CALIFORNIA PUBLIC ASSISTANCE POLICY IN AN ERA OF MINORITY RULE

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I. INTRODUCTION

It is often said that one can gain insight into the morals of a society by observing how it treats the poorest among us. If indeed this is an accurate measure, it appears that our society is losing its moral balance. The cuts to core public assistance programs agreed to by Governor Schwarzenegger and the California Legislature in the 2009 state budget mark a radical and ominous departure in state policy. Whether this becomes a trend or simply an irrational one-time reaction to the greatest budget crisis in seventy years will be up to us. Recent history in the California Legislature suggests that it may be a trend of increasing minority party power that is only now attaining its full impact. This paper focuses on California's continuing budget crisis and its impact on key public assistance programs.

II. A QUICK TUTORIAL ON CASH ASSISTANCE

There are two main forms of cash assistance in the United States and California. The largest program, Supplemental Security Income for the Aged, Blind and Disabled (SSI),[1] serves persons who are blind, aged and disabled and who have little or no other income. The federal government provides the funding for SSI. Some states, like California, add an additional amount from the state General Fund.[2] Like Medicaid and Medicare, SSI is a federal entitlement program that the government guarantees its citizens.[3]

The second program, Temporary Assistance for Needy Families (TANF),[4] provides cash assistance and employment services to

1. 42 U.S.C.A. §§ 1381-83(f) (2003).

2. CAL. WELF. & INST. CODE §§ 12000-401 (2001) (State Supplemental Program for the Aged, Blind and Disabled, Burton-Moscone-Bagley Citizens' Security Act of 1973).

3. 42 U.S.C.A. § 1381(a).

4. 42 U.S.C.A. §§ 601-19 (2003).

extremely low income families with children under age eighteen. In California, TANF is known as California Work Opportunity and Responsibility to Kids (CalWORKs).[5] CalWORKs came into existence in 1998 to replace the Aid to Families with Dependent Children (AFDC) program. Under AFDC, extremely low income households with children received a federal entitlement to cash assistance that was funded with half federal funds and half state funds. Under CalWORKs, there is no federal entitlement to assistance and states have discretion to establish eligibility rules. CalWORKs is funded by a $3.7 billion grant from the TANF block grant and a $2.6 billion state match. SSI provides cash aid to 1.3 million individuals and couples while CalWORKs provides assistance to 1.3 million people, including about one million children.[6]

III. THE ORIGINS OF THE BUDGET CRISIS

By their nature budgets are inaccurate and invariably wrong. Budgets are estimates of how much the government thinks it will take in and how much it thinks it will spend. Government always gets less or more revenue than it thought and always spends less or more than it thought.

In California, this budget reality must confront the state's Constitutional reality of passing both a budget and any tax increase by a two-thirds vote of the Legislature. According to its proponents, two-thirds vote requirements are desirable because they build broad consensus for major policy and fiscal decisions. In reality, the two-thirds vote shifts control over passage of the budget to the minority party. Under two-thirds vote requirements, until the minority party is satisfied, there can be no budget.

Over time this power has begun to establish a pattern not only of annual late budgets, but more importantly of tax cuts for the wealthy and well-connected. The minority party assembles a demand list each year and stalls the budget process until its demands are met. Business interests converge on Sacramento every summer asking for desired tax cuts or business advantages added to the minority parties'

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5. CAL. WELF. & INST. CODE §§ 11200-15 (2001).

6. *See generally* California Department of Social Services, Public Assistance Facts and Figures, http://www.cdss.ca.gov/research/PG370.htm (last visited Mar. 17, 2010) (provides information on caseload and benefit levels of California public benefit programs).

demand list.[7]

Analysts would note other factors also contributed to our current budget crisis, such as the passage of Proposition 98[8] that guarantees public schools a minimum level of funding, the spending of one-time Internet revenue in the Davis Administration,[9] or the passage of Proposition 13 that shifted power over state and local funding to Sacramento[10]. But nothing matches the long-term corrosive effect of the twin two-thirds vote requirements on the state's finances. In good years and bad, the Legislature has consistently reduced taxes or made conditions favorable for selective, powerful industries, solely due to the two-thirds vote.

