January 15, 2004 Re: Summary response and detailed analysis of Minnesota DHS memo (on letterhead, author unstated): "HF 1031 Rep. Jacobson" dated 12.23.03

This responsive paper is organized to deliver an easy to read and understand analysis of the memo, law, and issues. It provides a:

- section by section analysis of the DHS author's position, premise and conclusions (both overt and assumptive) and critical elements, simultaneously,
- a side by side clarification which contains supporting detail of our analysis compared to the memo followed by,
- References that more fully authenticate and detail this analysis.

These are detailed and complicated issues, difficult to fully develop. The intent of the formatting of this document is to present the substance of the issues in a very succinct manner with a detail review optional in the endnote validation. The reader of this document may read pages 5 -9 for the point / counter point and, if so inclined, read the endnotes that provide proof to this responsive document's statements. A brief overall appraisal precedes the detailed review of the three page (author undisclosed / no credits nor credentials provided) DHS memo. Although the DHS memo may have been issued sua sponte, the memo is likely to be a response to Speaker of the House Steve Sviggum's-

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-request for information as follow up to Ms. Olson's meeting with the Speaker in November.

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General review of DHS document:

Authorship:

It is not possible to establish overall credibility and authority since the writer's identity is not disclosed. Given that it is on MN DHS memo letterhead and made available from a legislative office it must be concluded that it is authorized.[1] Conflicting with the presumption of authorship and authority is the identification in the "from" line of *The Children and Family Services Administration* which is known as a federal agency. Obviously, it cannot be both so it would seem that DHS, uncertain or ill-equipped to do its own analysis, sought support from a like minded party. The "switch" in authorship created by providing the memo on MN DHS letterhead, while meaningless to the response here provided, at minimum is revealing and at worst represents a behind the scenes collaboration that is apparently meant to be undisclosed by the author(s) and issuer(s). As a public debate on a legitimate issue, clandestine behavior seems oddly out of place and also creates a shield preventing a direct response. This is consistent with what has now become a systemic organizational practice.

DHS memo lacks objectivity:

Although the memo is conversational and polite in tone, the memo lacks objectivity. It is an instrument with designed direction and intent to reinforce and retain the preexisting position of the author(s) (and or departmental/public authority). The reader is easily enticed to assume the author's perspective and conclusions even though lacking adequate and accurate information to support the position. In addition to detailed omissions and misdirection, it is fatally flawed in premise as the author fails to clarify for the reader that the entire dialogue on the subject is reviewed and debated in the context that this is a state voluntary compliance to an elective federally funded program.

Position held:

Sidestepped is the discussion that the Federal regulations and law referenced by the author(s) (and or departmental/public authority) are compliance mechanisms of an elective federal program and the misstatements of "*requires*" and *"must"* are antithetical to an elective program. This failure makes evident that the memo is written as a position document rather

[1] Post memo distribution, Commissioner Goodno validated the 12.23 DHS memo – no authorship provided. See attached memo from Commissioner Goodno dated 1.30.04 received 2.8.04

than an objective overview of the issue. In this failure, the memo creates a false anticipation for the reader that compliance with this voluntary elective program carries the same mandate for compliance that laws that effectuate constitutional protections or criminal law require. This is a misreading and/or misunderstanding of the intent and reality of the statutory provisions contained in part IV-D of chapter 7 of USC 42.

Relevance of position:

The conditions referenced are moderately relevant to achieve and continue substantially compliant performance in order to obtain available cost offset and incentive funding made available under the authorizing federal code. The federal government does not FORCE complicity of the several or individual states. It does not entitle the State and/or the associate agencies to impede the guarantee of protections to its resident citizens in its desire to comply with the conditions of this elective program. Neither does the federal code make available to the State (Agency) protections from the consequences of the overreach of authority, such as taxpayer fraud or enforcement actions against its citizenry when no state interest exists. This is obviously a critical omission for the intention to gently misguide the reader so as to avoid potential scrutiny of the existing overreach of authority to maximize availability of grant money.

Specific message:

The memo's author(s) (and or departmental/public authority) has grossly exaggerated; if not entirely mislead for desired effect, HF 1031's implications to T.A.N.F. funding. The effect of the bill's eligibility requirement (inherent in any welfare program) to obtain these welfare benefits would be seen as beneficial and harmonious to the intent, scope, and cost of the program, and likely, welcomed. The federal government provides panoply of options and in some cases obligations to which the states may choose to conform *for the purpose of obtaining the available federal cost offset and performance incentives.* The position that "the feds make us do it" is, and always was, a false platitude for unrestrained practice and is so old that only a novice to the discussion or one who would be affected by implementation of proper scope parameters, uses it, let alone believes it. In creating the memo, the un-named author(s) from *The Children and Family Services Administration*, at minimum, would be expected to provide an objective review which would at least superficially, if not authentically, attempt to identify

and respond to underlying motivations and conditions that HF1031 addresses. Unfortunately, this is a consistent attitude and behavior of this and associated interdependent bureaucracies. Further, the author's citation of isolated statutory provisions and the opinion of those provisions to bolster a predetermined theory are done with the intention to narrowly guide, and misguide, rather than objectively analyze and inform the reader. Although this is a practice that falls below a reasonable standard of expectation for a public authority, it is useful in this analysis as it calls attention to improper intent. Significantly, legislation now proposed (HF 1031) would be unnecessary if not for the continuing obdurate nature of the prevailing attitude of the public authority. Easier remedies exist. Simply incorporating any current welfare program eligibility standard into the required state plan would cure the improper practice making this, and additional actions to cure, moot.

