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Economic Flaws in Proposed Virginia Child Support Cost Schedules

Senate Bill No. 1312 (2003)

No Definition of Child Support Costs; Per Capita Allocation of Household Costs Erroneously Inflates Child Costs

The foremost problem with the proposed child support guidelines schedule developed at the request of the review panel is that the child cost definition—as based on how the child costs are calculated—does not meet any economic or legal standard definition of actual child costs. Most of the child cost schedule is based on per capita child costs. That is, for given components of household spending (housing, transportation, “other,” and all components for three or more children), the child cost is determined by taking the household total for that spending category, dividing by the number of people in the household, and then prorating by the share of children in the household. For example, if mortgage interest is \$1,000 per month, if there are two adults and two children, the two-child share of the mortgage interest is \$500 per month. The per capita allocation is used even though the two adults would incur far more than 50 percent of the mortgage interest costs without the children. The per capita child cost figure includes portions of the adult costs in the child cost figure and then the guideline allocates that to the non-custodial parent as a child cost. This is a due process and equal protection violation. Under traditional case law on child support determination, child costs are defined as the added costs of having children.

Per capita child costs are used for cases with three children or more. The three-child costs are on a per capita basis. Four-child costs and higher numbers of children are based on ratios to the three-child costs. Hence, four-child cases and higher are also per capita and have no economic basis for determining the added—or marginal—cost of children in these cases.

The choice and combination of per capita intact family child costs and the separate household discount are essentially arbitrary and capricious. This combination of choosing intact family data on child costs results in a high “baseline” and an arbitrary basis of “lowering” the final schedule to achieve a pre-determined political child cost table. The review panel artificially creates high guidelines and then lowered the guidelines for a special factor in a manner to get the outcome desired prior to having any empirical basis.

The unadjusted per capita child cost tables are so high as to be ridiculous. It was necessary to adjust the basic cost tables so the proposed tables would have some minimal semblance of credibility. The upward bias in the initial table is artificial—child

costs are exaggerated with per capita child cost data.

The proposed cost schedule arbitrarily and capriciously switches from mixed estimates (per capita and average use) for one- and two-child cases to just per capita estimates for three-child cases and higher. There is no consistency in these child cost estimates. The choice is based on reaching predetermined political outcomes for the child cost tables. The arbitrary and capricious switch in methodology is a due process violation.

Economic Study for U.S. Department of Health and Human Services Finds Per Capita Child Costs Inappropriate and Excessive

The U.S. Department of Health in Human Services during the late 1980s contracted the consulting firm of Lewin/ICF of Washington, D.C. to evaluate some of the pros and cons of alternative child support guidelines. The following is the finding regarding per capita child cost estimates:

Unfortunately, the per capita (average cost) procedure has little merit. (emphasis added). The most obvious problem is that it does not really correspond to expenditures on children. Rather, it assumes that the expenditure patterns are known. The other major problem is that the marginal (i.e., extra) expenditures on an additional family member are likely to be less than average expenditures on a family member. Up to some limit, expenditures on an additional family member can be accommodated without buying a larger house or a larger car. Even if additional expenditures on shared goods become necessary because of the addition of one more person, in many cases the incremental (i.e., marginal) expenditures would be less than the per capita (i.e., average) expenditures on the shared good. That is to say, per capita expenditure “estimates” are likely to overestimate the true level of expenditures on children.¹ (emphasis added).

No Adjustment for Visitation in Cost Schedule Despite Claims Otherwise

The review panel voted to include an assumption of 60 to 90 days parenting time as being built into the child cost table. This vote was arbitrary and was not based on the cost schedule actually including any such adjustment for 60 to 90 days of parenting time by the non-custodial parent. The inclusion of the presumption of 60 to 90 days parenting time is arbitrary, is a due process violation, and is an equal protection violation.

The statement by the developer of the proposed cost table that 60 to 90 days parenting time is automatically taken into account in the cost table was arbitrary. The calculation of the cost table did not include any such adjustments. Inclusion of such a statement is unprofessional and results in violations of due process and equal protection of those under the guidelines.

¹ See Estimates of Expenditures on Children and Child Support Guidelines, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Lewin/ICF, Washington, D.C., October 1990, Chapter 2, page 6.

The developers' willingness to accommodate in written findings the review panel's politically arbitrary and capricious decisions regarding the cost schedule including built in parenting time adjustments—even when in conflict with economic facts—raises doubts regarding the developer's credibility in creating a sound cost table overall.

