Supreme Court of California
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Supreme Court of California
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SUPREME COURT CASE NO. S245395

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.

After a Decision by the Court of Appeal for the First Appellate District, Division Two, No. A144254

Reversing a Judgment of the Superior Court of San Francisco County Case No. CPF-12-512070, Honorable Ernest H. Goldsmith, Judge

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REPLY TO ANSWER TO PETITION FOR REVIEW

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I. The Court of Appeal opinion conflicts with this Court's prior cases directing that fictional financial resources do not count.

This Court should review the important question of available income in public benefit programs that assist California's poorest children. CalWORKs is part of a comprehensive Legislative scheme to which the availability principle applies. In considering whether child support payments are available to children who live with responsible working parents that pay child support, the CalWORKs and child support statutes must be read together. And read together, the challenged policy thwarts their joint structure and intent to support California's poorest children. Deference is not due to the Department of Social Services' interpretation where the Department lacks expertise implementing child support laws, and fails to consider the Legislature's intent that poor children be supported through child support and CalWORKs together.

A. The Department's attempt to distinguish earlier cases as involving benefits other than CalWORKs is unpersuasive, as the Welfare and Institutions Code prohibits counting unavailable income in all California public benefits programs.

The Department contends that because cases cited in the Petition involved benefits other than CalWORKs, there is no general principle of availability that applies to this case. Answer at 12-13. But CalWORKs is part of an overall scheme of public social services governed by the Welfare and Institutions Code to which this Court's availability precedent applies.

Welfare and Institutions Code Division 9, governing Public Social Services programs, begins by giving guidance in Part 1 to *all* public social services programs, including CalWORKs, CalFresh, Medi-Cal, and General Relief. These include the proviso, in section 10000,[1] that "aid shall be administered and services provided promptly and humanely." *See Mooney v. Pickett,* 4 Cal.3d 669, 672 (1971) (section10000 applies to all services under Division 9 and states their fundamental purpose).

Part 3 sets forth additional rules that apply across the board to CalWORKs, CalFresh, and Medi-Cal, among other programs. Section 11005.5's provision that one recipient group's income can never be the income of another is found here, in the legislation's "Policies and Purposes." Division 9, Part 3, Ch. 1, Art.1. To the extent the Department claims no rules apply to calculation of income in all public benefits programs, the very structure of Division 9 directs otherwise.

As discussed in the Petition, under long-established, uniform *California* precedent, fictional financial resources that cannot be accessed by a poor applicant for public benefits do not count. Petition at 16-19. These authorities apply to California's public social services programs, including CalWORKs. In *Waits v. Swoap,* 11 Cal.3d 887 (1974), this Court stated the governing legal principle: "Only the *actual value* of [financial] benefits received could possibly constitute income to the recipient." *Id.* at 895 (quoting *Cooper v. Swoap,* 11 Cal.3d 856, 870 (1974) (italics original). *Mooney v. Pickett,* 4 Cal.3d 669, likewise prohibits

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[1] Unspecified statutory citations are to the Welfare and Institutions Code.

California counties from counting theoretical economic resources, stating, "theoretical employability is a barren resource; it is inedible; it provides neither shelter nor any other necessity of life." *Id.* at 680. Indeed, there exists a "fundamental and time honored policy of ensuring that states do not make assumptions of availability, and of requiring that income and resources be actually on hand or ready for use when needed." *Galster v. Woods,* 173 Cal.App.3d 529, 540 (1985). To count child support that is transferred to support children in other homes, as available income to the Christensen children, violates these principles. Petition at 16-19.

The Department attempts to distinguish these cases, stating, "Neither [Bruce Christensen's] paycheck nor his unemployment insurance payments are theoretical or fictional sources of income." Answer at 14. But to the Christensen children, those funds that are diverted to support other children in other homes *are* as theoretical as the in-kind income found unavailable in *Waits*. In *Waits,* statutory authority at the time required the Department to count in-kind income; yet "the department's position suffer[ed] from" a "fundamental defect" in that the relatives whose shared housing was considered in-kind income were "under no legal duty to support the children whom they have voluntarily taken into their homes." *Waits,* 11 Cal.3d at 893. The Court reasoned that the rejected regulation "totally ignores this important fact, and *conclusively presumes* that such relatives . . . are both willing and able to provide the children with free housing and utilities." *Id.* (emphasis original).