Abdication of public interest:

As it is these public authorities whose mandate it is to serve, opinion memos disguised as objective analysis that are issued to persuade rather than inform, are an abdication of the obligation to act in the interest of the public they serve. Although the improper practices that HF 1031 would relieve could be addressed via ***direct*** judicial action, to preclude further impairment of the use of taxpayer funds and infringement of constitutional protection resulting from the current practices, there is ample information available that would lead reasonable people to less drastic corrective measures. All material references contained in the memo are governed by the Social Security Act, corresponding U.S. Code, and corresponding State statutes, enacted to obtain and sustain compliance with this elective federally funded program. The public agency(s) have manufactured a position and are sticking to it. Bill HF 1031 is simply intended to bring the current practice(s) of the State into compliance with language and intent of the voluntary program and ultimately restrain one aspect of an overreach of authority. The resulting impact to those affected from the improper policy, and reduction of the unnecessary associated expense paid by both the federal and state taxpayer, would thereby make judicial action unnecessary.

<u>A section by section analysis of the DHS memo follows.</u>

Memo topic: "IMPACT OF HF 1031 ON MINNESOTA"

DHS Memo
(sub heading 2 / paragraph 5)

"The most significant impact on the state would be loss of federal funding for the child support program because the provisions of this bill are inconsistent with Federal requirements. Implementing this bill would mean that Minnesota's state plan for the child support program would not comply with federal requirements. This would eventually lead to disapproval of the IV-D state plan. If a state does not have an approved IV-D state plan for child support, the state would eventually be ineligible for federal TANF (MFIP) block grant funding. In FFY 02, Minnesota received about $82 million in federal IV-D program funds and about $267 million in federal funding for TANF block grants. The loss would be well over $350 million per year."

Issue development detail:
Here, the opinions and assumptions stated as a fact leading to the conclusion that an extraordinary cascade of effects would ultimately lead to the loss of $350 million in grants is entirely without basis, merit, and not real or reasonable. References to the congressional record dating to 1921 are replete with references to containment of the size, scope, and presumptive authority.[1] Also, the overt threat that the T.A.N.F. funding plan would be jeopardized is an immature attempt to alarm rather than inform.[2] The individually developed state plan is designed by original intent to be reasonably accommodated by the federal authorizing entity.[3]

More probable, consistent application of any existing qualifying welfare eligibility standard for a citizen to receive these welfare benefits would go un-remarked as lacking significance, and if noted, seen as compliant with the federal program. Application of standards here already defined and in existence in all other welfare programs would regain this states plan's compliance with original intent and language of the law. Corresponding cost savings are blatantly proper. At worst, a waiver may be submitted. [4]

Memo topic: Overview

DHS Memo:

(Introduction excerpts: para 1,2,3)

"The goal was to reduce demand for public assistance and children in poverty by more effectively enforcing child support orders. The federal government began providing funds to states with child support programs that met federal guidelines. Currently, the federal government contributes about 76 percent of Minnesota's child support enforcement funding. Over the years, to qualify for federal child support enforcement funding, as well as public assistance funding (Temporary Assistance for Needy Families), Congress has required states to enact various kinds of legislation to strengthen child support enforcement services. States must also comply with a variety of federal regulations related to program policy and operations. 42 USC 654 states that provide {error noted} child support services must be given to recipients of certain public assistance benefits and to "any other child" if an individual applies for such services. Federal regulations do not allow the provision of services to be contingent on the other parent's agreement or on a determination of financial need"

Issue development detail:

Here, the memo leads to an erroneous interpretation of 42 USC 654 which is followed by an incorrect conclusion in part based on the erroneous interpretation of 42 USC 654. It is a cascade of seemingly minor misrepresentations leading to a colossal failure of logic and reason. This, while maintaining the presumption to the memo reader that this is somehow more than an elective program for the purpose of obtaining available federal cost offset and incentive money.

> ←*"The federal government began providing funds to states with child support programs that met federal guidelines",*

Funds are not simply provided. They are paid to a state following the compliance to the pre-approved state plan submitted prior to the initiation of the funding period. Plans are unique for the purpose of addressing each state's indigenous needs.[5] The "any other child" reference is not a panacea from the charge that the state is acting outside its purview of authority and in fact when relying on this phrase in 654 reveals selectively purposeful intent to maintain the overreach of the program. [6]

> ←*"Federal regulations do not allow the provision of services to be contingent on the other parent's agreement or on a determination of financial need."*

Nor do they restrict or prohibit such a provision. This misleading takes the memo reader away from the more important issues.[7]

Memo topic: "Summary of HF 1031"

DHS Memo:

(page 1 / paragraph 4)

"This bill would establish eligibility criteria for receiving IV-D child support services when the applicant for services is not a recipient of public assistance. The eligibility criteria would be based on income and assets of the applicant. The applicant would be required to demonstrate that private attempts to secure financial support from the obligor were unsuccessful and that without support from the noncustodial parent the custodial parent would be in immediate need for public assistance. The noncustodial parent would be required to approve the application for child support services. The bill would require the child support program to terminate services to all non public assistance IV-D cases and former public assistance IV-D cases and require individuals to reapply for IV-D services under the new eligibility criteria."

