S245395

In the

Supreme Court

of the

State of California

SUPREME COURT
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Deputy

ANGIE CHRISTENSEN,
Plaintiff and Respondent,

v.

WILL LIGHTBOURNE, as Director, etc.,
Defendants and Appellants.

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO · CASE NO. A144254
SAN FRANCISCO COUNTY SUPERIOR COURT · CASE NO. CPF-12-512070
HONORABLE ERNEST H. GOLDSMITH, JUDGE

COMBINED APPLICATION OF HARRIETT BUHAI CENTER FOR FAMILY LAW FOR PERMISSION TO FILE AN *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE BRIEF* IN SUPPORT OF RESPONDENT [RULE 8.520(f)]

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STATEMENT OF INTEREST (Rule 8.520(f)(3))

The Harriett Buhai Center for Family Law (the Center) is a public-interest law firm that provides free family law assistance to over 800 very poor persons and 700 children each year. The well being of poor children is one of the cornerstones of the Center's mission. And from the standpoint of our practice, nothing is more challenging than securing minimal support for children of vulnerable families.

For this reason, the Center has been at the forefront of efforts to assure an effective, consistent and equitable child support system. Based on our day to day experience, we are convinced that the position of the Department of Public Social Services is inconsistent with the Legislature's intent that the same basic standards should apply to the child support requirements of the Family Code and the child support safety net of the CalWORKS program. We believe that the Court of Appeal decision not only harms children, but undermines confidence in the equity of child support policies generally.

UTILITY OF OUR SUBMISSION (Rule 8.520(f)(3))

Having reviewed the legislative and policy history of the issue before the Court, the Center believes that inadequate attention has been given to the actual legislative intent expressed in Thompson-Maddy-Ashburn Welfare-to-Work Act of 1997. Stat. 1997 ch. 270. The Court of Appeal's assertion that the Welfare-to-Work Act "adopted a new method

for calculating cash aid payments and amounts" (15 Cal.App.5th 1239, 1245) is an oversimplification, The attached brief presents a detailed analysis of the language and legislative history that is not reflected in the record or in the briefs filed to date.

IMPORTANCE OF THE ISSUE (Rule 8.520(f)(3))

"[T]he family unit is of fundamental importance to society in nurturing its members, passing on values, averting social problems and providing the secure structure in which citizens live out their lives." Welfare & Institutions Code §11205. This finding and declaration was adopted in 1982. It was not changed in the 1997 legislation. It remains in the Code today. But the characteristics of a "family unit" have changed. This case highlights one of the most significant of those changes.

Angie Christensen and Bruce Christensen are part of a complex family unit including children from multiple partners. Social scientists refer to this phenomenon as multi partner fertility (MPF). Whatever the incidence of MPF families when the Welfare to Work Act passed in1997, research indicates that this family structure has become more and more common.[1] The exact extent to which California children live in MPF

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[1] See, Guzzo, Karen. B. (2014) New partners, more kids multiple partner fertility in the United States, *Annals of the American Academy of Political and Social Science*, 654(1):66-86, Table 1 doi 10.1177/000271621452557. Cancian Maria and Daniel R. Mayer (2012) Who owes what to whom? Alternative approaches to child support policy in the context of multipartnered fertility. *Social Service Review* 46:85-101.

families has not been measured. Estimates vary widely.[2] In disadvantaged populations available data suggests that MPF complicates child support policy for as many as 40% of minor children.[3] Whatever one thinks of the drivers of this phenomenon, two principles should be obvious (1) parents have a duty to support *all* of their children no matter where they reside, and (2) the law should not penalize children of multipartner relationships.

The policy at issue in this case discriminates against MPF children precisely because one of their custodial parents is discharging his law-imposed duty to support noncustodial children of another relationship.[4] Lawyers may argue about what is and is not "income" for statutory purposes, but the hard fact remains: the Department's policy denies children like the children in this case assistance they objectively *need* to maintain even a substandard level of subsistence.[5]

While the number of children affected by the Department's policy can only be estimated, there is little doubt that the number is substantial. An estimated 1.8 million California children live in families whose income

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[2] *See* Guzzo, *supra*, Table 1
[3] See Guzzo at 72-75, Cancien and Meyer at 597-600
[4] It is undisputed that if Bruce Christensen moved out of the family unit, the Christensen children would be entitled to CalWORKS benefits, and Christensen's duty to all of his children would be calculated consistently under the statewide guideline.
[5] "Substandard" according to Welfare & Institutions Code §11452 with §11450.

is below the federal poverty line.[6] Of these about half rely on CalWORKS for their support.[7] Preliminary studies suggest that 40% of poor children are likely to have MPF parents. According to these best-available statistics, it is evident that the Department's policy denies assistance to about 400,000 objectively needy California children.

The attached brief was researched and authored by staff and volunteers of Harriett Buhai Center for Family Law. No monetary contribution was made to Harriett Buhai Center for Family Law intended to fund the preparation or submission of the brief.

September 7, 2018

Respectfully submitted,

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[6] Public Policy Institute of California, *Child Poverty in California*, July 2018. http://www.ppic.org/publication/child-poverty-in-california/

[7] California Department of Social Services, CalWORKS Annual Summary, January 2016: California Families on the Road to Self Sufficiency at 4 Table IA, http://www.cdss.ca.gov/cdssweb/entres/pdf/CW_AnnualSummary2016.pdf

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INTRODUCTION

When plaintiff Angie Christensen applied for public assistance for her family, she was denied because her family's income was deemed to be too high. The income determination was based on a Department of Social Services policy that allocated to her family's income the child support her husband pays for children from prior relationships who live in different homes.

The Department's policy wasn't always like that, however. In fact, for 30 years it was just the opposite. Under the prior policy, support for children in another household specifically did *not* count towards the payor's family income. We refer to this policy as the "Child Support Allocation." The dispositive issue thus is whether the Department erred in reversing its long-standing policy. It did.

The policy change occurred in 1998 when the Department misapprehended action taken a year earlier by the Legislature. The Court of Appeal in this case said the Legislature at that time had established "a new method for calculating cash aid amounts." *Christensen v. Lightbourne* (2018) 15 Cal.App.5th 1239, 782 [223 Cal.Rptr.3d 779]. With respect, a careful review of the legislative history reveals that the Legislature did no such thing.

The Court of Appeal did not analyze the statutory language or the history of the policies involved. Such an analysis reveals that the

Legislature did not substitute a wholesale, comprehensive overhaul of the system for calculating a family's income to determine if a family qualifies for public assistance. At the least, there is no evidence that the Legislature then intended to supplant the Department's Child Support Allocation policy.

