In the Supreme Court of the State of California

ANGIE CHRISTENSEN,

Plaintiff and Respondent,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

Defendants and Appellants.

Case No. S245395

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San Francisco County Superior Court, Case No. CPF-12-512070
Honorable Ernest H. Goldsmith, Judge

DEFENDANTS AND APPELLANTS' ANSWER TO AMICUS CURIAE BRIEFS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Congress repealed the Aid to Families with Dependent Children (AFDC) program in 1996, and replaced it with the Temporary Assistance for Needy Families (TANF) program. In response, the State repealed its AFDC program and enacted the California Work Opportunity and Responsibility to Kids Act (CalWORKs). In the context of this comprehensive welfare reform and the enactment of a new state program, the Department took a fresh look at exemptions from income used to calculate eligibility for aid under the former AFDC program (also called "disregards" or "deductions"). In light of CalWORKs' expanded earned-income disregard and its goal of simplifying the grant calculation process, the Department reasonably decided to repeal regulations pertaining to a number of income deductions that it had promulgated in its discretion under the prior AFDC program, including the one for court-ordered child support obligations.

It is undisputed that the CalWORKs statute does not contain an exemption of income garnished for child support in determining eligibility. Nonetheless, amicus curiae Harriett Buhai Center for Family Law (the Center) argues that once the Department adopted a child support disregard under AFDC, it was prohibited from repealing its prior policy as part of implementing CalWORKs without explicit Legislative direction. The Center's argument is unsupported. The Department's discretionary decision, made 20 years ago, that its AFDC-era deduction for court-ordered child support could—and should—be repealed in light of the comprehensive review and overhaul of the State's welfare system, is entitled to great weight and must be upheld because it is not clearly erroneous. And to the extent the Center argues that the CalWORKs statute would allow the Department in its discretion to fashion a child support exemption under CalWORKs similar to what existed under the AFDC

program (see Harriett Buhai Center for Family Law Amicus Curiae Brief (Center AC) 18-19, 30), this litigation does not present that issue, the parties have not briefed it, and it is not part of this appeal.[1]

In addition, amici curiae the Center and the Alliance for Children's Rights (the Alliance) argue that the Department's policy regarding the treatment of income used to satisfy child support obligations creates a financial incentive for families to separate. If amici are arguing that the Legislature could not have intended such consequences, the Department notes that the incentives they posit are based on unsupported assumptions that do not hold up to scrutiny, and must therefore be rejected. If amici simply take issue with the CalWORKs program's reliance on an expanded earned-income disregard, their policy arguments are best directed to the Legislature.

The Court of Appeal's decision should be affirmed.

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[1] The Center attempts to create categories of income disregards—calling them "attributions," "allocations," and "exemptions." (See Center AC 18.) Unlike "exemptions," the terms "attributions" and "allocations" are not used in the CalWORKs provisions governing the calculation of income. (See Clerk's Transcript (CT) 519-533 [Manual of Policies and Procedures (MPP) § 44-111].) In any event, these are distinctions without a difference. The legal question is whether a specified payment will or will not be counted as the payor's income in determining aid eligibility. In any case, while the Center coins the new term "Child Support Allocation" to describe the AFDC deduction for child support (Center AC 15), the Department considered the sums used to pay child support as part of the *gross income* of the non-custodial parent, subject to an income *deduction*, as demonstrated in its formal AFDC regulations. (CT 330 [former MPP § 44-113.9, entitled "Deduction of Court Ordered Child Support Payments in Determining Net Income"]; see also former MPP §§ 44-113.24, 44-113.241, 44-113.242 [providing for "deduction" of support payments from net income], attached as Addendum to Center AC.)

