

69806-1

69806-1

No. 69806-1-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Marriage of

JULIE DAVIS  
Respondent

and

PAUL DAVIS  
Appellant

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ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR WHATCOM COUNTY

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REPLY BRIEF OF APPELLANT

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## I. STATEMENT OF ISSUES IN REPLY

1. The judge should not search the Internet to decide disputed facts in a case, whether or not the resolution may also be found in the RCW or WAC.

2. The division of assets and the awards of family support are inequitable because they were entered without fair consideration of the facts and the statutory factors, including the wife's actual ability to support herself.

3. The father did not invite the errors made here in the entry of child support; rather, the order appears to have been proposed by agreement in violation of public policy.

4. The wife has the ability to pay her own fees.

## II. ARGUMENT IN REPLY

### A. JUDGES SHOULD NOT SEARCH THE INTERNET TO DECIDE DISPUTED FACTS IN A CASE, WHETHER OR NOT THE RESOLUTION MAY ALSO BE FOUND IN THE RCW OR WAC.

At most casual gatherings today, inevitably, the conversation will raise a question about the length of the Nile or the Best Movie of 2004 and five people will whip out smart phones. At this same gathering, it is likely someone will eventually say, "I saw it on the Internet." These fact-checking and fact-asserting impulses are perilous enough for the art of conversation. When introduced into the courtroom by the judge, these

same impulses undermine the adversarial system and threaten the due process rights of the parties.

Our adversarial system in large part depends on a neutral and passive decision-maker and on party presentation of evidence. Stephan Landsman, *Readings on Adversarial Justice: The American Approach to Adjudication* 1-5 (1988). There are other ways to try cases (e.g., inquisitorial), but this is our way. In it, evidence may be incomplete or simply wrong, but it is the parties who have presented that evidence. The judge has enough to do to ensure fairness, a concern predating the Internet by several centuries, at least. For example, as Lord Matthew Hale described it, a judge should “abhor all private solicitations, of what kind soever, and by whomever in matters depending.” *In re Code of Judicial Conduct*, 643 So. 2d 1037, 1038 n.2 (Fla. 1994) (reprinting an excerpt from *Lord Hale's Rules for His Judicial Guidance, Things Necessary to Be Continually Had in Remembrance*). Probably Lord Hale would have thought an Internet search to be a prohibited solicitation.

Until the Internet and omnipresence of computers, there were certain practical impediments to independent judicial investigation and research, and these impediments served as reminders of Lord Hale's axiom. Much has changed, and changed fast, so that circumstances such as occurred here do not fit easily into existing frameworks (i.e., “ex parte

communications” and “judicial notice,” etc.), and the new frameworks are still under construction. In this case, the husband argues that a consistent principle arises from existing rules and may be applied here, and that principle is: that trial courts should not abandon their neutral and passive role by conducting Internet research.

Julie wants to treat this case as one where the judge spent time in the law library finding the law governing accountant certification. That is what her appellate counsel has done. But that is not what the judge here did. In fact, we do not know with certainty what the judge did or, more precisely, what he viewed.

In any case, the better analogy is to the judge placing a call (or email!) to a CPA he knows and asking about the certification requirements. The CPA, like the Internet, may or may not be a source of reliable information. That is one problem here, the Internet being fraught with problems of accuracy, authoritativeness, and permanency. *See* David H. Tennant & Laurie M. Seal, "*Judicial Ethics and the Internet: May Judges Search the Internet in Evaluating and Deciding a Case?*" 16 *Professional Lawyer* 2, 16 (2005); *see, also*, Raizel Liebler & June Liebert, *Something Rotten in the State of Legal Citation: The Life Span of a United States Supreme Court Citation Containing an Internet Link (1996-2010)*, 15 *Yale J.L. & Tech.* 273 (2013) (describing how 29% of

websites cited by the United States Supreme Court are no longer working, a phenomenon known as “link rot”).<sup>1</sup> Government websites are not immune from these problems, with the U.S. Supreme Court’s own hyperlinks rotting (Appendix A) and with competing government actors posting information (Appendix B).<sup>2</sup> While the trial judge in this case apparently embraces this new technology, other judges urge extreme caution.