Indeed, the Department's 30-year-old policy was consistent with how the Legislature required — and still requires — the treatment of support payments for out-of-household children in guidelines that determine appropriate amounts of court-ordered child support. Those support payments were — and still are — excluded in calculating the payor's capacity to provide support for additional children for whom he or she is also responsible. Family Code, § 4059(e).

The Department and the Court of Appeal pointed to Welfare and Institutions Code §11451.5 as proof of the Legislature's intent to eliminate the Department's Child Support Allocation policy.[8] But that statute does not mention and has nothing to do with child support. Instead, it concerns the Earned Income Exemption, which, as the name suggests, exempts a certain amount of earnings from the calculation of a family's income in determining public assistance eligibility.

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[8] All citations are to the Welfare and Institutions Code except as otherwise noted.

The Earned Income Exemption had a long history and the Child Support Allocation was no part of that history. Each policy was based on its own logic and purpose. There is nothing in the legislative record indicating an intent to treat the two together.

Further, it is unreasonable to believe that the Legislature would have nullified the Department's Child Support Allocation policy by enacting a statute that says nothing about child support, especially when that policy complemented a policy the Legislature expressly codified in its court-ordered child support guidelines. The Legislature would not have taken so dramatic an action so obliquely.

The Legislature had no reason to, and did not, abrogate the Department's Child Support Allocation policy. The Department was wrong in thinking the Legislature had done so, and the Court of Appeal erred in not finding the Department's elimination of the Child Support Allocation to be an abuse of discretion. This Court should reverse the Court of Appeal's judgment.

ARGUMENT

I. COURT-ORDERED CHILD SUPPORT PAYMENTS WERE NEVER TREATED AS "FAMILY INCOME" WITHIN THE MEANING OF WELFARE & INSTITUTIONS CODE §11450.

Eligibility for assistance to a needy family pursuant to CalWORKS is governed by §11450 of the Welfare & Institutions Code. That section defines need by deducting "the family's income, exclusive of any amounts considered exempt as income" from the "maximum aid" standard established by the Legislature. This case turns on the proper construction of that term -- "family income."

A. ORIGIN OF THE CHILD SUPPORT ALLOCATION.

"Income," as used in §11450, has always been a term of art. There have always been attributions of income, allocations of income, and exemptions of income.[9] From at least 1968 forward, as a matter of California law, court-ordered child support payments were "allocated" to the family receiving the payments. Meaning that such payments were not recognized as "family income" of the payor's family.

Although a matter of California policy, the Child Support Allocation required federal permission. Federal law at the time required that in determining need a state was required to "take into consideration any other

---

[9] An example of an attribution is the attribution of a sponsor's income to an immigrant family unit. §11008.135. An example of allocation is the allocation of a portion of the income of parent under the stepparent rule. Cf. §11008.14, 45 C.F.R. 233.20 (a)(3)(xiv)(C). One example of an exemption is the income earned by a full time student. See, §11008.15.

income and resources of *any child or relative claiming aid*." 53 Stat 1379 (1939) [Emphasis supplied]. Federal administrators, however, interpreted this requirement to allow states -- at their discretion --- to *allocate* income to the dependents living outside the assistance unit. The Department of Health, Education and Welfare ("HEW") published this policy for comment on July 17, 1968 as follows:

> If [state] policies provide for *allocation* of the individual's income as necessary for support of his dependents, such *allocation* shall not exceed the total amount of their needs as determined by the statewide standard. 33 F.Reg. 10,230 (July 17, 1968) (Emphasis supplied.)

After comment, state option to allocate support payments was confirmed by regulation issued on January 29, 1969. 34 F.Reg.1395. It then read as follows:

> If agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their needs as determined by the statewide standard.
>
> 34 F.Reg.1395 [former 45 C.F.R. §233.20(a)(3)(ii)(b)]

The first available documentation of California's implementation of this option provided as follows:

> Deduction [from income] for support of a child or spouse not in the home, paid on court order, shall be made not to exceed three months if the parent requests review of the order. If, upon review, the court orders continued support payments, the amount of the court order shall be deducted until the order is changed.

DEPARTMENT OF SOCIAL WELFARE, Manual of Policies and Procedures ("MPP) 44-113.241 (Effective 7/1/68) [10]

B. ORIGIN OF THE EARNED INCOME EXEMPTION.

It may or may not be coincidental that the foregoing state and federal regulations were published coincident with implementation of the original "Earned Income *Exemption*." The terms of the exemption were then as follows:

> A State plan for aid and services to needy families with children *must...*
>
> (7) ...provide that the State agency *shall*, in determining need, take into consideration any other income or resources of any child or relative claiming aid.
>
> (8) provide that, in making the determination, the State agency --
>
> (A) *shall* with respect to any month disregard ---
>
> (i) ...
>
> (ii) in the case of earned income of a dependent child [or] a relative receiving such aid and any other individual (living in the same house with such relative or child) whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month.

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[10] Archives of the MPP as of any specific date are not readily available. The July 1968 version of 44-113.241 is available at the Los Angeles County Law Library, call no. KFC600.A29 C351. Relevant excerpts are attached to this brief. The Court should take judicial notice of this material, it being an official regulation of the Department. Evidence Code §§ 452-53; Govt. Code §18576; *Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1248 n.9 [223 Cal.Rptr.3d 779]

81.Stat. 881 (1967) [former 42 U.S.C. §602(a)(7)-(8)] [Emphasis supplied]

C. THE CHILD-SUPPORT ALLOCATION OPERATED IN PARALLEL WITH THE EARNED INCOME EXEMPTION.

In implementing the 1967 Social Security amendments, the regulators always drew a clear line between the "Earned Income *Exemption*" and the "Child Support *Allocation*." The Earned Income Exemption was implemented in subsection (a)(11) of the regulation. 45 C.F.R. §233.20(a)(11). 34 F.Reg. 1396 (January 29, 1969). That subsection was titled "Disregard of income and resources applicable only to AFDC." Its terms were *mandatory*.

The Child Support Allocation, on the other hand, was authorized in subsection (a)(3). Subsection (a)(3) was titled "Income and resources." 34 F.Reg. 1395. According to the logic of that subsection, court-ordered child support payments were not considered as "income" of "the *child or relative claiming aid*." Period. Or, to be more precise, the states were allowed the *discretion* to allocate income to the dependents who actually received the beneficial use of child support payments.