ARGUMENT

I. THE DEPARTMENT'S DECISION UNDER CALWORKS TO CALCULATE INCOME WITHOUT EXEMPTING INCOME GARNISHED TO PAY CHILD SUPPORT IS NOT CLEARLY ERRONEOUS

A. The Department's Longstanding Interpretation Is Entitled to Great Weight

As a threshold matter, the Department's interpretation of the CalWORKs statute—in the context of comprehensive welfare reform, and with the goals of simplifying how grants are calculated and promoting self-sufficiency through employment—is entitled to deference. (Answer Brief on the Merits (ABM) 20-21.) The Legislature charged the Department with implementing CalWORKs (Welf. & Inst. Code, §§ 10554, 10600, 11209), relying on the agency's expertise to "fill up the details" of the CalWORKs scheme. (See *Assn. of California Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 391.)[2] The Department concluded that certain AFDC exemptions from income, including the exemption for court-ordered child support, did not carry over to the new CalWORKs program and, accordingly, amended its regulations to remove those exemptions. (ABM 17-18.) It expressed its decision in an All-County letter. (ABM 17.) And the Department has consistently maintained its interpretation over the past 20 years. (ABM 18.)

As the agency most familiar with the AFDC and CalWORKs programs, the Department's "long-standing" and "consistently maintained" policy is entitled to "great weight." (ABM 28; see also *Larkin v. Workers' Compensation Appeals Board* (2015) 62 Cal.4th 152, 158; *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436 [assigning "great weight" to the Department's statutory interpretation set forth in an All County Letter].)

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[2] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

Amici's analyses fail to begin from this deferential standard of review or acknowledge that the Department's interpretation must be upheld unless "clearly erroneous." (See *Larkin v. Workers' Compensation Appeals Board*, *supra*, 62 Cal.4th at p. 158.) The Department's interpretation is not.

B. The Department's Repeal of the Child Support Exemption Is Consistent with the Text, History, and Policy of CalWORKs

The Department in its answer brief discussed how the repeal of the AFDC-era child support exemption is consistent with the text, history, and policy of CalWORKs. (ABM 29-50.) The Center's arguments to the contrary must be rejected.

1. The Legislature Intended to Engage in Welfare Reform; The Department Reasonably Responded by Overhauling Its Supporting Regulations

The Center argues that the Legislature intended for the Department to keep the "eligibility mechanics" of the AFDC program in place, and simply graft the CalWORKs program onto the existing framework. (See Center AC 26-27.) The Center fails to acknowledge that CalWORKs was the result of a "comprehensive review and overhaul" of the State's welfare system in response to Congress's welfare reform in 1996, which eliminated the AFDC program and enacted the TANF program. (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1231.) These reforms fundamentally restructured the Nation's welfare system. Against this backdrop, the California Legislature comprehensively reviewed and overhauled the prior AFDC program.

To implement this new federal welfare program, the California Legislature established CalWORKs through Assembly Bill 1542. The many fundamental program changes from AFDC to CalWORKs included limiting the receipt of aid to a specified number of months, requiring aid

recipients to engage in work activities, creating a new grant calculation methodology, and revising certain provisions pertaining to eligibility. (*Sneed v. Saenz*, *supra*, 120 Cal.App.4th at pp. 1231-1232; CT 67-95, 314, 320-324.) Many of the changes under AB 1542 focused on job training and work-participation requirements. (Center AC 27; CT 68-70, 314 ¶ 7.) However, pertinent here, the Legislature also made changes to the eligibility requirements for CalWORKs aid. As stated in the Legislative Counsel's Digest for the CalWORKs bill:

> Existing law establishes eligibility requirements for benefits under the AFDC program, including limitations on the amount of income and resources that may be available to an eligible applicant or recipients. [¶] This bill would revise eligibility requirements and apply them to the CalWORKs program.

(CT 68-69.)

