SUPREME COURT CASE NO. S245395

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
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ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

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

DEFENDANTS AND APPELLANTS.

CRC 8.25(b)

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

REPLY BRIEF ON THE MERITS

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Introduction

Angie Christensen's family was denied aid under a program named California Work Opportunity and Responsibility to *Kids*. §11200 (emphasis added).[1] The Department of Social Services has lost sight of the "Kids," the very reason CalWORKs exists.

To hear the Department tell it, CalWORKs is all about "simplification" and bringing adults into line through work requirements or incentives and counting all their income. But that is true only to a limited extent. While work incentives are a major part of CalWORKs, they do not justify a policy – counting garnished child support as available to the family of a working parent – which actually discourages employment. And it's one thing to count every penny, but the Department crosses the line when it counts pennies that are actually earmarked to support other children under the very same program.

CalWORKs has brought about changes to the public benefits system, but not to its ultimate goal: "the preservation, so far as possible, of the family unit, and the more fundamental purpose of the preservation of the health of the state's children, the potential leaders of tomorrow." *Waits v. Swoap,* 11 Cal.3d 887, 896 (1974). The Department's policy thwarts that goal and should be invalidated.

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[1] All undesignated statutory citations are to the Welfare & Institutions Code.

I. The Department's statutory interpretation does not warrant the deference it seeks, as this Court is better equipped to decide the legal issues presented.

The Department argues that the policy at issue is entitled to "great weight" and should "not be disturbed unless it is 'clearly erroneous.'" Answer Brief on the Merits (AB) at 28. On the contrary, this Court is better equipped than the Department to make the statutory interpretation required. The Court should give little or no deference to the Department's construction.

While, as the Answer Brief states, §§10553, 10554, and 10600 authorize the Department to issues rules and regulations (AB at 28, 46), these statutes do not give the Department carte blanche. "'Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.'" *Cooper v. Swoap*, 11 Cal.3d 856, 864 (1974) (citation omitted) (invalidating AFDC regulation). *See Webb v. Swoap,* 40 Cal.App.3d 191, 197 (1974) (holding that the Department's predecessor mistakenly relied on §§10553, 10554, and 10600; "[n]one of these sections authorizes the regulations in question.").

The policy counting garnished child support as income is nothing more than a statutory interpretation. "Because an interpretation is an agency's *legal opinion*, however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19

Cal. 4th 1, 11 (1998) (italics in original).

When evaluating an agency's statutory interpretation, courts consider "[1] factors relating to the agency's technical knowledge and expertise, which tend to suggest the agency has a comparative interpretive advantage over a court; and [2] factors relating to the care with which the interpretation was promulgated, which tend to suggest the agency's interpretation is likely to be correct." *Association of California Ins. Companies v. Jones*, 2 Cal.5th 376, 390 (2017). Neither set of factors militates in favor of deferring to the Department in this case.

First, determining whether garnished child support is available to the paying parent's family does not require "technical knowledge" in economics, science, or any area where agencies have a comparative advantage. *Compare Spanish Speaking Citizens' Found., Inc. v. Low*, 85 Cal.App.4th 1179, 1234–355 (2000) (deferring to agency's interpretation of proposition regulating auto insurance rates where agency had technical expertise in complex actuarial issues such as "sequential analysis"); *with Styrene Info. & Research Ctr. v. Office of Envtl. Health Hazard Assessment*, 210 Cal.App.4th 1082, 1100 (2012) (declaring that while the defendant agency "may have an interpretive advantage over the courts in determining whether a particular chemical causes cancer, it does not have such advantage in determining whether the appropriate standard under the statute is one of known cause or possible cause.").

In addition, as discussed in the Opening Brief, the CalWORKs and Family Code child support statutes operate

together for the purpose of securing adequate financial support to all California children. Opening Brief on the Merits (OB) at 18-22. The Department cannot claim expertise in child support law. As the Department itself points out, AB at 48, n. 22, in California judges implement the Family Code through child support orders. *Anna M. v. Jeffrey E.*, 7 Cal.App.5th 439, 446 (2017). And insofar as there is a role for a state administrative agency, that agency is not the defendant here – the Department of Social Services – but rather the Department of Child Support Services, legislatively designated to "administer all services and perform all functions necessary to establish, collect, and distribute child support." Fam. Code §17200.

