COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss. SJC-10786
Appeals Court No. 2010-P-0301

FATHERS AND FAMILIES, INC. & OTHERS,

Plaintiffs - Appellants,

v.

CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT & ANOTHER,

Defendants - Appellees.

ON APPEAL FROM A JUDGMENT OF THE SUFFOLK SUPERIOR COURT

BRIEF OF *AMICUS CURIAE*, THE BOSTON BAR ASSOCIATION, IN SUPPORT OF THE DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

The Boston Bar Association ("BBA") is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts. The BBA is a bar association established almost 250 years ago, and currently has approximately 9,500 members. There is no parent corporation or publicly-held corporation that owns 10% or more of BBA's stock.

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I. INTEREST OF AMICUS CURIAE

The Boston Bar Association (the "BBA") was founded in 1761 by John Adams and other Boston lawyers and is the nation's oldest bar association. The BBA's mission is to facilitate access to justice, advance the highest standards of excellence for the legal profession, and serve the community at large. From its early beginnings, the BBA has served as a resource for the judicial, legislative, and executive branches of government.

Through its Family Law Section (the "Section"), the BBA considers matters regarding the care, protection, and support of children, as well as other family-related legal issues. The Section studies existing statutes and submits proposed legislation in the area of family law. The Section concerns itself with procedural and administrative matters relating to the Probate and Family Court and maintains a continuing dialogue with its judges.

The question on which the Court has invited amicus submissions relates directly to the administration of justice in child support cases before the Probate and Family Court. Given the BBA's mission and the Section's experience with family law

issues, the BBA's views on this matter may assist this Court in making its determination.[1]

II. SUMMARY OF ARGUMENT

Since 1984, federal law has required the states, as a condition of receiving federal funds, to develop child support guidelines and subject them to periodic review. In 1986, the Massachusetts Legislature enacted an enabling statute that called for the Chief Administrative Justice of the Trial Court, now known as the Chief Justice for Administration and Management ("CJAM"), to convene an advisory committee to develop such guidelines. This statute properly delegated authority to the CJAM because it set forth the fundamental public policy to be applied, provided clear standards to guide the development process, and included procedural safeguards (pages 9-24).

The most recent incarnation of the Child Support Guidelines (the "Guidelines"), which was the product of a comprehensive review by a Task Force convened by the CJAM in October 2006 (the "Task Force"), is workable for attorneys and *pro se* litigants alike.

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[1] The drafters would like to acknowledge the assistance of Peter G. Coulombe, Esquire (BBO #600868) and Kristin Doeberl, a third year law student at Northeastern University.

The Guidelines promote predictability, fairness, and uniformity in orders of support for children, fulfilling the goals of Congress and the Legislature (pages 24-27). Invalidation of the Guidelines could result in inefficiencies and inequities in the setting of orders, jeopardize millions of dollars in federal funding for public welfare programs, and call into question thousands of support orders entered since the Guidelines were first enacted (pages 27-30).

III. ARGUMENT

A. Congress Required Each State to Develop Child Support Guidelines by Law or By Judicial or Administrative Action to Ensure Children Are Adequately Supported Through a Process That Is Fair, Consistent, and Efficient.

In 1984, Congress passed a statute intended to combat nationwide deficiencies in child support procedures. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 St. 1305. The Child Support Enforcement Amendments of 1984 require each State to develop child support guidelines by statute or by judicial or administrative action as a condition of receiving federal funding for public welfare programs.

Prior to the 1984 legislation, courts typically awarded child support based upon a case-by-case analysis of the financial circumstances of the parties. Such case-by-case determinations, however, tended to suffer from at least three deficiencies. First, child support orders often did not provide adequate support to children relative to the economic costs of raising them. U.S. Dep't of Health & Human Services, Admin. for Children & Families, Office of Child Support Enforcement, Evaluation of Child Support Guidelines: Findings and Conclusions, 1 (1996).[2] Second, the unfettered discretion of the decision-makers resulted in orders that were widely different for parents in similar circumstances, creating

[2] A federal study estimated that in 1984 there was a shortfall of $15.5 billion between child support orders that were actually in effect and the amount of child support that could have been ordered consistent with parents' ability to pay if use of a sample set of guidelines was mandatory. R. Williams, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations & Final Report, U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Office of Child Support Enforcement, pp. 68 II-2 (1987). Another study showed that parents paying child support paid less on their child support than on their monthly car payment. L.M. Yee, What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court, 57 Denv. U. L. Rev. 21-68 (1979).

inconsistencies and inequities.[3] Third, the case-by-case method was inefficient and resulted in delays in establishment of support amounts. Id.