While some look to the Internet as an innovative vehicle for communication, the Court continues to warily and wearily view it largely as one large catalyst for rumor, innuendo, and misinformation.... Anyone can put anything on the Internet. No web-site is monitored for accuracy and nothing contained therein is under oath or even subject to independent verification absent underlying documentation. Moreover, the Court holds no illusions that hackers can adulterate the content on any web-site from any location at any time. For these reasons, any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules  
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<sup>1</sup> Larry Lessig, et al, have updated this figure, reporting that it now stands at 49%. Liptak, Adam, *Supreme Court Opinions, Web Links to Nowhere*, **NEW YORK TIMES**, September 23, 2013 (electronic version at: [http://www.nytimes.com/2013/09/24/us/politics/in-supreme-court-opinions-clicks-that-lead-nowhere.html?\\_r=0](http://www.nytimes.com/2013/09/24/us/politics/in-supreme-court-opinions-clicks-that-lead-nowhere.html?_r=0))

<sup>2</sup> The California state government created a web portal to implement the Affordable Care Act. <https://www.coveredca.com/> Legislators opposed to the law created another website, also an “official” government website, but with the purpose of criticizing the law. <http://coveringhealthcareca.com/> (The first several pages and a related news story, <http://abcnews.go.com/blogs/politics/2013/12/california-republicans-defend-fake-obamacare-site/> are reprinted in the appendix.)

*St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 F. Supp. 2d 773, 775 (S.D.Tex. 1999). These concerns go mainly to the reliability of the information, whatever party provides it, which is only part of the problem, but it is a problem greatly compounded when the judge introduces the information. This is a fairness problem, independent of the accuracy of the information itself.

The husband submits it does not matter in this case whether the trial court's answer can be confirmed by a source the judge did not consult, because the greater problem lies with the judge's undertaking the Internet investigation and inserting himself into the proceeding. It does not matter whether or not he got his facts right; they are not his facts to get. In other words, the problem here lies with the appearance of fairness doctrine.

A similar circumstance arose in a Pennsylvania child support proceeding, where the parties debated the thoroughness of the husband's job search, as reported in his testimony. *Ney v. Ney*, 917 A.2d 863 (Pa. Super. 2007). During this testimony, the judge hopped on the Internet and searched for jobs in the husband's fields, then remarked on ones the judge found. The appellate court reversed on the basis that the court relied on "off-the-record facts." *Id.* at 867.

The Pennsylvania court had the right instinct, but maybe did not identify the problem accurately. The trial judge read into the record the results of his search; and, presumably, the judge could have printed the pages he viewed. Whether or not they would satisfy the evidence rules is certainly doubtful. But another problem is that the judge went looking, abandoning his proper role and taking on the role of advocate for one of the parties.

In other similar cases, the analysis focuses on the search occurring ex parte, probably because the rules prohibiting ex parte communications are familiar, despite that these cases involve research, not communication per se. For example, the Delaware Supreme Court reversed a family law decision on the wife's earning capacity after the court rejected the unrefuted evidence of the husband and performed a search of its own. *Tribbitt v. Tribbitt*, 963 A.2d 1128 (Del. 2008). The court took guidance from the ABA Model Code of Judicial Conduct 2.9(A)(2), regarding ex parte communications, and Delaware's Evidence Rule 201(3), regarding judicial notice. Under the CJC, a judge may obtain the written advice of a disinterested expert only with advance notice and an opportunity to be heard. 963 A.2d at 1131. Likewise, ER 201 requires advance notice to the parties, for which reason the court also disapproved of the judge taking "notice" of "information she had "read about" to support her view that

“banks would be less likely to hire a candidate with a bad credit history, a view contrary to that of the Husband's expert.” 963 A.2d at 1131 n. 15. A Pennsylvania court also rejected a judicial notice claim because there was no advance notice to the parties. *M.P. v. M.P.*, 54 A.3d 950 (Pa. Super. 2012) (reversing where court consulted information about Hague Convention, since even if it could be judicially noticed, party was entitled to notice and an opportunity to be heard as to the propriety of taking notice). In another Internet search case, the Vermont Supreme Court cited additional evidentiary reasons for reversal. *Rutanhira v. Rutanhira*, 35 A.3d 143 (Vt. 2011) (reversing custody decision where trial court relied on the Internet to question the father’s judgment in proposing a trip with his children to Zimbabwe).