As for the second set of factors, neither the All-County Letter nor the rulemaking file cited by the Department[2] shows "indications of careful consideration by senior agency officials...." *Yamaha*, 19 Cal.4th at 13. In each instance, the Department simply concluded in two sentences or less that the requirement to disregard a parent's payments to children outside the home as income available to his new family had been replaced with an expanded earned income disregard.

Leave aside for a moment the merits of that conclusion, which we address in §II.C. below. The failure of the Department to provide any meaningful explanation for its conclusion should

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[2] AB at 27-28, citing ACL 97-59 at 3, 1 C.T. 322; Request for Judicial Notice (filed in Court of Appeal), Ex. A at 38 (rulemaking file).

preclude the Court from giving "great weight" to the policy at issue.

The Department did not even attempt to consider, much less carefully consider, how its new policy might harm families that through no fault of their own cannot benefit from the expanded earned income disregard. Nor did the Department consider how the policy might affect the joint, cooperative role of CalWORKs and the family court child support system in supporting *all* of California's poor children.

"Agency interpretation that violates the Legislature's intent is not due deference – even if it was adopted contemporaneously and has been consistently maintained." *Yamaha*, 19 Cal.4th at 13. The policy at issue here does not warrant deference.

II. Child support paid to another family is not income available to the family of the paying parent under the CalWORKs statutes.

The Department repeatedly points out that no CalWORKs statute expressly states that garnished child support should be disregarded in CalWORKs income calculations. *See, e.g.*, AB at 30. But at the same time, while the Department cites no fewer than 52 provisions of the Welfare & Institutions Code, not one of those provisions states that garnished child support should be *counted* as income. The Department has failed to show that it should.

A. The Department's policy thwarts the purposes of both CalWORKs and child support in a manner that could not have been intended by the Legislature.

As previously discussed, the Department's policy conflicts with the shared primary purpose of the inter-related CalWORKs and child support statutory schemes: to provide sufficient support and protection for California children. Child support actually paid to another family does not count as income available to the paying parent under the court-ordered child support provisions found in Family Code §4059(e). The Legislature could not have intended a more punitive result when the family of the paying parent is poor enough to potentially qualify for CalWORKs. OB at 18-22. The Department's contrary arguments are less than persuasive.

First, the Department asserts that excluding Bruce Christensen's child support payments from his family's income would shift his obligation to support his children to the state. Based on this, the Department argues that treating payments to children outside the household as available for the Christensen children's needs advances "the intent of both the child support system and CalWORKs that parents have the responsibility to provide sufficient support for their children..." AB at 49.

The Department is correct that parents have a legal obligation to support their children, as the CalWORKs statutes acknowledge. But the CalWORKs program also recognizes that the state must sometimes step in to help parents meet this

obligation when they lack the means to do so; the program exists because adequately supporting children is ultimately a shared obligation for the benefit of society as a whole.

Seen from this perspective, excluding Bruce Christensen's child support payments from his income would not improperly "subsidize" his child support obligations, as the Department contends. AB at 49. It simply acknowledges that when the same income must support two sets of children, there is only so much to go around. Once Mr. Christensen has met his obligation to support his children outside the home, there is not enough left over to provide sufficient support for the Christensen children. Yes, the state fills the gap through CalWORKs payments, but that is what CalWORKs is supposed to do.

The Department's distinction that child support is not a government benefit, *id.* at 47, misses the point. The two programs are interconnected. OB at 18-19. Enforcing parents' individual obligations to provide for children through the child support system and aiding parents who are financially unable to meet those obligations both serve the state's goal of meeting the needs of all children. Because the Department's policy ignores the interlocking statutory schemes to secure children's financial needs, it is inconsistent with the purposes of both.

Next, the Department contends that Family Code §4059(e) actually supports its position because the Legislature has not added the same express exclusion to the Welfare & Institutions Code. AB at 31. But the chronology of events contradicts this contention. The family law requirement to disregard child

support paid to other families first appeared in 1984. Stats. 1984, ch. 1605, §4, adding [former] Civ. Code § 6721(c)(5)., At that time, the Department's AFDC regulations exempted garnished child support from income calculations. As a result, there was no need for the Legislature to restate what was already the law. Then, when the Legislature later enacted CalWORKs, it added §11157(b), which states that income remains the same as under AFDC unless otherwise specified, and thus there was no further need for an express exclusion.