IV. THE FORMATION OF TOGETHER FOR CALIFORNIA'S FUTURE (T4CF)

Each year legislators, budget staff, and advocates assert that this is the worse year ever. But by the fall of 2007, it was clear to all involved that the 2008-2009 budget would be the worst budget since at least the early 1990s. Budget expenditures had soared under the Schwarzenegger Administration, and revenue had begun to decline as the State saw the first signs of the economic decline that was to come. Without new revenue all areas of the State budget would suffer deep cuts.

The idea that revenue increases would be part of a budget solution was met with guffaws both inside and outside the Capitol. This bucked the trend of the previous two decades of budget-induced

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7. *See generally* CALIFORNIA BUDGET PROJECT, TO HAVE AND HAVE NOT (June 2009), *available at* http://www.cbp.org/pdfs/2009/0906_bb_To_Have_and_Have_Not.pdf (details recent tax changes benefiting wealthy business interests made as part of budget agreements).

8. Proposition 98, a 1988 ballot initiative that amended the State Constitution, commits the State to providing K-14 schools with guaranteed funding from the General Fund and local property taxes. The funding commitment grows each year with the economy and the number of students, but Proposition 13 froze property tax levels at 1% of assessed value. See *infra* note 9. The result is an increasingly large, inflexible commitment from the State's General Fund. *See* Legislative Analyst's Office, Proposition 98 Primer, http://www.lao.ca.gov/2005/prop_98_primer/prop_98_primer_020805.htm (last visited Apr. 8, 2010).

9. *See generally* Kevin Yamamura, *Capital Gains Tax Cuts Turns Into Issue in Governor's Race*, SACRAMENTO BEE, Apr. 19, 2010, at 1A, *available at* http://www.sacbee.com/2010/04/19/2688057/capital-gains-tax-cuts-turns-into.html (chart indicates a revenue increase in 2000 and attributes it to people selling internet stock in 2000).

10. Passed by the state's voters in November 1978, Prop 13 amended the State Constitution to permanently reduce and freeze property taxes at 1% of their assessed value, and impose limits on the ability of local governments to levy new taxes and fees without two-thirds voter approval. CAL. CONST. art. XIIIA.

tax cuts. Because the minority party opposed tax increases, most observers believe it would kill any attempt to increase revenue.

Nonetheless, a broad coalition of groups came together and began to discuss the impossible: demanding a balanced solution of smart reductions and revenue increases. The budget coalition included seniors, the disabled, education, law enforcement, labor, environmentalists, parks, health care, human services, the faith community, grassroots organizations, and many other interests. The coalition came to be known as Together For California's Future (T4CF). It was the broadest and deepest state budget coalition formed in at least 15 years.[11]

T4CF's core strategy was to build grassroots pressure on the Legislature for revenue increases by building field operations in key Republican and moderate Democratic districts. Several labor unions, notably including the California Teacher's Association (CTA), donated their local field staff to organize at the local level. T4CF also formed a lobbying group that lobbied intensely for more than a year within the Capitol providing a constant reminder of what the legislators were hearing in their district.

By September 2008, the State budget was more than two months late. Pressure was mounting to do something to close the budget gap and allow members to return to their districts to stand for election. As a temporary solution was being crafted the national, and eventually, the world economy began to collapse. Within a few weeks the State's deficit had climbed from a staggering $13 billion, to the stratospheric $32 billion. By the time the February 2009 budget was approved, the gap had grown to $38 billion.[12]

V. THE FEBRUARY BUDGET SOLUTION

As the size of the deficit grew the need for revenue as part of the solution became not just a demand but a necessity. The State needed money. There was no practical way to cut $38 billion from the budget legally and without inflicting real harm to countless Californians. Eventually a package was developed that cut $15.8

11. *See* League of Women Voters of California, Forward Together: A Budget for All Californians Allies Letter, *available at* http://ca.lwv.org/lwvc/action/budget/forward_together_allies_letter.pdf.

12. Jennifer Steinhauer, *In Budget Deal, California Shuts $41 Billion Dollar Gap*, N.Y. TIMES, Feb. 19, 2009, *available at* http://www.nytimes.com/2009/02/20/us/20california.html.

billion from the budget and increased revenues by $16.2 billion.[13] But this package did not receive the requisite two-thirds vote until minority party demands were met. Along with new tax breaks, the minority party demanded: a special election for a spending cap on the state budget, alterations to voter-approved funding formulas for children's health programs, and alterations to local mental health services. The combined alterations to children's and mental health programs amounted to a $5.8 billion reduction in funding for those services.[14]

VI. THE FEDERAL STIMULUS INTERVENTION

The American Recovery and Reinvestment Act (ARRA) was the federal response to the deepening economic crisis.[15] It provided more than $800 billion to states and local governments to create green jobs, increase alternative fuel sources, and rebuild infrastructure. In addition, tens of billions were made available to state governments to backfill proposed cuts to state programs. Funding came for K-12 and higher education, the MediCal program, TANF, Food Stamps, Earned Income Tax Credits and many smaller programs.

