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Originally Posted - February 28, 2006

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### **COMMENTARY - Social Security, Welfare and Child Support Enforcement**

#### **How federal welfare funding drives judicial discretion in child-custody determinations and domestic relations matters**

**By Lary Holland and Jason Bottomley**

There is a growing pandemic in this country where the very fabric of our society, the family, is being attacked and destroyed. Our children are systematically being torn away from willing and capable parents who want to be involved in parenting their children. Families are systematically being torn apart instead of being helped when they turn to the states' family courts to solve domestic relations disputes. This document demonstrates an attempt to trace this problem back to its source.

The topics and issues being discussed are quite complex because of the nature of the multiple welfare programs created within Title IV of the Social Security Act (SSA); so the authors have attempted to provide a simplified overview of how federal welfare funding motivates the state family court judges to remove a willful parent and create high child support orders.

The Social Security Act  
 Title IV

GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

**Part A** - Block Grants to States for Temporary Assistance for Needy Families

**Part B** - Child and Family ! Services

**Part C** – Repealed

**Part D** - Child Support and Establishment of Paternity

**Part E** - Federal Payments for Foster Care and Adoption Assistance

The authors have spent a tremendous amount of time researching external economic factors that they believe drive judicial discretion and influence professional judgment in domestic relations matters. Through their research and experience, the authors have concluded that a relationship exists between the federal funding of state welfare programs and the determinations made by state family court judges presiding over child-custody and domestic relations matters. They believe that it is this relationship that de-emphasizes the importance of sharing parental responsibility, and instead emphasizes a manufactured public policy concerned only on the financial obligations of one parent - rather than on the real interests of the children involved.

The authors have also concluded that, while this relationship has successfully been masked behind what is commonly termed "the best interests of the child," the federal funding created within the Social Security Act provides clear monetary incentives to states that have a high-occurrence of one-parent households, where a child has the majority of access to only one of their parents. The authors believe that this "best interests of the child" standard is loosely subjective, gives unlimited discretion to state family court judges, and ultimately leaves a tremendous amount of room for abuse.

In simplest terms: State family courts are forcibly depriving children's access to a parent because it is a source of revenue for the states - and because they can.

The most basic component of the federal welfare system was originally created by the Social Security Act with the intent of providing assistance to families in which the parent who financially supported the family was absent due to death, or where a disability prevented that parent from providing for the family. Unfortunately, the welfare system has shifted

away from providing assistance to needy families into a system of entitlement and abuse by both the state and the welfare recipient.

Welfare programs are a combined effort between federal and state government. Federal welfare programs impose voluntary guidelines on the states and provide block grant funding for compliance. These block grants similarly resemble how the states' are granted federal funding for enacting motorcycle-helmet and motor vehicle seat-belt legislation or risk losing substantial federal highway repair dollars. States are not required to participate in the federal welfare programs created within Social Security; state participation is strictly voluntary - but by not participating, the state is turning down extremely large sums of federal money.

Title IV (four) of the Social Security Act consists of four parts (A, B, D, and E) and provides for the annual appropriation of block grant funding to subsidize the operation of various state-level welfare programs as outlined in each part of the title as long as the states are compliant to the federal guidelines.

Title IV, Part A (or IV-A) is the most widely recognized welfare program, and is referred to as Temporary Assistance for Needy Families, or TANF.

Formerly known as AFDC, the TANF welfare program imposes federal guidelines to which all states must adhere in order to receive billions of dollars in federal block grant funding. This money is only available to a state when that state fully or substantially complies with these federally imposed guidelines. The complying individual states can use the money they receive to pay for the administration of their own programs, and to provide cash assistance to "needy" families pursuant to the federal guidelines.

The type of program described in Title IV-A is referred to as an "entitlement" program at both the state and welfare recipient level because it entitles the complying states to receive blocks of grant money, and it entitles the recipients who qualify to receive a certain amount of money as well.

Eligibility must be proven in order to receive services and cash assistance through the IV-A TANF welfare program. The eligibility requirement, which uses income level as an indicator to demonstrate need, limits program participation to families with dependent children that show an actual need for income assistance. Not every person is eligible to receive cash assistance benefits and services through the TANF

welfare program, and sometimes eligibility is limited to only the children of "needy" families.

