

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

TYLESHA L. MASON and FERNANDEZ)
MASON , BY AND THROUGH)
LISA CANNON, AS THEIR)
NEXT FRIEND; HANNAHA WHITE, BY)
AND THROUGH CRYSTAL D. WHITE,)
AS HER NEXT FRIEND; SIMEYON)
EVANS, BY AND THROUGH ANDREA)
EVANS, AS HIS NEXT FRIEND,)

Case No. CI 00-3389

**BRIEF OF AMICUS CURIAE
IN SUPPORT OF PLAINTIFFS**

Plaintiffs,)

v.)

(EQUITY)

STATE OF NEBRASKA,)
NEBRASKA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
and RON ROSS, DIRECTOR,)

CLASS ACTION

Defendants.)

INTERESTS OF *AMICUS CURIAE*

Amicus curiae NOW Legal Defense and Education Fund is a leading national non-profit civil rights organization that has used the power of the law to define and defend women’s rights for thirty years. NOW Legal Defense has a long-standing commitment to economic opportunity and justice for all women. It has litigated many cases to ensure that policies that affect the income security of low-income women recognize the rights of those women, including Saenz v. Roe, 119 S. Ct. 1518 (1999), aff’g Roe v. Anderson, 134 F.3d 1400 (9th Cir. 1998); C.K. v. Shalala, 883 F. Supp. 991 (1995); and Sojourner A. v. New Jersey Dep’t of Human Services, No. ESX-L-10171-97 (N.J. Super. Ct. Law Div. filed Sept. 3, 1997).

SUMMARY OF ARGUMENT

This case concerns the Defendants' improper denial of Aid to Dependent Children (hereinafter ADC) financial assistance to any child born into a family more than ten months after anyone in the family began receiving ADC assistance, even if the only adult(s) in the family are disabled or otherwise lack "the capacity to work." Neb. Rev. Stat. § 68-1723(2) (2000). The "Child Exclusion" law (also called a "family cap"), Neb. Rev. Stat. § 68-1724(2)(b), Neb. Admin. Code 2-007.01A, harms Nebraska's needy families even when applied to families where the adult(s) have the capacity to work and have entered into a self-sufficiency contract. The State's erroneous application of the Child Exclusion law to the families of disabled adults does even greater damage to the very families who are in greatest need and have the least ability to become self-sufficient or make up for the cash assistance denied to their families.

Plaintiffs argue that the Child Exclusion law, by its own terms, applies only to families who participate in the welfare program and, therefore, not to the Plaintiffs who, due to the adults' incapacity to work, are not participants. *Amicus* submits that the legislative intent in enacting the Child Exclusion law, and the Welfare Reform Act of which it is a part, clearly establishes that the Child Exclusion was intended to apply only to families who enter into self-sufficiency contracts. The hardships imposed on needy families by the Child Exclusion, and the extraordinary harm that the Child Exclusion causes to the Plaintiff class of families of disabled adults, further support the argument that the Child Exclusion must not, and was not intended to, apply to such families.

BACKGROUND

I. Operation of the Child Exclusion Law

The Child Exclusion was enacted in 1994 as part of the Welfare Reform Act. 1994 Neb. Laws 1224. It operates as an exception to the general eligibility scheme for ADC, under which the amount a family receives is determined based upon income and family size. Section 24(2)(B) of the Welfare Reform Act, codified at Section 68-1724(2)(b) of the Revised Statutes of Nebraska, states in pertinent part: “The payment standard shall be based upon family size. Any child born into the recipient family after the initial ten months of participation in the program shall not increase the cash assistance payment...”

The Child Exclusion denies subsistence benefits to needy children based solely on the timing of their conception and birth. It is not a “family cap” which would limit assistance amounts at certain levels for all poor families in Nebraska, for example by “capping” all families to a maximum level of benefits granted to a family of five. *Cf. Dandridge v. Williams*, 397 U.S. 471 (1970) (upholding maximum welfare benefits payment to an AFDC household). It is instead a denial of critical, subsistence aid to a specific newborn child because she was conceived or born into a household in which someone received ADC.

