No. S245395

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED
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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.

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

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

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APPLICATION OF THE ALLIANCE FOR CHILDREN'S RIGHTS TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF AND RESPONDENT; PROPOSED BRIEF AMICUS CURIAE

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APPLICATION TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

Pursuant to Rule 8.520(f), the Alliance for Children's Rights respectfully requests leave to file the attached brief amicus curiae in support of petitioner in the above-captioned case.

The Alliance for Children's Rights is a nonprofit 501(c)(3) organization that protects the rights of impoverished, abused and neglected children and youth in Los Angeles County. By providing free legal services and advocacy, the Alliance for Children's Rights ensures that foster children and youth have safe, stable homes, healthcare and the education they need to thrive.

This case is about whether one set of children can be penalized because their father is paying child support for another set of children. The Department of Social Services says that is how the law should work. The Alliance for Children's Rights offers this brief amicus curiae to demonstrate how the Department's position contradicts state and federal social welfare policy focused on meeting children's needs and how that policy is supported by social science research regarding the importance of the family unit to children's well-being. The proposed brief will assist the Court by providing a deeper discussion of the history and purpose behind welfare programs for children and the social science literature regarding the importance of those programs to children's overall well-being.

No party or party's counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. Other than the amici curiae, their members, or

their counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of the brief.

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PROPOSED BRIEF AMICUS CURIAE

INTRODUCTION

Like many others facing similar circumstances, Bruce and Angie Christensen faced a cruel and untenable choice: either break up their family or risk depriving their children of adequate food, clothing, and shelter.

This Hobbesian choice is the direct result of a Department of Social Services policy that penalized the children in their home for the child support that Bruce Christensen paid to children outside the home. If Bruce's child support payments were not counted as part of the family income, his children from his marriage to Angie would be eligible for CalWORKs. But because one set of children received help from their father, another set either had to go without the means of meeting their basic needs or go without their father. No parents should ever have to make such a choice.

Forcing such a choice on the Christensens and others like them squarely contradicts both state policy and undisputed research about the importance of the family unit in raising healthy, resilient children. Whereas California's child welfare system has evolved in recent years to be child-centered and supportive of families to promote family stability, the Department's policy contravenes these values. Rather than promoting family stability, the policy encourages or even requires the dissolution of the family unit, contrary to the best interests of the children in the home.

The Alliance for Children's Rights respectfully submits this brief amicus curiae to provide the Court additional context about the importance of maintaining strong family units by centering benefits on the needs of the child and to demonstrate how the Department's policy not only

undermines but also affirmatively thwarts these fundamental legislative and societal goals.

ARGUMENT

I.

THE DEPARTMENT OF SOCIAL SERVICES RULE CONTRAVENES ESTABLISHED STATE AND NATIONAL LAW AND POLICY PROMOTING MAINTENANCE OF THE FAMILY UNIT AND TAILORING BENEFITS TO THE CHILD'S NEEDS

A. Preservation of the Family Unit Is of Utmost Importance and Requires That Government Intrusion Be Limited

There can be no doubt that the policy of the State of California is to promote and protect the family unit. Section 11205 of the California Welfare and Institutions Code "declares that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives . . . . Each family has the right and responsibility to provide sufficient support and protection of its children, to raise them according to its values and to provide every opportunity for educational and social progress."

California's goal of preserving the integrity of the family is evident from child welfare law and policy, which is concerned first and foremost with promoting a child's best interest. The benchmark standard in child welfare law that a state must meet before interfering in family unity and integrity is to show that such interference is necessary to protect the best interest of the child. *See* 42 U.S.C. § 671(a)(15)(A) (states must institute a plan in which "the child's health and safety shall be the paramount concern"); *id.* § 671(a)(22); Cal. Welf. & Inst. Code § 202(a) (the "purpose" of the California Welfare and Institutions Code "is to

provide for the protection and safety of . . . each minor . . . and to preserve and strengthen the minor's family ties whenever possible").