The MPP did not use the term "allocation." It referred to the Child Support Allocation as a "deduction from net income." MPP 44-113.241. This is consistent with the fact that the Manual was a practical guide to eligibility workers, not a legal analysis. The phrasing of the MPP could not

change the legal substance. The only source of the Department's authority to make the 44-113.241 "deduction" was the discretion to "allocate" the payor's income authorized in 45 C.F.R. §233.20(a)(3)(ii)(b).

Terminology aside, it is clear that the Department did not consider the Child Support Allocation as an element of the Earned Income Exemption. Instructions for administration of the Earned Income Exemption were included in MPP 44-111.2 (entitled "Exemption of Earned Income-General"). MPP 44.111.23 (dealing with the Earned Income Exemption) was entitled "Family Exemption."

The Child Support Allocation was implemented separately in 44-113.24 entitled "Other Deductions from Net Income." Paragraph 44-113.241 dealing with the Child Support Allocation specified that this "deduction" was "*in addition to* the deductions described above" and applied to "income from any source."

Clearly, the Department recognized from the beginning that the Child Support Allocation (44-113.241) was separate and distinct from the Earned Income Exemption (44-111.23).

D. AMENDMENTS OF THE EARNED INCOME EXEMPTION WERE NEVER INTENDED TO AFFECT THE CHILD SUPPORT ALLOCATION.

Over the next twenty years, Congress and the Legislature repeatedly tinkered with the exact terms of the Earned Income Exemption. In its original version, the exemption was applied after deducting "expenses

reasonably attributable to the earning of income." 81 Stat 881; 45 C.F.R. 233.20(a)(3)(iv). In the Welfare Reform Act of 1971, our Legislature added a new section (§11451.6) to the Welfare & Institutions Code. Stats. 1971 ch 578, §28.1. It provided that in California, "expenses reasonably attributable to earning income" would be limited to $50 a month. This provision was later declared invalid as inconsistent with federal law. See, *Conover v. Hall* (1974) 11 Cal.3d 842 [114 Cal.Rptr. 642]. Relevant to this case is the fact that while the Legislature clearly intended to limit the scope of the Earned Income Exemption, it took no action to rescind or cutback the Child Support Allocation even though it had unquestioned authority to do so.

In 1981, there was another review of the Earned Income Exemption, this time at the federal level. Section 402(a)(8) of the Social Security Act was amended to set four- and twelve-month limits on the Earned Income Exemption. 95 Stat 843-44. If the Child Support Allocation was an element of the Earned Income Exemption, the 1981 amendment *obligated* the Department to begin counting child support payments as "income" after four or twelve months. However, this was never done, or even suggested. By 1981, the Child Support Allocation and the Earned Income Exemption had been operating on parallel but separate tracks for over a decade. There was no confusion of one with the other by Congress, by the Legislature,

and, up to that point, by the Department. Each had its own logic and each served a different purpose.

The next documented review of the Child Support Allocation occurred shortly thereafter. Concerned that some states were allowing abuse, HEW initiated a thoroughgoing review of the Child Support Allocation. The notice of rulemaking issued November 16, 1984 explained as follows:

> States have been permitting income to be *allocated* to meet the need of a wide variety of persons. ... In order to assure that an individual's income is used primarily to support the members of his or her own family who are in the assistance unit, we propose to revise the existing provisions on the amounts of income that may be *allocated* and the persons for whom income may be *allocated.* The proposed [amendment] restricts the income *allocation* provision to permit *allocation* only for the individual's own needs...the needs of others who are or could be claimed as dependents for determining Federal personal income tax liability, or those whom the individual is legally obligated to support. Within this limitation, States may elect which dependents to include for coverage. The amounts which may be *allocated* and the individuals for whom income may be *allocated* are consistent with similar provisions regarding the income of stepparents and alien sponsors. In specifying the amount of income which would be considered available to an assistance unit, the Congress made certain provisions to assure that stepparents and alien sponsors would retain sufficient income to meet their own needs and the needs of their dependents. ... Since these are amounts that Congress has determined are reasonable, we have adopted them as the maximum amounts that may be allocated in other similar circumstances." 49 F.Reg 45561 (November 16, 1984) [Emphasis supplied].

The revised regulation reads, in relevant part:

> In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner)...

(a)(3)(ii)(C) States may have policies which provide for *allocating* an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability, or those he or she is legally obligated to support.

45 C.F.R. §233.20 (a)(3)(ii)(C) [Emphasis supplied.][11]

The 1984 restudy of §233.20 is a significant moment. At the very least, the federal notice of rulemaking required the Department (and even the Legislature) to verify once again that that California's Child Support Allocation was permitted under the Social Security Act. It was perfectly clear that the California rule was invalid if it was deemed an element of the Earned Income Exemption. *Shea v. Vialpando* (1974) 416 U.S. 251; *Conover v. Hall, supra,* 11 Cal.3d 842. The Child Support Allocation was valid *only* insofar as it was, and was meant to be, an allocation of income as permitted (but not required) by the federal regulation. But there had never been any doubt that the Child Support Allocation was exactly that.

The Department was once again required to determine the boundaries of the Earned Income Exemption in 1993. California obtained a federal waiver of the 1981 restrictions on the duration of the Earned Income

[11] The 1984 federal regulations continued to differentiate between the Child Support Allocation authorized in sub-§233.20(a)(3)(ii)(C) and earned income disregards which were outlined in sub-part (a)(11).

Exemption. This authority was implemented by adding §11255 to the Code which provided:

> The department *shall* implement the waiver obtained from the federal government to allow the thirty dollars ($30) and one-third income disregard to be continued without regard to the 12-month and 4-month limitations for income earned after April 31, 1993.
>
> Stats. 1993, ch. 69, §21 p. 964 [Emphasis supplied]

Section 11255 represented a material enhancement of the Earned Income Exemption. Its design and purpose was identical to the design and purpose of §11451.5. Yet no one suggested that §11255 repealed the Child Support Allocation by implication. Section 11255, like federal Earned Income Exemption, was a welfare-to-work incentive. The Child Support Allocation was based on a fundamentally different logic: equitable division of the support capacity of a parent responsible for support of children in different homes. There was no logical connection of the allowance of one with a repeal of the other.

II. THE 1997 LEGISLATURE DID NOT INTEND TO REPEAL THE CHILD SUPPORT ALLOCATION.

Now we come to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1997 (PRWORA, 110 Stat. 2105) and California's corresponding Thompson-Maddy-Ashburn Welfare-to-Work Act of 1997 (hereafter AB 1542).[12] The primary concern of PRWORA was

[12] It is important to note the scope of the Welfare to Work Act. It consisted of 188 sections affecting 293 provisions of five different codes. It

to require stronger work and work training requirements for recipients of aid under Title IV-A of the Social Security Act. See, H. Conf. Rep. 104-651 at 5 ["[W]elfare is, for the first time, converted to a work program."]