With limited exceptions,¹ each child born into a family where any family member is receiving ADC is excluded from receiving cash benefits. Neb. Rev. Stat. § 68-1724(2)(b), Neb. Admin. Code 2-007.01A. This is true if a child is born because of failed contraception or because the mother did not use birth control because she believed she had been sterilized, and all children of a multiple birth will be excluded if they are born into a household receiving ADC benefits. Defendants apply the Child Exclusion to families in which anyone in the household is

¹ Children are not excluded if their birth was the result of incest or sexual assault, or if they are the first born of minor parents. Neb. Admin. Code 2-007.01A.

receiving ADC benefits even if the mother of the child receives no cash benefits from the state, is not participating in the welfare reform program, and has not, therefore, entered into a “self-sufficiency contract.”

Defendants’ own standard of need and benefit payment schedule, as stated in Nebraska’s regulations, recognize that the amount of money a family requires to meet its needs depends on the number of children in the family. Neb. Admin. Code 2-009.01A, 3-008-07B5. According to Defendants’ needs standards, the amount a Nebraska family needs “for basic subsistence” increases by \$85 for each additional member of a family. Neb. Admin. Code 2-009.01A. Similarly, the standard ADC benefit payments, although lower than the standard of need, reflect the fact that costs increase with each additional member of a family. For example, a family of three that is not subject to the child exclusion receives \$71 more each month than a family of two, and for each additional family member, the monthly benefit increases by \$71. See Neb. Admin. Code 3-008-07B5, App. 468-000-209.

Clearly, the Child Exclusion is an exception to the general statutory scheme of increasing incremental benefits for each additional family member, and deprives a family of the additional \$71 monthly benefit. As discussed infra, this seemingly small difference in benefits makes a great difference to a family already living in poverty.

II. The Legislature Did Not Intend that the Child Exclusion Apply to Families of Disabled Adults

The legislature did not intend the Child Exclusion to be applied to families where the parent is disabled and, therefore, not expected to enter into a “self-sufficiency contract.” The legislature’s intent to exempt families of disabled adults from the child exclusion is consistent with the relevant stated purposes of the Welfare Reform Act:

The Legislature...finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support, stabilize, and enhance individual and family life in Nebraska by:...(9) providing continuing assistance and support for...individuals and families with physical, mental, or intellectual limitations preventing total economic self-sufficiency.”

Neb. Rev. Stat. § 68-1709.

The sponsors of the Welfare Reform Act consistently explained that the Child Exclusion would apply to adults who signed self-sufficiency contracts and participated in the welfare-to-work programs. In fact, the sponsors repeatedly justified the Child Exclusion based upon the fact that no one would be subject to it until she had entered into a contract with the state in which she acknowledged that her family would be subject to the Exclusion. For example, a chief sponsor of the Welfare Reform Act, Senator Wesely, stated:

The idea is you come into ADC, you sign the self-sufficiency contract... Part of the contract is envisioned to say this amount of children that now are in your family would be covered and have this assistance... [I]f, the months after that contract, you bear a child, what we’re saying is we signed a contract, we had an understanding of what the conditions were and a decision was made to have another child...there will not be the additional \$71.

Floor Debate, LB 1224, 93d Legis., 2d Sess., March 29, 1994, at 11940. Senator Wesely described the children who would be subject to the child exclusion as, “those children born after the 10 months of the contract.” Floor Debate, LB 1224, 93d Legis., 2d Sess., April 11, 1994, at 13043, and reiterated in later debate that the exclusion would affect “a child born after the first 10 months of the self-sufficiency contract.” *Id.* at 13045. Another sponsor, Senator Rasmussen, also explained: “If we pass this [Child Exclusion] legislation what we will have is a contract, and under that contract there will be support for the family of size at the beginning of that contract.... What it is saying is we are not going to give the additional \$71 for that child born ten months

beyond the initiation of the contract.” Floor Debate, LB 1224, 93d Legis., 2d Sess., March 29, 1994, at 11951. In further debate on the child exclusion during the next year, Senator Wesely again explained the operation of the child exclusion as follows: “[S]omebody would come into the welfare office and say, I need ADC, we would negotiate with them and then sign a contract between the state and the individual.... [I]f she should become pregnant after that point, after the contract is signed, ten months or so later she would not get the cash payment.” Floor Debate, LB 455, 94th Legis., 1st Sess., May 23, 1995, at 7954. And again: “This doesn’t occur until after the individual has signed a contract.” *Id.* at 7967.