In short, the Department's policy cannot be reconciled with the primary purpose of both CalWORKs and child support.

B. Treating child support obligations as different from other debt is entirely consistent with legislative intent.

As explained in the Opening Brief, the Court of Appeal was mistaken in concluding that child support cannot be distinguished from any other debt that may lead to garnishment of income. Unlike with other debt, CalWORKs and the child support statutes work together to assure that all children receive sufficient support. Child support takes priority over all other debt, cannot be compromised without both agency and court approval, cannot be discharged in bankruptcy, and never benefits the family of the paying parent. OB at 25-28. For the most part, the Department does not dispute the accuracy of these descriptions.

Instead, the Department states that other garnished debt may also be unavailable to the family of the paying parent and in

some instances may not be for items that have benefitted that family. AB at 41-42. From there, the Department leaps to the conclusion that there is "no principled basis to distinguish child support payments from other wage garnishments for purpose of applying the availability principle." *Id.* at 41.

That there are some similarities between child support obligations and other debt is beside the point. The "principled basis" for treating child support differently is that *the Legislature* has done precisely that in so many ways that it is unreasonable to infer legislative intent to require identical treatment in this context.

Indeed, for 30 years, *the Department* and its predecessors, without express legislative direction, specified that garnished child support could not be counted as income available to the families of paying parents.[3] Presumably, the Department had a "principled basis" for its former regulations, which did not make similar allowances for other garnished debts. The Department's concern for supposed lack of a limiting principle comes 30 years too late and does not justify its current policy.

Nor do inapposite federal opinions support the Department. As previously discussed, *Heckler v. Turner,* 470 U.S. 184 (1985), is distinguishable. OB at 27-28. Child support *is* less available to the paying family than the payroll deductions involved in

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[3] [Former] MPP §44-113.241, effective July 1, 1968; [Former] MPP §44-113.9, repealed effective July 1, 1998. *Christensen v. Lightbourne,* 15 Cal.App.5th 1239, 1248 (2017), *review granted,* Jan. 10, 2018.

Heckler; and, unlike those deductions, is part of an interlinked system to assure the all California children are sufficiently supported. *Heckler* can hardly be read as commanding the treatment of garnished child support as income, given that for more than a decade after that decision the Department continued to treat that support as unavailable to the paying family.

It is true that other federal cases the Department cites do treat garnished child support as available for purposes of different federal programs. AB at 38-40. *But see Dep't of Health Servs. of State of Cal. v. Sec'y of Health & Human Servs.*, 823 F.2d 323 (9th Cir. 1987) (permitting California Department of Health Services to disregard as income for Medicaid purposes money paid for child support and alimony).

None of the cited cases concerns programs and policies comparable to those involved here. For example, in *Peura By & Through Herman v. Mala*, 977 F.2d 484 (9th Cir. 1992), the challenged state policy, unlike the Department's policy, took "into account only a portion of the funds [the plaintiff] must spend on child support in calculating the extent of [the plaintff's] Medicaid benefits." *Id.* at 489. More importantly, the court ruled in favor of the state in part because "[m]issing here is any indication that the entire amount of [the plaintiff's] court-ordered obligation was earmarked to advance an identified congressional purpose." *Id.* at 490. By contrast, all the money taken from the Christensens *was* earmarked to serve the state legislative purpose to assure that every California child receives adequate support.

As the Department points out, some of the federal opinions

state that a person is benefitted by the payment of his or her obligations. AB at 37-38. But in each of these cases, the government assistance reduced by the withheld or garnished amount would have gone solely to the individual plaintiff, not to his or her family. *Peura*, 977 F.2d at 484 (institutionalized Medicaid recipient); *Emerson v. Steffen*, 959 F.2d 119, 121 (8th Cir. 1992) (plaintiff class of "medically needy" individual Medicaid recipients rather than "categorically needy" families); *Cervantez v. Sullivan*, 963 F.2d 229 (9th Cir. 1992) (recipients of Supplemental Security Income, an individual benefit program); *Martin v. Sullivan*, 932 F.2d 1273 (9th Cir. 1990) (same). By contrast, whatever benefit Bruce Christensen himself derives from payment of his child support obligations, the children in the Christensen family do not share in that benefit at all.