Congress addressed those concerns by requiring that the states establish guidelines for child support awards, by requiring periodic review of such guidelines,[4] by requiring States to meet expedited time standards in the processing of child support and paternity cases,[5] and through other reforms. Massachusetts complied with the federal mandate, in keeping with the Commonwealth's long-held public policy that minor children be supported as completely as possible by their parents. G. L. c. 119A, § 1 (1998). This parental duty has existed by statute in some form since as early as 1692. See T.F. v. B.L., 442 Mass. 522, 532 (2004), *citing* G.L. c. 18, § 5 (Province Laws, 1692-1693). In December 1984, Governor

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[3] For example, one study in the Denver District Court showed that child support orders for parents with one child ranged from 6% to 33% of income and child support orders for parents with two children ranged from 5.6% to 40% of income. Supra Yee at 21-68.

[4] 42 U.S.C. § 667(a) (1988) (requiring review at least once every four years).

[5] R. Williams, Development of Guidelines for Child Support Orders: Final Report, U.S. Dep't of Health & Human Services, Admin. for Children and Families, Office of Child Support Enforcement, pp. 68 II-2 (1987).

Michael Dukakis appointed the Governor's Commission on Child Support. See P. M. Carey, et al., Report of the Child Support Guidelines Task Force, available at http:/www.mass.gov./courts/child support/task-force report.pdf,(Oct. 2008)(the "Task Force Report"). The Commission's report, issued in October 1985, recommended that child support guidelines be developed and issued by the CJAM. St. 1986, c. 310, § 16A, codified at G. L. c. 211B, § 15 (repealed, 1992).

In 1986, the Massachusetts Legislature enacted an enabling statute to implement the Commission's recommendations (the "1986 statute"). The 1986 statute specifically set forth a series of policies the Legislature wanted implemented in developing child support guidelines. It also set forth the process for developing the guidelines, including the appointment of a diverse committee, which would allow for a broad range of interests to be represented in the process and would guard against the concentration of authority in the CJAM. Id.

In accordance with the 1986 statute, the CJAM promulgated Interim Child Support Guidelines in 1987. From May 1 to December 31, 1987, judges and practitioners of the Probate and Family Court used and

evaluated the interim guidelines and provided feedback to the CJAM on their structure and content. Task Force Report, supra at 16. The CJAM produced a revised set of guidelines that became effective on January 1, 1989, satisfying the federal requirements. Since their promulgation, the guidelines have been reviewed or amended in 1994, 1998, 2002, and 2006. Id.

The current Guidelines are the product of a scheduled review in 2006 as required by federal law. 42 U.S.C. § 667(a) ("The guidelines . . . shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.").

Following the 2006 review, the current CJAM, Robert A. Mulligan, appointed the Task Force to conduct a thorough review of the Guidelines in keeping with the process used by the 1986 statute. This review was in anticipation of the next quadrennial review required by federal law. The 2009 Guidelines are the product of this review.

B. The Legislature's Delegation of Authority to the CJAM Was Proper.

The promulgation of the Child Support Guidelines is consistent with Article 30 of the Massachusetts

Constitution, which "encompasses the general principle that the Legislature cannot delegate the power to make laws." Constr. Indus. of Mass. v. Comm'r of Labor & Indus., 406 Mass 162, 171 (1989). The evaluation of a legislative delegation of power involves the following three questions:

> (1) did the Legislature delegate the making of fundamental policy decisions, rather than just the implementation of legislatively determined policy;
>
> (2) does the act provide adequate direction for implementation, either in the form of statutory standards or, if the [agency] is to develop the standards, sufficient guidance to enable it to do so; and
>
> (3) does the act provide safeguards such that abuses of discretion can be controlled?

Chelmsford Trailer Park v. Chelmsford, 393 Mass. 186, 190 (1984).