The Child Exclusion was passed as part of the Welfare Reform Act, which also placed time limits on cash assistance: families where the parent is capable of attaining self-sufficiency are limited to 24 months of assistance within a 48 month period. Neb. Rev. Stat. §§ 68-1724(1), 68-1723(2). For families of the Plaintiff class, who do not have the “capacity to work,” the two-year time limit does not apply. *Id.* The combination of the time limit and the Child Exclusion operates to exclude a child of an able-to-work parent from welfare for up to 14 months (because a child is excluded only if she is born at least 10 months after the contract begins). If, after being removed from the welfare rolls because of the time limit (or for another reason), a family member again applies for welfare, then the new benefit amount, and the new self-sufficiency contract, will reflect the true size of the family. The child who was denied benefits the last time the family received welfare will no longer be excluded. A child of a disabled parent, however, is excluded from cash benefits so long as she remains in the ADC household. Because of the exemption to the time limit and self-sufficiency contract for families of a disabled parent, there is no new ADC application or self-sufficiency contract at which time the benefits would be redetermined based on actual family size. Directly contrary to the stated purposes of the Welfare

Reform Act, Defendants' misapplication of the Child Exclusion excludes the child of a disabled parent from ADC as long as she is a dependant of her parent, but would permit the child of an able-to-work parent to be eligible for ADC 38 months or less after her birth.

The hardship caused by the Child Exclusion is increased for a family of a disabled parent not only because of the parent's additional costs and possible limitations, but also because her children, unlike those of an able-to-work parent, may be excluded from all cash assistance for nearly two decades. As her children grow, so do the costs of meeting their basic needs. Their exclusion from benefits will likely cause ever-increasing problems of hunger, inadequate housing, and other hardships.

ARGUMENT

When examining statutory construction and legislative intent, the fact that a broader construction imposes hardship upon those affected by the law argues against adopting that construction absent clear indication of legislative intent. Norman J. Singer, *Sutherland on Statutes and Statutory Construction* §§ 56.01-02 (5th Ed.). A narrow construction is particularly appropriate where, as here, the hardship imposed by a broad view is directly contrary to the stated purposes of the law. *Id.* The legislature's stated purposes in passing the Welfare Reform Act included "providing continuing assistance and support for...individuals and families with physical, mental, or intellectual limitations." Neb. Rev. Stat. § 68-1709. Therefore the legislature could not have intended to impose hardship on families of parents with such limitations. Because a broad construction of the Child Exclusion law would, in fact, impose such hardship, only a narrow construction is consistent with the legislative construction and intent.

I. The Child Exclusion Law Causes Significant Hardship

A. Families with Excluded Children Face Housing Problems and Hunger

Families who find it necessary to depend on welfare are generally on the edge of intense suffering due to hunger, homelessness, and the deprivation of basic necessities. See, e.g., Kathryn Edin & Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* 58-59 (1997). A family's level of material hardship varies according to the level of benefits that they receive. See id. at 59. There is no question that depriving a child of all monetary support when he or she is born into an already struggling family that receives welfare is likely to cause that child serious harm and increase the level and intensity of hardship for the rest of the family. See id.

By any measure, a full welfare grant to a family in Nebraska leaves them with far less than the minimum income necessary to meet their basic needs. According to the Bureau of Business Research, the minimum necessary expenditures for the basic needs of a Nebraska family of three is approximately \$3137 per month in metropolitan areas or \$2573 in non-metropolitan areas. Lisa Darlington, *A Livable Wage: What Does it Take to Get By in Nebraska?*, Business in Nebraska, July/Aug. 2000 (Bureau of Business Research, Lincoln, Neb.), available at <http://www.bbr.unl.edu/BINLEADS/binjulyaug2000.pdf>. A 1997 study, adjusted for inflation to 2001, found that the monthly budget for “a minimally decent standard of living” for a family of three was \$2030 in metropolitan areas or \$1903 in non-metropolitan areas.² Patricia E. Funk, *Economic Self-Sufficiency: The Minimum Cost of Family Support in Nebraska, 1997* 13-14 (Nebraska Appleseed Center, Feb. 1998). However, a family of three on ADC, if they are receiving a full grant because no one is denied benefits due to the Child Exclusion, receives only

² The study found that the minimum budget in 1997 for a family of three was \$1854 (metropolitan) or \$1738 (non-metropolitan). The adjustment to 2001 dollars is based upon the Consumer Price Index. Bureau of Labor Statistics, U.S. Dep't of Labor, *Consumer Price Index*, available at <http://stats.bls.gov/cpihome.htm>.