It is no answer for the Department to state that CalWORKs provides aid to adults as well as children. AB at 37-38. While a child not living with an eligible adult may receive aid,[4] it is impossible for an adult not living with a needy child to qualify. CalWORKs is for the benefit of children, and the children in the Christensen family do not benefit from the money garnished to support children in another family.

Beyond these distinctions, as this Court has stated, even "United States Supreme Court interpretation of federal statutes does not bind us to similarly interpret similar state statutes." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 568 (2004).

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[4] *See* §11450 (table) (listing Maximum Aid Payment to a family of one).

The same is true for any of the federal cases cited by the Department, particularly in light of California statutes requiring an expansive interpretation of beneficiary rights to public benefits. *See* OB at 27. These opinions are therefore inapposite.

Even more inapplicable is the federal income tax law relied on by the Department. AB at 34-35. The purpose of the Internal Revenue Code is to raise money for the federal government, not to assist needy children.

Child support obligations are fundamentally different from other debt, and the Legislature has repeatedly reaffirmed its intent that they be treated differently. The Department's policy, which conflicts with that intent, is invalid.[5]

C. The increased earned income disregard, which does not assist persons with unearned income and provides less assistance to those with disability-based income, was not intended to permit counting garnished child support as income to the paying family.

When the Department eliminated the child support disregard in 1997, its sole rationale for doing so was that the disregard had been replaced with an expanded earned income

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[5] The Department suggests that its policy is necessary to guarantee that Bruce Christensen's garnished child support payments are treated the same as if he were paying child support "voluntarily." AB at 40, n. 19. This argument is a red herring. There is nothing in the record to indicate that Mr. Christensen's payments were anything but voluntary. Family Code §5230 requires a court to include in any child support an "earnings assignment order" regardless of the motivation of the non-custodial parent.

disregard. *See* footnote 2 above. Twenty years later, the Department has attempted to explain that conclusory statement, but without great success.

To begin with, as the Department acknowledges, the AFDC statutes already provided for work incentives by disregarding $30 plus one third of a recipient's income; and implementing both a $90 work expense disregard and a disregard of up to $175 for child-care costs. AB at 43. *See also Sneed v. Saenz*, 120 Cal. App. 4th 1220, 1230 (2004) (describing an additional provision – authorized by a federal waiver effective from 1991 to 1997 – which permitted employed recipients to keep the difference between the Maximum Aid Payment and the higher legislatively-prescribed standard of need). While for most employed recipients the new provision, which exempts up to $225 plus one half of all earned income (§11451.5), was an improvement,[6] it was a difference in degree, not kind.

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[6] While the current earned income disregard is more generous than the one existing under AFDC, even the families of employed parents subjected to the Department's policy often end up with less money. Under the current policy, the County counted $188 of Mr. Christensen's $600 gross monthly earnings. AR 15. However, under the prior AFDC rule, only $135 of his earnings would have counted as available income. (The $600 gross monthly income was calculated using his $277 bi-weekly check and multiplying by 2.167. (*See* AR 15.) However, if the $128 in garnished child support (AR 20) was deducted under the old rule ([former] MPP §44-113.9 (1 CT 189)], the $600 would be reduced to $323. $277 - $128= 149; $149 x 2.167 = $323. Applying the additional $90 and $30 + 1/3 additional earned income disregards allowed under former MPP §§44-113.214 and .215 (CT 181) would leave only $135 as countable income. ($323 - ($90+$30) = $203 – ($203/3) = $135.))

Though the Department is correct that §11451.5 simplifies calculations by consolidating earned income disregards, AB at 44, the former requirement exempting garnished child support paid outside the home was ***not*** an earned income disregard. The child support disregard applied equally to unearned income and disability-based income, as does the current policy of pretending that garnished child support is available to the family of the paying parent.

Under the Department's current policy, the family of a person who is laid off from his or her job and receiving unemployment insurance benefits, while at the same time required to pay child support from that unemployment check, is far *worse* off than it would have been under AFDC. *See* AB at 30 (unemployment insurance is unearned income). The full unemployment insurance amount is deducted from the family's CalWORKs grant without any reciprocal benefit.

