

B251797

IN THE
Court of Appeal
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

C.S.,

Respondent-Appellant,

vs.

W.O.,

Petitioner-Respondent.

APPEAL FROM
SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
HONORABLE CHRISTINE BYRD
CASE NO. BF036276

**APPLICATION FOR PERMISSION TO FILE AMICUS
CURIAE BRIEF; AMICUS CURIAE BRIEF OF THE LOS
ANGELES CENTER FOR LAW AND JUSTICE, ET AL., IN
SUPPORT OF RESPONDENT-APPELLANT**

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TO THE PRESIDING JUSTICE:

Los Angeles Center for Law and Justice, American Civil Liberties Union of Southern California, Asian Americans Advancing Justice – Los Angeles, California Partnership to End Domestic Violence, Family Violence Appellate Project, Inner City Law Center, Legal Aid Association of California, Legal Aid Foundation of Los Angeles, Public Counsel, and Western Center on Law and Poverty respectfully request permission, under rule 8.200(c) of the California Rules of Court, to file the attached *amicus curiae* brief in support of Respondent-Appellant in this case. No party, any

counsel for a party, person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the *amicus curie*, its members, and its counsel in the pending appeal. Rules of Court, Rule 8.200(c)(3).

This appeal addresses whether a court has discretion to deny a fee waiver to an indigent litigant who receives government benefits. The trial court in this case revoked C.S.' fee waiver, despite finding that she qualified for and received needs-based government benefits for indigent persons, because she borrowed money to pay for court costs not covered by her fee waiver.

This amicus brief explains why the trial court's ruling is antithetical to the purpose for which the fee waiver statute was created, ignores the realities of poverty in California, is a de facto denial of access to the courts, and is a waste of precious judicial resources. The brief discusses the implications of the trial court's decision on the ability of many indigent, self-represented Californians to obtain fee waivers and the importance of fee waivers in obtaining access to justice.

As more fully outlined below, *amici* are California-based local and state nonprofit organizations that represent the interests of indigent litigants in California and collectively work with thousands of indigent litigants each year, including those who receive government benefits and apply for waivers of court fees and costs. *Amici* are committed to ensuring that all litigants, regardless of income, have access to the civil courts in this state.

Los Angeles Center for Law and Justice ("LACLJ") is a nonprofit legal aid organization that fights for the rights of vulnerable families and advocates for a more just legal system. For over 40 years, LACLJ has helped vulnerable families overcome hurdles to successfully access the courts. LACLJ serves the most underserved communities who face significant challenges in understanding their legal issues, and provides in-

depth individualized legal services, including representation in court. LACLJ's attorneys and staff provide direct legal services, education and advocacy for low-income families in five program areas: Domestic Violence, Teen Legal Advocacy, Immigration, Housing Education, and Access to Justice. The vast majority of LACLJ's clients - many of whom are recipients of government benefits, young parents, or survivors of domestic violence - live below 125% of the federal poverty level, and rely on fee waivers to access the court.

Amicus American Civil Liberties Union ("ACLU") of Southern California is a nonprofit, nonpartisan membership organization. It is dedicated to preserving and expanding the civil rights and liberties enshrined in the Bill of Rights and civil rights law, including ensuring that all people, including those who are poor, have equal access to justice and the legal system.

Asian Americans Advancing Justice – Los Angeles ("Advancing Justice – LA") is a non-profit legal services organization based in Southern California. Founded as Asian Pacific American Legal Center in 1983, Advancing Justice - LA's mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively impact Asian Americans, Native Hawaiians, and Pacific Islanders, and to create a more equitable and harmonious society. To fulfill its mission, Advancing Justice - LA works to increase access to justice for all through direct services, litigation, and advocacy efforts. Advancing Justice - LA serves approximately 15,000 individuals annually across Southern California, the majority in Los Angeles County. Advancing Justice - LA attorneys and staff provide direct legal services to low-income, limited English proficient communities in civil matters including family law, domestic violence, workers' rights, and housing. The majority of these clients depend on statutory fee waivers in order to access the courts.

California Partnership to End Domestic Violence (“the Partnership”) is the federally recognized State Domestic Violence Coalition for California. Like other Domestic Violence Coalitions throughout the U.S. States and territories, the Partnership is rooted in the battered women’s movement and the values that define this movement, including working toward social justice, self-determination and ending the oppression of all persons. The Partnership’s mission and work are focused on protecting the safety of domestic violence victims and their children and holding batterers accountable. This includes providing and supporting access to court services for all survivors, including low-income survivors. Domestic violence survivors often turn to the judicial system as a means of protecting themselves from future abuse. A 2010 study demonstrated that an increase in the number of legal services available is associated with a decrease in intimate partner homicide.¹ Access to the court system can save a survivor’s life and should be available to all.

Family Violence Appellate Project (“FVAP”) is a nonprofit organization dedicated to ensuring, through the appellate legal system, the safety and well-being of domestic violence survivors and their children. A State Bar-funded Support Center, the goal of FVAP is to aid in creating a body of precedent that will help protect families across California. To that end, FVAP provides direct appellate representation for survivors of domestic violence in collaboration with legal services and pro bono attorneys, and offers training to domestic violence attorneys and advocates on issues pertinent to domestic violence appeals. In addition, FVAP monitors California litigation and identifies those cases that have the

¹ Reckdenwald, A., & Parker, K. F. (2010). Understanding gender-specific intimate partner homicide: A theoretical and domestic service-oriented approach. *Journal of Criminal Justice*, 38, 951-958.

potential to impact the interests of domestic violence victims and their children statewide. This is one of those cases.

