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## The Impact of Social Security of Dependents and Financing of Post-Secondary Education of Dependents on Support Obligations in Particularly California Divorces After the Tax Cuts and Jobs Act of 2017

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**THE IMPACT OF SOCIAL SECURITY OF  
DEPENDENTS AND FINANCING OF POST-  
SECONDARY EDUCATION OF DEPENDENTS ON  
SUPPORT OBLIGATIONS IN PARTICULARLY  
CALIFORNIA DIVORCES AFTER THE TAX CUTS  
AND JOBS ACT OF 2017**

**By: John R. Dorocak\***

**ABSTRACT**

The 2017 Tax Cuts and Jobs Act made alimony in divorce decrees and separation agreements entered into after December 31, 2018, neither deductible by the payor nor income to the payee for federal income tax purposes. Likely, that change in the tax law will result in less income to payees in a divorce and higher taxes for payors. In California, support in divorces is basically calculated by the software program Dissomaster. With payors facing higher taxes, such payors may look for possible sources of additional income for paying support. Payors may receive a credit in California against the support obligation for children for Social Security paid to such children, particularly on account of the payors' Social Security status. In addition, there is at least a majority of authority in California that payments for post-secondary education expenses of adult children may be considered by California courts in determining a just and equitable award of support.

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## INTRODUCTION

Negotiations regarding divorce decrees and separation agreements have, of course, likely changed since the 2017 Tax Cuts and Jobs Act (TCJA) became effective for such decrees and agreements entered into after December 31, 2018.<sup>1</sup> From a tax standpoint, alimony is neither deductible by the payor nor income to the payee for payments under post 2018 decrees and agreements.<sup>2</sup>

With such new financial concerns, payors may examine other amounts for which they may be credited as having paid. In particular, the issue arises whether or not a payor receives credit for payments to a payee for Social Security of a dependent assigned to the payee whether or not the Social Security is initially paid to the payee or the payor. In addition, the issue arises whether or not a payor receives some credit for payments toward an adult child's post-secondary education expenses (e.g., college and graduate school) in the calculation of child or spousal support.

In California, although the software Dissomaster calculates support amounts, judges and mediators and parties have apparently found approaches to modify the Dissomaster output.<sup>3</sup>

This article will discuss the impact of Social Security of dependents and the financing of post-secondary education of dependents on support obligations, particularly in California divorces after the TCJA of 2017.

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<sup>1</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 § 11051 (repeal of deduction for alimony payments).

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., Mark A. Krasner, *Recent Changes to California Family Law and Strategies for Addressing the Challenges Facing the California Family Law Lawyer*, in STRATEGIES FOR FAM. L. IN CAL. 45, 53 (Aspatore 2016).

## LIKELY IMPACT OF THE TCJA ON DIVORCING PARTIES

Revenue projections for the TCJA of 2017 from the changes in the alimony rules indicate an increase in revenue to the government.<sup>4</sup> The tax increase is likely so because the alimony payor in a higher tax bracket will no longer have a deduction for the payment and the alimony payee in presumably a lower tax bracket will no longer pay the lower tax. Thus, the payor is paying support now with after-tax dollars taxed at a higher rate.<sup>5</sup> Also, the payee will presumably have less after-tax dollars because the payor will have incentive to pay less because of the higher tax. Taxes are often regarded as an effective nudge for people to change their behavior.<sup>6</sup> In any event, the divorced couple will have less money between them after tax.<sup>7</sup>

At least some commentators have opined that with the change in the alimony rules both parties to the divorce may be worse off.<sup>8</sup> One commentator has suggested, since alimony is now treated from a tax standpoint the same as child support, which is not deductible by the payor nor income to the payee, that “alimony-receiving women are like dependent children” and “the new alimony rule puts ex-husbands in the parent role ....”<sup>9</sup> The new tax rules have led some to suggest that the amount and frequency of alimony will diminish and the impoverishment of divorced women will increase as well as their social disempowerment.<sup>10</sup> Apparently alimony awards have been rare, declining from 25% in the 1960s to 10% circa 2015.<sup>11</sup>

With pressures on the payor in the divorce to pay less with after tax dollars, there may be incentive for the payor to seek credit for other payments made to the payee, such as in the form of Social Security of dependent children, whether paid to the payor or payee, or possibly in the form of payments made for post-secondary education