\$364 in ADC benefits each month, a fraction of the minimal costs of living. Neb. Admin. Code 3-008-07B5, App. 468-000-209.

The monthly ADC benefit is also well below the federal poverty threshold, and Defendants' own ADC standard of need. For example, the full ADC grant to a family of three, \$364, is only 31% of the federal poverty threshold of \$1156 per month. U.S. Census Bureau, Poverty Thresholds in 2000, at <http://www.census.gov/hhes/poverty/threshld/thresh00.html> (Jan. 29, 2001). A full ADC grant falls below even Defendants' own calculation of the amount "necessary for basic subsistence"—the standard of need. The grant to a family of three is 68% of the standard of need of \$535. Neb. Admin. Code 2-009.01.

When a child is denied benefits under the Child Exclusion, the shortages and likelihood of hunger and other harm increases. A recent survey of welfare recipients confirms that families who experience a reduction in their welfare benefits—as is experienced by members of a recipient family into which an excluded child is born—suffer substantial hardship. New Jersey Poverty Research Institute, Legal Services of New Jersey, Assessing Work First: What Happens After Welfare? (1999). According to the survey, nearly four out of five (79.8%) families who experienced a reduction or termination of benefits reported that they were not able to support themselves and their households financially after the reduction. Id. at 41. More than one out of three (36.4%) reported that they could not sufficiently clothe themselves or their families after the reduction or termination, almost one in three (32.7%) reported an inability to sufficiently feed themselves or their families, nearly one in six (16.5%) reported that they or their family members did not receive necessary health care, nearly one in six (15.8%) lost their housing, more than one in ten (10.3%) reported that they placed their children outside of their homes, and almost one in

ten (9.1%) reported exposure to a greater risk of violence or abuse. Id. at 54. It is clear that all needy families deprived of benefits for a child suffer devastating harm.

For example, housing is a serious issue for all families receiving welfare. Decent housing is essential to the health and safety of families with children; without a safe place to live, it becomes difficult for children to grow properly, physically, and emotionally, and for adults to parent their children. Poor housing is more likely to have elevated lead levels and other conditions that may harm children's health. See, e.g., Robert P. Clickner et al., U.S. Dep't of Housing and Urban Development, National Survey of Lead and Allergens in Housing: Final Report 3-5 to 3-7 (2001), <http://www.hud.gov/lea/Vol1finalreport.pdf>. Homelessness makes it more difficult for children to acquire a decent education. See, e.g., National Coalition for the Homeless, Education of Homeless Children and Youth (1999), <http://www.nationalhomeless.org/edchild.html>.

Even when no one in the family is excluded under the Child Exclusion law, full welfare grants in Nebraska do not cover the cost of decent housing in any part of the state. The fair market rent for a two-bedroom apartment in Nebraska is \$522 to \$538 in metropolitan areas and \$394 to \$505 in non-metropolitan areas, according to the U.S. Department of Housing and Urban Development (hereinafter HUD), yet the maximum ADC grant is only \$364 for a family of three. 65 Fed. Reg. 57,691-93 (Sept. 25, 2000); Neb. Admin. Code 3-008-07B5, App. 468-000-209. Furthermore, for some families of three, depending on the age and gender of the children, HUD public housing programs may require a minimum of three bedrooms. The fair market rent for such an apartment in this state is \$651 to \$777 in metropolitan areas and \$504 to \$664 in non-metropolitan areas. Id.; Funk at 13-14.

Because grants do not cover the costs of decent housing, it is often necessary for families on welfare to live in unsafe, unstable, or overcrowded housing. Despite the recommendation of HUD that families spend 25 to 30% of their income on rent, HUD, Renter's Kit, at <http://www.hud.gov/renting/index.cfm> (last modified Mar. 27, 2001), it is necessary for most families receiving ADC to pay far more than 30% of their income in order to secure any housing. Indeed, some pay nearly all their income in rent, requiring that the family forego other necessities.

