SUPREME COURT CASE NO. S245395

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

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

DEFENDANTS AND APPELLANTS.

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

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

OPENING BRIEF ON THE MERITS

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Issues Presented for Review

1. California's CalWORKs program supports children in the homes of very poor families. Eligibility for and the amount of aid depends on the amount of income already available to the household. May income that is paid as court-ordered child support for children in other homes be considered available to children in the home of the paying parent?

2. Welfare and Institutions Code section 11005.5[1] prohibits one family's "income or resources" from being considered in determining the amount of aid to any other family. Where garnished child support is the direct or indirect income of the receiving children, does the state violate section 11005.5 when it allows the garnished income to also be considered in determining the amount of aid to the paying family?

Introduction

Angie Christensen's family was denied public assistance because the Department of Social Services counted the family as having money it never will receive: her husband's wages and unemployment garnished to pay child support owed to another family. The result for the Christensens and similar families throughout California thwarts the legislative purpose behind both CalWORKs and child support: to secure adequate financial support to all California children.

For more than 40 years, California's welfare and child support systems have operated in tandem with the single overarching goal of ensuring sufficient financial support for the state's children. Each statutory scheme

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[1] Section or § refers to the Welfare and Institutions Code unless otherwise stated.

calculates an amount intended to meet that goal, whether funded by the government, private sources, or a combination.

The Legislature has recognized that robbing from children in one system to pay for the needs of children in the other undermines both systems. The detailed statutory guideline for calculating child support specifies that the amount a parent pays to support another family does not count as income available to that parent. Fam. Code §4059(e). It is inconceivable that if the family of the paying parent happens to be so poor as to potentially qualify for CalWORKs, the same Legislature would turn around and permit that family to be penalized.

In fact, no statute authorizes the Department's policy at issue here, and a long line of opinions from this Court and the Court of Appeal prohibit counting phantom funds in public benefits programs. In the absence of express legislative authorization, this Court should not infer that the Legislature intended such an outcome in this case.

Contrary to the Department's expressed fears, the Court can invalidate the Department's policy without necessarily changing the treatment of other garnished debt. Child support is uniquely intertwined with CalWORKs for the purpose of securing adequate financial support to all California children. Moreover, child support is a different kind of debt which takes priority over all other debt, cannot be compromised without both agency and court approval, and cannot be discharged in bankruptcy. Child support paid to another family *never* benefits the paying family. It is simply unavailable to the paying parent's family. The Department's policy of pretending otherwise cannot withstand scrutiny.

In addition, the Department's policy violates §11005.5, which prohibits consideration of income received by one group of public benefits recipients as also available to a different group. When garnished child support goes to

another family receiving CalWORKs, the Department violates §11005.5. The Department's policy allows counting the same money twice: once to reduce or deny aid to the family of the paying parent, such as the Christensens; and then to reduce CalWORKs for the family that receives the child support. The Department's policy is invalid.

Statement of the Case

CalWORKs supports poor families whose "reasonably anticipated" income "to be received" falls below specified amounts.

CalWORKs, the California Work Opportunity and Responsibility to Kids Act, provides cash assistance to low-income families. §§11200, 11250. The Legislature enacted CalWORKs after Congress replaced the old welfare system known as AFDC (Aid to Families with Dependent Children) with a block grant program known as Temporary Assistance for Needy Children. AB 1542, Stats. 1997, ch. 270.

To qualify for CalWORKs, a family must be poor; its "reasonably anticipated income, less exempt income" must be less than the maximum CalWORKs benefit for a family of its size. §11450.12(b); MPP §44-207.2.[2] The maximum benefit is called the Maximum Aid Payment, §11450.12(b), which in October 2010 (when Ms. Christensen applied) was $828 per month for a family of four. *Christensen v. Lightbourne*, 15 Cal.App.5th 1239, 1249, n.13 (2017), *review granted*, Jan. 10, 2018. This was 45% of the federal poverty line. 75 Fed.Reg. 45628, 45629 (Aug. 3, 2010).

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[2] The MPP, the Department's Manual of Policies and Procedures, constitutes the Department's official regulations and is available at http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CalWORKs-CalFresh-Regulations/Eligibility-and-Assistance-Standards.

The CalWORKs program calculates need prospectively, and the monthly benefit amount is based on income "reasonably anticipated" that "will be received" during the family's reporting period. §§11265.2, 11450.12(b). Income is considered reasonably anticipated "if the county is reasonably certain of the amount of the income and that the income will be received" during the reporting period. §11265.2(b).

Child support is money generally garnished from non-custodial parents' wages to pay the expenses of their children in amounts set by state law.

California parents must support their minor children. Fam. Code §§3900 et seq. Child support is money that a non-custodial parent pays to the custodial parent for the child's expenses. *Sneed v. Saenz*, 120 Cal.App.4th 1220, 1245 (2004).