The arrival of the ARRA funds helped prevent even deeper cuts to the budget. For example, the Governor proposed cutting CalWORKs grants by 10 percent and to place time limits on assistance for children of parents ineligible for cash aid. But because the TANF provisions in ARRA reimbursed the State eighty cents for each dollar of new grant costs, it made no sense to cut grants or reduce caseload. The same could not be said for SSI grants. They suffered severe cuts.

VII. THE BUDGET "TRIGGER"

While ARRA funds prevented deeper cuts in some critical programs, the Administration was concerned that it would not get the

13. Senate Bill 3X 1 (Ducheny) was the main budget vehicle for the February 2009 changes. S.B. 1, Cal. 2009-2010 3rd Extraordinary Sess. (West 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx3_1_bill_20090220_chaptered.pdf.

14. *See* California Budget Project, Governor Signs Budget Plan, *available at* http://www.cbp.org/documents/090220_Gov_Signs_Budget.pdf. (summary of Feb. 2009 budget deal).

15. *See* "Stimulus Bill," American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

ARRA funds in time to spend during the 2009-10 budget year. The Administration wanted a backup plan if the ARRA funds did not arrive in sufficient amounts or arrived late. As such, the Legislature agreed to $4.6 billion in additional cuts and revenue increases that would only be triggered if the State determined that ARRA funds were inadequate. Unfortunately, the mechanism designed to make that determination left the decision solely in the hands of the Administration. To no one's surprise (but to strong opposition), the Governor's Department of Finance determined California would not get sufficient ARRA funds by July 2010 and the following cuts were approved:[16]

- Revenue - $1.8 billion increase in income taxes.
- IHSS - $78 million to reduce state participation in wages and impose share of cost requirements on program users.
- MediCal - $129.4 million in reductions to MediCal optional benefits and DentiCal for adults.
- CalWORKs - $146.9 million reduction from a 4 percent grant cut (approximately $30 from a family of three receiving the maximum grant of $723).
- SSI/SSP - $267.8 million reduction from a 2.3 percent grant cut (approximately $20 per month to individuals and $35 per month to couples).

VIII. THE FAILURE OF THE SPENDING CAP

According to the terms of the February budget deal agreed to by the Governor and legislative leaders, if the spending cap was approved, the revenue increases remained for four years.[17] But if the spending cap was defeated, the tax increase went away in two years. This "poison pill" was intended to persuade liberal-leaning voters to vote for the cap so that the revenue would stay in place longer.

Many observers believe it backfired, because conservative-leaning voters saw it as an opportunity to reduce the duration of the tax increase by voting against the spending cap. Combined with liberal distrust of spending caps, it failed badly. So did the proposed shift of funding from children's programs and mental health

16. *See* California Budget Project, Proposed Budget Cuts Come at a Time of Growing Need, (Feb. 2010), *available at* http://www.cbp.org/documents/100202_Growing_Need_000.pdf.

17 CAL. BUDGET PROJECT, WHAT WOULD PROPOSITION 1A MEAN FOR CALIFORNIA'S FUTURE? (Mar. 2009), *available at* http://www.cbp.org/pdfs/2009/090318_prop1A.pdf.

programs. This created an immediate $5.8 billion hole in the 2009-10 budget and created significant shortfalls beginning with fiscal year 2011-12. This outcome set the stage for the July, 2009 budget.

IX. THE JULY 2009 BUDGET

Even with $38 billion in solutions in February, the economy was continuing to shed jobs and State revenue was declining even more than predicted. The February plan was already off by $8 billion by the time the voters rejected the ballot measures, which added an additional $5.8 billion to the deficit. The Governor and the Democratic leadership both pronounced the vote against the spending cap as an indication that voters wanted the budget resolved without additional tax increases. This meant that the entire $13.8 billion deficit would have to come from budget cuts.