And contrary to the Department's description, AB at 17, §11451.5 does not treat disability-based income as favorably as earned income. Section 11451.5 exempts $225 of disability-based income, but the additional 50% disregard applies only to earned income. §11451.5(a)(2)(B). Thus, the family of a person unable to work whose disability check is garnished to pay child support to another family is also disadvantaged.

The Court should reject the Department's rationale that punishing the families of unemployed and disabled people in this way is an additional work incentive intended by the Legislature. AB at 45. Low-income parents do not need a huge benefits cut to make them want to keep their jobs or find new ones. They already have substantial economic and legal incentives. Workers may not receive unemployment benefits when they voluntarily quit their jobs; and persons receiving such benefits are required to search for new employment. Unemp. Ins. Code §§1256, 1253. And as the Ninth Circuit has pointed out, "the idea of imposing a work-incentive benefits cut on individuals whose disabilities preclude work can only be called absurd." *Beno v. Shalala*, 30 F.3d 1057, 1073 (9th Cir. 1994) (invalidating federal approval of a statewide AFDC cut as a work incentive experiment). Punishing the families of unemployed and disabled parents required to pay child support outside the home cannot be justified under the guise of simplification or work incentive.

The legislative history behind the increased income disregard does not support the Department's policy. The Senate Health and Human Services Committee analysis of AB 1542 states that the $225 plus one half formula replaced "a complex calculation," i.e., the $30 plus one third plus $90. The committee analysis did *not* state that the new earned income disregard

would also replace the child support disregard.[7]

The Department's admission that "the increased earned-income disregard provides an imperfect substitute for the child support disregard" (AB at 44) does not go far enough. The revised earned income disregard is not a substitute at all.

D. The CalWORKS statutory scheme does not support the Department's policy change, particularly in light of §11157's requirement that income be treated the same as in the AFDC program.

The Department's argument that the Legislature abolished the child support disregard begins with the mistaken premise that CalWORKs so completely superseded AFDC that previous AFDC rules and practices can be ignored. AB at 45. To the contrary, while CalWORKs made substantial changes, much of AFDC has remained intact. "Like the former AFDC program, CalWORKs provides cash grants to families with minor children who meet certain requirements, including limited income and resources, and are deprived of the support of one or both parents due to factors such as absence, disability or unemployment."

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[7] Sen. Com. on Health and Human Services, Analysis of Assem. Bill No. 1542 (1997–1998 Reg. Sess.) as amended Aug. 4, 1997 (Aug. 28, 1997), "Earned/Unearned Income Disregards," *available at* http://www.leginfo.ca.gov/cgibin/postquery?bill_number=ab_1542&sess=9798&house=B&author=ducheny; and http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_1501-1550/ab_1542_cfa_19970828_143509_sen_comm.html. (Each last checked Aug. 5, 2018.)

Sneed v. Saenz, 120 Cal.App.4th at 1231.

With one exception not relevant here, *id.* at 1232, the basic structure for determining income eligibility and grant amounts did not change. The "MAP [Maximum Aid Payment] language in section 11450, subdivision (a) remained the same. As in the 1994 version, the MAP is used in the current cash aid calculation method, setting forth the maximum cash aid payment a family assistance unit can receive." *Sneed,* 120 Cal. App. 4th at 1232.

Most importantly, §11157(b) provides that "[e]xcept as otherwise provided in this part," for purposes of the CalWORKs statutes, "'income' shall be deemed to be the same as applied under the Aid to Families with Dependent Children program on August 21, 1996 . . . ."

The Department, in a cursory footnote, dismisses §11157(b) as only applying to gross income. AB at 45, n.21. But elsewhere the Department states that any income, earned or unearned, *already* counts as gross income under the CalWORKs statutes. *See, e.g.,* AB at 29. Thus, under the Department's interpretation, §11157(b) is superfluous. A "statute should not be given a construction that results in rendering one of its provisions nugatory." *People v. Craft*, 41 Cal.3d 554, 560 (1986).

The most reasonable reading of §11157(b) is that it commands the Department, when determining income eligibility and grant amounts, to look first for a specific CalWORKs provision that addresses the matter; and, if none is available, to follow AFDC's rules for counting, exempting, or disregarding income.

Thus, contrary to the Department's argument, AB at 30-31, the existence of express statutory exemptions and disregards does not compel a conclusion that the child support disregard was statutorily repealed. Section 11157(b) provides otherwise.