Inner City Law Center (“ICLC”) is a nonprofit law firm focused on housing, homelessness, and veterans’ issues. As the only provider of legal services on Skid Row in downtown Los Angeles, ICLC combats slum housing throughout Los Angeles and develops strategies to end homelessness. ICLC’s staff of forty-two provides free, high-quality legal representation to low-income tenants, working-poor families, immigrants, people who are homeless or disabled, and veterans. ICLC’s main projects include homelessness prevention, homeless veterans, housing, government benefits, and housing policy. Since ICLC’s founding, providing access to justice has been central to our mission. Fee waivers for indigent litigants are essential to access to justice.

Legal Aid Association of California (“LAAC”) is a statewide membership association of more than eighty public interest law nonprofits, which provides free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations, including seniors, persons with disabilities, victims of domestic violence, and migrant farmworkers. LAAC strongly believes that low-income Californians who qualify for fee waivers should not have those fee waivers denied if eligible litigants borrow money from family and friends for one-time court fees they believe cannot be waived, nor if they borrow money from family or friends for basic life necessities for their own families and children.

Legal Aid Foundation of Los Angeles (“LAFLA”) has been the frontline law firm providing free civil legal services to low-income people in Los Angeles County for 85 years. With six neighborhood offices, and

four Self Help Legal Access Centers, LAFLA serves diverse communities and is the first place thousands of poor people turn to when they need legal assistance for a crisis that threatens their shelter, health and livelihood. LAFLA is particularly committed to ensuring access to the courts for our poor litigants, and as such we have vigorously advocated fee waiver and language access issues. In 2013 LAFLA assisted an estimated 22,554 litigants who needed fee waivers. The vast majority of our clients, many of whom are supported by public benefits, would be denied their day in court without fee waivers. Equal access to justice requires equal access to courts, which is impossible for our clients without fee waivers.

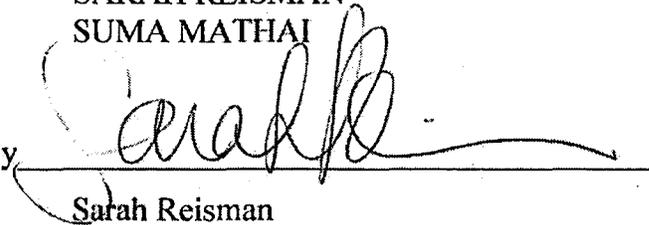
Founded in 1970, Public Counsel is the public interest law firm of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel's staff of 61 attorneys and 52 support staff – along with over 5,000 volunteer lawyers, law students and legal professionals – assists over 30,000 children, youth, families, and community organizations every year. Public Counsel's activities are far-ranging and include court-based clinics and other work to increase access to the justice system for people who live at or below the poverty level. Public Counsel regularly observes, and supports efforts to correct improper application of the statutory provisions waiving court fees for indigent litigants in California's courts.

Western Center on Law and Poverty (“WCLP”) is the state support center for California's neighborhood legal aid offices. For many years, WCLP has monitored access to court issues statewide and has advocated for enforcement of the fee waiver statutes in the Legislature and in the courts. *See, e.g., Cruz v. Superior Court*, 120 Cal.App.4th 175 (2004).

Dated: July 1, 2014

LOS ANGELES CENTER FOR LAW AND JUSTICE
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INTRODUCTION

“If the motto ‘and justice for all’ becomes ‘and justice for those who can afford it,’ we threaten the very underpinnings of our social contract.”

Chief Justice Ronald M. George, State of the Judiciary Speech, 2001.

This Amicus Brief is filed in support of C.S., an indigent single mother receiving government benefits, whose fee waiver was revoked because she borrowed money to pay for a transcript. The legal issue before this Court is whether the trial court had the discretion to deny a fee waiver to an indigent litigant after that court confirmed that the litigant was receiving government benefits. Appellant’s opening brief convincingly argues that the trial court did not. This Amicus Brief discusses the implications of the trial court’s decision on the ability of many poor, self-represented Californians to obtain fee waivers and the importance of fee waivers in obtaining access to justice.

The crux of the trial court’s holding is that if an indigent litigant finds a way to pay for court costs not covered by a fee waiver – in this case by borrowing money from friends or family – then that litigant is not entitled to a fee waiver. However, penalizing indigent litigants for borrowing money to pay for court costs or other living expenses is antithetical to the purpose for which the fee waiver statute was created.

Moreover, and more broadly, denying a fee waiver to a self-represented indigent litigant who is statutorily eligible for one is a *de facto* denial of access to the courts. It is unlikely that the litigant would be able to afford to continue with her case-in-chief or have the knowledge or resources to file an appeal to have the fee waiver restored to her. And, if she did continue her case, she would only be able to do so by borrowing the funds or doing without basic necessities in life.

Further, the trial court's decision ignored the rigorous scrutiny that C.S. and other recipients of government benefits go through to qualify and continue to receive their benefits. The clear legislative intent behind providing automatic fee waivers to recipients of qualifying government benefits without collecting income information is to conserve precious judicial resources and allow the court to rely on government agencies' detailed determination of the litigant's income level and qualification for benefits. Moreover, categorizing the loans as income, the trial court failed to defer to the CalWORKs and CalFresh government regulations and is in conflict with the Legislature's allocation of resources among the various branches of government.

