

TO: SP/HR and/or Legislative Chmn.
LL Pres.; DPM

4/30/85

LWV-Texas
April, 1985
LL Pres. Mailing; DPM
II. A. 2.
Social Policy/Human Resources

FROM: Barbara McCormick, SP/HR Dir., LWV-T
[REDACTED] [REDACTED]

SP/HR LEGISLATIVE ISSUES

After the state of dread about funding for human service programs that permeated the Capitol during the first few weeks of the legislative session, health and human service advocates are beginning to feel hope about programs like Aid to Families with Dependent Children (AFDC), Temporary Emergency Relief Program (TERP), the hunger bill, and child care, etc. The Senate Finance Committee and House Appropriations Committee have shown strong support for the Texas Department of Human Resources budget requests. The House Appropriations Committee recommendation to raise the average monthly AFDC grant from the current \$53 to \$57 per child is rather a victory to be savored.

The League testified for AFDC during one of those long, late committee hearings "...Children are especially vulnerable and immeasurably harmed by neglect. ...we've seen the terrible price we pay in individual suffering and state dollars when services and sufficient aid are not provided for children and families. ...Aren't we failing as a state when we don't provide at least enough AFDC funds to pay for decent housing? Aren't we failing when we turn away 49% of the children who need the help the AFDC program provides? ...Children are a funding priority; they are worth the investment."

TEXAS HOUSE APPROVES AFDC GRANT INCREASE

All the organizations working for AFDC increases obviously did impress upon the representatives the importance of investing in children, as the Texas House did approve an AFDC grant increase to \$57 on April 24, 1985. The Senate Finance Committee budget recommendation includes a \$60 AFDC grant amount.

We will support the Senate \$60 AFDC grant recommendation and hope that the final compromise appropriations bill from a conference committee of both houses will contain a \$60 grant amount for 1986 or 1987.

Lobbying effectively is really knowing when to support or not to support a bill or a proposed dollar amount. Texans For Children Coalition, of which we are a member, decided to support the House Appropriations Committee's AFDC recommendation of \$57 per child. It is still a meager amount and falls short of the \$72 level (50% of the state's standard of need) which the Coalition had hoped to advocate this session. But any AFDC grant increase by Appropriations is such a victory for us, such a difficult decision for the Committee, and such a miracle given the current financial condition of the state, that the Coalition believed support of \$57 was the best action.

The current \$53 AFDC payment is 34% of the standard of need as set by the state. The \$57 amount will be 33% of this standard of need in 1986 and 31% in 1987. Inflation will cause the decreases. But on the positive side, raising the AFDC grant allows more families with dependent children to become eligible: 13,152 recipients for AFDC and Medicaid could be added to the AFDC program at the \$57 level.

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OTHER HUMAN RESOURCES LEGISLATIVE NEWS

Turning to other bills, HB 349 which strengthens rules concerning registered family homes and strengthens overall enforcement of child-care standards has passed the House Human Services Committee and is being calendared for the House floor. We will be testifying this week on child-care bills that will enable counties and the state to establish child-care services for employees.

TERP has passed both houses and has been sent to the governor. It has reauthorization for only \$1.5 million but we'll take it! (HB 330)

The Omnibus Hunger Bill (SB 526) passed the Senate floor on March 27 and was reported favorably without amendments by the House Human Services Committee April 10th. It will go to the House floor very soon. The League received a very nice letter from Senator Parmer thanking us for our efforts in supporting this bill and urging our support on the House floor for the companion bill (HB 1001 by Vowell).

Those are the major H.R. issues that are moving. Pay equity is not moving yet but is causing lots of waves. The Texas Eagle Forum (a conservative political women's group from Dallas) has spread its wings, sharp warnings about Big Brother, and home-made brownies around the Capitol. The two major comparable worth bills are SCR 50 by Barrientos and HB 1507 by Glossbrenner. She is receiving much of the attack by the Eagle Forum. Read the Legislative Newsletter to see if Ms. Glossbrenner survives the attack of the pink-legged brownie pushers. She will, but it will probably take a few sessions for this bill to pass.

Be certain to respond not only to the LWV-T calls to action in the Legislative Newsletter but also to LWVUS calls to action in Report From the Hill. You should have received the April issue of R/H last week. Be sure that your League has responded with letters to Senators Bentsen and Gramm and your representative about the Civil Rights Restoration Act of 1985.

I enjoyed meeting all the local League delegates at convention and look forward to working with the SP/HR chairmen for next year.

Enclosed in this mailing is "AFDC Questions and Answers". Please feel free to reproduce this in any amount.

LET YOUR LEGISLATORS HEAR FROM YOU ON AFDC AND OUR OTHER PRIORITIES!

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AFDC QUESTIONS AND ANSWERS

What is AFDC? Aid to Families with Dependent Children (AFDC) is a federally mandated program of financial assistance for needy children and their parents or caretakers. In Texas, payments are made only to families with children who are deprived of parental support because of the death, absence, or disability of one or both parents.

What Benefits Does AFDC Provide? The average monthly grant per recipient is about \$53 in fiscal 1985. The maximum grant for a family of three is \$167 per month.

How Much Have AFDC Payments Increased in Recent Years? The Texas Legislature raised the average monthly AFDC grant from \$42 to approximately \$48 per recipient for FY 84 and authorized a one-time transfer of unexpended funds in FY 85 to boost it to \$53 for the second year of the biennium. Except for these small increases, however, AFDC grants have remained about the same for 15 years while inflation as measured by the Consumer Price Index raised basic living costs 183.3%.

How Are AFDC Grant Levels and Eligibility Determined? The Texas Department of Human Resources (TDHR) sets a subsistence level or "need standard" for Texas based on the cost of basic essentials such as food, shelter, transportation and clothing not covered by Food Stamps or Medicaid. Legislative appropriations for AFDC determine what portion of this need standard will be funded and currently amount to one-third of the subsistence level.