Under the new system for calculating income set forth in the CalWORKs statute, "aid recipients who increase their work efforts and obtain greater employment income may retain more of the increased income before cash aid is affected." (*Sneed v. Saenz*, *supra*, 120 Cal.App.4th at p. 1232.) The simplified methodology for calculating grants exempts a larger percentage of applicants and recipients' earned income in determining CalWORKs eligibility and aid amount. (§ 11451.5; CT 315; *Sneed v. Saenz*, *supra*, 120 Cal.App.4th at pp. 1232, 1240.)[3]

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[3] Specifically, in contrast to the AFDC deduction of the first $30 of earned income plus one-third of the remaining earned income, CalWORKs deducts the first $225 from earned income plus one-half of the remaining earned income. (Compare Welf. & Inst. Code, § 11451.5, and CT 520 [MPP § 44-111.23], with former Welf. & Inst. Code, § 11008 [requiring disregard of earned income "to the extent required by federal law"], and former 42 U.S.C. § 602(a)(8)(A) [requiring states to disregard the first $30 plus one-third of the remainder of family's earned income], and CT 152-153 [former MPP § 44-111.24].)

After the Legislature enacted CalWORKs, the Department reviewed and considered its regulations in light of the goals of the new program and the expanded earned income disregard. It decided to repeal certain deductions, including the previous $30 and one-third earned-income disregard, a disregard for work expenses, a disregard for child care costs, a disregard for support paid by "Non-[Assistance Unit] members to others not living in the home who are claimed as federal tax dependents," and the disregard for court-ordered child support that it had decided—in its discretion—to promulgate under the prior AFDC program. (CT 322 [All County Letter No. 97-59], 330 [former MPP § 44-113.9].)[4]

Welfare reform reflected a comprehensive overhaul and reform of the State's welfare program in response to Congress's adoption of TANF. Considering the goals of the new program, including creating a simplified methodology for calculating grant eligibility and amount, it was reasonable for the Department to review and substantially revise its prior AFDC regulations, including the AFDC child support deduction, in the process of converting those regulations to appropriately govern the new CalWORKs program.

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[4] The Center argues that because the Department's bill analysis accompanying CalWORKs did not discuss whether the AFDC-era child support disregard would continue under the new program, the Department signaled its intent to keep the deduction following welfare reform. (Center AC 29-30.) But nothing in the proposed legislation mentioned the child support disregard, and the Department's analysis of legislative changes (CT 199-248) did not attempt to discuss how the regulatory scheme would change after the new law took effect.

2. The Department's Decision to Create a Child Support Exemption Under AFDC Did Not Tie Its Hands When AFDC Was Superseded by CalWORKs

The Center also contends that once the Department exercised its discretion to disregard court-ordered child support payments under AFDC, it was prohibited from reversing that policy under CalWORKs unless "the California Legislature intended to abrogate" it. (Center AC 32.) None of the cases cited by the Center support the proposition that an agency is prohibited from repealing a regulation without explicit direction from the Legislature.

In *California Welfare Rights Organization v. Brian* (1974) 11 Cal.3d 237 (Center AC 32), AFDC recipients challenged the validity of a Department regulation that attempted to "assess the value to an unborn child of the comforts he receives in his mother's womb," and reduced aid payments to the family by that amount. (*Brian, supra*, 11 Cal.3d at p. 240.) The Court concluded that because AFDC grants were "really made to the mother, not her unborn child, for the present and future needs arising from pregnancy[,] . . . [i]t would be anomalous to hold that the pregnancy generates income or resources of benefit to anyone, mother or child." (*Id.* at p. 243.) For that reason, the regulation conflicted with "the probable [legislative] intent underlying those terms." (*Id.* at p. 240.) *Brian* does not support the Center's argument that the Department was prohibited from rescinding the child support disregard without the Legislature's express direction.