This is a new problem, or an old problem with a new aspect. Not that long ago, this Court distinguished between court records, as proper subjects of judicial notice, and a judge’s memory of prior testimony, “the accuracy and contents of which *are* subject to reasonable dispute.” *Vandercook v. Reese*, 120 Wn. App. 647, 651, 86 P.3d 206 (2004) (emphasis the court’s). Just so the contents of the Internet. Certainly, the customary ways of thinking about the propriety of judicial conduct in searching out facts or law must adapt to the particular temptations and perils of the Internet. In this case, and the cases beginning to arise around

the country, one unifying theme is how it *looks* to have the court

“Googling” to decide a pending case, and it looks unfair.

It looks just as unfair as its historical counterparts, such as a judge going to the scene of an accident to determine the operation of the traffic lights, which caused reversal in a Michigan case. *Valentine v. Malone*, 257 N.W. 900 (Mich. 1934), *citing Elston v. McGlaufflin*, 79 Wash. 355, 140 P. 396 (1914). It did not matter that the trial judge may, “in fact, be absolutely right in his ideas,” since

the important thing from the standpoint of the public interested in the due administration of justice, is that there be no room for suspicion that such bias, interest, prejudice or preconceived notions may perhaps have warped the judicial judgment and affected for good or ill the disposition of the case before the court.

*Id.*, at 903-904. So long as we adhere to an adversarial system, and not an inquisitorial one, the judge must limit his or her role. *Id.*, at 904. As our own court in *Elston* instructed, “[a] defeated litigant is entitled not only to a fair trial, but to the semblance of a fair trial.” 79 Wash. at 359. By that we mean a proceeding that would appear fair to a reasonably prudent and disinterested person. *Brister v. Tacoma City Council*, 27 Wn. App. 474, 486-87, 619 P.2d 982 (1980), *review denied*, 95 Wn.2d 1006 (1981). Paul Davis is entitled to that, too.

This fairness problem does not vanish because there are laws that control the certification of accountants. Laws are facts, too, and, as factual

issues, they arise constantly in litigation.<sup>3</sup> In family law, for example, parties and their witnesses may dispute taxation issues or foreign laws or other laws controlling the factual determinations the court must make, as opposed to the substantive law pertaining to the case (e.g., community property law). Given an earnest and reliable enough search, the Internet might provide answers to such issues, but it is unlikely, given the source, those answers would satisfy the “strict requirements for judicial notice.” *Cameron v. Murray*, 151 Wn. App. 646, 657-660, 214 P.3d 150 (2009). Here, the court did not review the law on community property or maintenance, i.e., the laws that governed the dissolution action. Rather, it conducted an Internet search during the husband’s testimony relevant to a factual dispute about the wife’s earning potential, then used the results of that search to dispute the testimony. Whether or not there is an acceptable judicial procedure by which to get to this information, which is not conceded, the point here goes to the more fundamental requirement of fairness. If judges are permitted such searches, what controls whether they conduct them impartially as between the parties, fact-checking one but not the other? This is not judicial notice, but judicial advocacy.

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<sup>3</sup> And, of course, not only are laws also facts, the difference between law and fact is not one subject to precise definition. See John McGinnis & Charles Mullaney, *Judge Facts Like Law*, 25 CONST. COMMENT. 69, 71 (2008) (“There is no analytic dichotomy between law and fact.”).

Moreover, and significantly, Julie's judicial notice argument focuses on actions taken by appellate courts. Some different considerations apply which render these authorities not helpful here. First, an appellate court performs a policymaking function, which sometimes involves reliance on legislative facts. Brenda See, *Written in Stone? The Record on Appeal and the Decision-Making Process*, 40 *Gonz. L. Rev.* 157, 183 (2004/05). Even so, the Internet poses new challenges to this practice, including some related to bias. See Allison Orr Larsen, *Confronting Supreme Court Fact Finding*, 98 *Virginia L. Rev.* 1255 (2012) (discussing Supreme Court independent investigation and research as influencing decision-making now that the Internet has removed many practical barriers to the court's gathering of information).<sup>4</sup> Like everyone, judges may occupy "filter bubbles,"<sup>5</sup> and may be better or worse at Internet research, and may have unconscious biases, all of which affect the results obtained. In any case, the trial court here did not take judicial notice of Washington law, either the RCW or the WAC. The court was looking at a website, and a website is not a source of unquestioned

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<sup>4</sup> The author's point, in part, is the blurring of the distinction between the judiciary and the legislature, as a consequence of independent, in-house efforts by the justices. Another point is that, given these changes, the rules' approach to judicial notice (e.g., exempting "legislative facts") is outdated.