Families must meet requirements that set stringent limits on income and other financial resources to be eligible for AFDC. For eligible families with some income, grants are also reduced proportionately.

What Other Benefits Do AFDC Families Receive? Families who qualify for AFDC are automatically eligible for Medicaid health insurance; they are usually eligible for Food Stamps and a small energy assistance grant. Approximately 28% of AFDC families live in subsidized housing. The maximum total of all benefits - excluding Medicaid, which is not spendable income - for an AFDC family of three is \$364 per month. Including Medicaid, the programs total about 70% of the federal poverty standard.

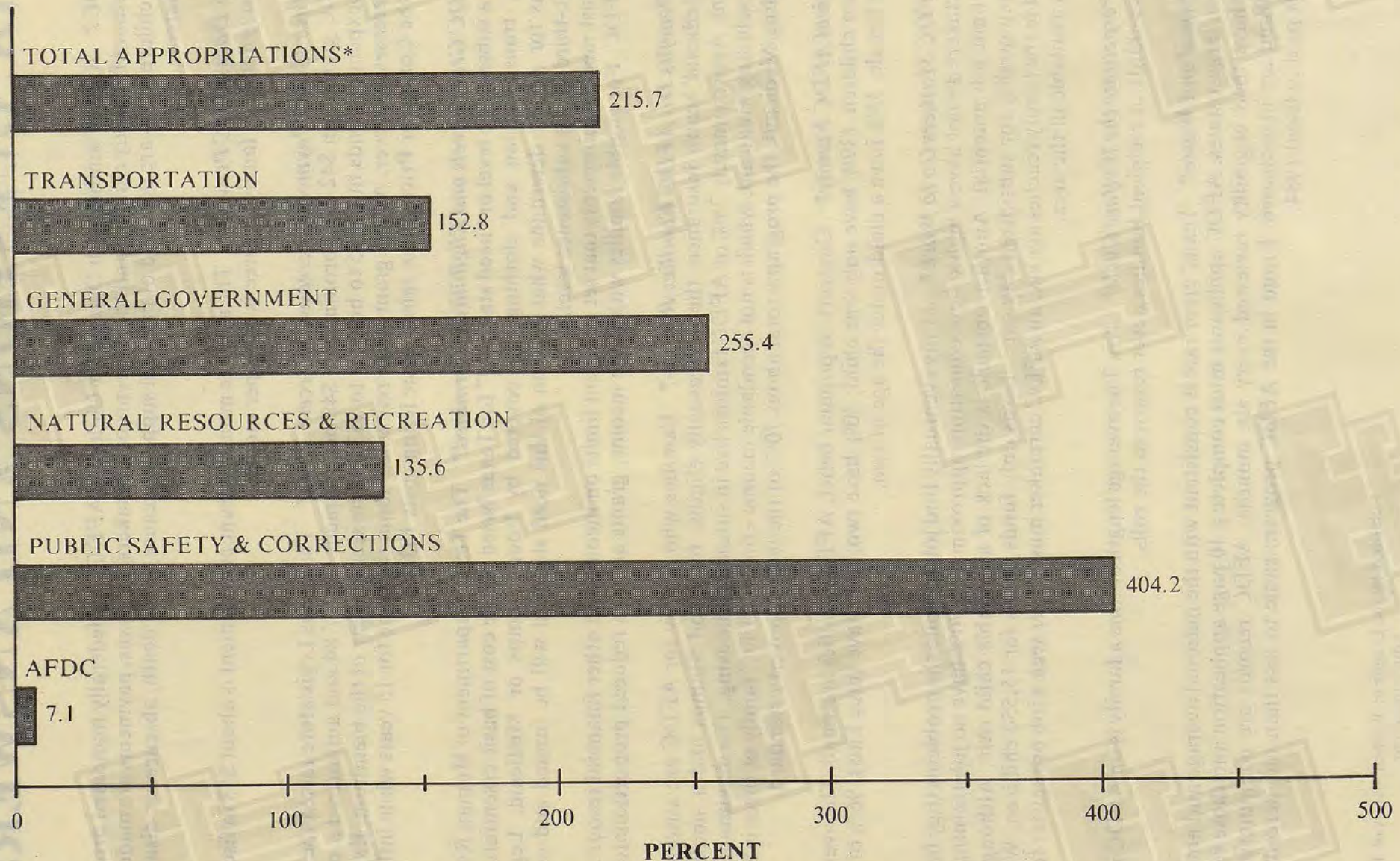
What is a Typical AFDC Family? Contrary to popular belief, AFDC families are small. The average is a mother and two children. (39% have only one child; 30% have two; 17% have three kids). 96% of AFDC caretakers are female. 33% have a child under the age of two.

Why Don't AFDC Mothers Go to Work? Many eventually find jobs despite the problems they face: 78% of AFDC caretakers do not have a high school education, approximately 70% have no job training. These factors alone limit job potential. Another obstacle is the lack of affordable child care. Although some 270,000 children qualify for subsidized day care, Texas only funds places for 15,550 children. When the youngest child in the family reaches age six, an AFDC caretaker must either seek a job or register for work training if it is available in the area.

Does AFDC Perpetuate the Welfare Cycle? No. The average length of time a family is on AFDC is about four years. Two-thirds of recipient families never return to the rolls.

What About Fraud and Waste? Texas' error rate is consistent with the national average and among the lowest of the ten largest states. AFDC applicants must complete a 10 page application and those receiving benefits must have their eligibility reviewed every six months. AFDC records are computerized and suspicions of fraud are investigated. Fraud in the AFDC program came to less than one percent of the AFDC benefits paid in fiscal 1984.