AB1542 had the same emphasis. It completely displaced the preexisting GAIN program, and made extensive revisions and additions to the work rules in the Welfare & Institutions Code. To implement these mandatory work requirements of the law, revisions were also made to the Education Code, the Government Code, the Health and Safety Code and the Unemployment Insurance Code. The emphasis of all these changes was to implement the federal mandate to require aid recipients to work or receive job training.[13] Contrary to the Court of Appeal's impression, the Legislature did not make dramatic, across-the-board changes to the eligibility mechanics of the AFDC program.[14]

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established, among other things, huge educational and child care programs. Most extensive of all was a complete redesign of California's Welfare to Work program. These provisions do not directly affect the issues at hand, but they are part of the context that is relevant to ascertainment of legislative intent. *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090–1091 [103 Cal.Rptr.3d 767].

[13] AB 1542 replaced pre-existing welfare-to-work provisions of the Code wholesale. In Article 3.2 of Chapter 2 of the Welfare & Institutions Code ("Welfare to Work Activities"), 44 of 47 sections (93%) were either new or amended. Twenty-one of the 33 outright repeals in Chapter 2 (63%) were sections relating to work requirements and training programs. It was because of this emphasis on work requirements that "Aid to Families with Dependent Children" was renamed CalWORKS.

[14] Twenty-five of 30 (83%) of provisions of Article 2, Chapter 2 Part 3 Division 9 of the Welfare & Institutions Code, entitled "Eligibility for Aid" (§§11250-11270), continued without amendment. Fifty-nine of 71 (83%)

Even §11451.5, the backbone of the Department's stance in this case, was not new. There the Earned Income Exemption had been standard since 1967. Section 11451.5 significantly enhanced the amount of exempted income and introduced distinctions between "disability income" and "earned income." But the basic structure and object of the Earned Income Exemption followed the x% plus $1/x$ of the remainder formula introduced in 1968 and followed thereafter. There is nothing in AB 1542 or in its legislative history to give the least suggestion that §11451.5 was intended to revoke the Child Support Allocation *sub silentio*.

On the contrary, the Legislature specified clearly what §11451.5 was intended to accomplish:

> Earned/Unearned Income Disregards: Current state law contains a complex calculation for determining the amount of income a parent or caretaker relative on aid who has earnings can "disregard", such that the earnings are not counted against the grant payment. The disregard is intended to provide an incentive for recipients to obtain employment by allowing the retention of a portion of earnings. The current formula allows a recipient to disregard a $90 work expense allowance, the first $30 of earnings, and then disregard 33% of earnings over that $120. In addition, earnings up to the difference between a "standard-of-need" and the maximum aid payment allowed, are disregarded 100%.
>
> *Under these amendments*, families would be able to disregard the first $225 of income and half of the remaining earnings before grants would be reduced. (For applicants, the $90 work expense disregard and the need standard gap would be continued; the $30 and 1/3 income disregard would not apply as in current law.) In addition, and existing $30 per quarter disregard for non recurring gifts would

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of the provisions of Article 6, titled "Computation and Payment of Aid Grants" (§§ 11450-11469.1), were left as they stood under AFDC.

be eliminated. In addition, these amendments count certain types of disability benefits toward the $225.

SENATE HEALTH & HUMAN SERVICES COMMITTEE, Analysis of Assembly Bill 1542 (1997-1998 Reg. Sess) as amended August 4, 1997.[15]

Thus, it is clear that legislators were thoroughly advised what was intended by §11451.5. They knew exactly which "disregards" would be eliminated. There is nothing to suggest that §11451.5's enhanced Earned Income Exemption implied elimination of the Child Support Allocation or any other "disregard." A voting member would be perplexed to find that, after enactment, the Department would assign an entirely different meaning to §11451.5.

And in fact, the Department itself was under no illusion about what the Legislature intended. Its own Enrolled Bill Report describes the effect as follows:

Section [sic] 138 & 139

Establishes new income disregards. A $225 income disregard is first applied to disability-based income. If disability based income is less than $225, the remainder of the $225 disregard is applied to earned income. Fifty percent (50%) of any remaining earned income is disregarded. If disability-based income is more than $225, the first $225 of disability based income and 50% of earned income are disregarded. Unearned income is deducted dollar for dollar from the Maximum Aid Payment (MAP).

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[15] Senate Health & Human Services Committee, Analysis of Assembly Bill 1542 (1997-1998 Reg. Sess) as amended August 4, 1997 available at 1550/ab_1542_cfa_19970828_143509_sen_comm.html

> This section eliminates the current "gap" between the Minimum Basic Standard of Adequate Care (MBSAC) and MAP when calculating grants. Net countable income obtained from applying income disregards is deducted from the MAP.
>
> Single income eligibility tests are applied for applicants and recipients.
>
> Eliminates the income disregard for work-related child care expenses. CT 234.[16]

The Court of Appeal simply denied the plain inconsistency between the Department's contemporaneous interpretation of §11451.5 and its subsequent revocation of the Child Support Allocation. 15 Cal.App.5th 1262. But it is only common sense that *Expressio Unius* applies to the Department as much as it does to other communications. The Department's expert clearly enumerated what §11451.5 changed and what it eliminated. The report is nearly meaningless if it is not understood to advise the Department's management exactly how the law was changed *and how it was not.*

The Department argues that the broad definition of earned income in §11451.5(b) amounts to a legislative directive that only statutory exemptions are valid. *Dept. Br.* 29-30. But the definition in sub-§(b) of §11451.5 applies only "[f]or purposes of this section," i.e. it is not the definition of "family income" for purposes of §11450. The sole purpose of sub-(b) is to establish the basis on which the amount of the Earned

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[16] California Department of Social Services, Enrolled Bill Report re AB 1542 (1997-98) dtd August 5,1997/ CT 234

Income Exemption is calculated. There is nothing new in this. Essentially the definition had always applied to calculation of the Earned Income Exemption. 45 C.F.R. 233.20(a)(6)(iii).[17] And always for the same limited purpose.

Under §11451.5, as under 45 C.F.R. 233.20(a)(6)(iii), the plain meaning of the definition is to prescribe the top line of the Earned Income Exemption calculation. Nothing more. It is undisputed that the Earned Income Exemption is only one step in the calculation of "family income" for purposes of §11450.[18] And, as shown above, the Child Support Allocation, along with the additional factors listed in footnote 13 of the Department's brief, has always been a part of the calculation of "family income" for purposes of §11450.