The "defect" here is yet "even more fundamental" than that in *Waits*: it "conclusively presumes" that income is available to children in homes like the Christensens while "totally ignor[ing]" that the income is legally obligated to, and paid to, other children in other homes. *Id.* Child support funds are not just *possibly* unavailable as was ruled improper in *Waits;* they are *actually* unavailable as a matter of law because they are obligated and transferred to support other children.

It is obvious that children who receive child support funds are "under no legal duty to support the children" in the homes of the working parents like Bruce Christensen who pay support. *Id.* But the presumption that they would somehow support the Christensen children is precisely what the Court of Appeal opinion has sanctioned here, in violation of this Court's ruling in *Waits*.

B. The Legislature's scheme to support children by way of child support and CalWORKs, which operate jointly, is precisely how child support is different from mere work-related payroll deductions.

The opinion below turns on the mistaken conclusion that child support obligations cannot meaningfully be distinguished "from any other debt that may lead to garnishment of income." Opinion at 17-18. The Department, too, presses "the lack of a limiting principle." Answer at 15. Their concerns fail to recognize the unique union of child support and CalWORKs.

Child support under the Family Code and CalWORKs under the Welfare & Institutions Code operate *in pari materia* to ensure adequate financial support for all of California's children.

Petition at 19-22. Both CalWORKs and child support secure financial support for children, and c*hildren's* interests are paramount in deciding the amount of support under both programs. Fam. Code §4053(e) (statewide uniform court-ordered child support guideline places "the interests of children as the state's top priority"); §11205 ("[e]ach family has the right and responsibility to provide sufficient support and protection of its children . . . .").

Not only is child support required to be assigned and collected in California's CalWORKs program (Petition at 20), a formula to set the *amount* of a child support order is a required component of a state's federally approved Temporary Assistance for Needy Families (TANF) plan. 42 U.S.C. §§602(a)(2); 667. This TANF plan must be submitted to the federal government for approval to receive federal TANF funds – the federal authorization for California's CalWORKs cash assistance program. 42 U.S.C. §602(a); Opinion at 2. California's child support formula, established to implement TANF requirements, is found at Family Code sections 4050-4076. Fam. Code §4050.

For purposes of setting the amount of a child support order, when considering the amount of income that is available to support a child, California's child support formula deducts "[a]ny child or spousal support actually being paid by the parent pursuant to a court order" from available income. Fam. Code §4059(e). Yet, under the Department's policy, when a family paying child support is so poor as to potentially qualify for CalWORKs, the same child support "actually being paid by the parent pursuant to a court order" is *not* deducted from the paying

family's available income. In pretending the child support payments are available to responsible paying families like the Christensens, the Department's policy frustrates the Legislature's intent. It fails to place the interests of the Christensen children "as the state's top priority" (Fam. Code §4053(e)) and fails to provide "sufficient support and protection" to them. §11205.

The federal authority the opinion below relies on, *Heckler v. Turner,* 470 U.S. 184 (1985), does not support the Court of Appeal's reasoning. Opinion at 17-18. In *Heckler,* the U.S. Supreme Court concluded that mandatory payroll tax deductions need not be considered "unavailable" to support poor children. *Id.* at 199-200. But child support is no mere payroll deduction akin to the union dues, medical insurance, retirement programs, and mandatory tax withholdings, distinguishing among which "would be 'metaphysical indeed.'" *Id.* at 202 (citation and quotation marks omitted); Opinion at 17. Whereas the "sums" mandatory tax withholdings "consume are no less available for living expenses than other sums mandatorily withheld from the worker's paycheck and other expenses incurred necessarily incurred while employed," child support withholdings *are* less available for living expenses. *Heckler,* 470 U.S. at 201. They will never, ever, by any means, be available to feed, clothe or shelter the children in homes like the Christensens where a responsible, working parent is paying child support.

No other debt or obligation operates in this way to secure support for California's poorest children. That the amount of child support is mandated by, and collected under the auspices of

the CalWORKs program, for the purpose of providing sufficient support in the best interests of all children, provides an inherent "limiting principle." Even where a rule risks a "slippery slope," "slipping down the slope stops where application of a law or regulation becomes unreasonable." *Conway v. State Water Res. Control Bd.,* 235 Cal.App.4th 671, 679 (2015). It is unreasonable to ignore that child support and CalWORKs operate together and should be interpreted together to attain the Legislature's purpose. The Court of Appeal's failure to do so warrants this Court's review.

C. The Department's statutory interpretation warrants little deference, because the Department of Social Services does not regulate child support, and has failed to consider the policies underlying child support and its interrelationship with the CalWORKs program.