PERCENTAGE INCREASE IN FUNDING 1974-75 BIENNIUM TO 1984-85 BIENNIUM



SOURCES: LBB AND THE TEXAS DEPARTMENT OF HUMAN RESOURCES

* AFDC FIGURE IS A COMPARISON OF 1974-75 EXPENDITURES AND 1984-85 ESTIMATED EXPENDITURES. ALL OTHERS ARE 1974-75 EXPENDITURES VERSES 1984-85 APPROPRIATIONS. ALL FIGURES BASED ON COMBINED STATE AND FEDERAL FUNDS.

DEC. 5 1983

DEC. 5 1983

TO: Women Under Texas Law Chairman/LL Pres; DPM

FROM: Franci Smith, W.U.T.L./ERA Director

LWV-Texas

December 1983

LL Pres. Mailing(1); DPM

II. A. 2. c.

Women's Issues

RE:] WOMEN UNDER TEXAS LAW

Congratulations to us! We should be proud of our contribution in promoting Proposition 6 and its passage. The children of Texas will surely benefit, as will their custodial parents. Thank you again for your fine cooperation.

The research on Domestic Violence and Intestacy is well under way. In order to assist you in your budget and calendar planning, we have tentatively approved the following time table and prices for publications: the publication on Intestacy will probably be a small brochure with a price of 25 cents. It should be available for purchase this spring. However, the consensus will not be due until the fall of 1984, along with Domestic Violence.

The Domestic Violence publication is expected to be similar to Women Under Texas Law and Exercising Your Legal Rights. It will probably cost \$1.00 and will be available during the summer of 1984. We have tentatively set a deadline of November 1, 1984 for the return of consensus forms on Domestic Violence and Intestacy. We hope this information will be helpful to you in setting your budget and calendar for next year.

EQUAL RIGHTS AMENDMENT:

Thanks to all local Leagues that responded to the LWVUS action alert on the ERA (if you wrote a letter, please send the state and national offices a copy). The state League sent letters to all Texas members of the U.S. House urging passage of the ERA without amendments. Still it failed. We must continue to work together at the grass roots level on this important issue. House members need to receive periodic reminders of the local League's official support for the ERA as well as personal letters from individual League members.

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OCT. 5 1983

Distributed on press release masthead October 6, 1983

FOR IMMEDIATE RELEASE

OCTOBER 6, 1983

The League of Women Voters of Texas is supporting Proposition 6, the proposed amendment to the Texas Constitution which would permit garnishment of wages for child support payments, state League President, Lois Carpenter, announced today in Midland.

Proposition 6 is one of the eleven proposed state constitutional amendments that will be on the ballot November 8, 1983.

League members statewide have just completed a study of child support enforcement in Texas. Their conclusion supports equitable and efficient means of enforcing court orders for child support, including the assignment of wages.

Current methods of enforcing court-ordered payments for child support are obviously inadequate. In 1982, over 155,000 Texas children living in one-parent households were on welfare, meaning they received Aid to Families with Dependent Children from the Texas Department of Human Resources. That Department reports a 70% rate of non-compliance with court-ordered child support payments owed their clients despite the fact that most of the non-custodial parents have the ability to pay. The result is that those non-custodial parents have transferred their child support responsibilities to the state's taxpaying public.

- more -

October 6, 1983

Present enforcement methods focus on remedies for non-payment of child support, rather than on a system to ensure timely regular payments on a continuing basis. "We believe that wage assignment would achieve the desired goal of regular support payments for dependent children much more effectively than current methods," said Mrs. Carpenter.

Texas and South Carolina are the only states which prohibit assignment of wages for purposes of child support collection.

According to the National Conference of State Legislatures, involuntary wage assignment laws are one of the most effective means of ongoing enforcement of support obligations with proven public acceptance in those states which have enacted such statutes. In Texas, the Legislative Budget Board and the Department of Human Resources have estimated an annual tax savings of \$9 million on welfare cases alone by 1985 if the amendment passes.

OCT. 5 1983

TO: LL Presidents, 2nd copy to Women Under
Texas Law Chairman; DPM; Standing Order

LWV-Texas
September 1983
LL Pres. Mailing (2); DPM;
St. Ord.

FROM: Franci Smith, WUTL Director; ERA

II. A. 2. c.
Women's Issues

RE: CHILD SUPPORT ENFORCEMENT CONCURRENCE

Due to the swift work of many local League presidents, program chairmen, and members, we collectively reached overwhelming member concurrence on the following statement: THE LEAGUE OF WOMEN VOTERS OF TEXAS SUPPORTS EQUITABLE AND EFFICIENT MEANS OF ENFORCING COURT ORDERS FOR CHILD SUPPORT, INCLUDING THE ASSIGNMENT OF WAGES.

At the September state board meeting the board voted to support Proposition 6 on the November 8 ballot in the event that local Leagues reached concurrence on the child support statement; you did. So now we need to act.

There is a good chance this amendment will pass in November if organizations such as ours help with public education and awareness. As part of our action campaign, we will be working with "Texans for Child Support," a statewide committee formed to promote the passage of Proposition 6. Each local League will be sent 50 flyers (enclosed to presidents in this mailing). More will be available at the upcoming regional counterpart workshops. Please distribute the flyers as widely as possible throughout your community. Make as many additional copies as you wish (see President's Letter in this mailing for information on Political Action Committees (PACs). You might also write your elected officials and send them a copy of the Facts & Issues. A letter to the editor would also be a good idea. The state board will be sending notification of our position to 109 statewide organizations, and Lois Carpenter will announce League support at a press conference. If you need help with your own local action campaign, please let me know.

WE NEED TO SPREAD THE WORD!! EDUCATE THE PUBLIC!!!

Anyway, thanks for your cooperation and understanding of the need to move expeditiously on this important matter.

* * * * *

I have already begun research on the other part of the Women Under Texas Law study--Domestic Violence and Intestacy. These were the other two areas voted for study by the 1983 convention. The topics are both vast, and again I need all the help I can get. I would appreciate input from local Leagues as soon as possible.

It would be helpful to know if your League has studied Domestic Violence or Intestacy. What was the focus of your study? What recommendations do you have for a statewide study?