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<sup>4</sup> Linda Sugin, *The Social Meaning of the Tax Cuts and Jobs Act*, 128 YALE L.J. F. 403, 412 n.46 (2018) (first citing JOINT COMM. ON TAX’N, 115TH CONG., ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR HR1, “THE TAX CUTS AND JOBS ACT” 3 (Comm. Print 2017); and then citing George D. Karibjanian, et al., *Married Taxpayers: INSIGHT: Alimony, Prenuptial Agreements, and Trusts under the 2017 Tax Act – Part 1*, 101 DAILY TAX REP. 13 (2018)).

<sup>5</sup> Sugin, *supra* note 4, at n.46 and accompanying text (citing Karibjanian et al.).

<sup>6</sup> Sugin, *supra* note 4, at n.47 and accompanying text (first citing Cass R. Sunstein, *Nudging: A Very Short Guide*, 37 J. CONSUMER POL’Y 583, 583, 585 (2014); and then citing RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS* (2008)).

<sup>7</sup> Sugin, *supra* note 4, at 412-13.

<sup>8</sup> *Id.* at 413.

<sup>9</sup> *Id.* at 414.

<sup>10</sup> *Id.* at 415.

<sup>11</sup> Sugin, *supra* note 4, at n.48 (citing Beth Pinsker, *Breadwinning Women Are Driving Alimony Reform*, MONEY (Nov. 17, 2015), <https://money.com/alimony-reform-spousal-support/>).

for adult children. Those two potential sources of additional payments to be credited to the payor are the subject of this article.

### CALCULATIONS OF SUPPORT IN CALIFORNIA - DISSOMASTER

Although the determination of child and spousal support in a divorce may appear to be a uniquely state law matter, the Office of Child Support Enforcement, an office in the Administration for Children and Families in the Department of Health and Human Services, has promulgated federal regulations under Title IV-D of the Social Security Act to require uniform application of child support guidelines throughout a given state. 45 Code of Federal Regulations Section 302.56 requires each state to establish and publish a guideline, which is presumptively and still rebuttably correct, for child support and to review that guideline at least every four years.<sup>12</sup> Other than for high-earner cases, the California Family Code Section 4055 contains a formula to determine child support and temporary spousal support.<sup>13</sup> San Francisco area family law attorney Steve Adams developed a software program Dissomaster, which computed the California child support guidelines under the federal requirements.<sup>14</sup> Temporary spousal support computed per the Dissomaster is presumptively correct but maybe challenged, for example on the basis that the obligee's needs are overstated, or that the obligee is working, or that the obligor's income is lower than alleged by the obligee.<sup>15</sup> Arguments may be made, for example, that the obligor's income fluctuates and should be averaged or that the obligee's current earnings are not as high as previously and needs should be calculated in accord with previous income amounts of obligee.<sup>16</sup>

Courts have only restricted authority to go outside guidelines in determining child support. Thus, the courts have utilized approaches in determining income or cash flow, for example the Ostler/Smith calculation from the case In Re: Marriage of Ostler Smith, in which the court awarded a percentage of future bonuses or income over base salary and/or draw.<sup>17</sup>

Given such relatively fixed mathematical guidelines, as indicated, the courts have sought approaches concerning income, credits against obligations, and ability to pay which have included

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<sup>12</sup> Guidelines for setting child support orders, 45 C.F.R. § 302.56 (2021). *Child Support in the United States*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Child\\_support\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Child_support_in_the_United_States) (last visited Sept. 30, 2021).

<sup>13</sup> CAL. FAM. CODE § 4055 (West 2021-22). See also Krasner, *supra* note 3, at 9.

<sup>14</sup> Ronald W. Anteau & Michael J. Kretzmer, *The Practice of California Family Law Litigation*, in STRATEGIES FOR FAM. L. IN CAL. 67, 74 (ASPATORE 2010).

<sup>15</sup> Krasner, *supra* note 3, at 9-10.

<sup>16</sup> *Id.*

<sup>17</sup> Anteau & Kretzmer, *supra* note 14, at 72.

examining Social Security of dependents and post-secondary education of adult dependents.