Advocates for public assistance could see that the situation called for deeper reductions than were adopted in the February budget. There were a few salvaged programs, but mostly deep cuts. To reduce CalWORKs costs, AB X4 4 (Evans) was the budget trailer bill used to temporarily expand exemptions from welfare-to-work activities with a focus on reducing child care costs. Exempt families were not required to seek work, and for most, the time on aid did not count against the federal 60-month lifetime clock. Counties agreed to a $375 million reduction in their funding in anticipation of providing fewer welfare-to-work services.[18] In other words, unemployed CalWORKs recipients lost their support services, like child care, transportation, and education assistance. AB 4X 4 also expanded the ability of counties and community colleges to create subsidized jobs for CalWORKs recipients, since these increased expenditures were reimbursed by ARRA at 80 percent.[19]

This, however, was not enough for the Administration. Governor Schwarzenegger used two high-profile media settings to

18. State law requires all able bodied adults in CalWORKs who are not otherwise exempt to work at least 32 hours a week to maintain their cash grant. Participants work with counties to develop a "welfare to work plan" that attempts to address the barriers the participant has to full-time employment. CAL. WELF. & INST. CODE §§ 11320-29.4 (2001). Most recipients do a combination of paid work and education to meet their welfare to work obligation. Participants get child care, transportation and supportive services to enable them to effectively participate. *Id.* at § 11323.2.

19. Assembly Bill 4X 4 (Evans), A.B. 4, Cal. 2009-2010 4th Extraordinary Sess. (West 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx4_4_bill_20090728_chaptered.pdf.

sharply attack the performance of the CalWORKs program while strongly implying that many CalWORKs participants were not doing anything to improve their condition. Aside from the fact that he was being critical of the performance of a program he had himself administered for the previous five and a half years, the Governor selectively chose his facts to present the worst face of the program.[20]

Though publicly the legislative leadership continued to say they would not cut the safety net, privately negotiations were occurring that would fundamentally alter that safety net. Leadership felt they had to make major concessions to get the votes needed to pass a budget and get the Governor's signature. Leaders felt hard-pressed to avert a fiscal meltdown that state Treasurer Bill Lockyer and Controller John Chiang, both Democrats, said was imminent.

X. UNPRECEDENTED CUTS

While observers knew that cherished programs would be impacted, no one foresaw the depth or breadth of the concessions.

A. CalWORKS

CalWORKs took by far the gravest hit. Since 1998 there had always been a commitment to avoid punishing children for the perceived behavior of the parent. This meant in practice that if sanctions were imposed or time limits reached, the State would always provide a full grant for the children. AB 4X 8, (Evans), the budget trailer bill implementing long term CalWORKs changes, ends this commitment. For families in the welfare-to-work program, the safety net program and the child-only program, children's grants will be gradually reduced until just 50 percent of the children's grant remains if the parent fails to meet work requirements. The Legislature also approved a shorter time limit for assistance and self-sufficiency reviews for families who failed to meet work requirements. Ironically, the changes have no impact on the current budget, because they do not go into effect until July of 2011.[21]

20. *See* County Welfare Association of California, Governor's Budget Proposals: Myths and Facts, *available at* http://www.cwda.org/downloads/priorities/budget2009/BudgetProposals.pdf.

21. Western Center on Law and Poverty Powerpoint presentation, *available at* www.wclp.org (explaining the changes to both AB4X 4 and AB 4X 8 (Evans)).

B. In-Home Supportive Services

In-Home Supportive Services (IHSS) also suffered significant reductions, completely eliminating services for persons whom the Administration believes can maintain their independence without a caregiver. One hundred sixty thousand Californians may soon find out if the Administration is correct. If the Administration's decision to terminate is wrong, the cost will be born by the State, which will have to pay for IHSS recipients to go into far more expensive nursing home care.

C. SSI Grants

SSI grants for blind, aged and disabled Californians were severely reduced. In January of 2009, SSI grants for individuals were increased to $907 for individuals and $1,579 for couples. By the time the July budget was finalized, these grants had been reduced by $62 for individuals, down to $845 a month, while couples took an even larger reduction. Couples lost $172 from the maximum grant, down to $1,407 a month. Because 85 percent of IHSS recipients also rely on SSI as their income, these households have taken a disproportionate share of the impact.[22]

D. Child Welfare Services

Child Welfare Services protects vulnerable children who are being abused or neglected by their parents or guardians. During the Schwarzenegger Administration, and with the strong support of Speaker Karen Bass, the State has made fiscal and policy improvements to child welfare. But these improvements were reversed when the Governor vetoed (via his blue pencil authority) $80 million in State funds from the child welfare budget.[23]

22. The February budget reduced the maximum SSI grant for individuals to $870 a month beginning in May and to $1,524 for couples. The "trigger" further reduced the grant by $20 for individuals down to $850 month, and reduced the amount by $35 for couples, down to $1,489 a month starting in July, 2009. The July budget cut the maximum SSI grant for an individual by $5 more, down to $845 a month, and reduced the SSI grant for couples by $82, to $1,407 starting in October, 2009.