Issue development detail:

> *←"The eligibility criteria would be based on income and assets of the applicant".*

Eligibility criteria are currently defined in all other programs. This bill would make this program compliant to, and consistent with, every other federally funded elective welfare program. This is the ONLY program to which the state has not applied the eligibility standard.

To an applicant's benefit the opportunity...

> *←"to demonstrate that private attempts to secure financial support from the obligor were unsuccessful and that without support from the noncustodial parent the custodial parent would be in immediate need for public assistance".*

...would provide for both the potential recipient, and the agency, and the taxpayer, alternatives otherwise undisclosed/unavailable and potentially prevent welfare program dependence.

> *←"The noncustodial parent would be required to approve the application for child support services."*

Providing this opportunity is not only positive for the reasons above, but also, establishes for the state (agency) required delivery of legal process and will minimize a number of liabilities to the state agency. Issues addressed such as tax fraud, notice, process, privacy, and rights issues, may ultimately prevent legal issues and corresponding additional burden to the state. Not enacting proper standards invites the growth of the backlog of litigation. [8]

Memo topic: Specific areas in conflict with federal regulations

DHS Memo	**Issue development detail:**
Page 2 - paragraph 6 "Eligibility requirements"	→ **previously addressed herein**
Page 2 - paragraph 7 "Approval of application by other parties"	→ **previously addressed herein**
Page 2 - paragraph 8 "Case closure requirement: This bill would require the state to close all non-public assistance and former public assistance child support cases and require individuals to reapply under the new eligibility criteria. This would be inconsistent with federal regulations (see 45 CFR 303.33) that prohibit the state from requiring an application or any other request for services from an individual who is eligible to receive continued services once eligibility for public assistance cases ceases. This provision would also be inconsistent with specific case closure criteria required by federal law (see 45 CFR 303.11)." Page 2 para 9 "Hearing requirement: This bill contains a requirement that prior to the approval of the IV-D application a parent of person standing in loco parentis must be afforded the opportunity to object to the services and assume charge of the child in compliance with 42 USC 1301(d). The federal office of child support enforcement has specifically informed us that this provision in federal code has nothing to do with child support. "	No inconsistency exists between CFR 45 and bill HF 1031. A state plan conforming to this bill would contain an eligibility standard, consistent with other welfare programs, and would not affect current recipients or former recipients of welfare benefits unless their financial circumstances improved so as to properly place them outside the scope of any welfare eligibility standard. At that point the former recipient is self sufficient and **NO** welfare program standard would apply. Also, current case closure criteria are assumptive of a state interest. Current practice creates a "welfare class" to which non welfare recipients (noncustodial parents) become subjected to consequence without notice, process, opportunity to provide remedy, etc; i.e. "case closure criteria"[9] and other terms, conditions, and reckless punitive measures is illegal. Aggravating the impropriety of the policy (as noted above) is the current condition that in **MOST** cases (over 75%) of the recipient group are not "welfare eligible".[10] No state interest exists. In these, and also the welfare eligible matters, no opportunity to review, correct, and object to the initializing act -the assignment of rights made by the actual or presumed custodial parent- is made available. The federal office of child support enforcement "wishing away" the USC 42 1301(d) objection provision does not remove it.[11]

Memo: Alternatives to HF 1031

DHS Memo:	**Issue development detail:**
	The last five paragraphs of the memo are an attempt to lead the reader to the conclusion that HF 1031 is unnecessary. None of the content is relevant to the facilitation, through the proposed bill's enactment, of appropriate application of current welfare eligibility standards to IV-D services.
(para 10 – 16)	
Paragraph 10:	← No relevance
Paragraph 11:	← No relevance
Paragraph 12:	← No relevance
Paragraph 13:	← No relevance
Paragraph 14:	← No relevance
Paragraph 15:	← No relevance
Paragraph (last) 16: "I hope that this information is helpful and if you need more information now or at anytime, please send me an email and we will get you what you need"	The sentiment in this closing statement helps to reveal the alliance and mission specific orientation and support for DHS of the author(s). Again, as no official recognition of the author's identity is provided no direct response, or more specific conclusions, can be reasonably made regarding the intent, style, and lack of the thoroughness in the DHS memo.

Detailed review by endnote reference:

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[1] This GAO report summary; Child Support Enforcement: *Opportunity to Reduce Federal and State Costs (Testimony, 06/13/95, GAO/T-HEHS-95-181)* summary is taken directly from the GAO. Actual testimony contained in the full report speaks in detail and unambiguously to the intention of beneficiaries and current "creep" to unintended beneficiaries. Overviewed by the GAO:

> "The federal Child Support Enforcement Program supports state efforts to obtain child support for recipients of Aid to Families With Dependent Children (AFDC) and nonwelfare families. Congress created the program in 1975 with the belief that many families might avoid applying for welfare If they could obtain the support due from the noncustodial parent. Preliminary data for fiscal year 1994 show that the program collected more than $7.3 billion for about 8.2 million nonwelfare clients. This testimony focuses on four key points about the non-AFDC child support program: (1) growth in non-AFDC caseloads and related administrative costs to provide collection and other services; (2) income characteristics of non-AFDC clients--specifically, GAO's finding that many are not the low-income persons that Congress envisioned targeting; (3) alternatives for boosting non-AFDC cost recovery; and (4) an alternative fee structure based on child support collections and the flexibility that states should have in implementing such a cost recovery system."
>
> It contains "the non AFDC child support program...many are not within the low income population to which congress envisioned providing child support enforcement services" (page 3)

[2] November 18, Congressional Record – House, Page 7920 1921

MR. WINSLOW. … that we would have in our ill, so far as we could provide it in a bill, an arrangement by virtue of which the States individually, through their properly accredited or appointed organizations as described in the bill, should set up its own plan of educating and handling and developing this maternity and infancy proposition. No. 1, the State to initiate its own plan, so that if the State of Oklahoma, on the one hand, for the State of Maine, on the other, and so on, had different viewpoints as to the necessities of their localities in respect to setting up the method of administering such a law, they would be free, without original or predetermined hampering, to represent to the Federal Government what each State thought it ought to have.