Unlike in other areas such as consumer debt, garnishment of wages to pay child support does not suggest a last-resort collection measure only invoked against a recalcitrant debtor. Rather, Family Code §5230 *requires* a court to include in any child support order an "earnings assignment order . . ." Such an order can only be stayed for good cause. Fam. Code §5260. Most California child support is collected through garnishment. 2 CT 374 (Department of Child Support Services Handbook).

To comply with the same federal law that authorizes funding of CalWORKs, the Legislature has established a detailed uniform guideline to determine the appropriate amount of child support for each family. Fam. Code §§4050, 4055.

When child support is owed to a CalWORKs family, the money is either assigned to the state or subtracted from the CalWORKs grant.

As a condition of receiving CalWORKs, applicants often must assign their rights to child support payments to the state. §11477. When an assignment occurs, the custodial family keeps only the first $50 of current monthly support collected. §11475.3; MPP §12-425(c).[3] The state keeps the rest to offset the amount of CalWORKs benefits it pays the custodial family.

For other CalWORKs recipients, child support payments received are not assigned and count directly as income. This occurs when all adults in the home are excluded from the assistance unit because they have received 48 months of assistance, have been sanctioned for 12 consecutive months, or are ineligible because they are in violation of the terms of probation or parole. §11477(c)(1). Similarly, there is no assignment when a family collects child support for arrears that accrued before the family started receiving aid, as well as when a family collects support in excess of what is owed. §11477(a)(1)(B). In all these cases, other than the first $50, the child support paid directly to the family counts as income. §11477(c)(2) ("It is the intent of the Legislature that the regular receipt of child support ... be considered" in determining income).

The result of considering child support as income for a family is subtracting the amount of support dollar for dollar from the grant or disqualifying the family altogether.

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[3] California Department of Child Support Services regulations, contained in its Manual of Policies and Procedures, are available at http://www.childsup.ca.gov/resources/childsupportregulations/manualofpoliciesandprocedures.aspx.

The Department, reversing previous practice, adopts policy counting child support paid to another family as income to the paying parent, disqualifying the paying parent's family or reducing its grant.

No statute has ever expressly addressed the availability of garnished child support to the family of the paying parent. Before AB 1542, the legislation that enacted CalWORKs, a Department regulation did not count garnished child support as available to the family of the paying parent. *Christensen*, 15 Cal.App.5th at 1248, citing former MPP §44-113.9.

Even though AB 1542 did not expressly repeal the prior regulation, the Department, in a sub-regulatory letter to counties, adopted a rule counting income paid as child support for children in other homes as if it were available to the children in the paying home. All County Letter 97-59, 1 CT 63.

Ms. Christensen applies for CalWORKs cash aid, but is disqualified because of wages and benefits that are never received by the family but instead garnished to support her husband's children outside the home.

In October 2010, Angie Christensen applied for CalWORKs cash aid to financially support the children in her home. Director's Alternative Decision, Administrative Record (AR) 3. Although her husband Bruce had income from wages and unemployment benefits, court-ordered child support was garnished from those funds. *Id.* The garnished income provided for children in other homes – one child whose mother also received CalWORKs, one child who was not assisted by CalWORKs at that time, and one child who was an adult and for whom support payments were for arrearages. *Id.* Had the garnished child support been excluded, the Christensen children would have been eligible to receive CalWORKs cash assistance. Instead, counting the

garnished income, San Mateo County's welfare department denied aid to the Christensens. *Id.*

An administrative law judge concludes Bruce Christensen's child support payments were not available to meet the Christensen family's needs, but the Director of the Department reverses the decision.

Ms. Christensen requested an administrative hearing, asserting that the child support garnished from her husband's wages and unemployment should not count as income to her family. AR 7. The administrative law judge who heard the case agreed. The judge concluded that the garnished child support "is not available to meet the needs" of the Christensen children, and instructed the county welfare department to reevaluate the application, excluding the child support garnished from Bruce Christensen's earned and unearned income. AR 9.

But the Department's Director reversed and issued an alternate decision denying Ms. Christensen's claim. He reasoned that no regulation expressly exempts income that is paid outside the home for child support. AR 4.

Trial court rules in Ms. Christensen's favor, but Court of Appeal reverses.

Ms. Christensen filed a petition and complaint, seeking administrative mandamus (Code Civ. Proc. §1094.5), a traditional writ of mandate (Code Civ. Proc §1085) and declaratory relief. 1 CT 5-10. The trial court granted administrative mandate and declaratory relief, ruling that the Department's "policy to count court-ordered child support payments as available income of

the CalWORKs applicants and recipients who pay support, is invalid." 2 CT 619.

The trial court concluded that "child support that is transferred to children that live outside the home is not available to needy members of the family." *Id.* The court also declared that the Department's policy violated §11005.5, which prohibits consideration of the same funds in determining the amount of aid to two different recipient groups. 2 CT 618.