Indeed, the Department's own actions show that the express statutory provisions it cites do not comprise the universe of disregards and exemptions. Department regulations provide for a number of income exemptions that are not expressly required by statute. *See, e.g.*, MPP §§44-111.45 (exempting a variety of in-kind income); 44-113.1 (deducting certain business expenses from gross income); 44-113.7 (deducting funeral, cremation and burial expenses from death benefits).

In short, particularly in light of §11157(b), the CalWORKs statutory scheme does not justify counting garnished child support as available to the family of the paying parent.

E. Subsequent legislative history, never a good indicator of original legislative intent, is particularly irrelevant in this case, where there is no indication that a proposal to recognize the child support disregard was ever considered by the entire Legislature.

The Department's argument that the Legislature "ratified" the policy at issue is mistaken. AB at 46-47. First, the Department contends that the Legislature acquiesced to the elimination of the child support disregard when it failed to overturn the Department's policy when subsequently amending the CalWORKs statute. But an "erroneous administrative construction does not govern the interpretation of a statute, even

though the statute is subsequently reenacted without change.'" *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, 43 Cal.3d 1379, 1396 (1987) (citation omitted).

The Department chiefly relies on the Legislature's 1999 failure to enact an amendment to Assembly Bill 1233 that would have expressly recognized the child support disregard. AB at 46-47. But as this Court has repeatedly stated, "[u]npassed bills, as evidences of legislative intent, have little value." *Arnett v. Dal Cielo,* 14 Cal.4th 4, 29 (1996) (citations and internal quotation marks omitted). That is because in "most cases there are a number of possible reasons why the Legislature might have failed to enact a proposed provision." *Id.* at 28. The Legislature might "have been motivated . . .by considerations unrelated to the merits, not the least of which is that it might have believed the provision unnecessary because the law already so provided . . ." *Id. Accord, Eastburn v. Reg'l Fire Prot. Auth.*, 31 Cal.4th 1175, 1184 (2003) (the "failure of the Legislature to adopt proposed amendments . . . could merely reflect a determination that such amendments were unnecessary because the law already so provided.").

The inference that can be drawn from unpassed amendments becomes even weaker when the Legislature never votes on the proposed amendment. When "a provision is dropped from a bill during the enactment process, the cause may not even be a *legislative* decision at all; it may simply be that its proponents decided to withdraw the provision on tactical grounds." *Arnett v. Dal Cielo,* 14 Cal.4th at 28 (italics in

original). *See also Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal.3d 287, 300 (1988) ("We decline to hold that failure of the bill to reach the Assembly floor is determinative of the intent of the Assembly as a whole that the proposed legislation should fail.")

Such is the case here. The child support disregard amendment was deleted from AB 1233 along with numerous other provisions in May 1999 while the bill was in the Assembly Appropriations Committee. The first floor vote did not occur until nearly eight months later.[8] *Compare Cooper v. Swoap,* 11 Cal.3d at 864 [cited in AB at 46-47], relying in part on the defeat of an amendment expressly rejected on the Senate floor. Accordingly, the Department is wrong in contending that removal of the child support disregard was an express rejection of that amendment by the Legislature. It was not, and therefore neither was it a legislative ratification of the Department's policy.

F. California case law prohibits treatment of phantom funds such as garnished child support as available to the family that never receives those funds.

California case law prohibits the Department from treating phantom income such as garnished child support as available to

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[8] 2 CT 408, 420 (showing deletion as of June 1999); California Legislative Information, AB-1233 CalWORKs program (1999-2000) (history of votes on AB 1233 showing vote in Assembly Appropriations Committee May 26, 1999). (*Available at* http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=199920000AB1233.) [Last checked Aug. 5, 2018.] The first floor vote took place on January 20, 2000. *Id.*

the paying parent's family, which cannot use any of that money to meet its subsistence needs. OB at 23-25, citing, *inter alia, Cooper v. Swoap*, 11 Cal.3d 856 (children's AFDC grant could not be reduced by attributing value of housing allowance provided to adult caretaker under ATD, a former adult aid program); and *Waits v. Swoap*, 11 Cal.3d 887 (AFDC grant improperly reduced by attributing value of housing provided by non-needy relative).