[3] 66th Congress, 3rd Session. House of Representatives. Report No. 1255.
Protection of Maternity and Infancy.
January 28, 1921. – Committed to the Committee of the Whole House on the state of the Union and ordered to be printed. Mr. Cooper, from the Committee on Interstate and Foreign Commerce, submitted the following report. [To accompany S. 3259]

Miss Julia Lathrop, Chief of the Children's Bureau, in her statement before the committee, said:

> *The bill is designed to avoid an obnoxious governmental authority. It respects the rights and duties of the States and requires no rigid control of their appropriations. But experience shows that there should be a central source affording to the different States, when they make their plans, the best experience of all of the other States and of the world, and a central body competent to assure taxpayers and the special beneficiaries of the measure that its spirit is effectively carried out and that intelligent use is made of every dollar.*
>
> *The actual public health nursing anticipated under the bill would be done by local employees, not by the Federal Government. The percentage of the appropriation that may be spent for administrative purposes by the Federal Government can not exceed 5 per cent, and at least 95 per cent must be allotted to the States.*
>
> *The bill does not contemplate the creation of new machinery in the States. It is its purpose to have the work done in the States by State child-hygiene or child-welfare divisions, and 35 of the 48 States already have such divisions, most of them under the State boards of health.*

[4] Minnesota's current plan contains several exception waivers. Any of these currently accepted would be considered at least if not more substantive than this reversion to become compliant with the intent of the federal authorizing regulations.

[5] **Sec. 651. - Authorization of appropriations**

For the purpose of.... there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part

Sec. 652. - Duties of Secretary

(3) review and approve State plans for such programs;

and CFR 45-

TITLE 45--PUBLIC WELFARE

CHAPTER II--OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 201--GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS--Table of Contents

Subpart A--Approval of State Plans and Certification of Grants

Sec. 201.3 Approval of State plans and amendments (f) Prompt approval of plan amendments. Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on

which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan,

and

TITLE 45--PUBLIC WELFARE

CHAPTER II--OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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Sec. 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration...

[6] It is not a realistic interpretation of 654 (A) (ii) "any other child" to invent a universal mandate. Reading literally, in this reference the DHS memo continues the misleading assumption that this is somehow more than an elective program. By extension of premise, any parent in the entire country must be granted welfare services (at minimum any/all described in IV-D) regardless of income, lack of need, privilege of circumstance, or any other qualification if simply requested, for a one time $25 fee. In the context of the DHS memo there is no, and cannot be, ANY eligibility standard. IF that were the case the law would simply so state and, importantly, it does not. Reading 42 U.S.C. 654 (4)(A) (ii) in context of the section and in particular together with (i) it is more reasonably concluded that since all of (i) is referencing the particular offspring of a particular parent (guardian) the phrase "any other child" is to mean of the same family (custodial parent) regardless of the likeness of consistent parentage. Continuing, absent the invention of a "welfare for everyone" mandate the basic principle of welfare program compliance law remerges: Helping those in need.

Sec. 601. - Purpose
(a) In general
The purpose of this part is to increase the flexibility of States in operating a program designed to -

(1) provide assistance to **needy** families so that children may be cared for in their own homes or in the homes of relatives;
(2) end the dependence of **needy** parents on government benefits by promoting job preparation, work, and marriage;
(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
(4) encourage the formation and maintenance of two-parent families.
(b) No individual entitlement
This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part

Complete context of:

Sec. 654. - State plan for child and spousal support
A State plan for child and spousal support must -
(1) provide that it shall be in effect in all political subdivisions of the State;
(2) provide for financial participation by the State;
(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;
(4) provide that the State will -
(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to -
(i) each child for whom
(I) assistance is provided under the State program funded under part A of this subchapter,
(II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter,
(III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or
(IV) cooperation is required pursuant to section 2015(l)(1) of title 7, unless, in accordance with paragraph (29), good cause or other exceptions exist;
(ii) any other child, if an individual applies for such services with respect to the child; and
(B) enforce any support obligation established with respect to -
(i) a child with respect to whom the State provides services under the plan; or
(ii) the custodial parent of such a child;

Numerous case law precedents provide guidance in the reading of the statute: Defining "any other" as being "of like kind or character." Therefore, when (ii) refers to "any other child," it must refer to a child in same or similar circumstances as 654(4)(A)(i), which is a child dependent on public assistance. Meaning, if a mother is already on public assistance in (i) to cover expenses for a child fathered by Father #1, she would automatically be in the IV-D program for a second child fathered by Father #2. In order to support the intent of Congress, these two paragraphs, (i) and (ii), in this section of federal law, cannot be read in isolation of each other; no recorded congressional intent indicates this was meant for everyone.