## SOCIAL SECURITY OF DEPENDENTS

### Introduction

Intuitively, it may seem obvious that an obligor should receive some credit for Social Security for the dependent paid initially to the obligor because of the obligor's retirement or disability and then to an obligee for child support of the dependent. Possibly less so obvious would be credit for the obligor for payments to the obligee by Social Security for a dependent based on the obligee's status. There has been litigation about whether or not such Social Security payments should be credited against the obligor's required child support payment.<sup>18</sup> Possibly some of such litigation has arisen because of the statutory nature of the child support obligation calculation.

### California Family Code Section 4504

California Family Code Section 4504(b) provides in part as follows.

If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of child made by the federal government pursuant to the Social Security Act ... because of retirement or disability of the noncustodial parent and received by the custodial parent or other child support obligee shall be credited toward the amount ordered by the court to be paid by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid.<sup>19</sup>

One secondary source has explained as follows:  
However, there is also authority that Social Security benefits maybe credited against a noncustodial parent's child support obligation to the amount of the support obligation. A statute may provide that benefits received by a child based on the earnings of the parent are to be credited as child support to the parent upon whose earning record it is based, by

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<sup>18</sup> Tori R.A. Kricken, *Child Support and Social Security Dependent Benefits: A Comprehensive Analysis and Proposal for Wyoming*, 2 WYO. L. REV. 39, 62 (2002).

<sup>19</sup> CAL. FAM. CODE § 4504(b) (West 2021-22).

crediting the amount against the potential obligation of that parent.<sup>20</sup>

### California Cases Regarding Social Security as Support

Both of the sources cited explain the credit for Social Security by analogy to monies by the contributing parent invested in an insurance policy then paid to the dependent children of the parent upon death, disability or retirement.<sup>21</sup> Although the law in other states may not be as clear,<sup>22</sup> the ambiguities in California seem to be confined to whether or not Family Code Section 4504 also applies where the obligor is not the noncustodial parent, for example, in a shared custody situation, and whether or not the payment might be taken into consideration as income in determining the amount of support to be paid. The California courts appear to have consistently credited the obligor for Social Security payments, received by the obligee, in support of dependent children.<sup>23</sup> In addition, those courts do not appear to include the amount of the Social Security payment in the obligor's income, consistent with the language of California Family Code Section 4055(b).<sup>24</sup> There does not appear to be any distinction drawn as yet in the California cases as to whether the Social Security payment is for retirement or disability, although payments after death appear to be treated differently.<sup>25</sup>

In the case In Re Marriage of Denney, the Court of Appeals for the Second District in California held that allowing the obligor

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<sup>20</sup> 24 AM. JUR. 2D *Divorce and Separation* § 933 (2022) (footnotes omitted).

<sup>21</sup> Kricken, *supra* note 18, at 62-63; *see also* 24 AM. JUR. 2D, *supra* note 20, at nn. 8-10 and accompanying text.

<sup>22</sup> *See* 24 AM. JUR. 2D, *supra* note 20, at nn. 1-13 and accompanying text. 24 AM. JUR. 2D *Divorce and Separation* § 933 explains that, in some states, the custodial parent's disability does not reduce the child support obligation of such noncustodial parent, that a noncustodial parent's support obligation may have Social Security benefits of the noncustodial parent for benefit of the dependent child credited against the support obligation, that in some jurisdictions the Social Security payment might not be automatically credited but might form the basis for a change of circumstances support modification proceeding, and that, in other jurisdictions, the credit might be disallowed on the theory that the payment does not come from the parent but is for the child, although a modification of the support for change in circumstances might again be possible.

<sup>23</sup> *See, e.g., In re Marriage of Denney*, 171 Cal. Rptr. 440, 115 Cal. App. 3d 543 (2d Dist. 1981); *In re Marriage of Daugherty*, 181 Cal. Rptr. 3d 427, 2 Cal. App. 4th 463 (1st Dist. 2014); *Lak v. Lak*, 263 Cal. Rptr. 3d 854 (4th Dist. 2020); *In re Marriage of Hall & Frencher*, 201 Cal. Rptr. 3d 769, 247 Cal. App. 4th 23 (4th Dist. 2016); *Y.H. v. M.H.*, 235 Cal. Rptr. 3d 663 (4th Dist. 2018); *In re Marriage of Bertrand*, 39 Cal. Rptr. 2d 151, 33 Cal. App. 4th 437 (3d Dist. 1995); *In re Marriage of Drake*, 62 Cal. Rptr. 2d 466, 53 Cal. App. 4th 1139 (2d Dist. 1997).