Attempting to distinguish these cases, the Department argues that because Bruce Christensen actually receives wages and unemployment insurance benefits, "[t]here is nothing 'theoretical' or 'fictional' about those sources of income." AB at 37. The fiction, however, lies not in whether the money is real, but whether it is really available to the needy children at the heart of this case. Thus, in *Cooper*, the ATD grant was not fictional, but because "the ATD housing grant was limited to the recipient's pro rata share, there were never any 'excess' benefits which could properly be considered as paying for part of the AFDC recipient's housing costs." 11 Cal.3d at 871. The money garnished from Mr. Christensen's paycheck and unemployment is real enough, but it will never be available to meet the day-to-day needs of Ms. Christensen's children and cannot properly be considered as income to the Christensen family.

Significantly, the Department fails to cite a single California appellate opinion permitting the government to deny public assistance to children by attributing income to them that is not actually available to meet their needs. The principle of actual availability is an important part of California public

assistance jurisprudence because it is essential to support the overriding statutory purposes and policies of public benefit programs. §§10000 ("It is the legislative intent that aid shall be administered promptly and humanely, with due regard for the preservation of family life . . . ."); 11000 ("the provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program.") Under such circumstances, "'it is obvious that only the plainest declaration of legislative intent'" should be construed as an effort by the Legislature to undermine this principle. *Jameson v. Desta*, 5 Cal.5th 594, 420 P.3d 746, 758–59 (2018) (in light of judicial policy of preserving equal access to the courts, ambiguous statute and rule of court should not be construed to authorize local rule refusing to provide court reporters to indigent litigants). (Citation omitted.)

The Department has failed to show any such "plainest declaration of legislative intent." To the contrary, as Ms. Christensen has demonstrated, the Department's policy thwarts the Legislature's intent to assure that all California children are sufficiently supported. The policy is invalid.

III. The Department's policy violates Section 11005.5 by counting the same funds as available to two different families.

Section 11005.5 provides in relevant part that aid "to a recipient or recipient group and *the income or resources* of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other

recipient or recipient group." (Emphasis added.) Under the Department's policy, when money is garnished from a parent's paycheck to pay child support to another family receiving CalWORKs, this income is "considered" twice: as available to the family receiving child support and to the family of the parent paying that support. This violates §11005.5. OB at 29-36.

A. Section 11005.5 applies when, as in this case, the same funds are considered as income to two different families.

The Department's primary argument rests on semantics. According to this argument, §11005.5 does not apply because the Department is merely counting the paying parent's wages as income to him, and then his child support payment as income to the custodial family. AB at 50, 51.

But calling the same pot of money different names cannot disguise the fact that it's the exact same pot of money. It's as if the government is waiving a check at the children in one family (the custodial or receiving family), informing them that once they receive that check it will reduce their aid. At the same time, the government is waiving that very check at the children in another family (the paying family), while telling them: "See this check? You can't have it, but we will pretend you can, and it will cost you." Section 11005.5 prohibits such double counting.

B. Declaratory relief is appropriate because the Department's policy permits and encourages double counting when the receiving family is one of the thousands directly receiving child support and CalWORKs.

The Department contends that its policy cannot cause double counting because in most cases child support owed to a CalWORKs family is assigned and paid to the government. AB at 55-61. But as both sides agree, assignment does not occur in "safety net" cases where only the child is receiving aid because the adults have received aid for the maximum amount of time. Nor is there an assignment when child support arrears accumulate during a time that a family is not receiving CalWORKs. OB at 14, 31; AB at 57.

While the Department describes these exceptions as "narrow," AB at 26, it does not dispute that as of 2014 there were more than 80,000 safety net families alone. OB at 31.

When a safety net family receives a child support payment, that payment counts as income and, except for the first $50, is subtracted dollar for dollar from the CalWORKs grant. MPP §44-411.472 (1 CT 120). Thus, the same income is considered for both paying and receiving families in violation of §11005.5.

The Department claims that this could not apply in 2010 to the family which received Bruce Christensen's child support, as the law which exempted safety net families from assignment was not enacted until 2014. AB at 57-58. But the trial court awarded declaratory relief as well as administrative mandamus. 2 CT 617-19. Declaratory relief "operates prospectively, and not

merely for the redress of past wrongs." *Babb v. Superior Court*, 3 Cal.3d 841, 848 (1971). "'When resolution of the uncertainty at issue ... operates only with respect to the future rights and duties of the parties, we apply the law in effect at the time of review because that is the law under which the judicial declaration will have effect.'" *City of Grass Valley v. Cohen*, 17 Cal.App.5th 567, 580 (2017) (citation omitted).