Neither does *California Welfare Rights Organization v. Carleson* (1971) 4 Cal.3d 445 support the Center's view. *Carleson* involved three emergency regulations adopted following federal amendments to the former AFDC program. (*Id.* at p. 449.) This Court invalidated two of those regulations on the grounds that they were in direct conflict with how *the*

Legislature had already directed the Department to award aid and calculate standards of need. (*Id.* at pp. 458, 459-460.)[5] Here, the Center concedes that the adoption of the deduction for child support under AFDC was itself discretionary. (Center AC 22.) And there is no dispute that, when enacting CalWORKs, the Legislature did not add a provision deducting income used for child support obligations, or direct the Department to promulgate a regulation doing the same. The Legislature left it to the Department to promulgate regulations to implement CalWORKs. (ABM 14-15, 27-28.) Accepting the Center's argument would effectively strip the Department of the discretion that the Legislature bestowed.

The Center contends that the Legislature effectively codified the Department's prior policy when it enacted CalWORKs, because it was "aware" of and "deliberately left that policy in place." (Center AC 32.) Generally, where the Legislature has made statutory amendments while leaving an agency's interpretation of that statute unchanged, there is a presumption that the Legislature is aware of and acquiesces in that administrative interpretation. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015; *Matthews v. Superior Court* (1995) 34 Cal.App.4th 598, 604.) But that presumption falls away when the amendment effects a "substantial

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[5] The Center also cites *Heckler v. Turner* (1985) 470 U.S. 184. (Center AC 31-32.) The Court of Appeal and the Department cited *Turner* for its conclusion that the "availability principle" did not require the Department to deduct tax withholdings when calculating an applicant or recipient's income. (ABM 35, 38-40; *Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1256-1257.) The Center relies upon a different portion of *Turner* noting that courts should not second guess the means chosen by Congress to achieve a particular result. (*Turner*, *supra*, 470 U.S. at pp. 205-206.) *Turner* does not support the Center's argument that the Department's policy is valid only if the California Legislature specifically directed the Department to abolish the exemption of income used to satisfy child support obligations.

modification[]" to the underlying statute. (See *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1156, quoting *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1257.) It should not apply here where the Legislature comprehensively reviewed the AFDC program under which the prior interpretation was made and replaced it with a new program, CalWORKs, that substantially changed the way grants are calculated. (See § 11451.5; *Sneed v. Saenz*, *supra*, 120 Cal.App.4th at p. 1240.)[6]

3. The Center Identifies No Statutory Provision that Conflicts with the Department's Repeal

The Center argues that the Department's action conflicts with CalWORKs. (Center AC 37-38.) But the Center points to no actual conflict between any provision of CalWORKs and the Department's policy. And it concedes that the policy at issue was *expressly* discretionary under AFDC. (Center AC 22.) As the Center acknowledges, "the source of the Department's authority" to promulgate the AFDC child support disregard was the "discretion" set forth in a federal regulation. (Center AC 22; 45 C.F.R. § 233.20(a)(3)(ii)(C).)

There is no dispute that, when enacting the CalWORKs statutory scheme, the Legislature did not enact a statute deducting income used to satisfy child support obligations, and it did not direct the Department to promulgate a regulation effecting the same result. Thus, no statutory

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[6] The Center also argues that the legislative history supports the conclusion that the Legislature intended to import the AFDC child support disregard into CalWORKs. The legislative history does not indicate that the Legislature was thinking one way or another about the child support disregard. But it clearly shows that the Legislature intended to simplify the grant calculation process. (*Sneed v. Saenz*, *supra*, 120 Cal.App.4th at pp. 1232, 1240.) The Department's policy change was consistent with the legislative policy behind reforming AFDC.

provision *required* the Department to recognize the deduction under CalWORKs. In these circumstances, where there was a shift in an expressly discretionary policy following a substantial overhaul to the program being implemented, the bar to establish that the new policy reflects a clearly erroneous view of the law must necessarily be high. Neither Christensen nor amici has made that showing.