FACTS

C.S. is an indigent single mother of three.² She receives government benefits through several programs, including Supplemental Nutrition Assistance Program (called CalFresh in California and more popularly "food stamps"), Medicaid ("Medi-Cal"), and California Work Opportunity and Responsibility to Kids ("CalWORKs") for herself and her children. Respondent-Appellant's Appendix ("RRA"), Vol.1, Tab 14. Her oldest son has a disability, for which C.S. receives Supplemental Security Income ("SSI") on his behalf. *Id.* All of these programs are needs-based programs that are only available to indigent families or individuals. C.S. has no other source of income, and must occasionally rely on friends and family for help with food, clothes and toiletries. *Id.*

Since 2009, C.S. has been involved in a contentious custody dispute with her ex-boyfriend, W.O., regarding their daughter. For the first four

² All facts are from Appellant-Respondent's Opening Brief and Appendices. Because the parties were not married, the underlying case was, by statute, confidential and as a result, some of the documents cited here were filed under seal with this Court.

years of the litigation, C.S. was self-represented. Because she received government benefits, C.S. requested a fee waiver pursuant to California Government Code § 68630, *et seq.*, which allows recipients of certain government benefits programs – including food stamps, Medi-Cal, CalWORKs and SSI – to receive fee waivers for court costs and fees. C.S. was granted her first fee waiver in 2009 and continued to receive fee waivers on a periodic basis until 2013. *Id.*

C.S. had sole custody of her daughter from her birth in 2007 until 2013, when the court granted joint custody to both parents. C.S. went to a nonprofit legal aid organization to see if she could appeal the decision. The legal aid organization told C.S. that she would need to get the transcripts from the trial as soon as possible so that they could evaluate her claim and, if appropriate, timely file a notice of appeal. *Id.* C.S. borrowed \$1,000 from her family and friends to purchase an expedited transcript.³ *Id.*

The trial court learned that C.S. had purchased the transcript and *sua sponte* revoked C.S.’s fee waiver on the grounds that the loan represented “undisclosed income” which made C.S. ineligible for a fee waiver. RRA, Vol. 1, Tabs 2, 16. After the denial, C.S. began to receive free legal representation from another nonprofit legal aid organization, Los Angeles Center for Law and Justice (“LACLJ”). RRA, Vol. 1, Tab 7. LACLJ represented C.S. in later custody hearings and in the subsequent fee waiver litigation. *Id.* LACLJ also paid for her court fees and costs for filing those requests, and paid for her transcripts so that C.S. could bring this appeal. Having a nonprofit legal aid organization pay for court fees, costs and

³ The Court Reporters Board of California has a Transcript Reimbursement Fund (the “Fund”) which reimburses qualified indigent litigants or court reporters for the cost of a court reporter’s services. *See* Court Reporters Business and Professions Code §§8030.2 *et. seq.* The Fund is very limited and had already been extinguished for the year by the time C.S. would have applied.

transcripts is very rare; given the ratio of indigent litigants to legal aid providers, organizations like LACLJ simply do not have the resources to pay for these costs other than in extraordinary circumstances.

Over the six months following the court's revocation of her fee waiver, C.S. filed two subsequent fee waiver applications and filed additional evidence of her financial circumstances. RRA, V.1, Tab14, 16. She provided notices from the government showing that she received food stamps, Medi-Cal, CalWORKs, and SSI, and that her total monthly cash benefits from CalWORKs and SSI were \$1,336.40, putting her income well below the Federal Poverty Guidelines. RRA, V.1, Tab 14. She provided a declaration stating that she had no savings and could not afford to pay for the transcript, but was able to borrow money from her mother, her sister and a friend. *Id.* She also stated that she could not pay for court fees and also meet her basic living expenses, and that she often had to rely on family and friends to help her with clothing, food and toiletries because her government benefits did not cover all of her living expenses. *Id.*

The court denied both of C.S.'s subsequent fee waiver requests. RRA, V.1, Tab 16. Despite finding that C.S. received government benefits that should have qualified her for a fee waiver, the court held that it had discretion to deny the fee waiver because C.S. "failed to disclose her true income," which the trial court found included the one-time loan she received for the transcript and the assistance she received from friends and family to help with basic necessities. *Id.*

ANALYSIS

I. Penalizing Indigent Litigants for Borrowing Money to Pay for Court Expenses Not Covered by a Fee Waiver Is Antithetical to the Purpose for Which the Fee Waiver Statute Was Created and Ignores the Realities of Poverty in California.

The trial court ruled that C.S. could not have a fee waiver because she had access to "other income" – a one-time loan and assistance from

friends and family.⁴ But the reality is that recipients of government benefits may need to turn to friends and family to meet basic needs or respond to an unforeseen crisis. Even the maximum benefit that a litigant could receive would not cover the cost of daily life, let alone the cost of a court case. Fortunately, the courts and legislature have recognized that a litigant should not have to choose between paying for her daily needs and covering the costs of a court case.

A. The California Courts and Legislature Recognize the Importance of Equal Access to the Courts for Indigent Litigants.

California courts have long been concerned about an individual's right to access justice without regard to her ability to pay and have recognized that denying access to the courts because of poverty "contravenes the fundamental notions of equality and fairness...." *Isrin v. Sup. Ct.*, 63 Cal.2d 153, 165 (1965); *see also Garcia v. Santana*, 174 Cal.App.4th 464, 470 (2009) (noting the long-standing precedents in California stating that California statutes, laws and court room procedures should not be applied to deny access to the court based on the litigant's financial status).

