I will be right back here in a few months exercising my right to demand a vote on a new Resolution of Disapproval under the Congressional Review Act.

I sincerely hope it does not come to that.

As my colleagues know, I have a long history of forging bipartisan compromises on welfare. I was a key player during the 1996 consideration of welfare reform that was passed by a Republican Congress and signed by a Democratic President.

In 2002, Senator Breaux and I worked with Republicans and Democrats to draft the so-called "Tripartisan" agreement on welfare reauthorization.

I stand willing to work again on a bipartisan basis on this important issue at this most critical time.

As Members of Congress, I believe we have a moral obligation to do what we can to help those facing the staggering challenges of deep and persistent poverty. We can begin to meet this moral obligation by strengthening and improving the TANF programs for the working poor, the middle class and children in the child welfare system.

In America today, we have women who take their children with them rummaging through trash cans hoping to find discarded soda cans that they can sell back to stores.

In America today, we have families who every month must make painful decisions about whether to buy food or medicine, or whether to pay to heat their home or to put gas in their car. Many single moms have no good choices when it comes to providing child care for their children while they attempt to find work.

I can think of no group of Americans more deserving of having the Senate's time and attention directed toward crafting policies designed to help improve their lives. I yield the floor.

###