The Court of Appeal reversed, deferring to the Department's statutory and regulatory interpretations. Although recognizing that no statute directs the Department's policy, the Court of Appeal was concerned that "no limiting principle" would prevent a decision that garnished child support is not available income from applying equally to any other income garnishment. *Christensen,* 15 Cal.App.5th at 1247, 1256.

This Court granted review on January 10, 2018.

Standard of Review

This appeal primarily presents issues of statutory interpretation, which the Court reviews de novo. *Reid v. Google, Inc.*, 50 Cal.4th 512, 527 (2010). "Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal.4th 1, 7-8 (1998). "[A]n erroneous administrative construction does not become decisive no matter how long continued.'" *California Trout, Inc. v. State Water Resources Control Bd.*, 207 Cal.App.3d 585, 607 (1989), quoting *People v. Union Oil Co.*, 48 Cal.2d 476, 480 (1957).

Argument

I. Child support paid to other families is not income available to the paying family under California welfare law.

A. CalWORKs and child support operate together for the primary purpose of adequately supporting all children, a purpose which is thwarted by the Department's policy.

The Court's "'primary task in interpreting a statute is to determine the Legislature's intent, giving effect to the law's purpose . . . .'" *John v. Superior Court*, 63 Cal.4th 91, 95 (2016) (citation omitted). While that task normally begins with analyzing legislative language, no California statute expressly authorizes or prohibits the challenged policy. And leaving aside the double counting issue, *see* §II below, resolution of this case does not hinge on the meaning of a particular code section. *Cf. Azusa Land Partners v. Dep't of Indus. Relations*, 191 Cal.App.4th 1, 16 (2010) ("[j]udicial construction . . . is not accomplished by examining bits and pieces of a statute, but only after a consideration of all of its parts in order to effectuate the Legislature's intent.").

In this case, the Court should examine not just the CalWORKs statutory scheme, but also the system for calculating and distributing child support. As we now discuss, those two schemes are linked with each other; they work together with the overriding goal of providing an adequate level of support for California children; and the Department's policy at issue thwarts that goal, along with other purposes of both statutory schemes.

The welfare and child support programs have been intertwined since at least 1975, when President Ford signed into law legislation that added a new Part D to Title IV of the Social Security Act (*i.e.*, to the AFDC title). This new part, commonly referred to as IV-D, established a federal system for child

support enforcement for states participating in the AFDC program. P.L. 93-647 (Jan. 4, 1975) §101, adding 42 U.S.C. §§652 et seq.

Though a block grant to the states has replaced AFDC's cash assistance federal entitlement program, the welfare-child support link established in 1975 remains intact. States seeking federal aid for their public benefits programs must submit a "state plan for child support" which require states to establish paternity, secure collection, and disburse assigned child support funds to reimburse the state for welfare. 42 U.S.C. §§602(a)(2), 652, 654. Congress has specified that court orders or federally-approved formulas should determine the amount of support obligations, which, when owed to a state, cannot be discharged in bankruptcy. 42 U.S.C. §656.

These linked programs share the same primary purpose: adequate support of all children. Section 11205 specifies that each CalWORKs "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." *See also Sneed v. Saenz,* 120 Cal.App.4th at1229 ("[a]dequate support for *all* of the needy children of California's working poor is a matter of priority" (emphasis in original); *Waits v. Swoap,* 11 Cal.3d 887, 896 (1974) (the purpose of AFDC, 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.").

The child support statutes share the goal of securing sufficient support for all children. Courts issuing support orders must "place the interests of children as the state's highest priority." Fam. Code §4053(e). Support orders shall "take into account each parent's actual income and level of responsibility." Fam. Code §4053(c). And they "must ensure that children actually receive fair, timely and sufficient support reflecting the state's high

standard of living and high costs of raising children . . . ." Fam. Code §4053(l).

The Legislature has implemented this goal concretely by specifying amounts that must be paid both for CalWORKs and for child support. The CalWORKs statute provides that "[a]id shall be paid for each needy family" (§11450(a)(1)(A)) and then details the amount calculations.

Similarly, a formula to set the *amount* of a child support order is a required component of a state's federally approved Temporary Assistance for Needy Families plan. 42 U.S.C. §§602(a)(2); 667. To "ensure that this state remains in compliance with federal regulations," Fam. Code §4050, California has adopted a detailed uniform guideline for calculating child support. Fam. Code §§4055 *et seq.*

Critically, California's guideline prohibits the same attribution of unavailable income to the non-custodial parent that the Department is making in this case. Family Code §4059 provides, in relevant part, that the "annual net disposable income of each parent" is computed by deducting from the parent's gross income "[a]ny child or spousal support actually being paid by the parent pursuant to a court order" to another family. Fam. Code §4059(e).

Yet, under the Department's policy, when a family is so poor as to potentially qualify for CalWORKs, the same child support "actually being paid by the parent pursuant to a court order" is *not* deducted from the paying family's available income. By pretending the child support payments are available to responsible paying families like the Christensens, the Department's policy frustrates the Legislature's intent. It fails to place the interests of the Christensen children "as the state's highest priority," Fam. Code §4053(e), and fails to provide "sufficient support and protection" to them. §11205.