I hope to hear from you by November 15, 1983 if you have something you wish to share.

DON'T FORGET
VOTE FOR 6
SUPPORT THE CHILDREN OF TEXAS

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Amendment ensures child support

Wage garnishment would save millions of dollars

By LINDA CARRICO
Staff Writer

Texans stand to save millions of dollars a year in the cost of welfare if voters approve a constitutional amendment to allow garnishment of wages for child support payments, proponents say.

But opponents of the constitutional amendment argue its passage will violate Texas' long-standing tradition of legally protecting a wage earner's paycheck from creditors.

Garnishment would involve routine payroll deductions — similar to income-tax withholding — when the courts deem it necessary for compliance with court-ordered child support.

"Texas is now only one of two states that does not have some kind of wage assignment for the collection of child support," said John McHugh, supervisor of the Child Support Division of the Nueces County District Clerk's Office. South Carolina is the other state.

"As a result, the collection of child support in Texas is way below the national average," he said, adding that Texas ranks 46th in the nation.

The Texas Department of Human Resources reported that 75 percent of all children in a single-parent household receive no support from their non-custodial parent.

In Texas, 33,000 parents are obligated by their divorce decrees to provide child support.

Presently, the Texas Constitution does not allow garnishment of wages under any circumstances.

The constitution states: "No current wages for personal service shall ever be subject to garnishment."

Because of the constitutional prohibition on garnishment, Texas has become a haven for people who don't want to pay child support, said Rep. Rene Oliveira, D-Brownsville, who proposed the constitutional amendment during the last legislative session.

Both the House and Senate agreed to place the constitutional amendment on the Nov. 8 general election ballot.

As a result of the present setup, Oliveira said, welfare rolls are increased because some mothers are forced to turn to the state for help for their children since their former spouses are not making child support payments.

If passed by voters, the amendment will add, "Except for the enforcement of court-ordered child support payments."

According to Oliveira, wage garnishment will ensure that child support payments are made by those individuals legally responsible to make them.

He said \$10 million a year in welfare payments could be saved even if the plan were only 10 percent effective.

As it is now, McHugh said, if a gainfully employed parent of a broken marriage refuses to support his or her children, the courts have only three options: They can ignore the situation, reduce the judgment in hopes the parent will pay the child support or jail the parent for contempt.

'If an employer does fire him (an employee because of wage garnishment) or interferes with his rights, the employer is liable for the man's wages and for court costs and attorney fees the man may incur in protecting his rights.'

— supervisor John McHugh

There are 3,650 cases on file with the Nueces County District Clerk's Office in which child support payments are being made regularly, McHugh said. But there are another 1,000 cases where no payment has been recorded for at least three months.

In their last session, Texas legislators passed a bill authorizing "voluntary" assignment of wages, in which a parent paying child support can ask a district judge to set aside a portion of his wages for child support, McHugh said.

This new enforcement mechanism should be given a chance to work before a constitutional amendment calling for "involuntary" assignment of wages is considered by voters, opponents of the amendment argue.

They also contend that wage garnishments will be an intrusion into the private lives of citizens. As a result of the garnishment, they said, employers will learn, for example, that an employee is divorced or has an out-of-wedlock child.

If the constitutional amendment is approved, what will it mean in practice?

According to McHugh, the parent entitled to the child support or the state attorney general's office may file a motion requesting garnishment of wages for failure to pay child support.

Following a court hearing, a judge may order the garnishment of wages if he finds that an individual was two months behind in child support payments at the time the motion was filed.

"An individual who gets notice of the hearing cannot run into the child support office the next day and pay the amount he owes in the hopes that the case will be dropped," McHugh said.

Once garnishment of wages is ordered, the judge will send the employer of the person responsible for child support a copy of the court order which will include an explanation of the employer's responsibilities.

Once the garnishment of wages is set up through the employer, child support payments will be made on behalf of the non-custodial parent until the youngest child turns 18, McHugh said.

The maximum amount that may be garnished is one-third of "disposable" income, or that amount which remains after deductions required by law — such as federal income tax and social security — are made.

McHugh said an employer may not terminate an employee because of the wage garnishment, may not discipline him for that reason nor refuse to employ a person because of the wage assignment.

"If an employer does fire him or interferes with his rights, the employer is liable for the man's wages and for court costs and attorney fees the man may incur in protecting his rights," McHugh said.

He added, "Should an employer refuse to handle the child support payments as ordered by the court, the employer becomes liable to the parent to whom support is to be paid."

For the first time this year in Texas, federal income-tax refunds were withheld from taxpayers who were identified by state welfare officials as delinquent in child support payments.

This new revenue for child support was the result of the federal government's implementation of "Project Intercept." Last year, 47 states — not including Texas — participated voluntarily in the program. This year, by order of Congress, all 50 states participated.

Under the program, instead of receiving tax refunds, individuals who owed child support payments were notified by the Internal Revenue Service that the money had been sent to a state welfare agency for distribution to children.

OCT. 5 1983

TO: LL Presidents, 2nd copy to Women Under
Texas Law Chairman; DPM; Standing Order
Members-at-Large

LWV-Texas
September 1983
LL Pres. Mailing (2); DPM; St. Ord.
II. A. 2. c. MALs
Women's Issues

FROM: Franci Smith, WUTL Director; ERA
[REDACTED]

CONCURRENCE REPORT

Congratulations to local Leagues! Due to the timely attention given to our study of Child Support Enforcement, we have reached member agreement. The local Leagues, state units, and members-at-large who participated unanimously concurred with the statement:

THE LEAGUE OF WOMEN VOTERS OF TEXAS SUPPORTS EQUITABLE AND
EFFICIENT MEANS OF ENFORCING COURT ORDERS FOR CHILD SUPPORT,
INCLUDING THE ASSIGNMENT OF WAGES.

Twenty-nine local Leagues, two state units, and three members-at-large participated in the study; all concurred.