<sup>5</sup> A filter bubble occurs when the algorithms in a search engine tailor search results to a particular user based on past searches. Eli Pariser, *The Filter Bubble: How the New Personalized Web Is Changing What We Read and How We Think* (Penguin 2009)

accuracy. ER 201; *State v. Kleist*, 126 Wn.2d 432, 436, 895 P.2d 398 (1995).

Effectively, the wife asks this Court to take judicial notice of the statute and WAC on certification of public accountants, and all but one of the authorities she cites involve judicial notice taken by the appellate court. Br. Respondent, at 11-12. The exception does not involve a trial court conducting its own research or investigation, but a trial court's refusal to acknowledge federal law placed right before it by one of the parties, with implications for the jury instruction. *Cresap v. Pac. Inland Navigation Co.*, 78 Wn.2d 563, 565-566, 478 P.2d 223 (1970) (the federal register had just recently become available in *print*). There is no reliability problem in *Cresap*, nor any appearance of fairness problem, since it was information proffered by a party.

Likewise, in another case, it was a party that offered the information in question. Specifically, the appellate court agreed to consider a new authority, pertinent to the controlling law of the case, in support of an argument raised at the trial level. *Osborn v. Public Hosp. Dist.*, 80 Wn.2d 201, 492 P.2d 1025 (1972). In particular, the court considered a statute not cited to the trial court but offered by one of the parties on appeal to determine the standard of care owed by a hospital to its patients, an issue squarely presented to the trial court. Here, again, the

appearance of fairness is not engaged because the party offered the material. Moreover, the appellate court was engaged in its quasi-policy making role by deciding the standard of care.

In short, none of these cases addressed the appearance of fairness problem arising from the trial court conducting an Internet search in the middle of trial on a disputed fact. This problem remains regardless of whether the judge's action is characterized as factual investigation or legal research. CJC Canons 2.9(C) and 3(A)(4). The court went outside the record being developed by the parties and their attorneys, directly challenged the testimony of the husband, and relied on the fruits of its own investigation to decide the case completely in favor of the wife. No one likes to put down their devices, not even at the dinner table. But Internet research by a trial judge to resolve a factual dispute, which may (or may not) improve the accuracy of fact-finding, but does a mortal injury to the fairness of the proceeding and threatens due process. In the criminal context, the U.S. Supreme Court has observed that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). Here, the temptation arises from technology, threatening the neutrality essential to a fair proceeding.

B. THE PROPERTY DIVISION AND THE FAMILY SUPPORT AWARD ARE INEQUITABLE AND IGNORE THE FACTS AND THE STATUTORY FACTORS.

What the court accomplished here in every aspect of its decision is lopsided in favor of the wife. It is not the result of a fair consideration of the statutory factors. *See, e.g., In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, *rev. denied*, 122 Wn.2d 1021 (1993) (maintenance award reversed where it did not consider husband's disability and retirement). In particular, the court overstated the length of the marriage ("relatively long") and understated the wife's actual ability to re-enter the job market. The court also ignored the husband's health issues, which had already affected his employment.

This marriage was mid-length, ending when both parties are relatively young. They do not have young children at home; one is about to enter college and the other is about to enter high school. Both parents have college degrees. Both have proven capacities to be gainfully employed. The wife received a disproportionate distribution of the total assets (community and husband's separate property), without counting the \$15,000 in savings she spent during separation (RP 281-292) and all the personal property. She also received a total of five years of full-time maintenance (from separation in November 2009 to September 2014), plus an optional year at half that level, as well as an additional \$500 the

husband was ordered to contribute to the mortgage on the residence where she was allowed to stay until June 2015. Effectively, the court gave the wife what she wanted without regard to what the law requires of her, which is to demonstrate an actual need for maintenance. RCW 26.19.090(1)(a). The wife may want to change careers and to continue living the lifestyle she enjoyed while married, but those do not translate into a need for maintenance. Rather, the law in Washington mandates that a party seeking maintenance must demonstrate a need for support.” *In re Marriage of Rouleau*, 36 Wn. App. 129, 132, 672 P.2d 756 (1983).

This demonstration of need is independent of the husband’s ability to pay, since maintenance is not an entitlement. Moreover, both the court and the wife ignore facts related to the husband’s ability. Both of them faulted the husband for taking a different job in his company, at a reduction in pay, the wife claiming he did so because it suited him personality wise and the court using it as a reason to relieve the wife of any obligation to get a job. Br. Respondent, at 1; CP 70. Both ignore the undisputed evidence that the husband suffered a life-threatening medical crisis while in his former position and that his new position is better for his health. RP 74-75, 180-182, 403. His job change is voluntary only in the sense that the husband chose to live, rather than die, and to make the changes necessary to support that choice.