The Legislature has ensured that in effect there are two pots of money: one to fund the poor children in CalWORKs families; and the other to pay for the beneficiaries of child support orders. Whatever mix of government and private money is poured into these pots, the Legislature has expressed its intent that each pot remain full and available, or at least sufficient for adequate support of California's children. Thus, Family Code §17516 provides that "[i]n no event shall public social services benefits . . . be employed to satisfy a support obligation."

But that is exactly the result compelled by the Department's policy. The Department is using money needed to provide sufficient support for CalWORKs families to satisfy the obligation to pay child support to other families. The policy thwarts the primary purpose of both CalWORKs and child support.

The policy conflicts with other statutory purposes as well. One of those is "the preservation, so far as possible, of the family unit . . . ." *Waits v. Swoap,* 11 Cal.3d at 896; *see also* §11205 ("the family unit is of fundamental importance to society"); *Sneed v. Saenz*, 120 Cal.App.4th at 1229 (welfare reform statutes are "designed to insure the long-term economic viability of the family unit.").

The Department's policy provides a strong incentive for the opposite result. If Angie and Bruce Christensen were to separate, Angie's family would readily qualify for CalWORKs. The family should not be penalized for staying together. *See Waits v. Swoap,* 11 Cal.3d at 896 (AFDC grant could not be reduced by attributing in-kind income from grandparents living in the same house); *McCormick v. County of Alameda*, 193 Cal.App.4th 201, 218 (2011) (in holding that a minor living with his mother was entitled to a General Assistance grant, the court stated: "respondents propose that [the

mother] and [the child] should simply cease living as a family. Such a 'solution' cannot be deemed to have been authorized by the Legislature . . . .").

In addition, CalWORKs, as its name suggests, is a work-incentive program. *Sneed v Saenz,* 120 Cal.App.4th at 1242. But the Department's policy undermines that incentive by substantially reducing any benefit that a non-custodial parent can provide to a new family through employment.

Already, too many absent parents stop working or voluntarily reduce their income to avoid paying child support. *See, e.g., In re Marriage of Ilas,* 12 Cal.App.4th 1630, 1638 (1993), for a discussion of the statutory and case law dealing with this problem. The Department's policy encourages such behavior, while penalizing responsible parents like Bruce Christensen who work and pay support.

"'[S]tatutes must be construed in a reasonable and common sense manner consistent with their apparent purpose and the legislative intent underlying them—one practical, rather than technical, and one promoting a wise policy rather than mischief or absurdity.'" *Weidenfeller v. Star & Garter,* 1 Cal.App.4th 1, 5–6 (1991) (citation omitted). Treating garnished child support as available to the paying parent and his family interferes with those goals and is therefore illegal.

B. Neither the CalWORKs statute nor California case law authorizes treatment of phantom funds such as garnished child support as available to the person who never receives those funds.

California public benefits law prohibits the government from treating phantom income such as garnished child support as available to families such as the Christensens who will never receive or benefit from that income. Section 11265.2(b) provides that income of a family must be "reasonably

anticipated" to be counted. Income shall be considered "reasonably anticipated" if "the county is reasonably certain of the amount of income and that the income will be received" during the applicable reporting period. §11265.2(b). The funds at issue in this case are never "received" because they are transferred via garnishment to meet the needs of other children. The funds also are not, and never will be, "the family's income" used to decide the CalWORKs grant amount in §11450(a).

The Court of Appeal deferred to the Department's interpretation of §11265.2(b) as merely describing a prospective budgeting system rather than requiring actual receipt and availability of funds. Under this interpretation, only gross income need be reasonably anticipated. *Christensen*, 15 Cal.App.5th at 1254-55.

But reading the principle of actual availability out of the CalWORKs statutes ignores more than 40 years of California public benefits case law. In *Cooper v. Swoap,* 11 Cal.3d 856 (1974), this Court held that "noncash economic benefits" such as shared housing did not count as income available to families under the AFDC program (CalWORKs' predecessor), thus reducing their grants. The Court ruled that "constructive presumptions of income" were not permissible. *Id.* at 870. Imputing constructive income without regard to actual availability was "arbitrary;" counting "fictional" economic benefits "improperly reduce[s] the already meagre grants on which the children must seek to survive." *Id.* at 871.

In a companion case, *Waits v Swoap,* 11 Cal.3d 887, this Court rejected a similar welfare regulation, based on similar reasoning, holding that it is improper to deem income from non-needy relatives who are not legally obligated to provide support. The *Waits* Court held that under California law, "[o]nly the actual value of ... [financial] benefits received could possibly constitute income to the recipient." *Id.* at 894-95.