The Second Household Discount Is Arbitrary and Capricious

The second household discount arbitrarily and capriciously is increased for very low income obligors and is arbitrarily and capriciously lowered to zero for relatively high income obligors. Essentially, there is no second household discount for high income obligors and high income obligors have child costs fully based on intact family data even though the presumption is applied only to non-intact families. The developer's use of varying amounts of discounts is arbitrary and without an economic basis. Notably, this concept is taken from research in Minnesota for that state's version of USDA based guidelines. The Minnesota version uses a constant 20 percent discount at all income levels—indicating that the Virginia developer's varying percentages for the second household discount are arbitrary and capricious. Additionally, the discount is applied to largely per capita based child costs. The discount is applied to inflated child costs and in effect is not a real discounted cost table. Essentially, the arbitrary second household discount is used as a device to make up the politically desired end result from the inflated per capita child cost table. The arbitrary discounts for second households for the proposed Virginia child cost schedule are used to arbitrarily create lower awards for the very low income range and significantly higher awards for higher income levels. See Minnesota House of Representatives, H.F. No. 778, 2nd Engrossment, 83rd Legislative Session (2003-2004), posted May 14, 2003.

No Adjustments for Child-Related Tax Benefits in Cost Schedule or Guidelines

Neither the proposed cost schedule nor any adjustments in child support determination in the proposed guidelines takes child-related tax benefits into account as cost offsets. Child-related tax benefits are major cost offsets. Not taking these into account results in a lower standard of support expected of the custodial parent (net of tax benefits) than of the non-custodial parent. This results in an extraordinary benefit for the custodial parent. Not taking into account child-related tax benefits as cost offsets results in equal protection violations. See R. Mark Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156. See also, R. Mark Rogers, "Virginia Child Support Guideline Legislation—SB 1312 Amended and Companion Bills: Why the Proposed Guidelines Are Economically and Legally Unsound," Virginia General Assembly, Ad Hoc Subcommittee Studying Child Support Guideline, November 18, 2003, Richmond, VA.

Proposed Cost Schedule Results in Huge Financial Windfalls for Custodial Parents and in Violations of Equal Duty of Support Standard

The cost schedule is so excessive and the child-related tax benefits are such large financial windfalls to custodial parents that in typical cases, the custodial parent ends up

with a sharply higher standard of living than the non-custodial parent—even when the custodial parent has significantly lower gross earnings. This is an equal protection violation.

An additional astonishing outcome of the new cost schedule is that for all but very low income cases, the new schedule has child costs that assume a 25 percent parenting time share for the non-custodial parent but the proposed child costs are significantly higher than the current cost tables which assume zero visitation for the non-custodial parent. The new cost schedule defies credibility.

For example, for one child cases, when the custodial and non-custodial parents have the same gross income and the non-custodial parent has 25 percent of the parenting time, the custodial parent household typically has a 30 percent higher standard of living than does the non-custodial parent. For two-child cases with otherwise the same circumstances, the custodial parent typically has a 40 to 60 percent higher standard of living than the non-custodial parent. For three-child cases with otherwise the same circumstances, the custodial parent typically has a 50 to 80 percent higher standard of living than the non-custodial parent. See R. Mark Rogers, “Virginia Child Support Guideline Legislation—SB 1312 Amended and Companion Bills: Why the Proposed Guidelines Are Economically and Legally Unsound,” Virginia General Assembly, Ad Hoc Subcommittee Studying Child Support Guideline, November 18, 2003, Richmond, VA.

The Virginia Bar Association Coalition on Family Law Proposed Legislation Is Arbitrary and Capricious

The modified child support legislation proposed by the Virginia Bar Association Coalition on Family Law Proposed Legislation can only be characterized as arbitrary and capricious. These guidelines are based on the per capita, arbitrary numbers produced by William Rodgers but contain additional arbitrary changes made by non-experts. The coalition changes were made without objective economic research. If enacted, Virginia will have child support guidelines with no sound economic basis. The combination of arbitrary adjustments by both William Rodgers and the VBA coalition to per capita child cost estimates leaves the final cost tables without any meaningful economic foundation.

The VBA coalition proposal also arbitrarily incorporates the unfounded assumption that the cost tables automatically include a 25 percent parenting time adjustment. There is no empirical basis for this assumption.

Additionally, the use of use a large threshold before incorporating parenting time adjustments violates equal protection standards. The custodial parent is not required to share in the non-custodial parent’s visitation costs for the first 90 days or so of parenting time. It is an arbitrary assumption that non-custodial parents can care for children for 90 days before incurring any child costs. Furthermore, it can be shown that the use of a “multiplier” is economically unsound and is an arbitrary assumption (without sound economic basis).