For this reason, contrary to the Court of Appeal's opinion, *Heckler v. Turner* (1985) 470 U.S. 184 does not support the Department's position. In *Turner*, the Court agreed that the change at issue -- treating income tax

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[17] The 233.20(a)(6)(iii) definition of "earned income" reads as follows: "The term earned income encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. For AFDC, earned income means gross earned income prior to any deductions for taxes or for any other purposes, except as provided in paragraph (a)(6)(v). Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry."

[18] *Dept. Br.* 31 n.13.

withholdings as "earned income" -- was contrary to the welfare-to-work objective of the statute. 470 U.S. 206. But the Court upheld the change because the relevant legislative history demonstrated beyond doubt that Congress specifically intended that result. 470 U.S. 190-192.

The opposite is true in this case. There is no evidence that *the California Legislature* intended to abrogate the Child Support Allocation. On the contrary, considering the design of AB1542 as a whole, the compelling inference is that the 1997 Legislature was aware of the policy of *allocating* mandatory child support payments to the recipient family and deliberately left that policy in place. §11157(b).

The case presented here is remarkably similar to the regulatory about-face challenged in *California Welfare Rights Organization v. Brian* (1974) 11 Cal.3d 237 [113 Cal.Rptr. 154]. In *Brian*, as in this case, the Department revised its historic interpretation of the meaning of "income" as used in §11450. In *Brian*, as in this case, the policy at issue was one that was permitted, but not required, by federal regulation. In *Brian*, as in this case, there was no evidence of a legislative decision to repudiate the historic administrative policy. On these bases, the Court held that the Department's change of direction was unauthorized because "such a radical departure from the prior practice would necessarily have been accompanied by a clear expression of legislative intent." 11 Cal.3d at 243. *See also*, *California Welfare Rights Organization v. Carleson* (1971) 4 Cal.3d 445,

458 [93 Cal.Rptr. 758], ["[C]onversion to such a plan would require a clear expression of intent by the Legislature. No such expression is to be found in either the Welfare and Institutions Code or the" other provisions of AB 1542]; *Matthews v. Superior Court* (1995) 34 Cal.App.4th 598, 604–605 [40 Cal.Rptr.2d 350] [Legislature's failure after multiple revisions to reject the Administrator's longstanding interpretation of "person."]

III. IT IS UNREASONABLE TO ATTRIBUTE A DOUBLE STANDARD ON CHILD SUPPORT TO THE 1997 LEGISLATURE.

The direct legislative history outlined above is like the story of the dog that didn't bark. The "clear expression of legislative intent" contemplated by cases like *Carleson* is absent. And, not surprisingly, it is unrealistic to suppose that the Legislature saw a need to negate all possible misinterpretations of the statute. The Legislature made clear what effects it did intend. Its silence on the Child Support Allocation is as meaningful as what it said. The Child Support Allocation had nothing whatever to do with the welfare-to-work objectives of AB 1542. That had been a long-settled interpretation of "family income" for purposes of §11450. It was an important and logical component of what the Senate Committee described as "current state law," and the Legislature had no reason to suppose that the Department would write terms into §11451.5 that were never disclosed to voting legislators.

But while the Legislature saw no need to direct the Department to continue the Child Support Allocation, the Legislature has nevertheless expressed strong support for the underlying policy.

The interdependence of the CalWORKS program (Social Security, Title IV-A) and the statewide child support enforcement program (Social Security, Title IV-D) has been extensively briefed by the parties. *See, Resp Br* 19-22. As in the case of the true meaning of "family income," we suggest that it is useful to take an historical perspective on the weight accorded to the *Legislature's* express adopting of a mirror image of the Child Support Allocation in Family Code §4059(e).

The first statewide guideline was adopted after extensive study in 1984. Stats. 1984, ch. 1605. At that time, the Child Support Allocation had been a settled feature of the Title IV-A program for 15 years. It was natural, therefore, that the Legislature would adopt the same standards as regards income available to pay child support in Part IV-D cases. And this was exactly the legislative state of mind. Former Civil Code §4720(d), adopted in 1984, recited as follows:

> [T]he minimum amounts necessary for the support, maintenance, and care of children have been established by the Legislature in the monthly needs standards set forth in the AFDC program. Therefore, it is the intent of the Legislature that a system of standards and procedures shall be established which provide a uniform determination of child support awards throughout the state, and which assures that, dependent upon the financial ability of each parent to do so, no child receives a support award less than would

otherwise be established as the need for that child under the AFDC program.

Stats. 1984 at 5665.

Accordingly, the Legislature's Title IV-D child support guideline has from the beginning required that "[a]ny child or spousal support actually being paid by the parent pursuant to a court order" be deducted from "income" in order to calculate "the financial ability of [a] parent" to pay additional child support. Family Code §4059(g), cf. former Civil Code §4721(c)(5), Stats. 1984 at 5667. This decision was made as a matter of policy, not economics. JUDICIAL COUNCIL OF CALIFORNIA, *Review of Statewide Uniform Child Support Guideline*, December 1993 at 35.[19]

The express child support allocation required by §4059(e) was not a one-time decision made by a single session of the Legislature. It has been a fixture of California law for at least 35 years. By legislative mandate, the guideline has been under constant surveillance. *See*, Family Code §4054. The Judicial Council is *required* to "recommend to the Legislature appropriate revision" of the guideline in order to "ensure that the guideline results in appropriate child support orders." Among the issues that the Council should consider in making its recommendations are :

(d)(2) The treatment of children from prior or subsequent relationships.

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[19] Available at http://www.courts.ca.gov/documents/ChildSupport-1993ChildSupportGuideline.pdf

(d)(3) The application of the guideline in a case where the payer parent has extraordinarily low...income

Thus advised by the Judicial Council, the Legislature revisited the statewide guideline several times between 1984 and adoption of AB1542.[20] The 4059(e) allowance for actual child support payments has not been amended or criticized.

A further affirmative indication of the Legislature's actual "intent" is the "hardship" provisions of the statewide guideline. *See*, Family Code §4070-4071(2). These provisions specifically apply to families like the Christensens. The hardship deduction is not automatic because §4070 applies to the wealthy as well as the poor. But it is clear that the Legislature intends the standard to be the actual ability of a parent to provide for *all* his or her children. *Marriage of Paulin* (1996) 46 Cal.App.4th 1378, 1382 [54 Cal.Rptr.2d 314]. And Family Code §4059(g) directs that where a parent has the obligation to support natural or adopted

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[20] Judicial Council Reports were submitted in 1993, *supra*,
1998 http://www.courts.ca.gov/documents/csguideline1998(Ch1-10).pdf;
2001 http://www.courts.ca.gov/documents/ChildSupport-2001UniformChildSupportGuideline.pdf;
2005, http://www.courts.ca.gov/documents/csguideline2005.pdf;
2010. http://www.courts.ca.gov/documents/review-sucsg-0611.pdf'
2017, http://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf.