C. The Treatment of Income Under the Family Code's Formula for Determining Child Support Obligations Does Not Control the Interpretation of CalWORKs Eligibility

To support its argument that the Department must exempt income garnished for child support payments, the Center misapplies Family Code provisions governing income for child support calculations. It argues that the Department's decision to repeal the former AFDC child support exemption for purposes of the CalWORKs program contradicts legislative intent because the statutory formula for calculating the amount of child support a parent owes to one child does not count that parent's child support obligations to a different child in computing "net disposable income." (Center AC 34-37.) However, unlike CalWORKs, the Child Support System is not an aid program, and has no bearing on the calculation of income for an entirely separate program.

The Family Code's child support formula determines each parent's "net disposable income," in order to calculate child support. (Fam. Code, § 4059.) For those purposes, courts start with the parent's "gross income" before subtracting not only "child or spousal support actually being paid by the parent pursuant to a court order," but also taxes, FICA withholdings, certain mandatory payroll deductions, and other job-related expenses. (*Id.* §§ 4055, 4059.) Significantly, none of those expenses is categorically deducted or exempted from income under CalWORKs. Whereas the child support formula's intent is to determine the net "disposable" income that a

parent could spend on his or her needs after taxes have been paid, CalWORKs' income calculation methodology is not, and has never been, focused on determining "disposable" income. (Compare Fam. Code, §§ 4055, 4059, with Welf. & Inst. Code, §§ 11450, 11451.5.)

Thus, contrary to Buhai Center's argument, the fact that the Legislature explicitly requires the deduction of a parent's child support obligations to one child in calculating that parent's obligations to a different child, does not support the argument that such a deduction is required for purposes of CalWORKs. If anything, it confirms that the Legislature knows how to exclude child support obligations in calculating income where that is its intent—and did not do so in the CalWORKs program. (See ABM 31.)

D. The Legislature Has Effectively Ratified the Department's Interpretation

Twenty years have passed since the Department adopted the policy at issue here. Not only has the Legislature not stepped in to adopt a child support disregard, it directly considered and declined to adopt such a provision. (ABM 46-47.) As originally introduced, AB 1233 (1999-2000) would have amended Welfare and Institutions Code section 11451.5 to add a child support disregard. (CT 388, 401.) Although AB 1233 ultimately became law, the Legislature amended it to delete the provision adding the child support disregard. (CT 427-432; see also CT 408, 420.)

AB 1233 affirmatively demonstrates that the Legislature knew the Department interpreted CalWORKs to not include a child support disregard, directly considered restoring it, but explicitly rejected such a proposal. (See *Cooper v. Swoap* (1974) 11 Cal.3d 856, 863-864 [Legislature directly considered and explicitly rejected policy later adopted by the Department, providing the "most obvious indication that the regulation at issue here does not confirm to, or implement the governing

welfare statutes . . . ."].) In *California Welfare Rights Organization v. Brian*, *supra*, 11 Cal.3d 237, relied upon by the Center (Center AC 32, 37), the Legislature introduced several bills to amend the Welfare and Institutions Code to expressly change the Department's interpretation of the term "needy child." (*Brian*, *supra*, 11 Cal.3d at p. 241 fn. 2.) Each of those proposed bills died in committee without reaching a vote. (*Ibid.*) This Court, therefore, concluded that it "may reasonably assume that the Legislature has been aware of the department's administrative construction of the statutory provisions," and that the Legislature's failure to act to modify that construction when presented with specific bills "is indicative of an intent to preserve" the Department's interpretation. (*Ibid.*) Likewise, here, the Court may reasonably assume that the Legislature's consideration and rejection of the proposed portions of AB 1233 that would have added a child support disregard, is indicative of its intent to keep the Department's policy in place.