This typically requires preservation of the family unit wherever possible. Cal. Welf. & Inst. Code § 16000 ("[i]t is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public."); *id.* § 16501.2 ("The Legislature finds and declares . . . [s]afety, stability, and the permanence of families in the child welfare system are of paramount importance."); *In re Elizabeth R.*, 35 Cal. App. 4th 1774, 1787 (1995) ("[F]amily preservation . . . is the first priority when child dependency proceedings are commenced." (citation omitted)); *see also* 42 U.S.C. § 671(a)(15)(B) ("[R]easonable efforts shall be made to preserve and reunify families . . . prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home . . . .").

These goals of continuity of family relationships and preserving the permanency and stability of children's living relationships are by no means new. In 1974, this Court wrote that the purpose of the program known as Aid to Families and Dependent Children, CalWORKs' predecessor, was "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).

More recently, the State emphasized the importance of the family unit with the passage of the Child Welfare System Improvement and Accountability Act of 2001. Known as AB 636, the legislation set the stage

for developing an outcome-based accountability system for child welfare services. In its first report following passage of AB 636, the Department of Social Services identified the following goals of the new legislation:

> SAFETY GOALS
> • Children are, first and foremost, protected from abuse and neglect.
> • Children are maintained safely in their homes whenever possible and appropriate.
>
> PERMANENCY GOALS
> • Continuity of family relationships and connections is preserved for children, as appropriate.
> • Children have permanency and stability in their living situations without increasing reentry to foster care.
>
> WELL-BEING GOALS
> • Families have enhanced capacity to provide for their children's needs.
> • Children receive appropriate services to meet their educational needs.
> • Children receive adequate services to meet their physical and mental health needs.
> • Youth emancipating from foster care are prepared to transition to adulthood.[1]

Thus, because the child welfare system is premised on the sanctity of the family unit, the Department must ensure that the system treads lightly on the private lives of families unless departmental involvement is necessary. Federal and state law recognize that government intrusion into a family is appropriate only if a child has been, or is at risk of

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[1] *Planning for Success, An Analysis of California Counties' Child Welfare Services System Improvement Plans, First Full Year of Implementation Under AB 636*, CAL. DEPT. OF SOCIAL SERVICES at 3-4, http://www.cfpic.org/sites/default/files/SIP_ImpApp_A_0.pdf.

being, abused, neglected or abandoned. *See* 42 U.S.C. § 672(a)(2); Cal. Welf. & Inst. Code § 300. There are safeguards in place to preclude removal of a child and, by extension, separation of the family even if government intrusion is warranted. *See, e.g.*, 42 U.S.C. § 671(a)(15)(B); Cal. Welf. & Inst. Code § 305. Moreover, this Court has recognized that:

> [t]he concept of personal liberties and fundamental human rights entitled to protection against overbroad intrusion or regulation by government . . . extends to . . . [citations] such basic liberties and rights not explicitly listed in the Constitution [as] the right 'to marry, establish a home and bring up children' [citation]; the right to educate one's children as one chooses [citation]; . . . and the right to privacy and to be let alone by the government in 'the private realm of family life.' [Citations.]"
>
> *Williams v. Garcetti*, 5 Cal. 4th 561, 577 (1993) (citing *City of Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 266-67 (1970)).[2]

Here, although the Department did not remove the Christensens' children from their care, the Department's policy is to withhold critical supports unless the family dissolves. The Department does not dispute that Bruce Christensen's current family sees no part of his child support payments. It also does not dispute that if those funds were not counted as income to the family, the Christensen children would be eligible for CalWORKs. However, if Bruce and Angie were to divorce and

[2] *Accord Arce v. Childrens Hosp. Los Angeles*, 211 Cal. App. 4th 1455, 1473 (2012) ("Parents and children have a well-elaborated constitutional right to live together without governmental interference." (Citation omitted.)

Bruce were to leave the household, his income then would not count toward eligibility for the children. His children would benefit from the additional support of CalWORKs, but they could no longer live with their father.