23. TWCLP and other organizations contested part of the Governor's blue pencil cuts alleging that the Governor violated the principles of separation of powers when he vetoed funds that were not subject to appropriation in the budget, A.B. 4X 1, Cal. 2009-2010 1st Extraordinary Sess., (West 2009). The child welfare funds, however, were not a part of that litigation. Unfortunately, the First District Court of Appeals ruled against the plaintiffs and no appeal is planned. St. John's Well Child and Family Center v. Schwarzenegger , 182 Cal.App.4th 590 (2010).

According to the County Welfare Directors Association, "[T]his represents 755 lost county child welfare workers across the state. These workers could have investigated 143,000 reports of abuse or neglect, or worked to reunify 20,400 foster children with their families."[24]

E. Across the Board COLA Losses

The elimination of all statutory cost-of-living adjustments (COLAs) was perhaps the most significant impact. CalWORKs and SSI grants, for example, had annual statutorily required cost-of-living adjustments much like the federal Social Security program does. Without these COLAs, the purchasing power of the grants decline over time. The CalWORKs and SSI COLAs have often been suspended or delayed but aside from the policy benefits the COLAs were always a tangible asset that could be used in negotiations with the Administration. Eliminating COLAs significantly reduced the Legislature's budget bargaining power, shifting power to the Governor and the minority party because all benefit increases now require a two-thirds vote.[25]

XI. WHY ARRA MAY STILL LEAD TO DEEPER CUTS

Unquestionably the ARRA funds prevented much deeper harm to a broad array of state programs including health and welfare programs. Nonetheless the funding was inadequate to prevent significant reductions across the board. It can be argued that the depth of the State budget cuts effectively offset the infusion of federal stimulus funds. If the July budget solution had been balanced between cuts and new revenue, the stimulus might be having a more beneficial effect.

What will California do when stimulus funds begin to disappear? For CalWORKs, the reimbursement for increased grant payments expires in October of 2010. In MediCal, the federal funds will expire at the same time. K-12 and higher education took drastic reductions, but it would have been worse if not for federal stimulus

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24. *See* County Welfare Director's Association of California, Governor to Abused Children: Sorry We Can't Help You, *available at* http://www.cwda.org/downloads/priorities/budget2009/PressReleaseVetoes7-28.pdf (information on child welfare cuts).

25. *See Leak of the Week: Senate GOP Leader's Budget E-mail to His Caucus,* CAPITOL WEEKLY, Jul. 21, 2009. The report prints the full language of an e-mail from Senate Republican leader Dennis Hollingsworth detailing, glibly, all the issues won in the Republicans' favor. *Id*.

education funding. In all three situations, the Legislature and the Governor must decide how they will make up the lost federal funds in the 2010-11 State budget. In some cases, there will be spillover ARRA funds that will reimburse the state for earlier expenses in 2010-11. But with the 2010-11 budget at $13.3 billion and with additional federal funds uncertain, many fear that the next wave of cuts could be even deeper than what happened in July. Certainly without more federal TANF funds, the risk of deep grant cuts to CalWORKs is a very real possibility. Lurking in the horizon is the unthinkable: abandonment of both CalWORKs and $3.3 billion in State payments for SSI recipients.

XII. HOW TANF REAUTHORIZATION MIGHT REDUCE THE HARM

Since 1998, the driving policy consideration in state TANF programs has not been poverty alleviation, but rather meeting federal work participation requirements and reducing caseload. States received a caseload reduction credit any time a family leaves the program, whether for a job, or because they were kicked off for non-participation. Every percentage point the caseload fell, resulted in a drop in the state's required 50 percent federal work participation rate.