The two sections of law, 654(4)(A)(i) and 654 (4)(A)(ii), must be read together, to appropriately apply the law. U.S. Congress would not have created two distinct classes of recipients, if the services were meant to apply to everyone. Otherwise, the law would have been written to say "any child" not "any other child" or it would have said "all children" and not tried to distinguish two difference classes. If it was meant for all, we wouldn't need (i) and (ii). Both (i) and (ii) were created to establish the limitations of the program to include only those cases where there was a compelling state interest. If a person is neither currently, nor at risk of being, on public assistance no compelling state interest exists.

This interpretation is supported by the Rule of Statutory Construction: Accepted that; Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others. Additionally, the reference in (ii), "*such services*," refers to the public assistance services listed in (i). It appears that (ii) was meant to apply to those who had applied for the services listed in (i) – which means there was at least a perceived need by the applicant they might qualify for public assistance.

This interpretation is completely consistent with the specific legislative intent of this section of the Act, which was created to 1) reimburse and recover costs paid out to mothers on Title IV-A public assistance services, and 2) protect those at "risk" from going on public assistance, if they would qualify for public assistance, without their child support payment.

This interpretation is consistent with the 1996 Welfare Reform Act, which was enacted to reduce the public burden, by limiting the welfare program only to those in true financial need, **because to provide services for everyone, under the auspices of the Social Security Act, would be a violation of Article 1 Section 8 spending clause. To interpret this federal law to mean that every child in the United States should get these services, would be contrary to the purpose to reduce the public burden, and would instead, increase the public burden,** and thereby would be (as the DHS memo would presume) antithetical to the entire concept of welfare.

[7] In maintaining purposefulness in the memo absent a state interest, this is a private matter and the delivery of welfare services improper as both a fraud to the state and federal taxpayer, but also, in the consequences to the other parent. Unless properly defined in the context of the original intent: Child Support and the welfare services that were created to address abandonment of children which is a relatively small number, the memo overlooks the numerous potential liabilities to state in its abdication of consideration for the other parent. As a result, this child support system has been abusively taken advantage of and has gone astray of its well-intended original purpose by separating the available yet non custodial parent from crucial matters involving his/her children.

Absent a state interest (i.e. the original primary intent; recovery of Welfare benefits, or poverty, endangerment, criminal behavior etc.) this facilitates serious deleterious effects on children and equally importantly, is a deliberate and intentional violation of process, privacy, etc. States receive federal payments based on how much child support passes through their hands. It is not

real or reasonable to conclude that this was the intention of the program. Further vesting the purposefulness behind the memo's premise is that the infractions have now become so egregious that corrective measures to this program creep may substantially (properly) diminish the bureaucracy developed to satisfy the invented purpose. In its zeal the overreach of authority by the public entity has now resulted in the application of extreme measures without cause or substantive process.

The most important and serious (considering the circumstances) is that these measures include the violation of a critical distinction between civil and criminal penalty(s). Criminal law involves prosecution by the government of a person for an act that has been classified as a crime. Civil cases, on the other hand, involve individuals and organizations seeking to resolve legal disputes. In a criminal case the state, through a prosecutor, initiates the suit, while in a civil case the victim brings the suit. Persons convicted of a crime may be incarcerated, fined, or both. However, persons found liable in a civil case may only have to give up property or pay money, but are not incarcerated. Reckless and overzealous in the improper unfettered expansion of its scheme, the memo's supporters have violated the basic principles of this Nation's system of justice, all under the fallaciously presumed authority via voluntary compliance to an elective program to achieve "substantially compliant" status for the purpose of obtaining and retaining federal funding. It sounds absurd because it is absurd.

[8] There are many legal liabilities and real life problems created by current practice. Some liabilities are created by the overreach of authority in providing welfare services to those that would not be eligible and in addition improprieties occur in all cases where there is an assignment rights. Eventually, accountability falls to the state since it is the state plan, practice, and failure to correct that enables and perpetuates the issues thereby generating liability to the state. First, this is fraud on anyone who is a state or federal taxpayer. Using the information contained in their own memo together with their own reporting: 76% of the cost is offset by federal money that equals a fraud on the federal taxpayer of amount equal to the cost spent on non eligible recipients. By their calculations approximately $82,000,000 of federal money of which 77% is spent on non eligible = over $63,000,000 (annual). By the same use of their information: 77% (see footnote 10 p.17) of current caseload is not eligible, then 77% of the state portion of the cost is fraudulent: over $19,000,000(annual) is state taxpayer fraud. Furthermore, the state (agency) has taken a protective and defensive posture regarding the improper practices and use challenge to blindly reinforce its position. Agency(s) resistance to any and all attempts of public opinion and guidance foster a potentially larger issue. This *deliberate indifference* is particularly concerning as a backlog of potential claims are building due most significantly to the willful refusal to implement corrective policy. Obviously antithetical to the mandate of the public authority this policy entrenchment is resulting in a backlog of practice failure and state liability.

This will also lead to a long list of USC 42 1983 actions.