Given this housing situation faced by poor families in Nebraska, any minor setback—such as the birth of a child denied benefits by the Child Exclusion—can push the family over the edge, increasing the risk of homelessness or of inadequate, unsafe, or overcrowded housing. For a family trying to make ends meet in non-subsidized housing and already paying most of their income toward rent, the birth of a new baby without any additional income to meet that baby's material needs will mean that there is less money for housing at a time when there is an additional person to be housed. Meeting one more child's needs can easily mean the difference between having enough money to pay the rent and an eviction notice. For those families sharing housing with friends or relatives, the birth of a new baby will often mean that the family has become too large to stay in shared quarters and may no longer be welcome, especially if they cannot contribute more money to the shared housing costs.

Similarly, the denial of cash benefits resulting from the Child Exclusion increases the risk of hunger for the excluded child and her family. For most families in Nebraska, Food Stamps are not adequate to provide food for the entire month. Food Stamps provides \$341 or less monthly for a family of three, Neb. Admin. Code App. 475-000-201, yet the low-cost food plan of the U.S. Department of Agriculture (USDA)—the lowest cost USDA plan that would provide

a nutritionally healthy diet, Funk, supra, at 11—costs a family of three \$414 per month. Center for Nutrition Policy and Promotion, U.S. Dep’t of Agriculture, Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average, January 2001, <http://www.usda.gov/cnpp/FoodPlans/Updates/foodjan01.PDF>; see also Funk, supra, at 11-12.

Not all families on ADC experience hunger, but it is more likely that families that do not receive benefits for all their members will be among those unable to provide sufficient food for those members. See Edin & Lein, supra, at 25. According to the low-cost food plan of the USDA, an additional child in a family adds \$85.80 to \$165.10 in food costs per month (increasing as the child grows older). U.S. Dep’t of Agriculture, supra. Although the normal ADC benefit increase of \$71 per family member, plus the corresponding increase in food stamps, might meet most or all of a child’s nutritional needs, the absence of that \$71 when a child is excluded from ADC can be expected to leave all the members of the family at greater risk of hunger and undernutrition. Furthermore, Defendants’ application of the Child Exclusion to families of disabled parents denies benefits to the child as long as she remains in the household, so, according to the USDA plan, the hardship and hunger in the family is likely to increase further over time as the children in the family grow and the costs of meeting their nutritional needs increase.

Even with the availability of Food Stamps and Women, Infants and Children (WIC), families without sufficient cash income are unable to purchase food of adequate quality and quantity. E.g., Denise F. Polit et. al, Manpower Demonstration Research Corp., Food Security and Hunger in Poor, Mother-Headed Families in Four U.S. Cities (2000), <http://www.mdrc.org/Reports2000/UrbanChange/FoodSecurityHunger.htm>. Studies of nutritional deficiency, or undernutrition, among poor children confirm the likelihood that the

denial of incremental welfare benefits to children born into families receiving welfare—who are already struggling to provide adequate food for all family members—will result in the increased prevalence of hunger and undernutrition, and a decline in dietary quality. See, e.g., Polit, supra.

Hunger and undernutrition in and of themselves are harmful to children and adults. In addition, repeated periods of inadequate nutrition can lead to permanent damage to children's health in the form of cognitive impairments, physical weakness, anemia, stunting, and growth failure. See, e.g., Center on Hunger and Poverty, [Statement on the Link Between Nutrition and Cognitive Development in Children](http://www.centeronhunger.org/pubs/cognitive.html) (1998), <http://www.centeronhunger.org/pubs/cognitive.html>. Specifically, the denial of support for a newborn baby puts that baby at risk of nutritional deficit at the most important time for brain growth. David E. Barrett & Deborah A. Frank, [The Effects of Undernutrition on Children's Behavior](#) 189-193 (1987). Consequences of undernutrition in early childhood include increased vulnerability to infection, decreased learning capacity, and increased vulnerability to lead intoxication. Center on Hunger and Poverty, supra. Iron deficiency, a particular risk when dietary quality declines, has been specifically correlated with behavioral and academic problems as well as long-term developmental problems. Id.