In addition to AB 1233, the Legislature has amended provisions of CalWORKs addressing eligibility and grant calculation numerous times in the last 20 years, but has not adopted a child support disregard. (See, e.g., CT 433, 435 [Sen. Bill No. 1041 (2011-2012 Reg. Sess.) [amending income eligibility standards]; COA RJN, Exh. B [Assem. Bill No. 444 (2001-2002 Reg. Sess.)] [introducing quarterly reporting system for eligibility and grant calculation], Exh. F [MPP § 40-103.5] [reflecting Legislature's 2011 amendments to CalWORKs to provide for semi-annual reporting].) One of those amendments came *after* the Court of Appeal issued the decision below. In June 2018, the Legislature amended section 11450 and added section 11450.022 to CalWORKs, in order to increase the maximum aid payment levels. (§§ 11450, 11450.022; http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1811; see also Alliance's Amicus Curiae Brief (Alliance AC) 17-18.)

The Center argues that legislative decision-making over the past two decades has no bearing on the issue before this Court. (Center AC 45-46.) But these affirmative acts of the Legislature are further evidence that the Department's interpretation of CalWORKs is not clearly erroneous and must be upheld.

II. THE DEPARTMENT'S POLICY DOES NOT CREATE AN INCENTIVE FOR FAMILIES TO SEPARATE

Both the Center and the Alliance argue that the Department's policy not to exempt income that must go to meet child support obligations creates a financial incentive for families to separate. (Center AC 40; Alliance AC 7, 11-12.) Amici repeat Christensen's argument that the Department's policy frustrates one of the statutory purposes of CalWORKs, as set forth in section 11205, because it allegedly promotes the dissolution of the family unit. (Center AC 40; Alliance AC 11-12; Christensen's Opening Brief 21.) The Department has fully addressed this argument. (ABM 47-50.) As it explained, counting income of the CalWORKs applicant, including wages and unemployment insurance benefits garnished for child support, as gross income subject to the earned-income disregard, is consistent with the goal in section 11205 of promoting financial self-sufficiency through participation in the work force to the extent possible. (§ 11205; see also *Sneed v. Saenz*, *supra*, 120 Cal.App.4th at p. 1242.)[7]

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[7] Based on the unsupported premise that the Department's policy provides a financial incentive for families to separate, the Alliance also argues that the policy contradicts the objectives of the State's other welfare laws affecting children and their families. (Alliance AC 8-14.) The Alliance bases its argument on statutory provisions and policies relating to the State's "Child Welfare System," which covers, for example, the removal of children from parental custody, child dependency, and family reunification. (*Id.* at pp. 9-13, citing §§ 300, 305, 16000, 16501.2, 16519.5; 42 U.S.C. §§ 671(a), 672(a).) Those programs have no bearing on how

(continued...)

In any event, amici provide no support for this proposition. They do not claim that any families have separated as a result of the Department's policy. But more importantly, neither brief attempts to engage with the relevant statutes and regulations to support their claim that the Department's policy creates an actual financial incentive to separate. The details paint a much different picture than the one portrayed by amici.

As a general matter, under CalWORKs, a family with earned income will be better off than a family with no earned income. This results from how the earned income disregard affects maximum aid payments. A family with no income that qualifies for CalWORKs will receive the full maximum aid payment, which in turn depends on the number of family members who qualify for aid. (§ 11450.) If a family with the same number of eligible members begins earning money, the amount of aid received by that family will go down, but not by an amount equivalent to what the family brings in as income. That is because after disregarding the first $225 of earned income plus one half of the remaining earned income, only a portion (always less than 50%) of earned income will work to reduce the family's aid payment. (§ 11451.5)

An example illustrates this point. For CalWORKs grant purposes, California has been separated into two regions with different maximum aid payment levels, the higher of which is Region 1. Currently, in Region 1, the maximum aid payment for a "nonexempt" family of four people is $852. (All County Letter No. 16-64 (August 16, 2016), <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2016/

(...continued)
income is calculated for purposes of determining eligibility for aid under CalWORKs.