Though the Department's statutory interpretation conflicts with this Court's decisions governing available income, the Department contends that the Court of Appeal correctly deferred to that interpretation. Answer at 11-12. Deference to administrative interpretations is situational, and courts retain "ultimate responsibility for the construction of the statute." *Yamaha Corp. of America v. State Bd. of Equalization,* 19 Cal.4th 1, 12 (1998). Courts must "independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning . . . ." *Id.* at 7. Agency interpretation that violates the Legislature's intent is not due deference – even if it was adopted contemporaneously and has been consistently

maintained. *Id.*at 13; *Larkin v. W.C.A.B.,* 62 Cal.4th 152, 158 (2015).

The Department implies that only its interpretation of its regulation is in question. Answer at 14-15. Not so. The Department announced its new policy to count child support payments as available income by way of a letter to counties implementing Assembly Bill 1542 (Stats 1997, ch. 270), followed by repeal of a prior regulation. Opinion at 5-7. It contends its policy change implements §11451.5. *Id.;* Answer at 7. "A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute." *Yamaha,* 19 Cal.4th at 12. The stricter standard of review of agency interpretation of the Legislature's intent is at issue here. *Id.*

In weighing the deference due an agency's statutory interpretation, among the factors to be considered are whether the agency "has expertise and technical knowledge" entwined with issues of policy that give it a comparative advantage over the courts, and whether there exist "indications of careful consideration by senior agency officials" that may show the agency's interpretation is likely correct. *Id.* at 12-13. Even where an agency has used notice and comment procedures, "the ultimate resolution of legal questions rests with the courts," which "play a greater role when reviewing the persuasive value of interpretive rules." *Id.* at 13 (citation and internal punctuation omitted).

Courts, not the Department, have the comparative advantage when it comes to child support policy and effectuating the Legislature's intent in the two statutory schemes. As

discussed in section I.B above, the child support and CalWORKs schemes operate *in pari materia.* Both the Family Code child support guidelines and the Welfare and Institutions CalWORKs statutes implement the state's CalWORKs program pursuant to federal TANF rules. In California, ***judges*** are charged with carrying out the Family Code through child support orders. *Anna M. v. Jeffrey E.,* 7 Cal.App.5th 439, 446 (2017). The Department lacks comparative expertise and is not due deference as to **child support** policy at issue here. *Id.*

"[I]ndications of careful consideration by senior agency officials" may also give a court comfort in deferring to an agency's interpretation of legislation. *Yamaha,* 19 Cal.4th at 13. The Legislature's intent is construed "from the statute taken as a whole." *Larkin v. W.C.A.B.,* 62 Cal.4th at 158 (citation and quotation marks omitted). Where the Agency's policy frustrates the purpose of the statute, and there is no evidence that the Agency considered its purpose, deference is not appropriate. *See id.* at 160, 164 (independently interpreting two statutory provisions taking into account "the structure of the statutory scheme encompassing both" to reach "the interpretation that best advances the Legislature's intended purpose"); *Azusa Land Partners v. Dept. of Indust. Relations,* 191 Cal.App.4th 1, 16 (2010) (independently reviewing Department of Industrial Relations' construction of a statutory section "after a consideration of all of [the statute's] parts in order to effectuate the Legislature's intent").

Neither the Court of Appeal nor the Department considered the Legislature's intent that CalWORKs and child support

provide sufficient support to all of California's poor children, taking into account the children's best interests. In its letter to counties and its regulation repeal, there are no "indications" that the Department considered – much less carefully – whether its policy would provide "sufficient support and protection" to poor children as section 11205 directs. Opinion at 6-7; Answer at 7. The Department considered only that §11451.5 created income disregards for earned and disability-based income. *Id.* It did not consider that child support is paid from all income – including Bruce Christensen's unemployment income, which does not receive the advantage of that disregard. *Id.* It did not consider the interests of *all* needy children of California's working poor – those living with their parents and those who do not. *Sneed v. Saenz,* 120 Cal.App.4th 1220, 1229 (2004) ("Adequate support for *all* of the needy children of California's working poor is a matter of priority") (emphasis original); §11205 (The Legislature's purpose is that CalWORKs support each family's "right and responsibility to provide sufficient support and protection of its children.") It did not consider that child support places "the interests of children as the state's highest priority." Fam. Code §4053(e).

The child support that belongs to Mr. Christensen's children who are not living with him is not available to support his children who are. The Department recognized this principle before CalWORKs was enacted (Opinion at 6), and CalWORKs did not alter this fundamental relationship between CalWORKs and child support. Neither the Court of Appeal opinion nor the Department considered CalWORKs' and child support's joint,

cooperative role in supporting *all* of California's poor children. The Court should review this important question.