B. Nebraska Families with Excluded Children Face Other Hardships and Shortages

In addition to hunger and homelessness, the denial of benefits to a child or children in the family is likely to lead to utility shut-offs, lack of adequate winter clothing, and lack of medical care when needed, especially with respect to over-the-counter medicine like Tylenol and cold medications. See Edin & Lein, supra, at 28-29. A family's basic needs include not only food and housing, but also transportation, clothing, health care, and childcare. Darlington, supra; Funk, supra, at 9.

In this state, the minimum monthly cost for transportation for a family of three is approximately \$148 in metropolitan areas and \$196 in non-metropolitan areas.³ Funk, supra, at 18. Even if the work-related travel is excluded (because the Plaintiff class includes adults who do not have the capacity to work), the minimum non-work travel costs are \$89 (metropolitan) or \$117 (non-metropolitan).⁴ Id. Transportation costs cover the expense of taking children to doctors, childcare, and other necessary appointments and tasks such as shopping for groceries. Darlington, supra.

Clothing and household items (such as cleaning and home maintenance supplies and household furnishings) are also necessary expenses. Darlington, supra; Funk, supra, at 20. Monthly clothing and household expenses for a minimally decent standard of living average \$91 for families in metropolitan areas of Nebraska and \$89 in non-metropolitan areas.⁵ Funk, supra, at 20-21. Minimum telephone costs are \$26 in metropolitan areas and \$23 in non-metropolitan areas.⁶ Id. Minimal health care costs, including health care services and supplies (such as dental and eye care) but excluding health care premium costs (because families receiving ADC will, presumably, be eligible for Medicaid) average \$49 to \$53 for a mother and \$30 to \$32 for each child.⁷ Id. at 14-15.

A family relying on welfare often cannot afford even these minimum expenses. If a family cannot afford transportation, they may neglect health care or miss other necessary appointments. If they cannot afford over-the-counter medications or appropriate winter clothing, they are more likely to get sick. A family without telephone service will have trouble contacting doctors or schools or reaching help in case of emergency.

³ Adjusted, based upon Consumer Price Index, from 1997 costs of \$135 (metropolitan) or \$179 (non-metropolitan).

⁴ Adjusted from 1997 costs of \$81 (metropolitan) or \$107 (non-metropolitan).

⁵ Adjusted from 1997 costs of \$83 (metropolitan) or \$81 (non-metropolitan).

⁶ Adjusted from 1997 costs of \$24 (metropolitan) or \$21 (non-metropolitan).

⁷ Adjusted from 1997 costs of \$45-\$48 for a mother and \$27-\$29 for each child.

Families relying on welfare are likely to suffer some of these hardships even if they receive a full grant. When a baby is born into the family and excluded from ADC, the likelihood of harm to the family increases further. For example, a newborn baby will, of course, need diapers and other appropriate supplies. In the absence of any cash assistance for a baby subject to the Child Exclusion, all the costs for those items will have to come out of the other family members' cash assistance. Similarly, clothing needs of the child, as a baby and when she is older, must be met without any increase in cash for her. The minimum cost of clothing and footwear for an additional child is approximately \$44 to \$46 per month.⁸ Funk, *supra*, at 21. Without any assistance to pay those costs, families are likely to keep using clothing and footwear that is inappropriate for the weather, leaving children colder and at greater risk of illness. "The denial of welfare benefits for additional children solely because they are born while the family receives welfare can devastate the family unit.... To take a family that is already deprived and to deprive them further can only exacerbate the negative problems associated with childhood poverty, including lowered behavior and cognitive skills, augmented health problems, and reduced access to medical care." Yvette Marie Barksdale, And the Poor Have Children: A Harm-Based Analysis of Family Caps and the Hollow Procreative Rights of Welfare Beneficiaries, 14 Law & Ineq. J. 1, 65-66 (1995).

Supporters of the Child Exclusion in the Nebraska legislature acknowledged that the law would make little or no difference to the State's budget, but they mistakenly argued that the loss of \$71 per month would also make little or no difference to families living in poverty. *E.g.*, Floor Debate, LB 1224, 93d Legis., 2d Sess., March 29, 1994, at 11941 (Senator Wesely) ("Now, it's not a huge payment, it doesn't have that big an impact on the budget, but symbolically it's an important element."). Senator Bohlke, one of the sponsors of the Welfare

⁸ Adjusted from 1997 costs of \$40-\$42.