Similarly, in *Galster v. Woods,* 173 Cal.App.3d 529 (1985), the Court of Appeal invalidated an AFDC rule that counted as "available" to the family real property that may legally be liquidated but "is not actually available." *Id.* at 532. The court considered whether real estate was available "in terms of providing for a needy child on a day-to-day-basis," where petitioners did not control it or were unable to sell it. *Id.* at 540. The practice of counting such real estate as an available resource unlawfully "hindered" the "paramount goal of providing assistance to needy children and their families" by denying the opportunity to demonstrate that the resources "are not actually available." *Id.* at 544. So too here, income that has been diverted to provide for children outside of Ms. Christensen's home is "not actually available" to provide for her children on a day-to-day basis.

California courts have also applied the prohibition against counting phantom resources in cases concerning General Assistance, a county-funded program providing subsistence benefits to individuals who are not assisted by other programs. §§17000 et seq. In *Mooney v. Pickett,* 4 Cal.3d 669 (1971), this Court held that the economic resource of employability (physical and mental fitness for work) may not be used to disqualify a person from eligibility for county general assistance cash aid. *Id.* at 679-80. The *Mooney* Court reasoned that "theoretical employability is a barren resource; it is inedible; it provides neither shelter nor any other necessity of life." *Id.* at 680. *See also McCormick v. County of Alameda,* 193 Cal.App.4th at 214 (county could not deny General Assistance to a minor on the ground that he was technically part of a CalWORKs assistance unit when in fact he was receiving no cash aid).

Here, court-ordered child support garnished for children in other homes is only theoretically available to the Christensen children. As in *Mooney*, it "provides [them] neither shelter nor any other necessity of life." The

Department's policy conflicts with the general principle that phantom resources should not be counted to reduce or deny public assistance.

When the Legislature wants to depart from that principle in specific areas, it knows how to do so. For example, §17001.5(a)(4) partially supersedes *Mooney* by expressly permitting counties to impose a time limit on employable General Assistance recipients.

But neither the Department nor the Court of Appeal could point to any express legislative authorization to count paid child support as available to the family who never receives it. In the absence of such authorization, the Court should not infer an implied legislative intent to do so.

C. The court should reject the Department's "slippery slope" arguments because child support obligations are qualitatively different from other debts.

The Court of Appeal opinion turned on the mistaken conclusion that child support obligations cannot meaningfully be distinguished "from any other debt that may lead to garnishment of income." *Christensen*, 15 Cal.App.5th at 1257. The Department also has criticized "the lack of a limiting principle" in petitioner's argument. Answer to Petition for Review at 15-16. But even where a rule risks a "slippery slope," "slipping down the slope stops where application of a law or regulation becomes unreasonable." *Conway v. State Water Res. Control Bd.*, 235 Cal.App.4th 671, 679 (2015).

Here, as shown in Section IA above, CalWORKs and the Family Code operate together to implement the legislative intent that all children – whether CalWORKs beneficiaries or recipients of child support – receive sufficient support. The same cannot be said of any other garnished debt, which is sufficient in itself to provide a "limiting principle."

Child support is different in other ways that make it unsuitable to be deemed available to the children residing with the paying parent. As a debt of the highest priority, child support must be paid before payment of any debts owed to creditors. Fam. Code §4011. While a debtor and creditor might agree to compromise a consumer debt, parents need approval of the local child support enforcement agency and the family court to agree to payment of child support amounts below the state guideline. Fam. Code §4065. Child support debt may not be discharged in bankruptcy. 11 U.S.C. §§523(a)(5), 523(a)(15); 42 U.S.C. §656. Whenever there is a child support order, wage garnishment is mandatory. Fam. Code §5230.

Most, albeit not all other debt owed by a family is for items that have benefitted the family (e.g., payments on a couch). But child support that a parent pays to another family can *never* benefit the children in his current household. Child support is different; the Court can draw the line there without undue concern over a slippery slope.

Thus, the Court of Appeal's reliance on *Heckler v. Turner*, 470 U.S. 184 (1985), is misplaced. *Christensen,* 15 Cal.App.5th at 1256. In *Heckler,* the Supreme Court concluded that under the former AFDC statutes mandatory payroll tax deductions were indistinguishable from other payroll deductions and thus need not be deducted from net income in determining grant amounts.

To begin with, *Heckler* was a federal case, a distinction with a difference. This Court, in construing state law, has never been reluctant to disagree with the United State Supreme Court's reasoning interpreting similar federal law. *See, e.g., Ketchum v. Moses*, 24 Cal.4th 1122, 1136-38 (2001) (holding unanimously that contingency fee multipliers are available under California fee-shifting statutes despite U.S. Supreme Court ruling they could not be awarded under similar federal statutes); *People v. Ramirez,* 25

Cal.3d 260, 263-64 (1979) (deprivation of property rights unnecessary to invoke California constitutional due process protections despite U.S. Supreme Court decisions to the contrary construing the Fourteenth Amendment). *See also Shaw v. McMahon*, 197 Cal. App. 3d 417 (1987) (unemployed parents held entitled to receive state-paid AFDC benefits even though receipt of lump sums disqualified them under federal law under portion of program funded jointly by state and federal governments).