16-64.pdf>.)[8] A "nonexempt" family of four with no income in that region will receive aid in the total amount of $852. (*Id.*, § 11450.) A family of four that earns $1,000 each month will benefit from the earned income disregard, as illustrated in the following chart:

Family of 4 with earned income, Region 1

Earned income $1,000	
$ 1000	Monthly Earned Income for the Family
- 225	$225 Income Disregard
$ 775	Subtotal
- 387.50	50% Earned Income Disregard
$ 387.50	Total Net Non-exempt Income
$ 852	Maximum Aid Payment
- 387.50	Total Net Non-exempt Income
$ 464.50	**Aid Payment**

$1,000 + $464.50 = $1,464.50 Total Income + Aid. (See CT 538 [MPP § 44-113.22] and Administrative Record 15 for how counties calculate net nonexempt income.)

As reflected in this example, a family will typically be better off earning $1,000 and receiving an additional $464.50 in aid than a family that receives only the $852 maximum aid payment. Although the family with earned income will receive less aid than the family without earned income, the family with earned income will almost always be better off than the family with no earned income.

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[8] Maximum aid payment levels differ based on whether a family unit is deemed to be "exempt" or "nonexempt" by the County Welfare Department. An "exempt" family unit is one in which each adult family member receives Supplemental Security Income/State Supplemental Payments, In Home Supportive Services, State Disability Insurance, or Temporary Worker's Compensation. (MPP § 89-110.2; <http://www.cdss.ca.gov/Portals/9/Regs/23EAS.pdf?ver=2017-06-30-095943-713>.) The hypotheticals used in this brief are for a "nonexempt" family in Region 1.

Next consider a family that earns enough income to make them ineligible for CalWORKs, and contemplates separating in order for the children and non-working parent to become eligible. As the example below illustrates, if one parent earns $2,000 per month in Region 1, that family's income will be just above the threshold to maintain eligibility for CalWORKs.

Family of 4 with earned income, Region 1

Earned income $2000

$ 2,000	Monthly Earned Income for the Family
- 225	$225 Income Disregard
$ 1775	Subtotal
- 887.50	50% Earned Income Disregard
$ 887.50	Total Net Non-exempt Income
$ 852	Maximum Aid Payment
- 887.50	Total Net Non-exempt Income
$ -35.50	**$0 Aid Payment**

Although this family will not be eligible for CalWORKs, it still earns $2,000, which far exceeds the maximum aid payment for a family of four ($852).

Now consider the hypothetical posed by amici: the non-wage earning parent separates from the wage-earning parent and retains custody of the two children in order to qualify for aid. Assuming they live in Region 1, they will receive the maximum aid payment of $714 for a family of three. (All County Letter No. 16-64 (August 16, 2016), <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2016/16-64.pdf >.) Amici appear to believe that the family would continue to benefit fully from the wage-earning parent's income (Center AC 40), but that is not so. As the Department explained in its answer brief, federal law requires recipients of CalWORKs aid to assign to the State any rights to spousal or child support to which the recipient or recipients are entitled. (42 U.S.C. § 608(a)(3).)

California law requires that the first $50 of child or spousal support be paid to the recipient and disregarded in determining eligibility for or the amount of aid under CalWORKs. (CT 530 [MPP §§ 44-11.47, 44-471]; Fam. Code, § 17504.)[9] Thus, in the hypothetical posed by amici, the family of three would stand to receive $50 of any spousal or child support due from the non-custodial parent, and in that case would have a monthly total of $764 in combined aid plus child/spousal support. That is still substantially less than $2,000.[10]

Of course, a number of factors affect the real world financial tradeoffs in the above examples. Some of a parent's earnings may go toward paying

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[9] The disregard applies to the *combined* total of any child or spousal support received by the county on behalf of the recipient. (MPP § 12-425(c), pp. 79.21-79.22, <http://www.childsup.ca.gov/portals/0/resources/docs/regulations/mpp/ch12-400.pdf>.)