Reform Act, stated: “It is merely the \$71...that is taken away, which really you say is not a great amount of money, Senator Dierks, and it’s really not, it’s almost symbolic.... [T]he \$71 a month, I don’t think, is going to make a difference.” *Id.* at 11949. In fact, the \$71 could avoid hunger, undernutrition, homelessness, illness, or other harm to the newborn child and her family. In light of the hardships endured by families relying on welfare, an additional birth with no increase in cash assistance will, as Senator Lindsay stated, mean “the diapers are going to stay wet longer, the baby formula is going to get thinned down just a little bit more, the clothes are going to get maybe a little bit less appropriate for the weather. The doctor is maybe going to be just a little bit less often visited. Bottom line is it’s the children who are going to suffer.” Floor Debate, LB 455, 94th Legis., 1st Sess., April 20, 1995, at 5014. Senator Dierks, the sponsor of several amendments that would have struck the child exclusion, stated: “[W]e not only make it difficult for that child for diapers and those necessary items but we also make it difficult for the children that are already in that family because the money that they would normally get and still will get is going to have to be divided.” *Id.* at 5022.

II. The Hardships Caused by the Child Exclusion Are More Severe for Families of Disabled Adults

Families struggling to survive on limited benefits are even more likely to suffer from inadequate or unsafe housing, lack of sufficient food, and other shortages of basic necessities where the only adult(s) in the family are disabled. Although Supplemental Security Income (SSI) may be available, the slightly higher benefit levels available under the SSI system are only expected to make up for the recipients’ higher expenses, providing enough for the recipients’ “basic necessities of food, clothing and shelter.” Social Security Administration, Management of the Supplemental Security Income Program: Today and in the Future (Oct. 8, 1998), available at

<http://www.ssa.gov/reports/ssi/intro.htm>. SSI is “a program of last resort, [that] targets those who are the neediest. The vast majority of the people who receive SSI benefits are too limited by their disabilities or too elderly to be expected to provide fully for their own needs.” Id.

Nebraska families relying on welfare, even where the parent receives SSI (which provides approximately \$530), still fall below the poverty level and below the minimum income necessary to meet their basic needs. 416 C.F.R. §§ 401-435 (2000); Social Security Admin., 2001 Social Security Changes, at <http://www.ssa.gov/pressoffice/Colafacts2000.htm>; U.S. Census Bureau, supra; see also, e.g., Darlington, supra; Funk, supra. A family of three in Nebraska, with a single parent on SSI and two children receiving ADC, receives no more than \$823 monthly, which is 41 to 43% of the minimum cost to maintain a “minimally decent standard of living,” Funk at 2, or 71% of the federal poverty threshold. U.S. Census Bureau, supra. Neither figure, however, takes into account the greater expenses that may arise because the parent of the family is disabled. Some of the additional costs for a disabled parent and her family may include: high electric bills because of medical equipment; payments for a van with a wheelchair lift; over-the-counter nutritional supplements; or computers to enable someone with limited speech to communicate her basic needs, thoughts, and ideas. See, e.g., Institute for Child Health Policy, SSI Briefing Book, http://www.ichp.edu/ssi/materials/briefing/3_ssiprog.pdf (last visited Mar. 29, 2001). Families of disabled parents where one or more children are denied ADC benefits under the Child Exclusion law are even more likely to have difficulty meeting their basic needs.

CONCLUSION

For the reasons stated above, amicus curiae respectfully requests that the Court find in

favor of Plaintiffs and grant the relief sought in the Petition.

Dated: April 19, 2001

Respectfully submitted,

MARTHA F. DAVIS
GEOFFREY A. BOEHM
NOW Legal Defense and Education Fund
395 Hudson Street, 5th Floor
New York, New York 10014
Tel. (212) 925-6635

VIRGINIA JOHNSON # 18095
1227 Lincoln Mall, 3rd Floor
Lincoln, Nebraska 68508
Tel. (402) 476-8585

Attorneys for Amicus Curiae