II. This Court should grant review to settle the interpretation of Welfare and Institutions Code section 11005.5.

As previously explained, the Department's policy at issue violates section 11005.5, which provides in relevant part that aid to a public benefits recipient "shall not be considered in determining eligibility for or the amount of aid of any other recipient . . . ." The money garnished from Bruce Christensen's wages and unemployment is counted both to penalize his new family and as income for the receiving families. Petition at 23-31. The Court of Appeal rejected this argument on two grounds, only one of which the Department defends.

First, the Court of Appeal concluded that section 11005.5 did not apply because "Bruce's garnished child support is not 'aid'." Opinion at 20. But that conclusion is mistaken because the second sentence of section 11005.5 provides that aid "to a recipient . . . and *the income or resources* of such recipient . . . shall not be considered in determining eligibility for or the amount aid of any other recipient . . . ." Petition at 24-25. The Department does not address this point at all, thus implicitly conceding its validity.

The Court of Appeal's holding that prohibited double counting of income only occurs when each source of income is itself "aid" contradicts the Department's claim that the ruling "is limited to the facts of this case." Answer at 17 (capitalization omitted). If the opinion below is permitted to stand, not just the

Christensens but a vast number of families subjected to double counting will be harmed by the opinion's erroneously narrow reading of section 11005.5. This alone would justify review.

While resolving one question of interpretation of section 11005.5, the Court of Appeal avoided others. The parties below disagreed about such questions as whether section 11005.5 protects applicants for aid as well as recipients, and whether the statute only applies to double counting of aid in the same household. Answer at 17. The Court of Appeal declined to decide those issues, reasoning that "child support paid to benefit a child living in a family receiving CalWORKs aid is not *generally* counted as income to that child's family" because it is assigned to the county and state. Opinion at 20-21 (emphasis added).

But an observation that an event "generally" occurs implies that often it does not. And as both the court below and the Department acknowledge, child support is not assigned to the government when child support arrears accumulate during a time that a family is not receiving CalWORKs; and in "safety net" cases where only the child is receiving aid. Opinion at 22, Answer at 19. The Department does not dispute that there are more than 80,000 safety net households alone. Petition at 27.

The Department defends the Court of Appeal's decision to ignore these 80,000+ households on the ground that the families receiving Bruce Christensen's child support are not among them. Contrary to the Department's contention, Answer at 19, the Court of Appeal did not make such a "*factual* determination," but merely observed that there was no evidence in the record on this point. Opinion at 22.

But even this observation misses the point. The Department enforces across the board its policy of counting garnished child support as income. CDSS makes no attempt to ascertain whether the garnished income will then be received directly by another CalWORKs family and again subtracted from its grant. The policy thus permits and encourages the double counting prohibited by section 11005.5, and petitioner may challenge the policy on that ground.

By defending the Court of Appeal's refusal to decide the full merits of petitioners' claims, the Department is essentially making a justiciability argument, one that is inconsistent with decades of California law. The trial court not only granted Ms. Christensen administrative mandamus, but also issued a declaratory judgment that the Department's policy was unlawful. In declaratory relief cases, California courts, unbound by article III of the federal constitution, have refused to apply the strict standing rules imposed by the United States Supreme Court. *See*, *e.g., Envtl. Prot. Info. Ctr. v. Dep't of Forestry & Fire Prot.,* 43 Cal.App.4th 1011, 1020 (1996) ("[w]e perceive neither justification nor authorization for us to import this federal law principle into our jurisprudence, and we accordingly decline the Attorney General's invitation to do so").

When declaratory relief is at issue, "[i]f the issue of justiciability is in doubt, it should be resolved in favor of justiciability in cases of great public interest." *Nat'l Audubon Soc'y v. Superior Ct.,* 33 Cal.3d 419, 433, n.14 (1983). *See also Residents of Beverly Glen, Inc. v. City of Los Angeles*, 34 Cal.App.3d 117, 127 (1973) (the right to sue is "greatly relaxed. . .

where the question is of public interest"); *Cal. Water & Tel. Co. v. Los Angeles Cnty.*, 253 Cal.App.2d 16, 26 (1967) ("[w]ere there any doubt about the justiciability of the controversy, that doubt would be resolved in favor of present adjudication, because the public is interested in the settlement of the dispute").