From the time that it was enacted in 1979 the Fee Waiver Statute has built on those principles and provided access to the courts for people who cannot afford to pay or who are receiving government benefits.⁵ *See Haglund v. Superior Court*, 139 Cal.App.3d 256, 259 (1982).

⁴ In general, income is monetary payments received for goods or services, or from sources such as rents or investments. *See* Los Angeles County Department of Public and Social Services' Manual of Policies and Procedures ("DPSS Manual") § CW 44-101 (CalWORKs regulations, available at <http://www.dss.cahwnet.gov/ord/PG302.htm>).

⁵ Under the current statute, the following government assistance programs entitle recipients to an automatic fee waiver: Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity

B. Government Assistance Is a Stop-Gap Measure and Does Not Provide a Living Wage.

Government benefits are meant to help individuals in deep poverty and cannot, by themselves, lift families out of poverty. Most government benefits consist of temporary stop-gap measures – cash aid is available, but more commonly support is in-kind, such as food stamps or subsidized medical care – designed to help qualifying families survive difficult times. The benefits do not, and are not intended to, provide a living wage.

The goal of CalWORKs, for example, is to put families on the path to self-sufficiency by providing cash assistance, supportive services, and employment training. Los Angeles County, Department of Public Social Services CalWORKs Information Website, *available at* <http://www.ladpss.org/dpss/calworks/default.cfm> (“CalWORKs Website”). Except in limited circumstances, a recipient can only receive cash aid for 48 months, which is counted cumulatively, over the lifetime of that recipient. *Id.* To be eligible for CalWORKs benefits, an applicant must show that she cares for at least one dependent minor, and that her household’s income is below a threshold amount. *Id.* Any income that the household receives is factored into the analysis of the family’s benefit amount, and reduces the final cash benefit each month. *Id.*

The maximum monthly CalWORKs cash benefit for a family of four in Los Angeles was \$849 in 2013 and the average benefit was \$668. Coalition of California Welfare Rights, Public Assistance Tables (April, 2014). For many CalWORKs recipients, this benefit is their only source of

and Responsibility to Kids Act (CalWORKs), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF), food stamps, California Food Assistance, County Relief or General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In-Home Supportive Services (IHSS), or Medi-Cal. Cal. Gov’t Code § 68632(a).

funds, which means that families who receive CalWORKs grants are living well below the Poverty Guidelines.⁶ *CalWORKs Characteristics Survey: A Characteristics Survey on Social and Economic Characteristics of Families Receiving Aid (2003-2004)*, available at http://www.dss.cahwnet.gov/cdssweb/entres/q51804/publications/pdf/CalWORKsCharFFY03_04.pdf.

C. The High Cost of Living and High Poverty Rates Mean Many Californians Struggle to Pay Their Daily Expenses.

The Great Recession, the high cost of living in California and wage stagnation mean that the number of families living in poverty in California is growing, just as budget cuts are limiting the resources available to help those families break the cycle of poverty. Families are being forced to do more with less and must make difficult decisions every day about how to best allocate their limited resources.

Fourteen percent of Californians, and all recipients of CalWORKs benefits, live below the Poverty Guidelines. Senate Joint Resolution No. 15 – Relative to the federal poverty level (filed April 9, 2004); *see also California Poverty Measure*, pg. 9 (California’s official poverty measure was 15.9% in 2012). Many poverty experts, as well as the California Legislature, have been critical of the Poverty Guidelines as being outdated and under-inclusive because the methodology was developed in the 1960s

⁶ The Federal Poverty Guideline is calculated and issued annually as a national administrative tool to determine eligibility for government benefit programs. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Frequently Asked Questions Related to the Poverty Guidelines and Poverty*, available at <http://aspe.hhs.gov/Poverty/faq.cfm>. In 2014, the Poverty Guideline calculation for a family of four is \$23,850. *Id.* Families that only receive CalWORKs grants are living at less than half of the Poverty Guideline (the maximum grant of \$849 x 12 = \$10,188). Even those who earn the maximum income allowed to qualify for CalWORKs are still earning an income that is well below the Poverty Guideline.

and it only includes the cost of food; it does not include transportation, medical expenses and other necessary living expenses. *Id.* The Legislature estimates that 30% of Californians do not earn enough to cover their basic expenses. *Id.* Even when the value of cash aid and in-kind assistance from government benefit programs is included in the poverty calculation, 22% of Californians still live in poverty. *California Poverty Measure*, pg. 8 (measuring the poverty rate using a calculation that includes the cost of food, shelter, clothing and utilities and factors in the value of in-kind assistance – like food stamps and Medi-Cal – as well as cash aid).

Though unemployment has been shrinking in recent years, most of the job growth has been in low-wage service industry where the jobs are part-time, pay minimum wage, and do not provide employees with benefits. *Uneven Progress: What the Economic Recovery Has Meant for California Workers*, California Budget Project (September, 2013), pg. 6-7 (“*Uneven Progress*”); *See also Handling Cases Involving Self-Represented Litigants, A Benchguide for Judicial Officers*, Administrative Office of the Courts (January, 2007), 1-2 (“*Benchguide*”). Five of the top 10 occupations that are expected to grow pay a median hourly rate of less than \$10 an hour. *Benchguide* at 1. However, minimum wage has not kept pace with inflation so that even if individuals can find jobs, they would still struggle to pay their expenses because the purchasing power of the minimum wage is 31.3% below what it was in 1968. *Uneven Progress*, pg. 10.