California public benefits law, unlike its federal counterpart, requires an expansive interpretation of the rights of low-income beneficiaries. §11000 (the "provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program."); §10000 ("It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life . . . ."). *See Hunt v. Superior Court*, 21 Cal. 4th 984, 1005–06 (1999) (relying on both statutes in ruling in favor of indigent county health care program beneficiaries). And "the courts play an important role in assuring that the provisions of the public welfare laws are liberally interpreted and actively enforced." *Robbins v. Superior Court*, 38 Cal.3d 199, 208 (1985).

More importantly, neither the holding nor the reasoning in *Heckler* aids the Department in this case. Child support is no mere payroll deduction akin to the union dues, medical insurance, retirement programs, and mandatory tax withholdings, distinguishing among which "would be 'metaphysical indeed.'" 470 U.S. at 202. Whereas the "sums" mandatory tax withholdings "consume are no less available for living expenses than other sums mandatorily withheld from the work's paycheck and other expenses incurred necessarily incurred while employed," *id.* at 201, child support withholdings *are* less available for living expenses. They will never, by any

means, be available to feed, clothe or shelter the children in homes like the Christensens where a responsible, working parent is paying child support.

Child support paid to other families cannot be considered available income under California welfare law.

D. The legislative history of AB 1542 does not support the Department's interpretation.

The legislative history of AB 1542 is silent on the precise question before the Court.[4] That silence favors Ms. Christensen, not the Department. In AB 1542's 153 sections, "the Legislature reviewed various statutes adopted during the time the AFDC program was in effect and either repealed, amended or continued those laws as part of the new CalWORKs program." *Sneed v. Saenz*, 120 Cal.App.4th at 1240. But the former rule recognizing the unavailability of paid child support took the form of a regulation, not a statute. *Christensen*, 15 Cal.App.5th at 1247.

That former regulation was important for the thousands of blended families like the Christensens which include a parent paying child support to another family. In *Hunt v. Superior Court*, 21 Cal.4th 984, this Court, in rejecting a county's overly expansive interpretation of a statutory amendment, stated that the "Legislature would not have made such a sweeping change . . . without a clear expression of an intention to do so. No such expression of purpose is reflected in [the amended statute] or its legislative history." *Id.* at 1006. The same is true in this case.

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[4] *See* Stats. 1997, ch. 270 (filed Aug. 11, 1997); 1 CT 199-248 (Department of Social Services, Enrolled Bill Rept. dated Aug. 5, 1997); 1 CT 250-287 (Department. of Social Services. "Major Items of Welfare Reform Contained in AB 1542," dated Aug. 14, 1997).

If anything, the Legislature warned against overly broad interpretations of the changes made in AB 1542. The new legislation amended §11157 to state, "Except as otherwise provided ... 'income' shall be deemed to be the same as applied under the [AFDC] program on August 21, 1996..." AB 1542, §46, amending §11157(b). In other words, §11157(b) retained the income definition under the AFDC program. This alone provides convincing evidence that the Legislature intended to keep disregarding money that was paid out by family members to support children outside the home.

In short, the Department's policy thwarts the Legislature's intent that both children poor enough to qualify for CalWORKs and children receiving child support receive adequate support; and that public benefit programs in this state not penalize beneficiaries by counting phantom income. The Court should invalidate the policy.

II. The Department's policy violates section 11005.5 by counting the same income as available to two different families.

The Department's policy results in counting the same income twice in many instances. The funds are counted as available to the paying family when the paying family applies for or receives CalWORKs. And they are counted as available to the receiving family when that family also receives CalWORKs.

The trial court correctly ruled that the Department's "interpretation of the governing scheme is contrary to Welfare and Institutions Code sec. 11005.5. Double counting should not occur among recipient groups." 2 CT 618.

A. The Court of Appeal's interpretation of section 11005.5 ignores the second sentence of the statute, which prohibits consideration of the income or resources of one recipient group in determining the amount of aid to another group.

Section 11005.5 begins by providing: "[a]ll money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person." The Court of Appeal concluded that §11005.5 did not apply to the Christensens because "Bruce's garnished child support is not 'aid.'" *Christensen*, 5 Cal.App.5th at 1258.

But that conclusion ignores the second sentence of the statute, which states that aid "to a recipient or recipient group and *the income or resources* of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group." §11005.5 (emphasis added). As the court stated in *Rogers v. Detrich*, 58 Cal.App.3d 90 (1976), "that portion of the statute [the insertion of the language "income or resources"] is even more clear on its face than the remainder of the statute." *Id.* at 101, n.6. Under the Department's policy, the garnished child support "income" received by the custodial family is "considered in determining eligibility or the amount of aid" to the paying family, in violation of §11005.5.