[10] As of November 1, 2018, a family may elect to keep the entire amount of child support received for one or more stepsiblings or half-siblings in the family if it is higher than the amount of cash aid that child would receive, and still qualify for CalWORKs aid, as long as the child lives with at least one other child who is eligible to receive CalWORKs aid. (§11450.17; All County Letter No. 18-82 (August 1, 2018), <http://www.cdss.ca.gov/Portals/9/ACL/2018/18-82.pdf?ver=2018-08-02-141654-947>.) In such a case, the stepsiblings or half-siblings who are directly receiving all of the child support paid on their behalf will not be included in the number of needy persons in the family when calculating the applicable maximum aid payment amount. (§§ 11008.14, 11450.17, subd. (a)(1).) Also, the child support received for a child who elects to receive support instead of CalWORKs aid will not be considered income for purposes of calculating eligibility for aid or aid amount. (§ 11450.17, subd. (a)(2).) This change in law would only apply to the above hypothetical family of four that chooses to separate, if the two children are "half-siblings" or "stepsiblings." But even if it did apply, only one of the children would be able to elect to receive child support instead of CalWORKs aid, and the total amount of aid the family would receive would be reduced to $577. (§ 11450.17, subd. (a)(1), (d)(1); 42 U.S.C. § 608(a)(1); All County Letter No. 18-82; All County Letter No. 16-64.)

taxes; some may be used to pay off consumer debt; and some may be garnished to satisfy child support obligations. Under the CalWORKs statutes and the Department's implementing regulations, none of those expenditures is disregarded from income in determining eligibility for aid. Accordingly, if enough of a parent's income is used for these purposes, theoretically the non-wage earning parent and children would be better off living separately and receiving the full maximum aid payment. But once again, amici offer no support for the proposition that this incentive exists in any sizeable number of cases, or has in fact caused any family to separate. Moreover, the Department's decision not to disregard income used for any expenditure (e.g. taxes, debt) could, in theory, create the exact same financial incentive to separate that amici speculates is present with respect to the Department's policy at issue here. It cannot be the case that such a hypothetical incentive renders the Department's policy unlawful. (See *Bowen v. Gilliard* (1987) 483 U.S. 587, 602 & fn. 17 ["[T]hese types of incentives are the unintended consequences of many social welfare programs, and do not call the legitimacy of the programs into question."]; *Sneed v. Saenz*, *supra*, 120 Cal.App.4th at p. 1250 ["Although the welfare program may create an incentive for some needy parents to live separately, that is not the goal of the program, nor does it call the program's legitimacy into question."].)[11]

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[11] The Center's additional argument that the Department's policy creates a temptation for adults to work in the "underground economy" in order to be eligible for CalWORKs also lacks merit. (Center AC 41-42.) The Center appears to be arguing that the policy encourages CalWORKs applicants to break the law, either by failing to report legally reportable income to the Department or by failing to report that same income in child support proceedings. (See *ibid.*) But the Center's assumption that low-income parents will break the law is not a reasonable assumption on which to base an argument against the Department's exercise of discretion here.

CONCLUSION

For the foregoing reasons, the Court should affirm the Court of Appeal's decision.

Dated: November 19, 2018

Respectfully submitted,

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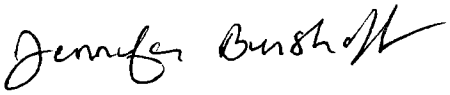
CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO AMICUS CURIAE BRIEFS uses a 13 point Times New Roman font and contains 5,330 words.

Dated: November 19, 2018

XAVIER BECERRA
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **ANGIE CHRISTENSEN v. WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES**

Supreme Court Case No.: S245395

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On November 19, 2018, I served the attached **DEFENDANTS AND APPELLANTS' ANSWER TO AMICUS CURIAE BRIEFS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

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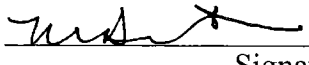
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 19, 2018, at San Francisco, California.

M Dubonnet
Declarant


Signature

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