As discussed in the opening brief, the family receiving Mr. Christensen's child support payments could easily become a safety net family. The parent in a CalWORKs family loses her benefits after she has been receiving aid for 48 months, after which child support goes directly to the "safety net" child and is not assigned. And in both declaratory relief cases and cases where ripeness is an issue, California law favors resolving issues like this of great public interest. OB at 33-35.

The Department does not deny either the possibility of a family becoming a safety net family or the public interest nature of this case. Instead, the Department cites two land use cases: *Pacific Legal Foundation v. California Coastal Com.*, 33 Cal.3d 158 (1982); and *Selby Realty Co. v. City of Buenaventura*, 10 Cal.3d 110 (1973). Neither is helpful to the Department.

In *Pacific Legal Foundation*, 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." 33 Cal.3d at 172.

In *Selby*, the Court rejected as not yet ripe a company's attack on a city's general plan which proposed streets that would run through the company's property. "The plan is by its very nature merely tentative and subject to change. Whether eventually any part of plaintiff's land will be taken for a street depends upon unpredictable future events." 10 Cal.3d at 118.

This matter presents no such barriers to resolving the merits. The Department's policy is the same in every case. And unlike with variable development projects, 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.

Hunt v. Superior Court, 21 Cal.4th 984 (1999), is instructive. *Hunt* concerned challenges to three versions of Sacramento County's indigent health care income eligibility standards: one which the County enacted and sought to implement; one which the County enacted but had not yet sought to implement; and one which would only go into effect if there were a final judgment invalidating the first two. *Id.* at 995-96. Despite the strong possibility that either of the latter two standards might never be implemented, the Court addressed their merits, reasoning that "the ripeness requirement does not prevent us from resolving a concrete dispute if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer

to a particular legal question." *Id.* at 998.

This case too presents a concrete dispute over the validity of the Department's policy that authorizes and permits double counting of benefits in many cases. This Court has never analyzed §11005.5, and the only appellate opinion to do so in any depth was *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. The Court should hold that the Department's policy violates §11005.5 insofar as it permits and authorizes counting child support as income both to the family of the paying parent and those families which directly receive the same support payment.

Finally, even when child support is assigned to the government, §11005.5 applies. OB at 34-35. The Department notes that when the child support payment is large enough in a particular month, that month is "unticked" from the parent's 48-month limit in receiving CalWORKs. AB at 56. But even in those months, the State is effectively substituting the child support payment for the CalWORKs the family would normally receive. The same income is still being "considered" (§11005.5) for both the family of the paying parent and the family of the custodial parent.

Whether collected child support is paid directly to the receiving CalWORKs family or repaid to the government, the *same* income of the receiving and paying families is considered in determining the paying family's eligibility for CalWORKs. The Department's policy violates §11005.5.

Conclusion

For the foregoing reasons and for the reasons stated in the Opening Brief, the judgment of the Court of Appeal should be reversed.

Dated: August 8, 2018

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

By: _____
RICHARD A. ROTHSCHILD

CERTIFICATE OF COMPLIANCE

I certify that the this Reply Brief on the Merits uses a 13 point Century Schoolbook font and contains 6,599 words.

Dated: August 8, 2018

WESTERN CENTER ON LAW & POVERTY
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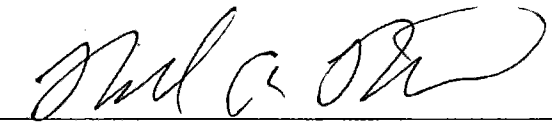
By: 
RICHARD A. ROTHSCHILD

PROOF OF SERVICE

Christensen v. Lightbourne et al,
Appeal No. A144254
Superior Court No. CPF-12-512070
California Supreme Court No. S245395

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 August 8, 2018 I served the following document described as:
REPLY BRIEF ON THE MERITS
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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[X] By Electronic Mail – I caused such document to be electronically transmitted to the offices of the addressee(s) listed above, using the above e-mail address, prior to 5:00 p.m. on the date specified above.

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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 2018 at Los Angeles, California.

Amanda Smith