The question of the wife's need and her employability at age 47 likewise affect the child support issue. She did not so much dispute that she could revive her bookkeeping career in less time than getting a special education degree or that the former would be more remunerative. Rather, she did not want to live up to this potential. The court endorsed her decision as reasonable, comparing it to the husband's medically-motivated decision. CP 70. But pursuing a passion is not the same as saving your health.

The wife's rationale has been rejected by this Court when proposed by a husband in a child support case. *Dewberry v. George*, 115 Wn. App. 351, 367-368, 62 P.3d 525 (2003). In *Dewberry*, the father had been employed in as an executive. He chose to work part-time delivering packages for UPS while pursuing his new, preferred career as a longshoreman. This Court held him to an obligation commensurate with his ability, not his passion.

There is no reason this principle should not also apply to the wife in this case, as relates both to child support and to the statutory analysis of need in the maintenance context. In Washington, in child support, income is imputed at the level "at which the parent is capable and qualified." *In re Marriage of Sacco*, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990). Likewise, the

wife's ability to support herself should be viewed in terms of her qualifications and capabilities, not just her preferences.

The wife analogizes to cases involving long-term marriages where wives have sacrificed their economic potential and face a job market late in life with few skills. This is not that kind of case. Julie is young. She is educated. She has marketable skills. Under Washington law, she has responsibilities to fulfill equal to Paul's. She may prefer a different career, and that is her choice, but the law does not require Paul to pay for it. The trial court did not take into account the law or the facts in concluding otherwise.

**C. THE FATHER DID NOT INVITE THE TRIAL COURT'S ERROR. IN ANY CASE, NEITHER PARENT MAY DEPRIVE THE CHILDREN OF SUPPORT.**

The mother seems to concede it is error to impute income to the mother at a part-time employment rate, since she cites no authority to the contrary. Br. Respondent, at 21. In fact, Washington law treats parents as having an equal obligation to support their children. The requirement to impute income is an aspect of that statutory scheme.

Instead, the mother argues the father invited the trial court's error. *Id.*, at 21-22. Actually, it appears the parties agreed to the levels of income as part of their pre-trial negotiations, which concluded with a Stipulation and Order Re Parenting Plan entered six months before trial.

CP 69. Both parties reflect this agreement in their trial briefs and worksheets. CP 10, 21, 26. For all the record tells, neither of them realized this was an error. *See In re Thompson*, 141 Wn.2d 712, 725, 10 P.3d 380 (2000) (invited error doctrine does not apply where “it appears that neither of the parties nor the trial court was aware of the error”).

In any case, when it comes to child support, the parties cannot agree to less than the statute requires. RCW 26.19.075(5) (“Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.”). Parents may not waive the rights of their children to support and agreements to do so are against public policy. *Harman v. Smith*, 100 Wn.2d 766, 768, 674 P.2d 176 (1984); *see, also, Pippins v. Jankelson*, 110 Wn.2d 475, 754 P.2d 105 (1988), *superseded by statute in respect of unrelated issue, as recognized by State v. Cooperrider*, 76 Wn. App. 699, 887 P.2d 408 (1994) (where no independent review of child support order by trial court, modification permitted without substantial change of circumstances). The apparent agreement of the parties is against public policy. If the court cannot evade the statute’s requirements when the parents agree, how can it do so by invitation?

Here, there are two errors in how mother’s income is imputed, both resulting in a lower child support level. She is imputed income at half-

time employment and she is imputed income at minimum wage, though she satisfies none of the statutory criteria. RCW 26.19.071(6)(a) and (d).

The mother goes on to argue that she should be relieved of her obligation because the children live with her full-time and her household expenses are for that reason increased. Br. Respondent, at 22-23.

However, as the court's findings expressly note, in lieu of residential time with the children, the father is ordered to contribute 65% to the cost of "reasonable recreational activities." CP 70, 78. Furthermore, the mother receives an extra \$500 every month from the father, paid against the mortgage but not credited as family support.