The *Rogers* court went on to decide that a county rule which used one person's Supplemental Security Income to deny General Assistance to another person in the same household "amounts to defiance of the legislative proscription." *Id.* at 101. The court concluded that the defendant county must "determine eligibility for General Assistance and the amount of General Assistance to which an applicant is entitled without reference to aid, *income,* or resources of SSI[] recipients...." *Id.* at 106 (emphasis added). By the same

token, the Department should determine the eligibility for aid of both families with parents who pay child support and CalWORKs families which receive that support without double-counting the same income.

B. The Department's policy inevitably leads to double-counting income when the family receiving child support also receives CalWORKs.

1. The issue is squarely presented by this case, as the trial court granted not just administrative mandamus but also declaratory relief in a matter of great public interest.

The Court of Appeal declined to interpret §11005.5 further, reasoning that "child support paid to benefit a child living in a family receiving CalWORKs aid is not *generally* counted as income to that child's family" because it is assigned to the county and state. *Christensen*, 15 Cal.App.5th at 1259 (emphasis added).

But as both the court below and the Department acknowledged, child support is not assigned to the government when child support arrears accumulate during a time that a family is not receiving CalWORKs. Nor does assignment occur in "safety net" cases where only the child is receiving aid because the adults have received aid for the maximum amount of time. *Id.* at 1260; Answer to Petition for Review at 22. There are more than 80,000 safety net families alone, a number which is rapidly increasing.[5]

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[5] 2 CT 578-580 (Department of Social Services., "CalWORKs Program Caseload by Category Jul. 2009-Aug. 2014 (released Oct. 2, 2014)), Request for Judicial Notice filed concurrently, Ex. A; CalWORKs - Cal. Families on the Road to Self-Sufficiency: Annual Summary Jan. 2017 at 10-11, Request for Judicial Notice, Ex. B.

The Court of Appeal refused to decide whether illegal double counting occurs in such cases, stating that there was no evidence in the record that the amounts garnished from Mr. Christensen were for pre-aid arrears or that the child receiving aid was a safety net child. *Christensen,* 15 Cal.App.5th at 1260. But the Department enforces across the board its policy of counting garnished child support as income and makes no attempt to ascertain whether the garnished income will then be received directly by another CalWORKs family and again subtracted from its grant. The policy thus permits and encourages the double counting prohibited by §11005.5, and petitioner may challenge the policy on that ground.

The trial court not only granted Ms. Christensen administrative mandamus, but also issued a declaratory judgment that the Department's policy was unlawful. 2 CT 618. In declaratory relief cases, California courts have refused to apply the strict standing rules that Article III of the United States Constitution requires federal courts to follow. *See, e.g., Envtl. Prot. Info. Ctr. v. Dep't of Forestry & Fire Prot.,* 43 Cal.App.4th 1011, 1020 (1996) ("We perceive neither justification nor authorization for us to import this federal law principle into our jurisprudence, and we accordingly decline the Attorney General's invitation to do so.").

When declaratory relief is at issue, "[i]f the issue of justiciability is in doubt, it should be resolved in favor of justiciability in cases of great public interest." *Nat'l Audubon Soc'y v. Superior Court,* 33 Cal.3d 419, 433, n. 14 (1983). *See also Residents of Beverly Glen, Inc. v. City of Los Angeles,* 34 Cal.App.3d 117, 122 (1973) (""the right to sue is greatly relaxed where the question is of public interest."); *California Water & Tel. Co. v. Los Angeles Cty.,* 253 Cal.App.2d 16, 26 (1967) ("[w]ere there any doubt about the justiciability of the controversy, that doubt would be resolved in favor of

present adjudication, because the public is interested in the settlement of the dispute.").

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

Ms. Christensen testified without contradiction that at least one child in the receiving family was a CalWORKs recipient. AR 3. While the record does not reveal whether that child was also a safety net child, that should not be surprising. Public benefits administrative fair hearings are supposed to be informal, with beneficiaries often representing themselves or enlisting lay persons. *K.I. v. Wagner*, 225 Cal.App.4th 1412, 1422 (2014). The Legislature did not intend that to prove a §11005.5 violation an applicant would have to subpoena another family's welfare records (even leaving confidentiality issues aside).

And even if the CalWORKs family receiving Mr. Christensen's child support were not a safety net family at the time of the hearing, the family could be on the verge of becoming one. The parent in a CalWORKs family loses her benefits after she has been receiving aid for 48 months, §11454(a), after which child support goes directly to the "safety net" child and is not assigned. So the most that the Department could argue under any factual circumstance is that the issue may not be ripe. But the "ripeness requirement does not prevent us from resolving a concrete dispute if the consequence of a deferred decision will be lingering uncertainty in the law,

especially when there is widespread public interest in the answer to a particular legal question." *Hunt v. Superior Court*, 21 Cal. 4th at 998. The Court should decide the issue presented.