In this way, the Department's policy is promoting the breakup of the Christensens' family and others like them. This cannot be what the Legislature intended when it increased the earned-income disregard for CalWORKs, as the Department claims. Requiring parents to choose between feeding their children and living together as a family simply cannot be part of a system designed to protect an institution that the Legislature declared is "of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives . . .." Cal. Welf. & Inst. Code § 11205.

B. California's Child Welfare Policy Is Child-Centered and Requires that Government Benefits and Services Be Tailored to the Child's Needs

In 2012, the Department of Social Services launched a massive new effort to reform the child welfare system that reflects the goal of promoting family stability, known as the Continuum of Care Reform ("CCR"). The ultimate goal of CCR is "*maintaining the family*, or when this is not possible, transitioning the child or youth to a permanent family or preparing the child or youth for a successful transition into adulthood." Cal. Welf. & Inst. Code § 16000(b) (emphasis added). The Legislature has unequivocally stated its intent "that all children live with a committed, permanent, and nurturing family" and that "[s]ervices and supports should be tailored to meet the needs of the individual child and family being

served . . . ." *Id.*[3] Put simply, promoting permanent family relationships is the linchpin of CCR and the keystone for California child welfare policy.

Another key tenet underlying CCR, and California's approach to child welfare, is that policies and practices should be child-centered. *See* Cal. Welf. & Inst. Code § 16519.5(a) (stating that the resource family approval process shall be child-centered). To accomplish that goal, agencies serving children and youth are expected to tailor services and benefits based on the specific needs of children and their families. For example, when child welfare agencies conduct assessments and service planning, the agencies should consider the particular needs of the children and families they are serving.[4] *See also* 2015 Cal. Stats. Ch. 773, § 1(c)(1) (in the context of foster care, outcomes for children "will be improved by assessing the individual needs of each child and youth . . . in order to identify and secure the most appropriate services and placement setting to meet those individualized needs").

California child welfare policy recognizes that a top-down, one-size-fits-all approach is not an appropriate way to serve children and families; rather, the child and family's specific needs and strengths must drive the provision of services and benefits. "Family-driven and youth-guided practices recognize that no one knows more about the family's story

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[3] *See also The California Integrated Core Practice Model for Children, Youth, and Families*, CAL. DEPT. OF SOCIAL SERVICES & CAL. DEPT. OF HEALTH CARE SERVICES at 5, http://www.cdss.ca.gov/Portals/9/CCR/FINAL%20Integrated%20Core%20Practice%20Model.pdf?ver=2018-05-22-085704-833.

[4] *See id.*

and their specific needs than the family members themselves."[5] By contrast, the Department's policy in this case is utterly disconnected from the needs of the Christensen children or others like them, and unilaterally deprives them of vital support without regard for their circumstances.

More than 60 years ago, this Court made clear that policies that so clearly contradict the objectives of our welfare laws "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." *Morris v. Williams*, 67 Cal. 2d 733, 737 (1967). Courts, which have "'final responsibility for the interpretation of the law,'" must strike them down. *Id.* at 748. That is what should happen here.

II.

THE DEPARTMENT OF SOCIAL SERVICES POLICY CONTRAVENES THE FINDINGS OF SOCIAL SCIENCE RESEARCH REGARDING CHILDHOOD WELL-BEING

The policies behind our child welfare laws are more than aspirational. They are grounded in solid social science research, and they are based in a common consensus about what children need in order to grow and thrive. Thus, two of the few things upon which researchers and policymakers all agree is that poverty harms children's well-being and family units should be maintained whenever possible.[6]

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[5] *See The California Integrated Core Practice Model for Children, Youth, and Families*, *supra*, at 10.

[6] As used here, the term "family unit" includes all forms of families, whether or not the parents are married or cohabiting and regardless of gender.

It stands to reason, then, that a policy that undermines the family unit by making it more difficult for the family to remain together or by increasing poverty is not good for children, particularly if it is part of a state program designed to help them. That conclusion is borne out by social science research both past and current, which cannot be reconciled with the Department's policy of allowing child support paid for one set of children to render other children ineligible for basic state aid.