Amendments affecting the statewide guideline adopted between 1984 and 1999 included Stats. 1993 ch 176, ch 219, ch 935 and ch 1156, and Stats 1994 ch.1056.

children from other relationships who reside with that parent, the courts should allocate income "to provide equity between competing child support orders." This is because "a support award should consider all support responsibilities of a parent when support is considered for any child of that parent." JUDICIAL COUNCIL OF CALIFORNIA, *Review of Statewide Uniform Child Support Guideline*, December 1993 at 45 (citing Report of Federal Office of Child Support Guidelines at I-19 (1987)).

No doubt the considerations relevant to the Legislature's treatment of child support payments for purposes of the statewide guideline are not identical to considerations relevant to allocation of income to members of a needy family. The statewide guideline applies to all parents, from the very rich to the very poor. The Child Support Allocation, on the other hand, applied only to families so indigent that they qualify for aid. Nevertheless, the Legislature's clear decision to exclude child support payments in calculating the income available to pay further child support is a positive indication that the Legislature did not intend §11451.5 to alter the symmetry that existed between the Legislature's statewide guideline and the preexisting Child Support Allocation. See, *Brian*, 11 Cal.3rd at 238.

IV. ADMINISTRATIVE REPEAL OF THE CHILD SUPPORT ALLOCATION WAS CLEARLY ERRONEOUS.

The Department's interpretation of §11451.5 cannot be validated as a matter of administrative discretion. No doubt the Department's 1998

ruling is entitled to deference. But "[a]dministrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them. They must conform to the legislative will if we are to preserve an orderly system of government." *California Welfare Rights Organization v. Carleson* (1971) 4 Cal.3d 445, 455 [93 Cal.Rptr. 758].

The Department's rulemaking discretion is limited:

> "[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute...."
>
> *Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226, 243–244 [5 Cal.Rptr.2d 782]; see Government Code §11342.2.

AB 1542 did not change the fundamental objectives of the CalWORKS program. One such purpose is to promote the "fundamental importance" of the family unit as providing "for its own economic security by full participation in the work force to the extent possible," and as providing "sufficient support and protection for [the family's] children." §11205. Or put in more direct terms, the purpose of CalWORKS was to assure "the proper maintenance and care of needy children." §11209. See also 42 U.S.C. §601 (a); Welfare & Institutions Code §10000.

Repeal of the Child Support Allocation was inimical to each and every one of these purposes and to past and current state policy overall.

A. THE REPEAL DENIES CHILDREN NEEDED ASSISTANCE.

Notwithstanding the change from Aid to Families with Needy Children to CalWORKS, "the proper maintenance and care of needy children" remains the cornerstone purpose of the program. §11209; 42 U.S.C §§ 601, H.R.Rep. No. 615, 74th Cong.1st Sess. at 10 (1935) ["the core of any social plan must be the child"]. Eligibility for aid still depends on the presence in the home of a "needy child" in the family. §11202, 42 U.S.C. §608(a)(1). And it is no less true of CalWORKS than of the mandatory child support guidelines that "the interests of children [are] the state's highest priority." Family Code §4053(e).

Without doubt, and by definition, the Department's repeal of the Child Support Allocation results in denial or reduction of aid to objectively needy children. It is as simple as cash on the barrel head that income paid to non custodial children is not available to buy food and clothes for custodial children. See, *Fry v. Saenz* (2002) 98 Cal.App.4th 256, 265–266 [120 Cal.Rptr.2d 30]

B. THE REPEAL UNDERMINES THE SURVIVAL OF TWO PARENT FAMILIES.

The Christensens are a two-parent family. They represent the direction society has been headed. A growing percentage of children -- as high as 40% by some measures -- live with parents who have children by

other partners.[21] The percentage of such arrangements is probably higher for very low income families. By *allocating* income to the custodial family that is actually going to the non custodial family, the Department creates a grotesque incentive to break up the two parent home.

The Department faces Bruce Christensen with a Hobson's Choice. Either he remains in the household and his current wife and children are left without the means to provide for themselves, or he moves out, and the "family unit" becomes eligible. His obligation to support all of his children remains, but it will be adjudicated consistently under the uniform child support system in the best interest of *all* his children. What suffers is the family unit.

So much for encouraging two-parent families. 42 U.S.C. §601(a)(4). So much for the nurturing of children in the family, passing on the family's values. So much for the family as a safeguard against potential social problems. So much for the family providing "a secure structure in which citizens can live out their lives." §11205; *Fry v. Sáenz, supra.*,98 Cal.App.4th 265–266.

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[21] Guzzo, Karen.B. (2014) New partners, more kids: multiple partner fertility in the United States, *Annals of the American Academy of Political and Social Science*, 654(1):66-86 at 72-76, doi 10.1177/000271621452557.

C. THE REPEAL DISCOURAGES FULL PARTICIPATION IN THE WORK FORCE.

The withholding of needed assistance to children cannot be shrugged off on the Dickensian theory that it's simply a matter of motivating parents to work harder. On the record, Bruce Christiansen disqualifies his children *because* of his efforts to participate in the work force.

There is no suggestion that Christensen was shirking or that he had the capacity to increase his earnings. CalWORKS recipients who refuse to make a good faith effort to work to their earning capacity are subject to denial of benefits. §11320.3. But the Department's policy discriminates against the Christensen family *because* Bruce Christensen made a good faith effort to work.

This certainly creates a disincentive to continue working or to participate in welfare-to-work training and services. See *Heckler v. Turner*, supra, 470 U.S. at 205-06 ["We agree that the new scheme, as implemented by the Secretary, threatens to dissipate any incentive to employment..."] The more conscientious the parent, the more the temptation to drop out of the work force. At a more practical level, the real incentive is to find paying work in the underground economy.