Now that we have a position on Child Support Enforcement, we need to take action for the passage of Proposition 6 on the November 8 ballot. Please spread the word. Share your Facts & Issues; write your local newspaper; discuss this matter with your elected officials; and help distribute the Proposition 6 flyers being sent to your president in this mailing (more will be available at the LWV-T regional counterpart workshops in October). We will also be working in this campaign with Texans for Child Support, a statewide committee formed to promote the passage of Proposition 6.

We must not allow this opportunity to escape without putting forth our best efforts.

DON'T FORGET

VOTE FOR 6

SUPPORT THE CHILDREN OF TEXAS

#

Child support pay in Nueces tops \$6 million ^{9/14/83}

By GLORIA PADILLA
Staff Writer

More than \$6 million in child support payments will be paid in Nueces County this year and that figure could increase substantially, the supervisor of the county child support division said yesterday.

If the voters approve a state constitutional amendment on the Nov. 8 ballot, judges can order employers to withhold up to one-third of an employee's wages for child support, said John McHugh of the child support division of the Nueces County district clerk's office.

McHugh was the guest speaker at yesterday's meeting of the Tuesday Luncheon Group at Ray's Restaurant.

If the voters approve the constitution change, the bill will be effective immediately. The Texas Constitution currently prohibits the taking of wages by creditors.

There are 3,650 cases on file with the Nueces County district clerk's office in which child support payments are being made regularly, but there are another 1,000 cases where no payment has been recorded for at least three months.

According to figures compiled by the Corpus Christi office of the attorney general, there are about 1,700 cases from Nueces and Kleberg counties that are delinquent. The total amount of delinquency is more than \$2 million.

McHugh said most fathers pay 15 to 20 percent of their salaries for child support. The average amount of a child support payment in Nueces County is \$200 a month. That is usually paid to a woman with one or two children, he said.

8/16/83



League of Women Voters of Texas Education Fund

Facts & Issues

Child Support Enforcement in Texas

- Single-parent families are the fastest growing family group in the United States (Census Bureau)
- 19.8% of all families with children are headed by single parents, up 69% in the last decade (Census Bureau)
- Over 130,000 Texas children became members of single-parent households in 1981 (Texas Dept. of Health)
- Half of all children in families with incomes below the poverty guidelines reside with single parents (Congressional Caucus for Women's Issues)
- 90% of these single-parent homes are headed by women (Census Bureau)
- Women earn only 60¢ for every \$1.00 earned by men with the same educational background (Congressional Caucus for Women's Issues)
- 75% of U.S. children in single-parent families receive no support from non-custodial parents (Texas Dept. of Human Resources)

Texas law requires that parents support their unmarried minor children. Generally, courts do not intervene to enforce this provision unless the parents and children are living apart. Courts may order the non-custodial parent to make a lump sum or periodic payments at the time that the legal relationship is established. These legal relationships are determined by paternity suits, voluntary legitimation by the father, or through other suits affecting the parent-child relationship such as divorces.

The judge's role in determining the amount of the obligation is described in *Divorce Without Defeat*:

In setting the child support the judge (juries don't set child support) should consider such things as: actual earnings, potential earnings, income producing property, debt, life styles of the parties and children, health of the parties and children, cost of living, how the property was divided between the parties, the age of the children, and other pertinent facts.

The parties may agree on the amount of child support in an agreement at the time of divorce and thereby create a binding contract. This contract may then be enforced by standard remedies available when either party defaults, which would also include contempt. Any agreement between the parties must be approved by the court.

The primary fault with child support in Texas is not in the establishment of a court-ordered obligation but in the enforcement of it. Many court orders direct payments to be made to the court registry, usually the District Clerk's Office, which then distributes the money to the custodial parent. Although a record is kept of all payments, courts do not monitor individual accounts in order to initiate enforcement action. The responsibility for enforcing court-ordered obligations falls squarely on the custodial parent or the agency supporting the child.

The collection of unpaid child support is analagous to running an obstacle course; as soon as one clears a hurdle, another appears immediately ahead. There are primarily three types of hurdles in Texas — psychological, economic, and legal.

The psychological effect of filing a legal action to force the non-custodial parent to comply with the court must be considered. Will the non-custodial parent become enraged and counteract by filing a suit to change custody or modify visitation? Will it cause the relationship between the parent and the child, or between the parents, to deteriorate beyond repair? Nonpayment of child support often causes the custodial parent to withhold visitation as punishment. The result is that children are caught between parents who are wielding child support and visitation as weapons against each other. Visitation and the right to receive child support are independent rights, not dependent on each other. The failure of the non-custodial parent to pay child support does not allow the custodial parent to deny visitation rights. If either parent fails to comply with the court order that person faces the possibility of a jail sentence and/or fine.

A second hurdle is the economic cost of filing a suit to collect support. Most courts require that the custodial parent retain an attorney to file suit, although the Texas Rules of Civil Procedure provide that the court "may" appoint an attorney to assist. More mothers than fathers are awarded custody. According to the Congressional Caucus for Women's Issues, the average annual income of female-headed households is one-third that of the average two-parent

income. Therefore, the cost of retaining an attorney and paying the initial filing fees is often an insurmountable barrier for custodial parents.

In addition, the legal system itself provides hurdles which cannot be bypassed. All enforcement techniques currently available in Texas require that the non-paying parent be brought into court to have the opportunity to explain the failure to comply with the court order. That court date may be months in advance because of the crowded court dockets. This leaves the parent without any immediate relief.

To satisfy the requirements of due process, the non-paying parent must be given adequate notice of the lawsuit allegations and the hearing date. This written notice is typically served on the parent by the sheriff or constable. These officers, particularly in larger cities, require that a correct, up-to-date address be provided for the non-paying parent. Many times the officers cannot afford the time to investigate each case to locate the parent if an incorrect address has been provided. Therefore, service of papers, an integral step of the legal proceedings, may be both time-consuming and a major stumbling block.