A. Safety Net Programs Are Already Insufficient to Meet the Needs of Our Poorest Children

Research demonstrates the importance of safety net programs like CalWORKs to children's well-being.[7] A 2016 paper by Anna Aizer, Shari Eli, Joseph Ferrie, and Adriana Lleras-Muney of the National Bureau of Economic Research studied the long-run impact of cash transfers to poor families on children's longevity, educational attainment, nutritional status, and income in adulthood more than 100 years ago.[8] To do so, they collected administrative records of applicants to the Mothers' Pension program – the first government-sponsored welfare program in the United States (1911-1935) – and matched them to census, World War II, and death records. The results compared the male children of accepted applicants with those of rejected mothers. The research showed that the children of

[7] For a brief history of modern welfare programs in this country, see Robert A. Moffitt, *The Deserving Poor, the Family, and the U.S Welfare System, Demography* (2015) at 729-49, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4487675/.

[8] Anna Aizer, *et al.*, *The Long-Run Impact of Cash Transfers to Poor Families*, AMERICAN ECON. REV. 106, No. 4 (2016) at 935-71, http://www.nber.org/papers/w20103.pdf.

the accepted mothers typically lived one year longer, received one-third more years of schooling, were less likely to be underweight, and had higher income in adulthood than children of rejected mothers.

The arc of this long history, however, is trending away from help for our poorest children. This year, a 2018 Brookings Institution study found that "virtually all gains in spending on the social safety net for children since 1990 have gone to families with earnings, and to families with income above the poverty line."[9] Strict work requirements and lifetime time limits on cash assistance, imposed in a 1996 federal welfare reform, reduced benefits to the poorest families. *Id.* at 5-6. Congress also replaced much of the money that formally went for AFDC with a refundable tax credit for working families that does little to help families where the adults are disabled or unable to find work.[10] Today, the research shows, "only 2.4 percent of safety-net spending goes to TANF [Temporary Assistance for Needy Families], and the program's reach is low – only

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[9] Hilary W. Hoynes & Diane Whitmore Schanzenbach, *Safety Net Investments in Children*, BROOKINGS PAPERS ON ECON. ACTIVITY (2018) at 1, https://www.brookings.edu/bpea-articles/safety-net-investments-in-children/.

[10] *Id.* at 5. The Internal Revenue Service describes the Earned Income Tax Credit as follows: "The Earned Income Tax Credit, EITC or EIC, is a benefit for working people with low to moderate income. To qualify, you must meet certain requirements and file a tax return, even if you do not owe any tax or are not required to file. EITC reduces the amount of tax you owe and may give you a refund." *Earned Income Tax Credit (EITC)*, IRS (2018), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit.

23 percent of children in poor families received TANF cash assistance in 2016 compared to 76 percent in 1996."[11]

After a review of the literature quantifying the benefits of providing a social safety net for children to health and productivity in adulthood, the study found that "access to safety net programs during childhood improves outcomes for children and society over the long run"[12] and that the "evidence suggests that the recent changes to the social safety net may have lasting negative impacts on the poorest children." Hoynes & Schanzenbach, *supra*, at 1.

California is trying to do something about this alarming trend. Last year, the Legislature passed Welfare and Institutions Code section 11450.022, which states that it is the intent of the Legislature "to increase CalWORKs maximum aid payment levels in the 2018-19, 2019-20, and 2020-21 fiscal years, or until the maximum aid payment levels reach 50 percent of the federal poverty level for the family size that is one greater than the assistance unit." Welf. & Inst. Code § 11450.022(a). Thus, by 2021, maximum aid payments in California will only reach 50 percent of the federal poverty level, yet the Department of Social Services policy would deny even this much support to children like the

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[11] Hoynes & Schanzenbach, *supra*, at 6. *See also* Moffitt, *supra* at n.6. Moffitt reports that married-parent families in deep poverty experienced a 31 percent decline in support between 1983 and 2004. *Id.* at 10.