The high cost of living in California means that meager resources – from government assistance or jobs – must be stretched further. Housing, for example, is significantly more expensive in California than it is elsewhere and consumes a disproportionately large percentage of a family’s resources. In Los Angeles, the average one-bedroom apartment is \$1,218 a month – more than the total monthly cash benefit that a family of four could receive from CalWORKs. *Building Healthy Communities 101: a*

Primer on Growth and Housing Development for Los Angeles Neighborhoods, Los Angeles Housing Department, available at, <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/curriculum/gettingfacts/affordability/renting.html>.

D. Indigent Families' Finances and Lives Are Precariously Balanced and Vulnerable to Unexpected or Unforeseen Expenses.

Families living in poverty are often treading water and make a number of sacrifices to survive on a day-to-day basis. They make rotating or partial bill payments, share housing with non-family members to combine resources, and rely on friends and family to fill the gaps or provide emergency support. Those methods, necessary for survival, also make indigent families vulnerable to small changes in circumstances and make the cycle of poverty hard to break because there is no way to get ahead.

Indigent families often strategically pay bills on a partial and rolling basis, according to that bill's priority: usually rent is paid first to prevent eviction, followed by utilities and then food. *Challenges and Tradeoffs In Low-Income Family Budgets: Implications for Health Coverage*, The Kaiser Commission on Medicaid and the Uninsured (April, 2004), pg. 7 ("Challenges & Tradeoffs"). The most such a system can offer is that no single obligation becomes too far overdue. Because there is no savings or cushion, small, unexpected expenses – such as a medical bill, or here, an unexpected court cost – can have catastrophic effects and force families to do without food, medical supplies or, in some situations, cause homelessness. *Id.*

Another increasingly common stop-gap measure for indigent families is combining households with non-family members. Mykyta, Laryssa & Macartney, Suzanne, *Sharing a Household: Household Composition and Economic Well-Being: 2007-2010*, Consumer Income,

Current Population Report (June, 2011) at 1. While there are certain advantages that come with shared expenses, living with unrelated persons can also be a source of instability and vulnerability. If one person decides to move out, then the remaining person is responsible for all expenses. There is also a chance that the assets and resources of the non-family member will be imputed to the indigent person when he or she is applying for benefits. Here, for example, C.S. lived with a non-family member who shared in payment of some household expenses. RRA, V.1, Tab 14. However, he was unwilling or unable to assist her with her court costs and was under no legal obligation to do so. *Id.* The trial court still found that his assistance in some areas of her life was one of the reasons why she was not entitled to a fee waiver. RRA, V.1, Tab 16.

Indigent communities tend to be generous with resources and support. *Challenges & Tradeoffs* at 9. Families in poverty often turn to friends and family who provide assistance in the form of food or childcare, but also provide temporary loans for the most urgent and immediate needs. *Id.* But again, receiving or providing rotating emergency loans or assistance means that indigent families are always allocating limited resources to respond to emergencies, causing them to only fall further behind in the payment of their own bills or expenses.

Indigent families – especially those living in such extreme poverty that they qualify for government benefits – live with a very narrow margin of error. Their lives and finances are precariously balanced and one unexpected expense can have serious and significant consequences. C.S.’s experience is both typical and representative of the financial choices and consequences that indigent families face on a day-to-day basis. C.S. testified that she paid her bills on a rotating basis, lived with a non-family member to share expenses, and relied on assistance from family and friends

to fill the gaps in her family's daily needs. RRA, V.1, Tab 14. As it was, her existence was precarious, but she was getting by.

The unexpected expense of the trial transcript, however, threatened to disrupt her fragile ecosystem. C.S. had no savings, no access to credit, and no paycheck from which she could obtain the funds. RRA, V.1, Tab 14. However, there is no greater emergency to a parent than the possibility of losing custody of her child. C.S., like most parents, felt that the safety, custody and care of her child were so fundamental that, even without having the liquid resources, she had to find the funds to purchase the transcript. She did the only thing that she could: she reached out to family and friends, whose resources were probably also limited, to borrow enough money to purchase the transcript that would assist her in her appeal. The actions of C.S. and her support system were not, as the trial court stated, evidence of "undisclosed income."⁷ Instead, the loan and support that C.S. received are evidence of a reallocation of extremely limited resources – both C.S.'s and her support network – in light of what was perceived as an emergency need.

E. Improper Denial of a Fee Waiver Forces Litigants to Choose Between Accessing the Courts or Meeting Their Basic Needs.

If LACLJ had not stepped in to pay C.S.'s subsequent fees and costs and purchase additional transcripts, C.S. would have had to find another way to continue the litigation, whether by borrowing additional money, doing without food, or making smaller bill payments and falling into debt. Or, she would have had to abandon the prospect of trying to regain custody of her child.

⁷ For purposes of calculation of income for the court, California Family Code exempts any funds received from any government assistance program where the eligibility is based on a determination of need. F.C. § 4058.