Finally, the statute provides a mechanism to ameliorate any added burdens on one parent or another, i.e., deviation. RCW 26.19.075; *State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 627, 152 P.3d 1005 (2007). The mother did not request a deviation. CP 78. Therefore, her citation to *In re Marriage of Krieger and Walker*, 147 Wn. App. 952, 960, 199 P.3d 450 (2008) does not make sense, since *Krieger* involved a deviation analysis. Nor is it fair to use *Krieger* here to imply the father has abdicated his responsibility for the children. The record reveals nothing of the reasons for the parties' parenting plan; the parties chose not to tell this tale. While into this void the mother insinuates one explanation, it would be just as fair to suggest she alienated the children from their father.

What we know is that the legislature sets the child support standards, with one goal being fairness. The father simply asks these standards be applied in this case.

D. THE MOTHER SHOULD PAY HER OWN FEES.

The statutory basis for attorney fees requires a demonstration of need. Implicit in this requirement is the notion that a person cannot create this need. As previously argued, the wife has the ability to support herself, even if she chooses not to exercise it. During separation, she spent far in excess of the income available, despite receiving over \$5000 monthly from the husband. She consumed marital savings and incurred credit card debt. Moreover, she received a disproportionate share of the marital property, receives maintenance and an additional \$500 against the mortgage, and has been relieved of her full child support obligation. She has the ability to pay her own fees.

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### III. CONCLUSION

For the foregoing reasons and in Appellant's Opening Brief, Paul Davis asks this Court to vacate the distribution made in the decree and the family support awards and to remand for further proceedings consistent with the correction of these errors, including hearing before a new judge.

Dated this 20th day of December 2013.

RESPECTFULLY SUBMITTED,



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## APPENDIX A

# 404 Error - File Not Found

Aren't you glad you didn't cite to this webpage in the Supreme Court Reporter at *Brown v. Entertainment Merchants Association*, 131 S.Ct. 2729, 2749 n.14 (2011). If you had, like Justice Alito did, the original content would long since have disappeared and someone else might have come along and purchased the domain in order to make a comment about the transience of linked information in the internet age.

And if you quoted this in the NY Times, will you do a correction for the now changed text?

## APPENDIX B

APPENDIX B

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# California Republicans Defend Fake Obamacare Site

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By Annetta Konstantinides Dec 3, 2013 7:07pm

The California Republican Assembly has come under attack this week for CoveringHealthCareCA.com (http://coveringhealthcareca.com/), which critics claim is a "deceptive" website meant to dissuade Californians from signing up on the state health care exchange.

Though it launched in August, the site made waves this week after a number of GOP Assembly members sent out mailers to their constituents, highlighting the page as a "resource guide" for information on the Affordable Care Act.

Sabrina Demayo Lockhart, communications director for the Assembly GOP Caucus, told ABC News that the goal of the site was informational. "It's a complex law, and we wanted to make sure our constituents had the tools to understand what this law meant for them."

But many are equating the site, whose URL resembles the official California insurance exchange site (CoveredCa.com (https://www.coveredca.com/)), to the onslaught of fake insurance sites popping up in the state — 10 of which were shut down by Calif. Atty. Gen. Kamala Harris in November — since the implementation of Obamacare.

Critics say the GOP site only highlights the costs and penalties of the Affordable Care Act and ignores its potential benefits. Sections in question include an interactive calculator that totals the tax penalties Californians may incur if they don't register for insurance, as well as the "Young Adults" section, which states:

"The Affordable Care Act requires young adults to pay higher premiums for health insurance because the law prohibits insurers from denying coverage to sicker individuals because of pre-existing conditions and limits what they can charge to older or sicker policy holders. This will mean that young adults will pay higher premiums even though they are generally healthier and do not visit the doctor as often."

"It's outrageous that our elected officials in California are using taxpayer dollars to intentionally mislead their constituents and divert them from CoveredCA.com," said Dr. Paul Song, executive chairman of the progressive California-based group Courage Campaign, in a released statement. "Republicans in Sacramento have wasted taxpayer dollars building a fake website in an attempt to sow confusion and fear, in a futile attempt to discredit the law."



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Following backlash the site was updated this week, the L.A Times reported, (<http://www.latimes.com/business/hiltzik/la-fi-mh-underhanded-20131202,0,1592466.story#ixzz2mRhjoGVik>) to include a direct link to the official Covered California website, as well as to the site's "Learn More" and "I don't have insurance" tab, a revision Lockhart told ABC News was made on feedback from site visitors.