Also, Texas law utilizes the concept of continuing jurisdiction, that is, all subsequent hearings must take place in the court where the order originated. Therefore, if the parties move, they must return to the site of the original court or legally transfer the case to the new location. This transfer also requires a court hearing with legal notice to the adverse party.

Prior to the adoption of the Family Code in 1974, the sole remedy for enforcement of child support orders was an action for contempt in the court which issued the order. Today, there are five major tools for collecting unpaid child support in Texas — contempt, probation, reduction to judgment, URESA, and the IV-D Agency. A sixth tool, criminal nonsupport, is seldom used. The primary reason is because of prosecutors' hesitancy to file criminal charges against a non-supporting parent. This reluctance stems from limited resources and minimal success in such suits.

Filing a motion for contempt is still the most common technique for collecting unpaid child support. The motion is filed in court asking that the person who has failed to pay support be held in contempt for disobeying the court's order. The non-custodial parent is then served with notice of the charges and the hearing date. At that time, the parent has the right to present the reasons for the failure to make the payments. Valid defenses include proof of payment, proven inability to locate work, or serious illness. Courts listen unfavorably to excuses for failure to pay because of payments for a new car or color television.

Each missed payment can result in a jail sentence and/or fine. Often, the judge merely orders the parent

to pay the current obligation and an additional amount each month to be applied to the balance of the unpaid support. This may put the custodial parent back on the same treadmill. A new enforcement action would have to be filed if the non-custodial parent still refuses to pay support.

The judge may sentence the parent to jail or probation. Sending the parent to the county jail may cause the loss of current employment or put a second family on welfare. If the parent can participate in a work-release program, a portion of the salary may be diverted to pay the support obligation. Without that type of program, jailing the parent for nonsupport is usually counterproductive. Alternatively, the judge may place the parent on probation with the requirement that the probationer support his or her family. Failure to comply will result in revocation of probation and a jail sentence.

The custodial parent also has the option of filing a lawsuit to turn the unpaid support into an ordinary civil money judgment. This judgment could then be used to force the sale of assets. However, homesteads and certain other properties, including some trusts, are exempt from forced sale. The proceeds from the sale would then be used to satisfy the child support obligation. This alternative presupposes the existence of assets of sufficient value to make the procedure cost-effective (which is seldom the case).

The Uniform Reciprocal Enforcement of Support Act (URES A) is designed to facilitate the collection of child support when the parent and the children live in different states. The petition is filed in the originating state and mailed, with supporting documents, to the receiving state. The receiving state then serves the non-custodial parent and holds a court hearing. Because the process depends on the cooperation of the receiving state, it is an uncertain procedure and very slow.

Title IV-D, added to the Social Security Act in 1975, provides for a comprehensive child support enforcement program. The Child Support Unit of the Texas Department of Human Resources (TDHR) is the designated IV-D Agency in Texas and is therefore mandated by federal law to establish and collect child support for those children who receive AFDC assistance. In order to receive an AFDC grant a custodial parent must assign all rights to child support to the state. Although the agency will assist non-welfare clients, the emphasis is on welfare cases in order to recoup the taxpayer's money, the avowed purpose of the program. The agency is allowed by law

to intercept income tax refunds of those parents whose children receive AFDC. Interception is not available to private individuals. Nationally, \$603 million was collected in 1980 as reimbursement for AFDC

payments by state IV-D agencies. The TDHR Child Support Unit, which will be moving to the Attorney General's Office in the fall of 1983, also operates a parent locator service to help find non-paying parents. This service is available to the public for a minimal fee. However, it must be pointed out that no enforcement tool will be completely successful as long as there are parents who refuse to pay support for whatever reasons. The parent may claim that the money is being diverted from the children's needs to the custodial parent or that the second family of the non-custodial parent comes first. The enmity between the parents may preclude any rational consideration of the needs of the children. Some parents will vow to spend time in jail before paying the former spouse any money.

Our present system of child support enforcement has failed to enforce effectively the large majority of child support orders for both welfare and non-welfare cases in Texas. In 1982, over 155,594 Texas children living in one-parent households were on welfare. They received no support from the non-custodial parent despite the fact that most of these parents have the ability to pay (Subcommittee on Public Health and Welfare, Interim Report on Child Support Enforcement in Texas, 67th Texas Legislature). These parents transfer the burden of support to the state taxpayer or the custodial parent.

Texas enforcement tools currently focus on remedies for non-payment of child support rather than on a system to insure timely, regular payments on a continuing basis. A proposed solution is the constitutional amendment which will appear on the November ballot. Article 16, Section 28 of the Texas Constitution now reads, "No current wages for personal service shall ever be subject to garnishment." This amendment, HJR 1, would add the phrase "*except for the enforcement of court-ordered child-support payments.*"

Much of the controversy over this amendment comes from the strong Texas tradition of legally protecting the wage-earner's paycheck from creditors. Texas has long been recognized as a debtor's haven, as illustrated by the constitutional prohibition against garnishment of wages and the homestead laws which protect the homestead from forced sale for debts other than for taxes, mortgage, or home improvements on a written contract. The flat prohibition against garnishment first appeared in the 1876 Constitution and has not been changed since. Texas and South Carolina are the only states which prohibit assignment of wages for purposes of child support collection.

According to the National Conference of State Legislatures, "Involuntary wage assignment laws are one of the most effective means of ongoing enforcement of support obligations with proven public acceptance in those states which have enacted such statutes." Forty-five states have such legislation at the present time. The Legislative Budget Board and the Department of Human Resources estimate an annual tax savings of \$9,000,000 on welfare cases alone by 1985 if the amendment passes.

Opponents of the amendment argue that it will be an administrative burden on employers and that information concerning an employee's private life such as a divorce or an illegitimate child would then be known to the employers. There is also the possibility that employers may discriminate against employees who are subject to wage assignment, especially in times of high unemployment when competition for jobs is intense.