The issues in this case are of great public interest. *Accord*, *Green v. Obledo*, 29 Cal.3d 126, 145 (1981) ("[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right . . ."). Petitioner may challenge the validity of the Department's policy under section 11005.5 regardless of whether the families receiving the garnished child support currently are safety net families. *Cf., Id.* at 144 (welfare recipients had standing to challenge a regulation as a whole, including portions that did not directly affect them).

Pacific Legal Foundation v. California Coastal Commission, 33 Cal.3d 158 (1982) (cited Answer at 20), is not to the contrary. In that case, this Court refused to decide the merits of a challenge to the Coastal Commission's requirements that coastal landowners dedicate public access to the ocean. The Court reasoned that the plaintiffs "are in essence inviting us to speculate as to the type of developments for which access conditions might be imposed, and then to express an opinion on the validity and proper scope of such hypothetical exactions." *Id.* at 172.

This matter presents no such barriers to resolving the merits. The Department's policy is the same in every case, and where child support is not assigned to the government the effect is the same: dollar for dollar subtraction from the grants of the

families of both the paying parent and the receiving children. Moreover, even if Mr. Christensen's supported children were not CalWORKs safety net families at the time – and there is no evidence that they were not – they would become a safety net family at any time that their parent receives 48 months of aid and joins the other 80,000. While the Department might quibble over the number of families in this situation, Answer at 20, it does not take a doctorate in statistics to infer that with over a million children receiving CalWORKs and more than 80,000 safety net families and growing, double counting is a recurring problem.

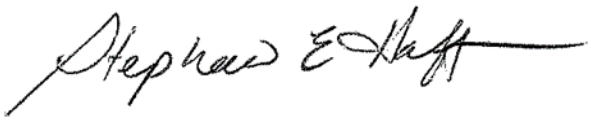
Finally, other than attempting to distinguish a case cited by petitioner (Answer at 18, n.3), the Department has not refuted the Christensens' argument that section 11005.5 prohibits the policy at issue even when child support is assigned to the county or state. Petition at 28-31. In those situations, the child support is counted not only as income to the family of the paying parent, such as the Christensens, but also for the receiving family as well. Instead of obtaining the full benefit of the child support, the receiving family is required to turn the money over to the government through assignment. Put differently, the child support payment *is* the receiving family's income, just paid as CalWORKs (and used to reimburse CalWORKs). The Department is unable to explain why this is not prohibited double counting as well.

Section 11005.5, which provides important protections to public benefits applicants and recipients, has not been carefully interpreted since *Rogers v. Detrich* 58 Cal.App.3d 90 (1976). The

poorest families in California should not have to wait another 40 years to get their day in court.

Dated: December 20, 2017

WESTERN CENTER ON LAW & POVERTY
LEGAL AID SOCIETY OF SAN MATEO COUNTY



By:_____
STEPHANIE E. HAFFNER

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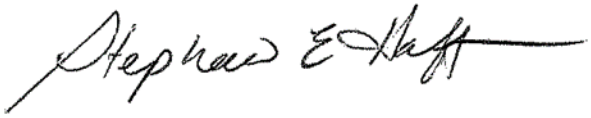

By:_____
STEPHANIE E. HAFFNER

PROOF OF SERVICE
Christensen v. Lightbourne et al,
Supreme Court Case No. S245395
Appeal No. A144254
Superior Court No. CPF-12-512070

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 3701 Wilshire Blvd., Suite 208, Los Angeles, CA 90010.

On December 20, 2017, I served the following document described as: **REPLY TO ANSWER TO PETITION FOR REVIEW** on all interested parties in this action by electronic transmission and by placing copies thereof enclosed in a sealed envelope addressed as follows:

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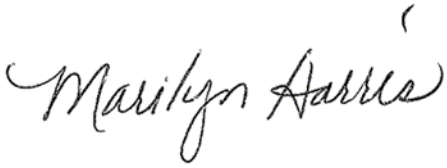

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Marilyn Harris

Supreme Court of California
Jorge E. Navarrete, Court Administrator and Clerk
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Supreme Court of California

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Case Name: **CHRISTENSEN v. LIGHTBOURNE**
Case Number: **S245395**
Lower Court Case Number: **A144254**

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Jennifer Bunshoft California Dept of Justice, Office of the Attorney General 197306	Jennifer.Bunshoft@doj.ca.gov	e-Service	12-20-2017 5:44:08 PM
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12-20-2017
Date

/s/Stephanie Haffner
Signature

Haffner, Stephanie (194192)

Last Name, First Name (PNum)

Western Center on Law and Poverty

Law Firm