Although the data are sketchy, it is certain that the impacts of the underground economy are huge and pernicious.[22] And, as might be predicted, low income workers are more likely to go underground. The underground worker breaks the law; but he may consider providing for his children the higher good. As the Judicial Council reported in its 2010 Report to the Legislature:

> When child support obligations are set too high for low-income obligors, they are unable to meet their own subsistence needs. This leads to many severe consequences: a reduced incentive to work and to work in the mainstream economy; depressed child support payments; higher arrears balances; and attenuated parent-child relationships, which in turn, can adversely affect child outcomes.
>
> Conclusion 12, 2010 Review of Uniform Statewide Child Support Guideline at vii.[23]

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[22] Estimates of the size of California's 'underground economy'—businesses operating outside the state's tax and licensing requirements—ranged from 60 to 140 billion dollars a year. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 379 [173 Cal.Rptr.3d 289] We find no reliable estimates of the share of the gross underground economy represented by under-the-table wages. Assuming the usual estimate that payrolls represent 40% of gross income, see FEDERAL RESERVE BANK OF ST. LOUIS, *Shares of Domestic Income* (https://fred.stlouisfed.org/series/W270RE1A156NBEA), the underground labor market in California involves somewhere between $24 and $56 billion annually.

[23] A task force formed by the Michigan Supreme Court reached similar conclusions: "We have no way to accurately measure the resulting underpayment of child support, but our best estimate of the underground economy's total size leaves no room for doubt that it causes huge shortfalls. Children absorb the deficit by going without essentials that their parents should provide." Underground Economy Task Force, *The Underground Economy*, Michigan Supreme Court, June 2010. accessed at https://www.scribd.com/document/290867664/Underground-Economy.

The obvious employment disincentives that follow from allocating income to the wrong family cannot be shrugged off on the premise that the same disincentives would result from any garnishment. See, *Christensen,* 15 Cal.App.5th at 1257. It is true that a commercial garnishment could have approximately the same economic effect on Christensen's custodial children as the garnishment of child support payments. But the fact that the effects are the same does not make the causes the same or the governmental interest at stake the same.

Contrary to the Court of Appeal's opinion, mandatory child support payments have always been in a class by themselves. But there has never been a deduction for commercial garnishments. The federal regulators and Department had no difficulty distinguishing child support payments from consumer debt prior to 1997. The Legislature had no difficulty differentiating child support payment from other garnishments in the child support guideline. And just as in the guideline, there are "policy reasons" to do so. Those reasons are compelling.

Payments to commercial creditors do nothing to alleviate the problem of child poverty, while child support payments alleviate the economic problems addressed by Titles IV-A and IV-D. Payments to commercial creditors do not help offset public welfare expenditures. But child support payments are assigned to reimburse the public for assistance grants. The state does not collect commercial debts. But the state is

required to enforce child support obligations. The "all garnishments are alike argument" is fallacious.

D. THE REPEAL PREJUDICES THE COLLECTION OF CHILD SUPPORT FOR NON CUSTODIAL CHILDREN.

The impact of the Department's policy on the entire child support enforcement system is insidious. At first blush, it is the CalWORKS family that suffers, while the Title IV-D family receives support. But Title IV-D is testament to the fact that collection of child support is a challenge even in a simple case. The example of fathers resorting to the underground economy to escape Title IV-A regulations sets an example for other parents with child support responsibilities. Precisely because the negative consequences of the Department's policy undermine the family as an institution, they undermine the structure in which all citizens live out their lives. Cf. §11205.

It is not remarkable that a parent would lose respect for a system that treats honest effort unfairly. A parent might easily conclude that the best course for all his children is to drop out of the record-keeping economy and go underground. Income then can be paid as the parent-worker sees fit. That sets an example for others whose situations may be marginally better to begin with. The consequences are hard, perhaps impossible, to measure, but they are substantial.

V. THE DEPARTMENT'S 1998 MISTAKE IS NOT VALIDATED BY PASSAGE OF TIME.

Does it make a difference that the Legislature has not taken the initiative to overrule the Department revocation of the Child Support Allocation? Unless the constitutional separation of powers is suspended, the answer has to be no.

The question is the effect the Legislature intended for §11451.5 *when it was enacted in 1997.* Subsequent sessions of the Legislature always had authority to amend or repeal §11451.5, but they had no authority to interpret the 1997 legislation. Interpretation of the meaning intended in 1997 is a question exclusively for the courts. *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 473 [20 Cal.Rptr.3d 428].

Legislative inaction subsequent to 1997, therefore, cannot be construed as a de facto amendment revising the original meaning of §11451.5. Time has not changed the question for decision.

Although subsequent Legislatures have legislated both in the area of Title IV-A and Title IV-D, there is no basis for concluding that any Legislature subsequent to 1997 meant to adopt or approve the Department's unfounded repeal of the Child Support Allocation. *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 506 [66

Cal.Rptr.2d 304] ["[S]omething more than mere silence is required before [legislative] acquiescence is elevated into a species of implied legislation."]

Error does not ripen into law with the passage of time. The validity of the Departmental repeal should be judged on its merits. *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571, 580–581 [116 Cal.Rptr. 183] [General rules of statutory construction control over any inference concerning that intent that might conceivably flow from the failure of the Legislature to enact a bill proposed to it.]

CONCLUSION

The Department's 1997 ruling that the Legislature repealed or eliminated the Child Support Allocation was and is clearly erroneous. See, *California Welfare Rights Organization v. Carleson* (1971) 4 Cal.3d 445, 458 [93 Cal.Rptr. 758] [Invalidating a regulation where there was no "expression supporting [the position taken in the regulation] in either the Welfare and Institutions Code or in the various restrictive pronouncements of the 1970 Budget Act."] Legislative inaction and the passage of time do not validate a regulation that conflicts with the controlling law and policy from the beginning.

The ill advised repeal of the Child Support Allocation is unjust to children and counter productive. The Court of Appeal's judgment should be reversed.

September 7, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rules 8.204 and 8.520 of the California Rules of Court, the enclosed Brief of *Amicus Curiae* is produced using 13-point or greater Roman type, including footnotes, and contains 7,463 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

September 7, 2018

Betty Nordwind

Betty Nordwind

ADDENDUM

MANUAL
OF POLICIES
AND PROCEDURES

PUBLIC SOCIAL SERVICES

STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL WELFARE

LOS ANGELES COUNTY
LAW LIBRARY

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44-101 INCOME DEFINITIONS (Continued) 44-101

AB APSB ATD OAS AFDC

.5 Earned Income

Earned income is income received in cash or in kind as wages, salary, commissions or profit from activities such as business enterprise, farming, etc., in which the recipient is engaged as a self-employed individual or as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock or poultry (other than sale of an entire holding). (See Section 44-135.)

Returns from personal or real property, such as net income from rental of rooms, or board and room are considered "earned income" if such returns result from an appreciable and continuous effort on the part of the applicant or recipient.