[12] Hoynes and Schanzenbach explain, "These findings imply that the benefits of the social safety net are broader than is commonly assumed, and indeed that this spending yields impacts that have downstream benefits to taxpayers (through increased tax revenues and potential declines in spending on healthcare and the safety net), in addition to the affected families." Hoynes & Schanzenbach, *supra*, at 3.

Christensens solely because their father is paying child support for his other children. Such a result is clearly counter to the overarching goals of California law and policy to promote family unity and child well-being, and to eradicate deep poverty among our state's children.

B. Research Demonstrates the Importance of the Family Unit to a Child's Well-Being

There can be no doubt that the Department's eligibility policy would make things even worse for children like the Christensens if it forces the breakup of the household for the family to survive. A policy that compels family separation contradicts well-established research on the value of family stability and unity to a child.

A joint study among researchers at Princeton and Columbia Universities has followed a cohort of nearly 5,000 children born in large U.S. cities between 1998 and 2000, roughly three-quarters of whom were born to unmarried parents. The researchers refer to these parents and their children as "fragile families," saying that they wish "to underscore that they are families and that they are at greater risk of breaking up and living in poverty than more traditional families."[13] Through interviews with parents and other primary caregivers, and in-home assessments of the children and their home environments, all at regular intervals ranging from birth through age 15, the study addressed how policies and environmental conditions affect families and children. *Id.*

The Fragile Families study documented, among other things, the effect of welfare policies on family units. A 2003 paper titled "The

[13] *About the Fragile Families and Child Wellbeing Study*, PRINCETON UNIV., https://fragilefamilies.princeton.edu/about.

Effects of Welfare and Child Support Policies on Union Formation" begins with the sentence: "The advantages to children of living in two-parent families are now well-documented."[14] The researchers reported that "higher welfare benefits are associated with a reduced likelihood of [parents] breaking up or of being in a visiting relationship at the follow-up, as compared to cohabitation." The researchers also found that "[g]enerous welfare is positively related to cohabitation," meaning that more children grow up in households with two parents.

The Department's policy flies in the face of decades of research emphasizing the significance of a stable family unit to a child. For the Christensens, and other families like theirs, the eligibility policy, with its penalty for individuals paying child support to children outside the home, poses a barrier to building and maintaining the kinds of family units that state and federal policy is intended to support. Rather than encourage families' efforts to maintain secure parental bonds, the policy forces them to make a troubling choice. If, prior to marriage but after the birth of their first child, parents are trying to decide whether to marry and raise their child together, they should not have to forego the choice to remain a family unit because one parent makes child support payments.

CONCLUSION

The Department of Social Services policy of counting child support for income eligibility violates fundamental principles of family life and directly contradicts both state and federal social policy and the research

[14] *The Effects of Welfare and Child Support Policies on Union Formation*, FRAGILE FAMILIES RESEARCH BRIEF No. 20 (2003), https://fragilefamilies.princeton.edu/sites/fragilefamilies/files/researchbrief20.pdf.

that supports it. The policy hurts poor children by forcing their parents to choose between living together as a family unit and finding the means to meet their children's basic needs. That policy should be reversed.

Dated: September 10, 2018

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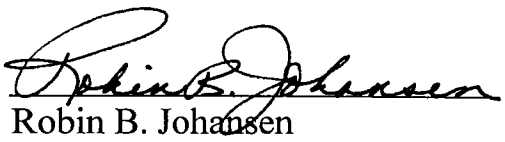
By: 
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BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 3,538 words as counted by the Microsoft Word 2003 word processing program used to generate the brief.

Dated: September 10, 2018

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On September 10, 2018, I served a true copy of the following document(s):

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California Court of Appeal
First Appellate District, Division Two
350 McAllister Street
San Francisco, CA 94102
(By United States Mail)

The Honorable Ernest J. Goldsmith
San Francisco County Superior Court
400 McAllister Street, Department 302
San Francisco, CA 94102
(By United States Mail)

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☒ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 10, 2018, in Oakland, California.

Michael A. Narciso

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