These are the options that an indigent litigant faces when a fee waiver is improperly denied. If she has sufficient liquid resources, she may choose to reallocate her limited liquid funds to pay her court fees instead of other basic necessities in her life. If she does not, she can borrow from friends and family. If there is no one to borrow funds from, then the litigant cannot continue her case.

However, the legislature and appellate courts have recognized what the trial court did not: that indigent litigants should not be forced to choose between paying for basic necessities and pursuing a court case and, that for many indigent Californians, the denial of a fee waiver denies the litigant access to the court.

II. Denying a Fee Waiver to a Self-Represented Indigent Litigant Who Is Statutorily Eligible for an Automatic Waiver Is a *De Facto* Denial of Access to the Courts.

Indigent litigants have suffered most significantly from cutbacks resulting from the economic recession: court functions have been reduced or eliminated and funding has decreased for the nonprofit legal aid organizations that provide free or low cost services, just as the recession has increased the number of people who need help. *The Access to Justice Crisis Facing California Families: An In-Depth Background Paper for An Informal Hearing of the Assembly Judicial Committee*, Staff Counsel of the Assembly Judiciary Committee (February, 2012) (“Access to Justice”).

The Legislature, court system and legal aid organizations have worked to make the court system more accessible to those indigent, self-represented litigants by removing situational barriers to access of justice. *The Path to Equal Justice: A Five-Year Status Report on Access to Justice in California*, California Commission on Access to Justice (October, 2002), pg. 18, 37 (“Path to Equal Justice”); *Action Plan for Justice*, California Commission on Access to Justice (April, 2007), pg. 17 (“Action Plan for

Justice”). One of the areas where strides have been made to provide greater access is in the application for and provision of fee waivers.

Initiatives in the fee waiver context have included state-wide efforts to simplify forms and procedures and to increase the level of information available to self-represented litigants. The fee waiver statute, California Government Code § 68630, *et. seq.* (the “Fee Waiver Statute”), was amended in 2008 to make the process of obtaining a fee waiver uniform and more straightforward. Legislative History, Fact Sheet, 2008, AB 2448 (Feuer) Courts: Access to Justice (The new law “contains a clearer and more comprehensive statutory scheme ... to ensure that indigent litigants have an opportunity to access the courts....”). Recognizing that the bulk of fee waiver applications would be completed by self-represented litigants, the new fee waiver application form was designed with assistance from literacy experts and includes plain language, larger type and graphics. *Path to Equal Justice* at 22; *Action Plan for Justice* at 69; *See also* Judicial Council Form FW-001 (last revised 2014).

These efforts, statutorily created and uniformly supported, recognize the difficulties that indigent and self-represented litigants face and the importance of creating a legal system that is open to all individuals, regardless of ability to pay.⁸ *Action Plan for Justice* at 7. However, if those measures are not followed, then indigent litigants are *de facto* denied access to the court system.

⁸ This Amicus Brief often refers to indigent, self-represented litigants as one in the same because most indigent litigants cannot afford to hire an attorney. However, that is not to say that all indigent litigants are self-represented or that only indigent, self-represented litigants are entitled to a fee waiver. Indigent litigants who decide to allocate their resources in such a way that they can hire an attorney – such as by taking out a loan or receiving assistance from friends and family – should not be penalized for that choice and should not be denied a fee waiver if they are otherwise entitled to one under the Fee Waiver Statute.

A. The Burden of Improper Denials of Fee Waivers Falls Heavily on Indigent Self-Represented Litigants in Cases Affecting Basic Human Needs.

C.S. followed the rules, applying for a fee waiver and following the instructions on the fee waiver form, which track the requirements in the Fee Waiver Statute. As a recipient of benefits from government programs enumerated by statute and listed on the form, C.S. was instructed not to provide any income information. In finding that she was not entitled to a fee waiver, the trial court reasoned that C.S. had failed to disclose income information – exactly the information that C.S. was instructed not to provide. *See Haglund*, 139 Cal.App.3d at 259 (trial court abused its discretion by denying litigant on food stamps and welfare a fee waiver when litigant had followed instructions on Judicial Council form and did not provide income or expense information).

Self-represented litigants apply for fee waivers most commonly in family law or housing related matters. If fee waivers are improperly denied, these litigants will not have access to the court to resolve issues affecting the most basic and fundamental areas of their lives: their families and their homes. The trial court's decision creates an unfair and unreasonable barrier between indigent self-represented litigants and the court, preventing them from resolving these basic, fundamental issues.

B. The Consequences of a Fee Waiver Denial Are Heightened in Housing and Family Law Cases.

It is a reality of the legal system that more and more individuals cannot afford legal representation and are forced to navigate the legal system on their own. *Self-Represented Litigants in Family Law: The Response of California's Courts*, California Law Review – Circuit (February, 2010), 2. Perhaps not surprisingly, the greatest concentrations

of self-represented litigants in civil cases are found in areas that disproportionately affect indigent litigants – family law and housing law.⁹

In the housing context, the result of a fee waiver denial is immediate. In an unlawful detainer case, a tenant has only five days to respond. Code Civ. Proc. §1167. The clerk will accept the tenant’s response even if the fee waiver has not yet been granted, but if at the fee waiver hearing held 10 days later, the waiver is denied, then the litigant will not be able to participate in the trial regarding whether or not she will be evicted if she does not pay her court costs. A denial of a fee waiver here will likely result in a loss of housing.