1. The Legislature Established the Fundamental Public Policy Regarding the Support of Children.

The Legislature did not delegate the making of a fundamental policy to the CJAM. The 1986 statute set forth the Legislature's policy by mandating that the committee developing the guidelines be guided by the following public policy principles:

- to minimize the economic impact on the child of family breakup;

- to encourage joint parental responsibility for child support, in proportion to or as a percentage of income to provide the standards of living the child would have enjoyed had the family been intact;
- to meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living, entitle the child to share that higher standard;
- to protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance;
- to take into account the non-monetary contributions of the custodial and non-custodial parents;
- to minimize problems of proof for the parties and of administration for the courts; and
- to allow for orders and wage assignments that can be adjusted as income increases or decreases.

St. 1986, c. 310 § 16A, codified at G.L. c. 211B, § 15 (repealed, 1992). "The Legislature was quite clear as to the policy decision it had made and wanted implemented." Commonwealth v. Clemmey, 477 Mass. 121, 136 (2006).

Furthermore, the 1986 statute was enacted contemporaneously with G. L. c. 119A, § 1, which codified the Commonwealth's public policy regarding the financial support of dependent children. G. L. c. 119A, § 1, added by St. 1986, c. 310 § 10B, provides that "[i]t is the public policy of the commonwealth

that dependent children shall be maintained, as completely as possible, from the sources of their parents."

This Court has recognized that prior versions of the guidelines further the very public policies established by the 1986 statute and G. L. c. 119A, § 1. In Dep't of Revenue v. Mason M., the court held that the 1998 child support guidelines advanced the policies of providing for the best interests of children and ensuring that children's financial needs are supported in the first instance by their parents. 439 Mass. 665, 669 (2003). The Court quoted as "social policies" underlying those guidelines essentially the same public policy goals articulated in both the 1986 statute and G. L. c. 119A, § 1. Id. at 669-670.

In accordance with Congress' mandate in 42 U.S.C. § 667(a), the CJAM convened the Task Force to review the child support guidelines. The CJAM asked the Task Force to "critically examine all aspects of the guidelines thoroughly, including possible alternatives to the current structure of the guidelines." Task Force Report, supra at 19. The Task Force reviewed and revised the guidelines in accordance with the legislatively-determined policy goals originally set

forth in the 1986 statute. Those policy goals are restated almost verbatim in the "Principles" section of the 2009 Child Support Guidelines.

Accordingly, this is not a situation where the Legislature delegated fundamental policymaking authority to a third party. Rather, the Legislature articulated its policy objectives in the 1986 enabling statute, which were to be implemented by the CJAM, with the advice of the Task Force. This structure satisfies the first prong of this Court's Chelmsford test.

2. The Legislature Provided the Necessary Standards to the CJAM, Sufficient to Implement Legislative Policy.

The Legislature also provided adequate direction to the CJAM in the form of statutory standards for implementation of policy. Chelmsford, supra at 190. As this Court has previously recognized, "[t]he standards for action to carry out a declared legislative policy may be found not only in the express provisions of an act but also in its necessary implications. The purpose, to a substantial degree,

sets the standards. A detailed specification of standards is not required." Id.

The 1986 statute was passed in response to 42 U.S.C. § 667(a), which required states to "establish guidelines for child support award amounts". See also L.W.K. v. E.R.C., 432 Mass. 438, 445 n.18 (2000) (recognizing the federal mandate to establish child support guidelines).

The advisory committee established by the 1986 statute was specifically directed to take into consideration "all relevant social, economic, and legal principles" in their creation of the guidelines. G. L. c. 211B, §15 (repealed, 1992). The Legislature delegated to the CJAM and the advisory committee the responsibility of working out the details of the policy decisions enumerated above. See Mass. Bay Transp. Auth. v. Boston Safe Deposit & Trust Co., 348 Mass. 538, 544 (1965). The purpose of the advisory committee was clear that they were charged with the task of creating a set of guidelines that would be utilized to establish appropriate child support orders.