Paternity establishment is one requirement, except in limited circumstances, that determines continuing eligibility of benefits to a recipient. If paternity is not already established or paternity is not actively being sought by the recipient, the recipient's portion of any cash assistance is reduced or even completely discontinued. If paternity is successfully established, the recipient is required to surrender and assign to the state any child support benefits established by court order.

Other eligibility requirements provide restrictions to the duration of Title IV-A benefits to 5 years and mandatory requirements for recipients to participate in certain work activities. Also, if the recipient is an un-emancipated minor with a child, the minor must be involved in schooling and be under the supervision of a responsible adult.

In the eyes of many, including Congress, the IV-A TANF welfare program has been widely abused since its inception. People have been known to alter their living conditions to fit the eligibility requirements in order to receive the cash assistance offered by the program. Abuse has prompted Congress to reform the entire Title IV welfare system by modifying the federal guidelines, changing how the states operate welfare programs - including who is eligible and for how long benefits may be received.

### **Keep in mind:**

TANF and "welfare" may have turned into synonymous terms as used by the general public; but they have very separate definitions when it comes to the federal welfare system...

The TANF welfare program in Title IV-A is a specific part or function of the broader Title IV "welfare" system.

The Child Support Enforcement program in Title IV-D is a specific function of the entire system as well.

Remember: Title IV covers the "welfare" system in its entirety, and Parts A, B, D, and E are all functions within it.

Attempts by Congress to reform welfare have caused the spurious growth of new and expanded programs within Title IV. In addition to

other programs, Title IV currently includes a Child Support and Establishment of Paternity welfare program in Part D (Title IV-D).

The federal Title IV-D program makes large sums of grant money available to the states through the Department of Health and Human Services' (DHHS) Administration for Children and Families' (ACF) Office of Child Support Enforcement (OCSE). In Fiscal Year 2006, Congress appropriated \$4,200,000,000 ( 4.2 billion dollars) for the states that operate programs in accordance with federal guidelines.

The purpose for the creation of the IV-D welfare program was to recover allegedly "lost" taxpayer money being spent by the federal government on needy families under Title IV-A (TANF). The intent of Congress was to slow the drain that the Title IV-A (TANF) cash assistance program had on the budget. The presumption was that single mothers with a high incidence of out-of-wedlock births was the proximate cause of the rising welfare expenditures. Congress attempted to shift the financial burden from their own budget to a parent who abandoned the family.

The result of Congress' intention was the creation of Title IV-D federally mandated guidelines, incentive block grants, and performance based grants being made available to the states for their operation of federally compliant programs. States that would comply with the federal guidelines made it a priority to collect money (termed as "child support") from willfully absent parents who had abandoned their parental responsibilities to their children. The goal was twofold: To reimburse the expense of providing public assistance to children who had been willfully abandoned by a parent (and thus forced to become dependent on public assistance to satisfy basic needs), and to ensure continued financial support from willfully absent parents with children that were at risk of requiring public assistance if they didn't receive support (to prevent them from requiring public assistance to satisfy basic needs).

In essence, the federal guidelines wanted the states to function as collection agencies, recovering financial support from parents who had willfully abandoned their parental responsibilities to their children. The result, however, was different from the intent and has caused the state welfare programs to adjust their environment to have a greater need, which has caused the program to collect from willing parents that would ordinarily provide a loving environment for their children absent a court order limiting a parent's involvement. Despite the original intent of the IV-D welfare program, it now provides an incentive for the states to use their family courts to produce forcibly absent parents in order to increase the

states' IV-D welfare caseload.

There are no limitations for participation, or eligibility requirements for recipients of the Title IV-D welfare program. This lack of eligibility requirements has been used to trap otherwise willing and fit parents, particularly of the middle-class, into participating in this program for the purpose of increasing federal reporting numbers. The forced inclusion of the middle-class maximizes the federal block grants being allocated for the operation of each state's Title IV-D welfare program. The Title IV-D welfare model isolates children from an otherwise willing custodian.