2. When garnished child support is passed directly to CalWORKs families, the Department violates section 11005.5 by counting the funds as income both for the paying parent's current household and the family that receives the support directly.

When child support is garnished and paid directly to a CalWORKs family, the Department counts the same money twice. First, the Department counts the money as income for the paying family, causing a grant reduction or, as in this case, a denial of aid altogether.

The receiving family receives similar treatment. Other than the first $50, the child support paid directly to the family counts as income and is subtracted from the CalWORKs grant. §11477(c)(2) (describing the "intent of the Legislature that the regular receipt of child support ... be considered" in determining income); MPP §44-113.5 (child support which is reasonably anticipated to be paid and not forwarded to the county "shall be considered available income"). This double counting violates §11005.5.

3. When child support is assigned and pays indirectly for CalWORKs, the same income effectively determines the amount of aid paid to both families, in violation of section 11005.5.

Section 11005.5 is applicable as well when child support paid to a family is assigned and paid to the state. In those instances, the state still counts the child support as income to the family of the paying parent. At the same time, the state uses those payments to offset the amount it pays

towards the custodial family's CalWORKs grant. The custodial family effectively receives less from the state's CalWORKs pot because a private child support payment covers part of the family's need.

It is as if the custodial family first received the child support and then was required to hand the funds over to the state. Where the custodial family cedes the funds to the state to pay for its own aid, and the paying family is deemed to still have the funds, the same income effectively reduces the CalWORKs aid paid to both families. This violates §11005.5.

C. Section 11005.5 applies to families in separate households and to public benefits applicants as well as recipients.

The Court of Appeal did not reach the Department's remaining arguments against applying §11005.5 in this case. Neither of these arguments is persuasive.

First, the Department argued below that §11005.5 only applies when income from one person is considered as income for another person in the same household. Appellant's Opening Brief at 40. But the statute draws no such distinction. Rather, it specifies that the "income or resources" of a "recipient group shall not be considered in determining eligibility . . . of *any other* . . . recipient group. §11005.5 (emphasis added). The two recipient groups need not be in the same household.

Second, the Department was mistaken when it contended that §11005.5 only applies to two groups of public benefits recipients and Ms. Christensen was an applicant. Appellants' Opening Brief at 39. "When uncertainty arises in a question of statutory interpretation. . . ., it is presumed the Legislature intended reasonable results consistent with its

expressed purpose, not absurd consequences." *Harris v. Capital Growth Investors XIV*, 52 Cal.3d 1142, 1165-66 (1991) (citations omitted).

The Department's interpretation would lead to anything but "reasonable results." Under this interpretation, if Angie Christensen were already receiving CalWORKs when Bruce Christensen's paid child support was imputed as income to the family, she could invoke §11005.5 to contest termination from the program. But she would be somehow powerless to contest the exact same computation of income as an applicant for aid.

The Legislature could not have intended such an absurd result, but rather used the term "recipient" to apply to public benefits beneficiaries generally. Thus, the statute states that "the income or resources of [a] recipient or recipient group shall not be considered in determining *eligibility for* or the amount of aid of any other recipient or recipient group." §11005.5 (emphasis added). The question of "eligibility" arises for applicants. The statute applies to applicants and recipients alike.

The *Rogers* court apparently agreed, ordering that a writ of mandate be issued directing counties "to determine eligibility for General Assistance and the amount of General Assistance to which an *applicant* is entitled without reference to aid, income or resources of SSI/SSP recipients . . . ." *Rogers v. Detrich*, 58 Cal.App.3d at 106.

The Department's policy permits and encourages double counting of income in violation of §11005.5. The policy is invalid generally and as applied to the Christensen family.

Conclusion

The Department's policy violates the fundamental purpose of child support and CalWORKs: to secure support for all California children. If allowed to stand, it would punish California's *poorest* children – who would

otherwise qualify for CalWORKs – by indulging a legal fiction that they may be fed, clothed and sheltered with funds legally set aside to take care of the needs of children in other homes. Moreover, the Department's policy allows one recipient group's income – that of the CalWORKs family for whom child support is collected – to simultaneously be considered the income of another applicant or recipient group, violating §11005.5

For the foregoing reasons, the judgment of the Court of Appeal should be reversed.

Dated: March 16, 2018

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

By:_____
RICHARD A. ROTHSCHILD

WORD COUNT CERTIFICATE

I certify that this Opening Brief on the Merits consists of 7,614 words, according to the computer program used to generate the brief.

Dated: March 16, 2018

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

By:_____
RICHARD A. ROTHSCHILD

PROOF OF SERVICE

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

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

On March 16, 2018, I served the following document described as: **OPENING BRIEF ON MERITS AND REQUEST FOR JUDICIAL NOTICE** on all interested parties in this action by electronic transmission and by placing copies thereof enclosed in a sealed envelope addressed as follows:

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 16, 2018 at Los Angeles, California.

Marilyn Harris