It is well established that the Legislature may delegate "the working out of the details" of a

previously adopted policy. Id. This Court has held that "[w]orking out of the details" to implement a Legislative policy decision includes the delegation of authority such as to set the amounts of money to be paid and to define specific terms. See Construction Indus. of Mass., supra at 171-72 (upholding the delegation of authority to the Commissioner of Labor and Industries to determine wages pursuant to legislative policy requiring the payment of certain minimum wages to persons employed in the construction of public works); see also Opinion of the Justices, 427 Mass. 1211, 1217 (1998) (upholding the delegation of authority to the city to define the terms "domestic partner" and "dependent" pursuant to the legislative policy of extending health care coverage to employees, their household members, and their dependents).

The very creation of an advisory committee to assist the CJAM in developing child support guidelines further satisfies the second prong of the Chelmsford test. See Clemmey, supra at 138 (stating that "the statutory creation of a farmland advisory committee to assist the department in defining these terms" contributes to the finding of legislative guidance under the second prong of the Chelmsford test).

3. The 1986 Statute Contained Sufficient Safeguards Against Abuse of Delegated Power.

Finally, the 1986 enabling statute provided safeguards against abuses of delegated power. The statute required the advisory committee to the CJAM to be comprised of persons of differing backgrounds, interests, and constituencies to ensure that a broad range of interests would be represented in the process of developing the guidelines.

The 1986 statute specifically stated:

> There shall be established a committee on Child Support Guidelines in compliance with section 467 of the Social Security Act (P.L. 980378). The committee shall be advisory to the [CJAM] and shall consist of fifteen members, seven of whom shall be appointed by the [CJAM], six of whom shall be appointed by the governor, at least five of whom served on the governor's commission on child support established by Executive Order on January twenty-eight, nineteen hundred and eighty-five, at least one of whom shall be a custodial parent, at least one of whom shall be a non-custodial parent, the commissioner of revenue, and the [CJAM] who shall be chairman.

St. 1986, c. 310 § 16A, codified at G.L. c. 211B, § 15 (repealed, 1992). By establishing a diverse committee, the 1986 statute sought to ensure the representation of a broad spectrum of interests and to safeguard

against any abuse of delegated authority on behalf of the CJAM.

The Task Force had the same safeguard. The Task Force was comprised of practicing lawyers from both private firms and legal assistance organizations, mental health experts, a public policy economist, a chief probation officer, a sitting justice of the Probate and Family Court, the Deputy Commissioner of the Child Support Enforcement Division of the Department of Revenue, and the Chief Justice of the Probate and Family Court. Task Force Report, supra at 19. The Task Force included Dr. Ned Holstein, Executive Director of Fathers and Families, Inc., a plaintiff in the lower court case. The members of the Task Force were chosen by the CJAM to "represent interests of children of diverse economic circumstances, interests of children of both divorced and never married parents, and interests of both child support payors and recipients." Id. at 18-19. The CJAM asked the Task Force "to work diligently, to commit themselves to an open process, and to critically examine all aspects of the guidelines thoroughly, including possible alternatives to the current structure of the guidelines." Further, CJAM asked the

Task Force to "critically examine the assumptions, information, and methodology for determining guidelines." Id. at 19.

The Task Force undertook a two year review of the Guidelines. It thoroughly reviewed economic research and empirical evidence regarding the costs of raising children, including housing and food, and how these costs vary based on income and household size, in keeping with the standards set forth by both the Legislature and the CJAM. As an example of this process, the Task Force invited Dr. Jane Venohr, an economist with PSI, Inc., to present on these important economic issues. She explained the two guideline models adopted by the states with respect to child support orders, which are the "income shares" model and the "percentage of payor income" model. Following her presentation, Task Force member Dr. Mark Sarro, a public policy economist, analyzed Dr. Venohr's presentation and "identified the strengths and weaknesses of the models." Id. at 20.

In addition to a diversity of membership, the Task Force looked to broad sources of information to inform its deliberations. Over a period of two years, the Task Force "considered federal and statutory

requirements; public comments and materials submitted at public forums throughout the Commonwealth both in 2005 and 2007, including written comments from the public; and ideas and opinions expressed both formally and informally by bar associations, judges, probation officers, legal services organizations and other individuals and groups interested in the substance and operation of the Guidelines." See Task Force Report, supra at 33.[6]

Furthermore, contrary to the Appellants' argument, the Guidelines themselves do not automatically mandate an original or a modified child support amount in any particular case. See Department of Revenue v. G.W.A., 412 Mass. 435, 400 (1992); Quinn v. Quinn, 49 Mass. App. Ct. 144, 147-48 (2000). The product of the Task Force was a carefully crafted formula setting forth the presumed amount of child support to be ordered in individual child support cases. The Guidelines themselves consider a number of factors in order to achieve an end result consistent with legislative policy.