The lack of any eligibility requirements for Title IV-D welfare services has caused exponential growth within this welfare program as well as in private "professional" sectors. In fact, an entire industry has evolved from the creation of the federal CSE program, which will be discussed later in this document. This entire private industry generates even more money from involvement in domestic relations disputes - turning a delicate private family matter into a money-maker for both the private and public sectors.

The lack of any eligibility requirements gives a huge financial incentive to every state to include middle-class divorcing parents, and to isolate a child from an otherwise willing and fit parent. By including the middle-class, state family courts and associated state agencies have expanded the operation of their Title IV-D welfare programs well beyond needy families. This lack of eligibility has led to the near complete inclusion of the middle-class, which has given a benefit to the state of larger child support awards to be collected from an otherwise willing and fit parent. The result is that children are being isolated from physical contact with a willing parent in lieu of financial gains enjoyed by the other parent, and by the state - all through the issuance of a court order.

The states have resorted to forcing parents involved in domestic relations matters into the welfare system either as wards of the state or as welfare recipients, whether or not either parent has actually willfully abandoned the child or requires public assistance. After the parents are included into the operating Title IV-D welfare program, one parent is then groomed into a role of non-custodial or forcibly absent parent. A court order is then issued against the now absent parent to pay child support through a state disbursement unit to the other parent who may or may not be equipped financially to run their own household in the first place - despite the other parent's ability to maintain an intact loving and caring household.

The exponential inclusion of the middle-class into the state operated Title IV-D Welfare System has facilitated and furthered a perceived need for increased funding from the federal government to the states. Because there is an overwhelming majority of middle-class parents that have child support automatically withheld from their paychecks, there is the appearance of a tremendously successful state run Title IV-D welfare program - and it causes even more federal incentive payments and reimbursement funding to be received by the states.

Even amidst cutbacks by the federal government for entitlement block grants and restrictions on the use federal incentive dollars as matching funds, the states' standing remains to gain billions in funding by including more and more of the middle-class in their welfare programs.

To be more specific: We believe that Title IV welfare programs actually encourage the diminishment of parents' roles in the lives of their children, and that these programs actually provide financial incentives for the breakup of the family - which is incidentally the exact opposite of the purpose of Title IV in reducing family dependence on government and encouraging safe and stable families.

The consequence of how and why the states receive federal funding is providing financial incentives to the state, its agencies, its human services professionals, and its family courts in general to create court-ordered child-support paying absentee parents wherever it can, and by whatever means available. The states' manufacturing of non-custodial parents maximizes incoming federal and state revenue redistribution. Similar to those who were accused of abusing the Title IV-A welfare program, which prompted reform, the states are now modifying their own environment in order to receive more federal money.

Title IV created incentives for the states that were intended to reduce the occurrence of single parent households; however these incentives have caused an exact opposite result. Instead of looking to Congressional intent, one only needs to look at the results.

State family court judges, agencies, and both public and private professionals now have a pecuniary interest in establishing single-parent households in which the majority of a child's time is limited by court order to be spent with only one parent. There is now a disincentive for a child to be equally placed with both parents where those parents share equal responsibilities while maintaining their own homes and lifestyles. If the

state family courts do not produce an absent or "non-custodial" parent through their orders, the courts would effectively exempt the state (and any associated professional beneficiaries) from receiving the billions of dollars in federal funding which is offered through compliance with federally imposed welfare guidelines.

The U.S. Taxpayer is solely supporting the middle-class's inclusion in the Title IV-D program because there is no reimbursement to welfare. For Fiscal Year 2006, Congress has appropriated \$4,200,000,000 (\$4.2 billion ) from the collection of federal and Social Security taxes solely to fund the operations of federally compliant state IV-D welfare programs. Despite a commonly held public misconception that child support enforcement activities are funded by the people within the system, the fact is that this welfare program is funded with the money that comes from the U.S. Taxpayer in the form of federal and Social Security taxes.

The federal funding is based on the reported needs of the multitude of federal and state bureaucracies operating within the IV-D welfare program. The need is further amplified by increasing the number of forced absentee parents being generated from the family courts each year.