Some opponents of wage assignment point out that employees can quit or change jobs frequently to avoid the assignment, and of course, it would not be effective for those who are unemployed or who are paid in cash.

Those in favor of income assignment argue that the purpose of the constitutional ban on garnishment is to protect the wage-earner's ability to support a family. The ban is misused when it allows the wage-earner to shirk that duty. They also contend that wage assignment benefits all of the involved parties. Parents under a court order to pay support no longer have to be concerned about making the payments; they are automatically deducted from wages. The employer benefits because the assignments can be made part of the regular payroll process; the employer need not deal with irregular garnishments or lost work time due to court proceedings or even jail time. The custodial parent and the children themselves receive the support they are due and are assured that the support payments will arrive regularly each month.

The Senate Subcommittee Interim Report concludes, "The focus of child support enforcement should not be to punish the absent parent for a failure to pay, but to *secure regular support payments* for dependent children." Wage assignment would achieve this goal much more effectively than the current remedies.

Enabling legislation that would implement the amendment, when it is passed, has already been approved by the legislature. Under this legislation persons obligated to make court-ordered payments could voluntarily assign a portion of their income to meet that obligation. The employer would deduct the child support in much the same manner as social security or FICA and forward it to the court registry.

Only those parents who have failed to comply with the court order to pay support would be subject to involuntary assignment of wages. Three conditions must be met before the provisions could be triggered: 1) that there is an existing court order; 2) that the parent has missed paying one or more payments within the last year; and 3) that the total amount of child support owed equals or exceeds the amount due for a two-month period.

With either voluntary or involuntary assignment, the maximum amount which could be withheld would be limited to no more than one-third of after-tax earnings. The assignment cannot be used as grounds for

termination or discipline by the employer without legal repercussions. The employer could deduct \$5 each month to cover administrative costs.

The fact that there is a 70% non-compliance rate with court-ordered child support payments owed to clients of the Texas Department of Human Resources vividly points out the inadequacy of current enforcement tools. Experts acknowledge that there may be no enforcement tool that will be completely successful, but many believe the best current solution to the problem is the proposed constitutional amendment.

An Amarillo Daily News editorial (March 2, 1983) raised these questions for Texas voters to consider in November:

Should 80% of all parents assessed child support payments by the courts be allowed to flout the law?

Who has the overriding moral and legal obligation to support the children of broken families: their gainfully employed parents or the taxpayers?

Should support payments come at regular and reliable intervals, or should they come sporadically — if at all?

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July 1983

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Researched by Chris Bell, Susan Coleman,
and Franci Smith

Written by Susan Coleman and Franci Smith

Published by the
League of Women Voters of Texas Education Fund ©
1212 Guadalupe, #109
Austin, Texas 78701

JUL 12 1983

LWV-Texas

July 1983

LL Pres.(3); NOT ON DPM

II. A. 2. c.

Women's Issues

CONCURRENCE DEADLINE: SEPTEMBER 30, 1983

CONCURRENCE REPORT FORM

CHILD SUPPORT ENFORCEMENT

Please make three copies. Send ONE copy to: League of Women Voters of Texas
1212 Guadalupe, #109
Austin, TX 78701

Send 2nd copy to: Franci Smith
[REDACTED] [REDACTED]

Name of Local League/State Unit: _____

Date: _____

Person Making Report: _____ Portfolio _____

The Board of Directors of the League of Women Voters of Texas asks local Leagues to concur with the following statement:

THE LEAGUE OF WOMEN VOTERS OF TEXAS SUPPORTS EQUITABLE AND EFFICIENT MEANS OF ENFORCING COURT ORDERS FOR CHILD SUPPORT, INCLUDING THE ASSIGNMENT OF WAGES.

WE CONCUR _____

WE DO NOT CONCUR _____ for the following reason(s):

How did you determine concurrence or non-concurrence?

- . telephone poll _____
- . unit meetings _____
- . general meeting _____
- . VOTER tear-off _____
- . board meeting _____
- . other (please describe) _____:

#

8/22/83

McHugh - child support enforcement office

amendment #6

gone background on amendment - need for child support payments
will be aimed for children - 15 million children want father
1/3 in poverty ^{in US} 75% of dis. fathers do not support their child

~~turned over to state~~ ^{IRS} 185,000 rec. in TX. ~~under~~ ^{under} DHR
for AFDC only - Fed.

Lx is only of 2 states - ^{North Carolina} where does not have
same method of child support enforcement.

Legislature gives long vote of approval for amendment.

^{child support}
DHR will become a department of atty. Gen's office
as of Sept. 1

~~motion~~ ^{of motion} for ~~assignment~~ ^{assignment} by person

(2) atty Gen's office

(3) per

of arrears equal to amt, ^{equal to 3 months} due at time motion ^{filed}

in Det. and one judge can ~~consider~~ rule for future points

commission, salary, retirement

1/3 of disposable income (after ded. required by law
SS - inc. tax)

becomes effective 15 days after service on employer
by officer or Reg. Mail R R R

strong penalties on employer - but employer
cannot be fined. Employer liable if he
fires employee.

3-1 ^{Person who fails} self employment - must execute bond for payment
also Provision for voluntary assignment - some regulations
Loss of income results from present system - jailed

against - Texas has done w/out government
would set a precedent
intrusion into privacy
Texas has lowest personal bankruptcy in nation
voters aren't aware of what they are voting for
HB#2 moratorium only - should wait to see how it works

Local office
3000

FACT SHEET
Child Support Enforcement in Texas
August, 1983

^{#6}
Proposed Amendment: "No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered child support payments." - Texas Constitution Art. 16, sec. 28.

Background: Since 1876, the Texas Constitution has prohibited garnishment of wages. Due to the growing number of single-parent families and the limited methods available for enforcing court-ordered child support, the ban on garnishing wages is being reconsidered.