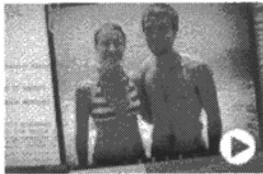
Even with changes to the site, the GOP assembly was not dissuaded. Lockhart reiterated that the site was merely for information, adding that the criticism was "manufactured outrage on the Internet" and "an effort by the left as a distraction from the real problem of failed health care government implementation."

California's state health care exchange has been a leader in successful sign-ups, with higher enrollment figures than the federal Obamacare exchange. In the first two weeks of November, the state had already exceeded October figures significantly.

This post has been updated.

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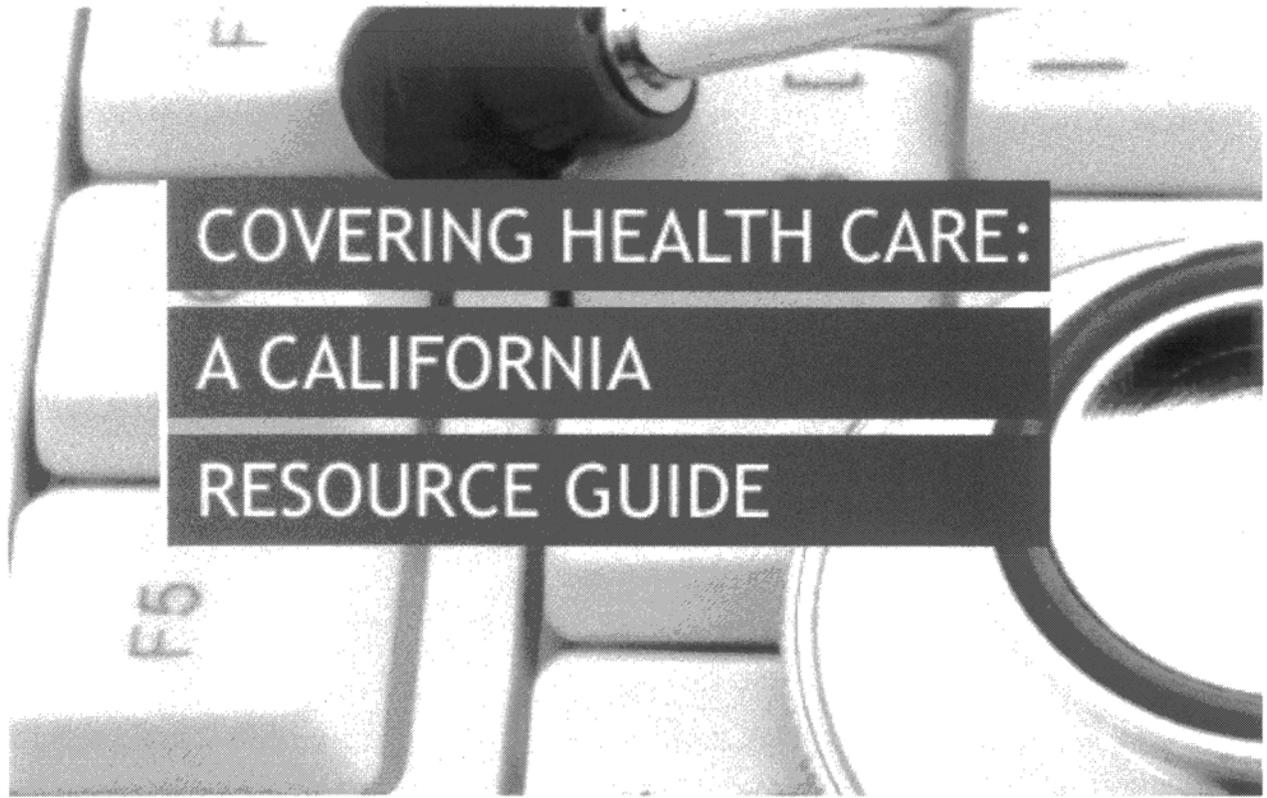
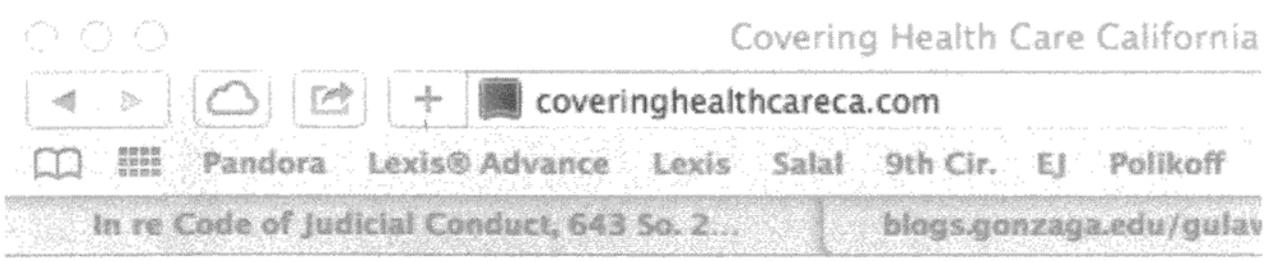
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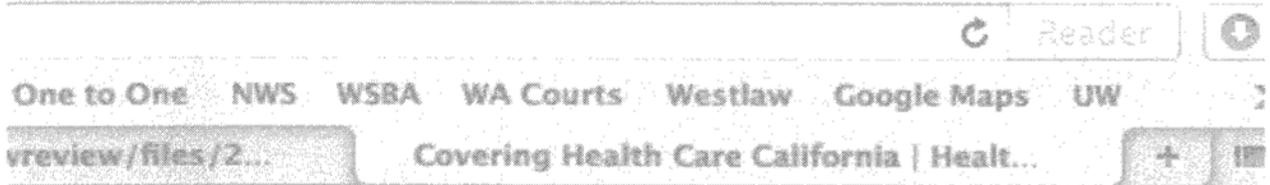
Background