In the family law context, the denial of a fee waiver would mean that litigants would not be able to proceed with custody hearings or would not be able to obtain a divorce. As the U.S. Supreme Court recognized in *Boddie v. Connecticut*, “resort to the state courts is the only avenue [litigants have] to dissolution of their marriages.... [and] is no more voluntary in a realistic sense than that of the defendant called upon to defend his interest in court.” 401 U.S. 371, 376-77 (1971) (finding that due process prohibited a state from denying access to courts in divorce cases, solely because of inability to pay).

Moreover, family law cases can be litigated for years. The litigation regarding custody and visitation may continue, even post-disposition, until the youngest child in a case reaches the age of majority. Disallowing an

⁹ At the time an Unlawful Detainer (eviction) complaint is filed, 34% of petitioners, usually landlords seeking to evict tenants, are self-represented. *Statewide Action Plan for Serving Self-Represented Litigants*, Judicial Council of California, Task Force on Self-Represented Litigants, pg. 11. Approximately 90% of tenants seeking to avoid eviction are self-represented. *Id.* In family law cases, 67% of petitioners are self-represented at the time the petition is first filed. *Id.* At the time of disposition 80% of petitioners in dissolutions and 96% of petitioners in paternity cases (when parents are not married) are self-represented. *Id.*

indigent parent from participating in a custody case due to her lack of funds prevents the court from getting all the information it needs to make decisions in the best interests of the child. More importantly, it can cause devastating, long-term effects on the family and to a parent who will not be able to participate in the process whereby a court determines where her child will live and who will make the decisions regarding how that child will be raised.

C. Litigants Usually Have Limited Recourse if a Fee Waiver Is Improperly Denied.

After her fee waiver was revoked, C.S. filed two additional fee waiver requests, a detailed declaration, and a memorandum of points and law in support of her subsequent fee waiver applications, and had a hearing on the fee waiver denial. RRA, V.1, Tabs 14, 16. She also requested a Statement of Decision when her fee waiver was denied, thus preserving her right to appeal. RRA, V. 1, Tab 14.

C.S. was fortunate to have the assistance of a nonprofit legal aid organization to draft the documents for her fee waiver hearing and to represent her at that hearing. Most indigent litigants do not have access to *pro bono* or legal aid attorneys. *Path to Equal Justice* at 31; *Action Plan for Justice* at 18-19. Without assistance from LACLJ – which paid both her court fees and the cost of the transcript – it is unlikely that C.S. would have been able to proceed in either her custody matter or this appeal. It is the very rare self-represented litigant who would be able to submit a legal memorandum citing statutory authority and case law interpreting that statutory authority, draft a clear declaration with detailed financial information, or even know to request a Statement of Decision.

Because a self-represented litigant would be extremely unlikely to appeal a fee waiver denial, the essential check-and-balance between

appellate and trial court does not operate as effectively as it normally does, magnifying the ramifications of an improper fee waiver denial.

III. To Deny a Fee Waiver to an Indigent Litigant Who Is Receiving Government Benefits Is Contrary to the Legislative Intent of the Fee Waiver Statute and Is a Waste of Precious Judicial Resources.

Fee waiver applicants who receive government benefits must provide the following information when they apply: address; employment information, if any; and the type of government benefit that they are receiving. Gov't Code §68633(a). To require more information would be contrary to legislative intent and would be a waste of judicial resources. Recipients of government benefits have to provide detailed information about their assets, income and resources to government agencies to obtain and retain their benefits. Therefore, the court's collection of the same information is duplicative and is not as thorough as the agencies'.

A. Individuals Who Receive Government Benefits Are Subject to Rigorous and Regular Income Scrutiny.

Individuals who receive government benefits are subject to rigorous scrutiny by government agencies that are explicitly tasked with the review of that individual's income, resources and needs. Those agencies were created to determine whether an individual qualified for benefits and to continuously evaluate that applicant's eligibility.

CalWORKs, for example, is one of the specifically enumerated government programs where recipients are automatically deemed eligible for fee waivers. It is funded by the state and federal government and administered by the California Department of Public Social Services ("DPSS") in partnership with other state and federal agencies. To qualify for CalWORKs, a household must include at least one minor child, be deprived of parental support (*i.e.*, a single parent or when one parent is unable to work), have assets totaling less than \$2,000 and, in Los Angeles

County, have a monthly income of less than \$1,424 for a family of four. *CalWORKs Website*.

The household must establish its eligibility in a comprehensive application process that includes an interview and the production of documentary evidence which includes, for all members of the household, (1) valid forms of identification; (2) birth certificates; (3) proof of residence with leases and rent receipts; (4) Social Security numbers; (5) bank statements showing the amount of money in the bank; (6) proof of earned income in the last 30 days; (7) statements regarding unearned income (*e.g.*, receipt of other government benefits, child or spousal support, grants or loans, etc.); (8) proof of lawful immigration status; (9) proof of immunizations for children under six; and (10) vehicle registration for any vehicles owned. All family members must also be fingerprinted and photographed. *Application for CalFresh, Cash Aid, and/or Medi-Cal/Health Care Programs*, SAWS 2 Plus Form. The government agency overseeing the application process may also undertake an investigation to verify or corroborate the information provided by the applicant. *Id.*

After being approved, the recipient has an on-going obligation to report any changes that may affect her eligibility within 10 days of that change. *Rights, Responsibilities and Other Important Information*, SAWS 2A SAR Form. The recipient must also verify her eligibility every six months with a government agent who collects, reviews the information and interviews the recipient to verify that she is still eligible. *Id.*

All information that the applicant provides is under penalty of perjury and she faces escalating penalties and fines if she provides false or incomplete information. *Id.* These penalties may include the loss of or disqualification from receiving benefits, fines of up to \$10,000 and incarceration of up to five years. *Id.*

DPSS and other agencies tasked with overseeing the provision of government benefits are able to make a more thorough examination of the individual's income than can the court, whose resources are necessarily more limited.¹⁰ Receipt of government benefits indicates that a government agency has already made a clear determination that the individual is living in poverty. Given the increasing demands on judicial resources, courts should not use their resources to make determinations that have already been made by a dedicated government agency in a more detailed fashion.