Where guaranteed protections of rights provided for in the United States Constitution, and Federal Law have been violated by the State, the matter is appropriate for federal or state jurisdiction. The State (agency) itself in its operation of its plan may be violative of The Supreme Law of the land. The Fourteenth Amendment ensures that States do not circumvent fundamental

rights of its citizens are susceptible to the scrutiny of violations of these rights, by either court. The Supreme Court has affirmed in a long line of cases upholding Congress' authority to redress and prevent discrimination pursuant to Section 5 of the *Fourteenth Amendment*. *City of Boerne*, 520 U.S. at 517- 518, 527-29. As long as the Federal action is reasonably related to the goal of enforcing the Equal Protection Clause, Congress may outlaw practices not themselves violative of that Clause. *City of Rome v. United States*, 446 U.S. 156, 175-77 (1980) (reviewing cases under the Fourteenth and Fifteenth Amendments).

Civil Rights actions, in many cases, belong in Federal Court often because lower court employee and officer staff is by nature, made up of the community that by training, custom or habit endorses and facilitates the discriminatory practice. This *deliberate indifference* may be applicable as a failure to train officials in a specific area where there is an obvious need for training in order to avoid violations of citizens' constitutional rights *Cornfield v. Consolidated High school dist. Number 230, 991 F2d, 1316, 1327, (7th cir. 1993)* or under 1983 where a pattern of unconstitutional conduct is so pervasive as to imply actual or constructive knowledge of the conduct on the part of policy makers, whose *deliberate indifference* to the unconstitutional practice is evidenced by its failure to correct the situation once the need for training became obvious. *Chew v. Gates 27 F3d 1432, 1445 (9th Cir. 1994)* It is by constitutional, and constitutional amendment, intent that the Federal Judiciary retains the Jurisdiction to hear such cases. Further, acting pursuant to its broad remedial powers under Section 5, Congress can enjoin unintentional discrimination, even though only intentional discrimination is prohibited by Section 1. *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); *City of Rome v. United States*, 446 U.S. 156, 173 (1980). Since the Fourteenth Amendment was enacted after the Tenth, the Court has repeatedly noted that the Fourteenth Amendment's enlargement of Congress' powers to remedy discrimination supersede the reserved powers of the States. *City of Rome*, 446 U.S. at 178-80; *EEOC v. Wyoming*, 460 U.S. 226, 243 n.18 (1983). Whether by intent, lack of training, or custom and habit, agency violations of constitutionally guaranteed rights generate the liability and provide a jurisdictional basis for either court to hear such matters.

[9] Without a state interest these provisions are moot. Enforcement procedures, and various regulations and including account closure criteria are meant to be acted upon with a state interest and to maintain compliance with a federally funded elective program, and do not entitle any government entity, absent a state interest, to force these measures on its citizenry, and is an illegal act by the government entity when it undertakes these measures, under these conditions. Consequential "closure criteria" are without basis

[10] ***2003* Minnesota Child Support**
Performance Report
Minnesota Department of **Human Services - Child Support Enforcement Division**
MS-2326

Total Former Public Assistance (139,819) & Never Assistance Cases (49,655) =	**189,474 (77%)**
Total Public Assistance Cases	55,401 (23%)
Total Child Support Case Load in MN	244,875 cases

[11] The memorandum fails to acknowledge that a state interest is the qualifying circumstance to allow for (optionally by the state under the rules for this elective, federally funded program) the delivery of IV-d collection services and corresponding assignment of rights, and that absent an interest of the state no provision of the Welfare program is applicable. Absent a state interest, it is this very foreseeable, if not anticipated, overreach of authority that the 1301(d) provision was intended to protect against.
The contextual historical review of the provision 1301(d) includes foundational history which indisputably corrects the claim. Note that this is an unsubstantiated statement, without authorship from the agency, in a memo from an unnamed source. Contrary to the assertion in the memo regarding the 1301(d) provision:
The 1301(d) *is* a quantifiable basis to reject the delivery of IV-d (or any other) "service", absent a valid state interest.

> *U.S.C 42 - THE PUBLIC HEALTH AND WELFARE*
> *CHAPTER 7 - SOCIAL SECURITY*
> *Sec. 1301. – Definitions* ***(d)***
> *Nothing in this* ***chapter*** *shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child* .U.S.C. 42 1301(d)

1. Without the 1301(d) objection provision there would only be naive confidence that all ongoing actions of the public authority are validly assumed to be well intended or, a lawsuit to correct adherence to the defined boundaries of the elective program. Unfortunately, the filing of a lawsuit is beyond the reach of many. Even more unfortunate is that one of the reasons that a legal action is beyond the reach of those who might most be in need of relief is the very overreach of authority has decimated their circumstances to a point that it is an untenable prospect. If not for the 1301(d) provision, those less capable and disenfranchised would have no enforceable mechanism to prevent an overreach of authority to their detriment, applied under the guise of authority of these laws.

2. The objection provision has been intact and its intention unaltered since the inception of what we now know today as the Social Security Act. Its foundation and contextual meaning, intent, and original language is found earlier:
   The cautionary precursor:

   > *PROTECTION OF MATERNITY AND INFANCY. January 28, 1921. – Committed to the Committee of the Whole House on the state of the Union and ordered to be printed. Mr. Cooper, from the Committee on Interstate and Foreign Commerce, submitted the following report. [To accompany S. 3259]*
   >
   > *Miss Julia Lathrop, Chief of the Children's Bureau, in her statement before the committee, said:*

The bill is designed to avoid an obnoxious governmental authority. It respects the rights and duties of the States and requires no rigid control of their appropriations. But experience shows that there should be a central source affording to the different States, when they make their plans, the best experience of all of the other States and of the world, and a central body competent to assure taxpayers and the special beneficiaries of the measure that its spirit is effectively carried out and that intelligent use is made of every dollar.