Current Guidelines Are Already Too High—the Cost Schedule Should Be Lowered—Not Increased

Research indicates that Virginia's current guidelines are too high. This is based on standard of living comparisons (after-tax, after-child support payment income) for both parents. This has been documented by Lewin (1990) and Rogers (2003). See Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990. See also "A Brief Economic Critique of Virginia's Child Support Guidelines and Recommendations," a presentation to the Virginia Child Support Guideline Review Panel, Richmond, VA, May 23, 2002.

Virginia's current guidelines are based on a cost schedule that assumes zero parenting time for the custodial parent. This has been extensively documented in economic literature on the Income Shares guidelines as developed by Policy Studies, Inc.

APPENDIX

Professional Studies Have Discredited Virginia's Current Guidelines as Being Too High

Virginia's version of the Income Shares child support guideline is based on the child cost research of Thomas Espenshade. See *Updated Child Support Schedule, State of Virginia*, April 6, 1999, by Policy Studies, Incorporated (pp. 1-2). In turn, Espenshade's method of estimating child costs is referred to as the Engel Estimator. This methodology for estimating child costs has been discredited in the economics community and is acknowledged as being heavily biased upward (child costs are estimated too high).

The Engel Estimator uses an economic relationship discovered by a nineteenth century economist. Engel discovered that as a family's income increased, the proportion of family spending on food decreased. That is, the family is able to spend a greater share of income on less essential goods (non-food) as income increases. This is the same as saying that the dollar amount of food consumed increased with income gains but not as quickly as the income increases. He also discovered from research that for a given level of income, as a family's size increased, the share of income spent on food increased—a greater share of income has to be spent on the basic need of food. Engel concluded that the share of income that a family spends on food is a good measure for evaluating the economic well-being of a family. Engel believed that families of different sizes were equally well off economically if they both spent the same proportion of total expenditures on food.

Espenshade used these concepts research by Engel to estimate child costs. This is documented in a 1990 report to the U.S. Department of Health and Human Services by the Lewin/ICF consulting group.²

The first empirical attempt to actually estimate expenditures on children (and adults as well) is attributable to Engel who noted two important regularities in expenditure patterns. Engel documented that as a family's size increased (holding family income constant), the percentage of the family's expenditures devoted to food increased. This observation, which still holds true today, has come to be known as Engel's Law. Engel also documented that as a family's income increased (holding family size constant), the percentage of the family's expenditures devoted to food decreased, even though total expenditures on food increased. That is to say, expenditures on food increased more slowly than income increased.

Given these empirical regularities, Engel concluded that the percentage of a family's total expenditures that was devoted to food was a good criterion for evaluating well-being. Engel assumed, therefore, that if two families were equal by this criterion, then the families were equally well off (in economists' terminology, the families have equal utility levels). Alternatively, if one family devoted a greater percentage of expenditures to food than another family, then that family was assumed to be less well off than the other family.³

The Espenshade estimates of child costs using the Engel estimator is upwardly biased.

The validity of the Engel estimator is critically dependent on the assumption that the percentage of the family's expenditures on non-food items that should be attributed to the family's children is the same as the percentage of the family's food expenditures that is attributable to the family's children. There is reason to believe that this assumption is invalid; children are probably "food-intensive." That is to say, the percentage of the family's food that is consumed by children is probably greater than the percentage of non-food items consumed by children. If this is the case, then the Engel estimator overestimates [emphasis original] the true expenditures on children.⁴

Research by other economists support the view that Engel's original research is not appropriate for extending its use as a way to estimate child costs. The following

² Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990.

³ Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, Section 2, pages 13-14.

⁴ Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, Section 2, page 28.

summarizes the research by economists Deaton and Muellbauer that conducted studies critical of using household food consumption as a method of estimating child costs.

Unfortunately, Deaton and Muellbauer's analysis indicates that the degree of overestimation [of child costs] may be quite substantial. This leads Deaton and Muellbauer to conclude that, "We can construct no plausible defense for the belief that the food share correctly indicates welfare [well-being] between households of different size, and we do not believe that credence should be given to estimates based on that belief."⁵

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⁵ Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, Section 2, page 13 and Section 2, pages 28-29. Deaton and Muellbauer are quoted from "On Measuring Child Costs: With Applications to Poor Countries," *Journal of Political Economy*, 1986, vol. 94, no. 4, p. 741, by Angus S. Deaton and John Juellbauer.