.6 Voluntary Contributions

A voluntary contribution is a contribution for which the contributor has no legal liability. In AFDC and OAS a contribution by a child is "voluntary" only to the extent that it exceeds the child's legal liability. (See regulations on Responsible Relatives.) Income allocated to an AB, APSB, ATD or OAS recipient by his spouse as provided in Section 44-131.132 is not considered a "voluntary contribution." However, a contribution to the recipient by a spouse from income which the spouse would otherwise be permitted to retain for his own support, is considered to be voluntary.

.7 Recurring Lump-Sum Income

Recurring lump-sum income is: (1) income accrued over two or more months and expected to be received at intervals in the future; and (2) a recurring benefit received less frequently than monthly.

Interpretation - Recurring lump-sum income may include payments received from sources such as crops, pensions, rentals, contributions to meet taxes, stock dividends, salaries, wages or commissions and trust fund payments. Recurring lump-sum income does not include:

a. Income received monthly, including any initial lump-sum payment which will be followed by monthly payments from the same source such as OASDI. (Such income is applied toward meeting needs in the month of receipt and any unexpended balance becomes personal property on the first of the following month.)

b. Rental or similar payments covering a one-month period, but received less frequently than monthly because of vacancies, etc. (Such payments are considered in the same manner as income received monthly.)

.8 Income in Kind

Income in kind is any benefit received other than in cash. It includes the value of need items provided at no charge. In AB, APSB, ATD and OAS, it includes the value of need items which a person, home or institution is obligated to provide the recipient pursuant to a partial life care contract, life lease or other agreement.

44-111 PAYMENTS EXCLUDED OR EXEMPT FROM CONSIDERATION AS INCOME 44-111

AB ATD OAS AFDC

Federal and state statutes exclude or exempt certain types of payments or benefits in whole or in part from consideration as income. These exclusions and exemptions vary widely between programs. However, the federal statutes also provide that any income to an individual which is disregarded in determining his eligibility under the provisions of one categorical aid program (AB, ATD, OAS or AFDC) shall not be taken into consideration in determining the eligibility and/or the amount of assistance paid to a recipient receiving aid under another categorical aid program.

The exclusions and exemptions and the applicable programs are discussed in Sections .1 through .4 below.

.1 General Exemptions - Income from Any Source - Blind Programs

AB

.11 The First $7.50 a Month

In addition to all exemptions from income allowed in .2 through .4 of this Section, an exemption of $7.50 from total income shall be allowed once per month.

APSB

.12 The First $1,500 a Year

.121 The net income of a recipient of APSB from all sources of a combined total value up to and including $1,500 a year, plus one-half of all net income in excess of $1,500 not otherwise specifically exempt as provided in Sections .3 through .4 below, is exempt.

.122 Room and board as an integral part of the program of training for those blind student-trainees in the State Orientation Center for the Blind, is exempt income during the period of training.

44-111 PAYMENTS EXCLUDED OR EXEMPT FROM CONSIDERATION AS INCOME (Continued) 44-111

.2 Exemption of Earned Income - General

ATD OAS .21 The first $20, plus one-half of the next $60 a month, of earned income from sources other than Title I or Title II of the Economic Opportunity Act, is exempt from consideration in determining the amount of the OAS or ATD payment. (See Section 44-101.5 for definition of "earned income." See Section 44-113.211c for the procedure to determine exempt and non-exempt earned income.)

AB .22 In addition to the exemption specified in Section .1 above, the first $85 a month, plus one-half of any earned income in excess of $85 a month, from sources other than Title I or Title II of the Economic Opportunity Act, is exempt from consideration in determining the amount of the AB payment. (See Section 44-101.5 for definition of "earned income." See Section 44-113.211c for the procedure to determine exempt and nonexempt earned income.)

AFDC .23 Family Exemption

The first $30 of combined net earned income plus one-third of the remainder of the earned income of adults and children 18 to 21 attending school less than half time is exempt.

Interpretation - The net earned is computed by deducting from each person's gross earnings (as provided by Section 44-113.23):

a. The involuntary deductions by employers,

b. The $25 standard allowance (for food, clothing and incidentals) incident to employment, and

c. All other expenses incurred to retain employment.

The net incomes so determined are added together and then reduced by $30 plus one-third of the remainder.

.231 The family earned income exemption applies to all families receiving AFDC unless one or more of the persons to whom the exemption applies:

a. Terminates his employment without good cause, or

b. Refuses to accept a bona fide offer of employment without good cause.

.232 The family earned income exemption applies in determining eligibility of applicants only when AFDC for the family was discontinued within the four preceding months due to employment which did not work out as full-time employment.

Interpretation - In all other applicant families, if the family is determined to be eligible for aid without the exemption, the exemption is applied in determining the amount of the initial and subsequent aid payments.

44-113 NET INCOME (Continued) 44-113

AFDC .235 When earnings are from self-employment or operation of a business, the expenses in Items .232 and .233 are deducted with all other normal items of expense incidental to receipt of the income. However, principal payments are not allowed except for tools and equipment essential to the employment.

.236 When an entire item of need in the itemized Cost Schedule is met in kind as a result of service performed, the monetary value of the item as shown in the Cost Schedule is income to the family. The expenses in Items .232 and .233 are deducted with all other normal items of expense incurred in securing the income to determine the net income.

.237 Exempt family earned income (as provided in Section 44-111.23) is to be deducted after all deductions for expenses of employment from income are made.

.24 Other Deductions from Net Income

In addition to the deductions described above, deductions for other expenses of persons with income from any source, shall be made as follows:

.241 Court Ordered Support Payment by Natural Parent

Deduction for support of a child or spouse not in the home, paid on court order, shall be made not to exceed three months if the parent requests review of the order. If, upon review, the court orders continued support payments, the amount of the court order shall be deducted until the order is changed.

.242 Stepfather

Deduction is made from income for:

a. The support payments actually made to or for his dependents living elsewhere.

b. Alimony payments to his ex-wife in the amount of the court order.

c. The cost of medical care of the stepfather and other persons in the Family Budget Unit for whom there is no federal eligibility as child or caretaker.

State of California)
County of Los Angeles)
)

Proof of Service by:
✓ US Postal Service
Federal Express

I, Stephen Moore , declare that I am not a party to the action, am over 18 years of age and my business address is: 631 S Olive Street, Suite 600, Los Angeles, California 90014.

On 09/07/2018 declarant served the within: Application and Amicus Curiae Brief of Harriett Buhai Center for Family Law in Support of Respondent **upon:**

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SUPREME COURT OF CALIFORNIA
350 McAllister Street
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San Francisco, California 94102-4797

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

Signature: Stephen Moore

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