The actual public health nursing anticipated under the bill would be done by local employees, not by the Federal Government. The percentage of the appropriation that may be spent for administrative purposes by the Federal Government can not exceed 5 per cent, and at least 95 per cent must be allotted to the States.

The bill does not contemplate the creation of new machinery in the States. It is its purpose to have the work done in the States by State child-hygiene or child-welfare divisions, and 35 of the 48 States already have such divisions, most of them under the State boards of health. (66th Congress, 3rd Session. House of Representatives. Report No. 1255.)

Later that year its language was tailored to substantially read as it is codified today:

PROTECTION OF MATERNITY AND INFANCY. November 14, 1921. –Committed to the Committee of the Whole House on the state of the Union and ordered to be printed. Mr. Winslow, from the Committee on Interstate and Foreign Commerce, submitted the following

SEC. 8. Any State desiring to receive the benefits of this act shall, by its agency described in section 4, submit to the Children's Bureau detailed plans for carrying out the provisions of this act within such a State, which plans shall be subject to the approval of the board: Provided, That the plans of the States under this act shall provide that no official, or agent, or representative in carrying out the provisions of this act shall enter any home or take charge of any child over the objection of he parents, or either of them, or the person standing in loco parentis or having custody of such child. If these plans shall be in conformity with the provisions of this act and reasonably appropriate and adequate to carry out its purposes they shall be approved by the board and due notice of such approval shall be sent to the State agency by the Chief of the Children's Bureau.

SEC. 9. No official, agent, or representative of the Children's Bureau shall by virtue of this act have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having custody of such child. Nothing in this act shall be construed as limiting the power of a parent or guardian or person standing in loco parentis to determine what treatment for correction shall be provided for a child or the agency or agencies to be employed for such purpose.

And

In other words, the committed was actuated by desire to encroach as little as possible on the rights of States, but on the other hand to encourage them to take on the work of guarding its maternity and infancy interests as completely as possible within the borders of each.

The committee, through the provisions of the bill, sought to insure to parents, guardians, etc., the control and direction of the care of mothers and children, their homes, their individual views as to social ethics, and preference as to schools of medicine, and, furthermore, to guard against the payment of any maternity or infancy pension, stipend, or gratuity. (67th Congress, 1st Session. House of Representatives. Report No. 467)

Continuing to 1925:

December 7, 1925. Title 42. The Public Health. Page 1322
168. Submission of plans by States; approval. – Any State desiring to receive the benefits of this chapter shall, by its agency described in section 164 of this title, submit to the Children's Bureau detailed plans for carrying out the provisions of this chapter within such State, which plans shall be subject to the approval of the board. The plans of the States under this chapter shall provide that no official, or agent, or representative in carrying out the provisions of this chapter shall enter any home or take charge of any child over the objection of the parents, or either of the, or the person standing in loco parentis or having custody of such child. If these plans shall be in conformity with the provisions of this chapter and reasonably appropriate and adequate to carry out its purposes they shall be approved by the board and due notice of such approval shall be sent to the State agency by the Chief of the Children's Bureau (Nov. 23, 1921, c. 135, § 8, 42 Stat. 225.)

169. Power of representatives of Children's Bureau to enter homes or take charge of children. – No official, agent, or representative of the Children's Bureau shall by virtue of this chapter have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having custody of such child. Nothing in this chapter shall be construed as limiting the power of a parent or guardian or person standing in loco parentis to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purpose. (Nov. 23, 1921, c. 135, § 9. 42 Stat. 225)

Again, the DHS memo is misleading. As we read it today the plain language is unmistakable. Agents and representatives were always, and are today, the State and local governments. The DHS memo is ***not correct*** in its assertion that

"... (1301(d)... The federal office of child support enforcement has specifically informed us that this provision in federal code has nothing to do with child support. "

And all issues are contained within the chapter (7) referenced by the statute, 1301(d).

Also, the H.R. rep. No. 74-1540, (1935) in complete context of discussion furhter confirms applicable intent:

May 28, 1935. Congressional Record – Senate Page 8333

Social Security – Amendments

MR. WALSH. Mr. President, I submit two amendments intended to be proposed by me to House bill 7260, the so-called "social-security bill", which I ask to have printed and printed in the Record. In connection therewith I request permission also to have printed in the Record a memorandum relative to the proposed amendments.

THE VICE PRESIDENT. Without objection, it is so ordered.

The amendments were ordered to lie on the table, to be printed, and to be printed in the Record, as follows:

Amendments intended to be proposed by Mr. Walsh to the bill (H.R. 7260) to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, dependent and crippled children, maternal and child welfare, public-health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes, viz:

On page 81, line 16, after the word "child", to insert a period and to strike out ", In violation of the law of a State."

The memorandum presented by MR. WALSH is as follows:

The purpose of amendment no. 1 is to conserve the rights of the individual from invasion by State as well as Federal authority. It would prevent the State official, in carrying out the provisions of the act, from entering the home and taking charge of the child over the objection of the parent or the person standing in loco parentis.