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## Helping You Navigate

Beginning January 1, 2014, most California residents will have to purchase health insurance as a result of the passage of the Patient Protection and Affordable Care Act, commonly known as the "Affordable Care Act" or "Obamacare." This reform will impact you whether or not you currently have health insurance that meets federal requirements.



## e Federal Health Care Changes

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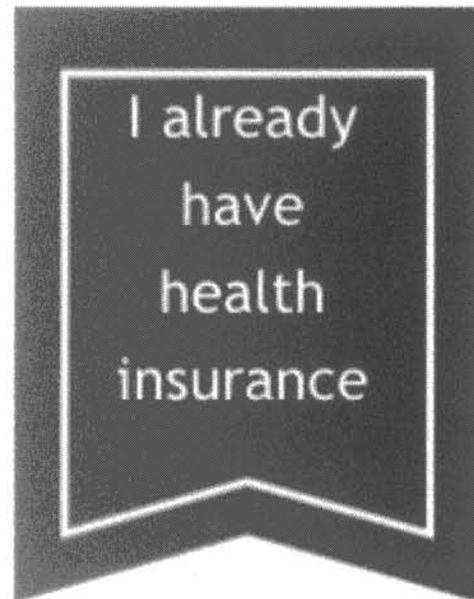
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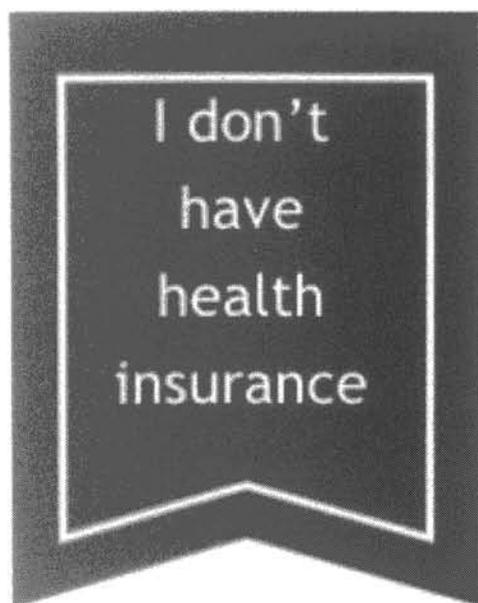
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December 8, 2013

**Sacramento Bee**

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DIVISION ONE

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JULIE DAVIS

Respondent

and

PAUL DAVIS

Appellant

No. 70900-3-1

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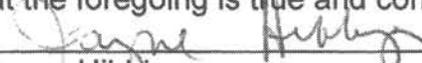
On December 20, 2013, I served upon the following true and correct copies of the Reply Brief of Appellant, and this Declaration, by:

depositing same with the United States Postal Service, postage paid  
 arranging for delivery by legal messenger.

Ronald C. Hardesty  
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I certify under penalty of perjury that the foregoing is true and correct.

  
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