Facts to Consider:

- Texas and South Carolina are the only states that prohibit garnishments. Federal authorities report that 45 states have some form of income withholding in child-support cases.
- In 1982 figures, 38462 parents are obligated to pay child support; 10720 actually pay. (27.8%)
- According to TDHR, 72% of AFDC recipients receive aid because they lack the support of an absent parent.
- Texas ranks 46th among the states in the ratio of AFDC collections to program expenditures (\$.45/dollar). National average is \$1.33/dollar.
- The proposed ballot language does not mention garnishment: "The constitutional amendment allowing the legislature to provide for additional remedies to enforce court-ordered child support payments".
- Wages assignments are not effective for the unemployed or those paid in cash.
- Texas' poor AFDC ratio could be due to low AFDC payments. Texas is second lowest in the nation averaging \$104/month for a mother with two children. If support collected is more than AFDC payments, the family receives the support and the money is not counted as AFDC reimbursement. To the family, loss of AFDC benefits also results in loss of Medicaid benefits as well.

\$88,000 withheld from spouses behind in support of children

By LINDA CARRICO
Staff Writer

More than \$88,000 in federal income tax refunds were withheld last month from 174 Nueces County taxpayers who were identified by state welfare officials as delinquent in child-support payments.

And an additional \$114,000 in tax refunds was withheld this month from taxpayers in Nueces, Kleberg and Kenedy counties, said John Green, child-support officer with the Texas Department of Human Resources in Corpus Christi.

The newly acquired revenue for child support is the result of the federal government's implementation of "Project Intercept." Last year, 47 states — not including Texas — participated voluntarily in the program. This year, by order of Congress, all 50 states must participate.

Under the program, instead of receiving tax refunds, individuals who owe child-support payments will be notified by the Internal Revenue Service that the money has been sent to a state welfare agency for distribution to children.

"The program here has been very successful," Green said. "We have collected several big checks."

Green noted that gross collections in the Corpus Christi area average about \$50,000 to \$60,000 a month. The \$88,000 received last month in tax refund checks "was net, all-cleared money which represented about two months of collections," he said.

In May, the largest refund check withheld from a Nueces County resident owing child support amounted to \$2,181, said John McHugh, supervisor of the Child Support Division of the Nueces County District Clerk's Office.

The lowest refund check intercepted was for \$35.97.

Under federal law, only the state has the right to

request that the IRS turn over an individual's tax refund to the Texas Department of Human Resources, McHugh said. The county has no such authority.

"Federal law authorizes the state to certify to the IRS that the absent parent is delinquent in child-support payments," McHugh said. "State officials specify the amount and ask that the refund be turned over to the state."

The IRS sends the absent parent, also called the non-custodial spouse, a letter notifying him that the state's request has been received. Several hundred notices were mailed last September to non-custodial spouses in Nueces, Kleberg and Kenedy counties, Green said.

Following that notice, McHugh said, many individuals came to the Wife and Child Support Office at the Nueces County Courthouse to pay or make arrangements to pay their overdue child support. The county then forwarded the money to the Texas Department of Human Resources in Austin for distribution.

If the person fails to respond within a certain time period, the IRS mails a second notice informing him that his tax refund has been kept to pay a past-due child-support obligation.

Green said the interception of tax refunds applies only to child-support recipients who have been forced onto welfare rolls.

"This program does not extend to those not receiving money from Aid to Families with Dependent Children (AFDC)," Green said. "Money owed in child support is assigned to the government in the form of AFDC."

He said the IRS will divert only the amount that the state paid in welfare to make up for the lack of child-support payments. If the refund falls short of the amount paid in welfare, the remainder can be taken from future tax refunds.

TO: LL Presidents, 2nd copy to Women Under
Texas Law Chairman

FROM: Franci Smith, Women Under Texas Law
Director; ERA

LWV-Texas
June 1983

LL Pres. Mailing (2); DPM
II. A. 2. c.
Women's Issues

JUN. 20 1983

RE: CHILD SUPPORT ENFORCEMENT

Many of you are aware that on November 8, 1983 Texans will be voting on a constitutional amendment which would amend Article 16, Section 28 of the Texas Constitution to read as follows: "No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered child support payments." This legislation had originally been proposed for a 1984 referendum vote, but it was amended to be placed on the 1983 ballot.

At state convention in Dallas a great deal of interest in child support enforcement was expressed. At its recent meeting, the state board felt it important to move immediately and take advantage of the opportunity to have an impact on this issue.

Because of the short time frame, we chose concurrence as the method for reaching member agreement. Concurrence shortens the time involved in wording a position, as the statement is prepared prior to the discussion and decision process.

Local Leagues may choose to handle this concurrence in a number of different ways:

- unit meeting
- special general meeting
- local VOTER tearoff
- telephone poll
- some other option decided by your board

For a discussion of the concurrence process, see pp. 37-38 of In League (LWVUS).

In order to take a position on the proposed amendment, we must move expeditiously. Therefore, in July each Texas League member will receive a brief Facts & Issues insert in the Texas VOTER covering child support enforcement in Texas. Leagues will be asked if they concur with the following statement:

The League of Women Voters of Texas supports equitable and efficient means of enforcing court orders for child support, including the assignment of wages.

You will be asked to answer "yes" or "no." If your League disagrees, you should indicate whether or not it is because your membership was not able to decide. Other comments will be welcomed.

Concurrence forms must be received by September 30, 1983. One copy will be sent to the state office; one copy to me. These forms will be sent to you in the July mailing.

The two areas of Women Under Texas Law adopted at convention, Domestic Violence and Intestacy Laws, will be researched this year. Within the next two months, I will be surveying all local Leagues to determine what areas you have studied. Tentatively, the consensus date will be sometime in the fall of 1984.

I am eagerly looking forward to serving on the state board. Please feel free to call or write to me regarding Women Under Texas Law or ERA. I really do want to be a good representative for you on the board, so let's communicate.

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