B. The Legislature Granted Automatic Fee Waivers to Recipients of Certain Government Programs to Conserve Judicial Resources Because the Income of Those Individuals Had Already Been Determined.

The depth and breadth of the government benefits application process, the on-going reporting obligations and the penal consequences ensure that those who receive government benefits are eligible. It is no surprise, then, that the Fee Waiver Statute grants litigants who receive government benefits automatic fee waivers and neither asks for nor requires income or expense information. In contrast, fee waiver applicants who do not receive government benefits must submit – and the court must review – evidence that their household income is below 125% of the Poverty Guidelines (\$29,812 for a family of four) or that the balance of the litigant's income and expenses make payment of court fees and costs overly burdensome. Gov't Code § 68632.

¹⁰ Because of the division of personal assets in a divorce and determination of child and spousal support, Judicial Officers who hear family law cases might have access to some of the same information as the government agency, depending on the nature of the case and the amount of discovery undertaken by the parties. The financial information certainly should not be taken out of context or reviewed in part, as the trial court did here, by only looking at the existence of a loan without also reviewing other income, if any, and expenses.

The Legislature was explicit that automatic fee waivers to recipients of qualifying government benefits were intended to conserve judicial resources and, in 2008, expanded the list of government benefits whose receipt entitles participants to automatic fee waivers to further alleviate judicial workload burdens. *See* Assembly Judiciary Committee Mandatory Information Worksheet, March 10, 2008 (“Moreover, by expanding the list of public benefit programs that provide categorical eligibility for a fee waiver ... [the statute] will alleviate workload burdens for the courts by making those applications easier to process.”); Senate Judiciary Committee hearing, June 24, 2008 (“This bill would add more income-based entitled programs to the list of public benefit programs for which recipients have an automatic right to an initial waiver of fees because eligibility for these programs tracks eligibility for the existing income-based benefit programs.”). The legislature noted that the inclusion of the additional government programs “would provide administrative efficiencies in processing fee waiver application, thereby reducing the workload and costs to the courts.” Senate Judiciary Committee, Hearing on June 24, 2008.

C. Courts Should Defer to the Legislature’s Allocation of Resources Between the Branches of Government to Avoid Duplication of Resources and Error.

Courts have stressed the importance of respecting the Legislature’s allocation of resources among the various branches of government. In *Barron v. Superior Court*, 173 Cal.App.4th 293 (2009), a family law judge ordered a custodial parent to secure a full-time job even though doing so would cause her to quit the school she was attending as part of her CalWORKs welfare-to-work plan. The Court of Appeal reversed, noting that if “there is any area requiring judicial restraint, it is where the legislative branch has defined the problem and set up a framework to solve

it.” *Id.* at 300, citing *Anderson v. Superior Court*, 213 Cal.App.3d 1321, 1337 (1989).

Similarly, the trial court’s characterization of the repayable loans to C.S. as income conflicts with CalWORKs and CalFresh law. Regulations governing both programs specify that most loans that must be repaid are *not* income. DPSS Manual § 44-111.437; 7 C.F.R. § 273.9(c)(4); DPSS Manual § 63-502.2(f). As the Legislature recognized, tasks such as determining income for government benefits recipients are best left to the expert agencies charged with administering those programs. Allowing the trial courts to reevaluate a government benefits recipient’s income is a duplication of efforts and increases the opportunity for errors in the determination of eligibility for a fee waiver.

CONCLUSION

For the reasons stated above and in the Appellant’s Opening Brief, this Court should reverse the order denying C.S.’s fee waiver application.

CERTIFICATE OF WORD COUNT

(Cal. R. Ct. Rule 8.204(c)(1).)

The text of this brief consists of 8,480 words as counted by the Microsoft Word Version 2010 word processing program used to generate the brief.

Dated: July 1, 2014

Respectfully Submitted,

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TO BE FILED IN THE COURT OF APPEAL

APP-008

<p>COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION</p>	<p>Court of Appeal Case Number: B251797</p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Sarah Reisman (SBN 294393), Sarah@lajl.org Suma Mathai (SBN 216689), Suma@lajl.org 1241 S. Soto St., Ste. 102 Los Angeles, CA 90023 TELEPHONE NO.: 323-980-3500 FAX NO. (Optional): 323-980-3510 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Amicus Curiae LACLJ, et. al.</p>	<p>Superior Court Case Number: BF036276</p>
<p>APPELLANT/PETITIONER: C.S. RESPONDENT/REAL PARTY IN INTEREST: W.O.</p>	<p style="text-align: center;">FOR COURT USE ONLY</p>
<p style="text-align: center;">CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</p> <p>(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE</p>	
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The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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