To reduce caseload, many states adopted short time limits, rigid eligibility requirements, full family sanction policies and very low grant levels to push families out of the program in record numbers. While some families did benefit from employment, education and training opportunities to increase their income, most families continued to live below the federal poverty level. Many families are "disconnected" from public assistance altogether and research suggests these are the families with the greatest barriers to success, who need public assistance the most.

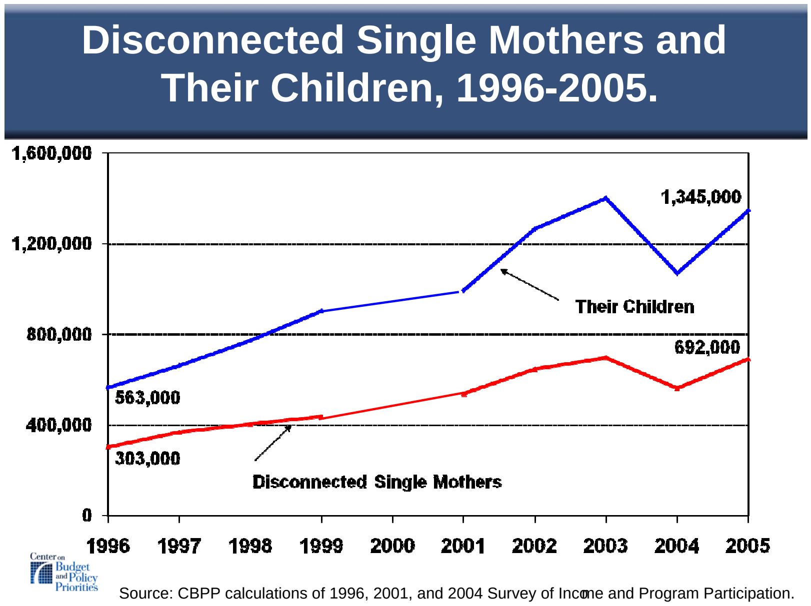

FIGURE 1[26]

But since states had no stake in improving the outcomes for families, they had no incentive to help them—rather they had perverse incentives to get as many families out of the support net as possible. California was an exception. The State had resisted this approach for the past decade. The results this summer push California "into the mainstream" of states that have adopted these harsh approaches and prioritized caseload reduction over poverty alleviation.

The new CalWORKs changes are designed to make sure the State avoids federal penalties. This approach has paid off for other states under the current and past authorizations of TANF.. What is unknown is whether caseload reduction and work participation will be the driving forces when TANF is reauthorized in 2010. Many national advocates, some of who now serve in the Obama Administration, want TANF to focus on outcomes. Rather than focus on reducing caseload, some argue that we should focus on

26. The chart is composed by the Center on Budget and Policy Priorities, 2009. *See generally* Rebecca Blank, *Improving the Safety Net for Single Mothers Who Face Serious Barriers to Work*, 17 THE FUTURE OF CHILDREN 183 (Fall 2007).

reducing the number of children living in deep poverty. Instead of focusing states on a work participation rate that may not improve the lives of families, we should measure states on the percentage of families who leave the program for a wage that can support their families.

If states were given incentives to focus on outcomes instead of caseload, many more families would get a decent grant amount and states would be rewarded for helping families get out of poverty through work. If states were rewarded for the number of people who reached self-sufficiency, they would be motivated to provide education and training pathways for jobs that pay a living wage. Such policies would require states to restore funding to TANF cash assistance programs and reduce the amount of funding that can be diverted to other state purposes. This will not be easy to achieve. States, particularly in the current recession, have grown accustomed to reducing TANF when budgets are tight. Forcing states to restore funds to TANF programs will cause other state programs to lose funding, some of it in vital areas like child care or child welfare.

XIII. CONCLUSION

There is a sense that something must change in California. An unprecedented number of "reform" efforts are underway. Among the proposals is a radical shift in tax policy (that again favors the well-off), returning to a part time Legislature, holding a constitutional convention, reducing the vote for a budget to a majority vote, making it harder to amend the State Constitution by initiative, and other efforts. Missing among the list is the most important change of all—reducing the vote threshold to a majority for a budget *and* for raising revenue through taxes. If voters do not like the decisions of elected officials, they will know who did what, especially once redistricting of legislative districts draws district lines that allow voters to choose their elected officials and not the other way around. Under the current system, budget choices are dictated by the minority party, and approved by the majority party—who often oppose what is in the budget they approve! Go figure. No wonder the public is throwing their hands up in disgust.