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[6] In fact, the highest child support order pursuant to child support guidelines (approximately $915 per week for one child) results from the non-custodial parent earning $250,000 per year and the custodial parent earning no income.

Importantly, the Guidelines also contain a detailed method whereby the courts, after review, may deviate from the Guidelines if their application would be unjust or inappropriate and in the best interests of the child, a safeguard also envisioned by federal regulations. See e.g. G.L. c. 208, § 28; G.L. c. 209, § 32F(d); G.L. c. 209C, § 9(c); 45 C.F.R. § 302.56(h)(providing for deviation from child support guidelines).

Accordingly, there can be no question that the system that the Legislature put in place, as well as its final result, contained ample safeguards against any abuse of delegated authority. The delegation is constitutional and satisfies the third prong of the Chelmsford test.

C. Striking Down the Child Support Guidelines Would Lead to Uncertainty, Instability, and Inefficiency in Awarding Child Support, and Could Jeopardize Federal Funding for the Commonwealth's Public Welfare Programs.

1. Holding the Guidelines Unconstitutional Would Diminish the Predictability and Efficiency of Judicial Processes for Awarding Child Support and Undermine Public Confidence in Those Processes.

The Court should also hesitate to declare the guidelines unconstitutional because their implementation, as intended by the Legislature, has

significantly improved the efficiency and fairness of child support proceedings, to the great benefit of courts and litigants alike. By providing recommended amounts of support in a wide range of cases and objective standards for deviation from the recommended amounts, the Guidelines help parents, many of whom appear *pro se*, frame child support issues for the Probate Court. When issues are effectively framed and outcomes are predictable, parties more readily negotiate settlements or agree to limit the scope of contested issues to be resolved by a court. The Guidelines are therefore a key tool for the efficient and predictable resolution of support issues.

In the absence of the Guidelines, parties would face increased uncertainty over the potential range of amounts to request as child support, more inconsistency in the amounts awarded to similarly situated litigants, and added resistance to settlement from parents who might hope to secure an atypically low or high award through litigation. Court proceedings would then require more extensive evidentiary presentations. The administration of family law would be unnecessarily more costly and time-consuming for parties and the courts as common

sets of facts and circumstances would be reviewed each time as in a case of first impression.

By increasing the inconsistency and variability of child support awards, striking down the Guidelines would also undermine economic justice in the resolution of contested family law cases. The historical record indicates that without guidelines, the range of awards likely would increase dramatically. See pp. 10 above. Some awards would be insufficient to support the financial needs of the child, with particularly serious consequences, as adequate child support remains a critical source of income for children on the margins of poverty. The Congressional Research Service recently reported that in 2008, child support payments lifted over 600,000 children out of poverty. Other awards would excessively burden the noncustodial parent.[7] As outcomes come to depend to a greater degree on

[7] The consequences for children who are beneficiaries of support orders could be serious, as adequate child support remains a critical source of income for children on the margins of poverty. The Congressional Research Service recently reported that in 2008 child support payments lifted over 600,000 children out of poverty. Congressional Research Service Memorandum to Hon. John D. Rockefeller (2010), available at http://www.clasp.org/admin/site/documents/files/CRS-Poverty.pdf (last visited 11/19/2010).

litigation, parties with greater financial resources — and correspondingly greater tolerance for litigation costs — invariably gain regardless of the merits.

The BBA does not suggest that the Guidelines' substantive wisdom necessarily guarantees the constitutionality of the delegated power that produced them. But their success, as well as the fact that the Legislature has never sought to disturb them, is strong evidence that the delegated authority produced the very system the Legislature intended.

2. Striking Down the Child Support Guidelines Could Undercut the Legitimacy of Existing Child Support Orders and Could Jeopardize Federal Funding for Public Welfare Programs.