In fact, an entire national special interest lobby comprised of judges' associations; national child support enforcement associations (representing both private and public sectors); state bar associations; labor unions representing government employees; social workers associations; and everyone else with a stake in the multi-billion-dollar industry that the Title IV-D welfare program has created, exists solely to ensure that the current annual flow of federal funding into the states continues increasingly and remains uninterrupted.

The U.S. taxpayer is supporting two-thirds of the federal expenditures associated with the inclusion of the middle-class in the operation of the state Title IV-D programs. The remaining one-third of the expenses for the inclusion of the middle-class is left up to the state and local governments - which again, is paid for with taxpayer money. The bottom line is that the federal, state, and local governments are footing the bill with our tax dollars for the inclusion of the middle-class in the state operated Title IV-D welfare program.

Out of the total \$4.2 billion appropriated by Congress for the operation of federally compliant state Title IV-D welfare program, there exists unchecked federal reimbursement funding to the states for the following:

66% of the costs of their Child Support Enforcement (CSE) operational activities (which range all the way down to the activities of each of the states' county prosecutors in domestic relations and paternity cases); 80% of the states' costs related to the improvement of technology as related to CSE activities; and, most recently changed to 66% from 90% for the costs of genetic DNA testing in paternity establishment cases.

Reimbursement funding has no performance standards or requirements, so even the most ill-performing state operated IV-D welfare programs still get federally reimbursed for their lackluster and ineffective operations.

The massive federal funding available to the states have led judicial discretion, government agencies, and professionals to establish that it is now in the "best interests of the child" to limit the child's involvement with one of their own otherwise willing, capable, and available parents.

In essence, the more cases involving Title IV-D welfare services that a court can create, the more operational expenses it will endure, and the more federal funding it will be able to pursue and receive as a reward for undermining a child's involvement with one of their own parents.

Title IV-D also provides performance-based federal incentive funding to the states based on certain criteria that is used to measure the states' performance of certain program functions.

Incentive funding comes from the total funding appropriated by Congress for the operation of the CSE program (\$4.2 billion). The total incentive funding available to the states is a fixed amount per fiscal year. For FY2006, the total available incentive funding is \$458,000,000; and each participating state competes for a share of this total.

Each state competes based on their performance measure of the following criteria:

- The paternity establishment performance level.
- The support order performance level.
- The current payment performance level.
- The arrearage performance level.
- The cost-effectiveness performance level.

The more support orders that are issued and the higher orders are, by including the middle-class, the more of a perceived need is created for increased enforcement. Increased perceived need for enforcement

provides for increased justification of program expansion, which in-turn provides for the perceived need for expansion of increased enforcement measures. The more enforcement measures that can be taken and the more serious the penalties are for resisting excessive monetary awards, the better chances are that the court-created absentee parent will pay even increased or incorrect amounts to avoid enforcement penalties like jail and license suspension. The more that court-created absentee parents pay to avoid jail or to prevent the suspension of the professional licenses that may be needed to maintain their livelihood, the less support goes into arrearage - which makes it appear that the states are performing more efficiently. The more effective the state looks, the increased chances that a state has to receive a higher portion of incentive funding.

As Robert Burns once wrote in "To a Mouse":

"The best laid schemes o' mice an' men gang aft agley" (which is popularly misquoted as: The best laid plans of mice and men often go astray).

Mr. Burns' concept seems to be applicable to Congress' intentions in Title IV-D as the intentions sound good, but the result actually undermines the stated purpose of Title IV welfare services.

The U.S. Taxpayer, including the poor, is currently footing the bill for the inclusion of the middle-class into state operated Title IV-D welfare programs because of the lack of eligibility requirements in the federally imposed guidelines. In order to strengthen families, and to better meet the goals of Title IV, it is imperative for eligibility requirements to be included in the federal guidelines to the states. Without eligibility requirements, states will continue to have an incentive to limit children's involvement with an otherwise willing, caring, loving, and fit parent.

The states are currently undermining the purposes of Congress' Title IV-A which is to keep families together. It's a commonly held belief that "the road to Hell is paved! with good intentions." Congress' intent may have been well-meaning, but the result has created another welfare abuser... the states. 2-28-06

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