The purpose of amendment no. 2 is to clarify the paragraph. The clause "in violation of the law of the State", which this amendment removes, vitiates the rest of the paragraph. If a State law provides against entering the home and taking charge of the child over the objection of the parents, neither a Federal nor a State official could violate it under the protection provided in this paragraph. On the other hand, if there were no State law giving such protection to the parents and the home, this paragraph provides that protection (except that with the objectionable clause, the Federal or State officer would be permitted to enter the home and take charge of the child because he would not be violating the State law). *With these amendments the paragraphs will read as follows: "Nothing in this act shall be construed as authorizing any Federal or State official, agent, or representative, in carrying out any of the provisions of this act, to take charge of any child, over the objection of either of the parents of such child, or of the person standing in loco parentis to such child."*

It is urged that this protection to the home and to the individual is fundamental and established principle that should be preserved in this act, which is of such far-reaching importance, particularly titles IV, V, and VI, which relate to the care of children, maternity, and health.

Followed by:

June 15, 1935. Congressional Record – Senate Page 9367

MR. WALSH. Mr. President, I ask the Senator from Mississippi whether it is agreeable to consider at this time two amendments which I have offered.

MR. HARRISON. It is.

MR. WALSH. I submit the amendments, which relate to subparagraph (d) on page 81. The explanation of the amendments will be found on page 8333 of the Congressional Record of May 28, 1935.

THE PRESIDING OFFICER. The clerk will state the amendments.

THE CHIEF CLERK. On page 81, line 12, after the word "Federal", it is proposed to insert the words "of State", and in line 16, after the word "child", it is proposed to insert a period and strike out the words "in violation of the law of a State."

MR. HARRISON. I have no objection to the amendments.

MR. MCNARY. Will the Senator from Massachusetts state the purpose of his amendments?

MR. WALSH. I will ask the Senator to read with me subsection (d) on page 81, which is under the title of "Definitions":

Nothing in this act shall be construed as authorizing any Federal-

One of the amendments provides for the insertion of the words "or State" in that place, so as to read:

(d) Nothing in this act shall be construed as authorizing any Federal or State official, agent, or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child,, in violation of the law of a State.

*The second amendment would strike out the last phrase, "In violation of the law of a State." Some States have no such law. **The purpose of the amendments is to conserve the rights of the individual from invasion by State as well as Federal authority.***

I may say that the amendments have been presented by representatives of the Christian Science religion, who feel very strongly upon the subject, and I believe many other religious bodies joint with them in urging that this protection of the home is an established principle that should be preserved in this act.

THE PRESIDING OFFICER. The question is on agreeing to the amendments.
The amendments were agreed to.

Further developed:

SOCIAL SECURITY BILL, July 16, 1935. – Ordered to be printed
Mr. Doughton, from the committee of conference, submitted the following Conference Report (To accompany H. R. 7260)

Amendments nos. 108 and 109: The House bill provided that nothing in the act should be construed as authorizing any Federal official, in carrying out any provision of he act, to take charge of a child over the objection of either parent, or of the person standing in loco parentis to the child, "in violation of the law of a State." Senate amendment numbered 108 added State officials to the officials affected by the amendment and Senate amendment numbered 109 struck out the language above quoted "in violation of the law of a State." The Senate recedes on amendment numbered 108 and the House recedes on amendment numbered 109.

The House recedes from its disagreement to the amendment of the Senate to the title of the bill.

On amendments nos. 17, 67, 68, 83, and 84 (dealing with the exemption of private pension plans in titles II and VIII) the conferees are unable to agree. 74th Congress, 1st Session. House of Representatives. Report No. 1540

Followed by the record of the following day:

July 17, 1935. Congressional Record – Senate. Page 11309

MR. WALSH. Mr. President ---

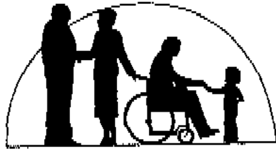
THE VICE PRESIDENT: Does the Senator from Mississippi yield to the Senator from Massachusetts?

MR. HARRISON. I do.

MR. WALSH. May I ask the Senator what was done about the amendment in which I was interested, which was proposed and adopted when the bill was before the Senate. Relating to noninterference by Federal officials with parental control of children?

MR. HARRISON. That was taken care of. The House receded on part of the Senator's amendment, and the Senate receded on the other part. Of course, the Senator will recall that we invited him before the conference committee to explain the amendment, and I think the wishes of the Senate largely prevailed in that matter.

This incontrovertibly confirms that it is the state and county or more to the point, any Chapter 7 government intervention (absent a compelling state interest) the objection provision, 1301(d), was designed to address. The language used in the memo is disingenuous at best, and attempts to circumvent the plain language of a statute contained in a chapter to which, in every other instance, the memo author relies and, when convenient to purpose, exaggerate. This is yet another contradiction in practice that invites scrutiny of intent of the memo. It is the intended effectiveness of the objection provision to provide an individual absolute protection from improper state and county and/or, any government intervention, not as memo's isolated reference misleads, leave them unaddressed.



Minnesota Department of **Human Services**

January 30, 2004

Michael Beach
CPR-MN
P.O. Box 130776
Roseville, MN 55113-0007

Dear Mr. Beach:

Thank you for your letter regarding House File 1031.

The Department was asked by a legislative committee to provide an analysis of the bill and how its provisions compare to federal law and regulation. The Department has a responsibility to respond to such requests by the Legislature and stands by its analysis.

Yours sincerely,

Kevin Goodno
Commissioner