The Guidelines have been the basis for child support orders issued in Massachusetts for almost 25 years. They also have been the basis for the Commonwealth's compliance with requirements imposed by Congress as a condition of federal funding for state public welfare programs. Declaring the Guidelines unconstitutional would create an undesirable state of legal uncertainty on both fronts.

If the Court were to strike down the Guidelines, it could throw into question every child support order entered since 1987 when the first set of child support

guidelines went into effect. St. 1986, c. 310 § 16, codified at G.L. c. 211B, § 15 (repealed, 1992). It is almost always the case that one, if not both, parties to a contested child support order are dissatisfied with the final outcome. When the standards that formed the basis for those orders change, dissatisfied parties naturally will look for an opportunity to modify the order, even in the absence of any other change in circumstances.

As part of the process of revising the Child Support Guidelines, the CJAM has recognized the importance of being able to continue to rely on orders established under prior guidelines. The current Guidelines, like the guidelines issued in 2002 and 2006, specifically provide that the changes in the Guidelines themselves are not a basis for modifying existing child support orders.[8]

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[8] The preamble states: "These guidelines shall take effect on January 1, 2009 and shall be applied to all child support orders and judgment entered after the effective date. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order. Existing orders and judgments less than three years old as of the effective date of these guidelines shall not be modified unless the income of one or both parties has changed or other new circumstance warrants modification." R.A. Mulligan, The Commonwealth of

If the Court were to find the Child Support Guidelines unconstitutional, then all child support orders issued pursuant to the Child Support Guidelines could arguably be subject to modification because the standards under which those orders have been issued would be invalidated. Such a flood of modification cases would cripple the effective operations of the Probate and Family Court and would leave families in a state of extreme financial uncertainty while their modification complaints - with the potential for retroactive application - await resolution.

Striking down the Guidelines could also put at risk millions of dollars in federal financial funding for Massachusetts public welfare programs. See Hodges v. Thompson, 311 F.3d 316, 320 (4th Cir. 2002) (upholding strict application of penalties to South Carolina for failing to comply with the federal requirement for an approved state plan for child and spousal support). In order to be eligible for such federal funding, a state must have a certified state plan for providing child support services. See 42 U.S.C. §§ 602(a)(2), 654. The federal government

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Mass. Admin. Office of the Trial Court, Child Support Guidelines, 2 (as in effect, January 1, 2009).

certifies plans to ensure they meet certain federal requirements. Every State plan must include child support guidelines that operate to establish presumptive amounts of child support in every case. 42 U.S.C. § 667.

If the Court determines that the Guidelines are unconstitutional, then Massachusetts could lose the certification of its state plan and therefore lose its eligibility to receive funding or public welfare programs under the Temporary Assistance to Needy Families (TANF) program. Massachusetts relies heavily on TANF funding for its cash assistance program for needy families, known as Transitional Aid for Families with Dependent Children (TAFDC). In fiscal year 2009, for example, Massachusetts received over $460 million in federal TANF funding in order to conduct the TAFDC program and to provide other related public welfare assistance for needy families.[9] Without federal funding, Massachusetts could not maintain one of its most crucial safety nets for poor families.

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[9] Information obtained from federal reports, available at U.S. Dep't of Health and Human Servs. Admin. for Children and Families, Combined Federal Funds Spent in Fiscal Year 2009, available at http://www.acf.hhs.gov/programs/ofs/data/2009/table_a1_2009.html (last visited 11/19/2010).

IV. CONCLUSION

For the reasons set forth above, the judgment of the Superior Court dismissing the Appellant's Complaint should be affirmed.

RULE 16 (K) CERTIFICATION

The undersigned certify that this brief complies with the Massachusetts Rules of Appellate Procedure.

The Boston Bar
Association
By its attorneys,

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CERTIFICATE OF SERVICE

Gayle Stone-Turesky, counsel for Attorneys for Amicus Curiae Boston Bar Association hereby certifies that she has served the Brief of the Amicus Curiae Boston Bar Association by causing two copies thereof to be delivered by first-class mail, postage prepaid to Gregory A. Hession, Esquire, 172 Thompson Street, Springfield, MA 01109 and Martha Coakley, Attorney General and Timothy J. Casey, Assistant Attorney General, Government Bureau, One Ashburton Place, Boston, MA 02108.

Gayle Stone-Turesky

Dated: January 21, 2011