<sup>24</sup> *See, e.g., In re Marriage of Denney*, 171 Cal. Rptr. 440, 115 Cal. App. 3d 543; *In re Marriage of Daugherty*, 181 Cal. Rptr. 3d 427, 2 Cal. App. 4th 463; *Lak v. Lak*, 263 Cal. Rptr. 3d 854; *In re Marriage of Hall & Frencher*, 201 Cal. Rptr. 3d 769, 247 Cal. App. 4th 23; *Y.H. v. M.H.*, 235 Cal. Rptr. 3d 663; *In re Marriage of Bertrand*, 39 Cal. Rptr. 2d 151, 33 Cal. App. 4th 437; *In re Marriage of Drake*, 62 Cal. Rptr. 2d 466, 53 Cal. App. 4th 1139.

<sup>25</sup> *In re Marriage of Bertrand*, 39 Cal. Rptr. 2d 151, 33 Cal. App. 4th 437.



husband a credit for Social Security Disability payments on behalf of minor children was not in error.<sup>26</sup> The Denney Court explained that the appellant wife asserted that the lower court had erred in allowing the husband a credit for Social Security Disability payments made on his behalf to his minor children. The Denney Court also noted that it was unclear from the record whether the credit was in fact allowed. The appellate court was informed that child support payments had been paid directly to the wife by the federal government. The appellant's attorney informed the court that the respondent had paid no child support. However, the husband's attorney advised that the Social Security was paying more per month than the court had ordered for support and that the husband was on disability. The appellate court said that, although the interlocutory judgment of the lower court was silent on the issue of Social Security disability payments to the children, it would nevertheless reach the issue.<sup>27</sup>

The Denney Court had decided for the appellee husband obligor based on former Civil Code Section 4705, the predecessor to California Family Code Section 4504.<sup>28</sup> The appellant obligee wife attempted two constitutional arguments to invalidate the California statute. The wife argued that, when the children are entitled to benefits based on the noncustodial obligor parent's disability, the use of those benefits to discharge the duty to provide support was a taking of property of the children without due process. The court did not find that such an offset violated due process.<sup>29</sup> The court also rejected the argument that the Supremacy Clause of the federal Constitution was violated because treating the benefits as support did not interfere with the Social Security Act or violate the Supremacy Clause.<sup>30</sup>

In the case In Re Marriage of Daugherty, the court held that the husband's Social Security disability income paid to him was his income for calculating support of the wife but that the children's derivative Social Security benefit, paid to the wife as a representative payee of the children because of the husband's disability, was not income of the husband and was credited against his child support obligation.<sup>31</sup> In addition, the court stated that the wife did not argue that the husband should not receive credit for the derivative payments and based its decision on California Family Code Section 4504 and the aforementioned In Re Marriage of Denney case.<sup>32</sup> To

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<sup>26</sup> *In re Marriage of Bertrand*, 39 Cal. Rptr. 2d 151, 33 Cal. App. 4th 437.

<sup>27</sup> *Id.* at 445, 15 Cal. App. 3d at 553.

<sup>28</sup> 23 CAL. L. REVISION COMM'N REPORT 1, 469 (1993) codified at CAL. FAM. CODE § 4504 (West 2021-22) (Law Revision Commission comment).

<sup>29</sup> *In re Marriage of Denney*, 171 Cal. Rptr. at 446, 115 Cal. App. 3d at 554.

<sup>30</sup> *Id.*

<sup>31</sup> *In re Marriage of Daugherty*, 181 Cal. Rptr. 3d 427, 429-30, 2 Cal. App. 4th 463, 466-67 (1st Dist. 2014)

<sup>32</sup> *Id.* at 429, 2 Cal. App. 4th at 466.

determine the gross income of each parent, the court based its decision on California Family Code Section 4058.

The payments at issue, however, were received not by David but by Melinda as the children's representative payee.... 42 United States Code Section 402(d) provides that qualifying children of a disabled person "shall be entitled" to derivative benefits. That is, David was not entitled to the payments, his children were. Social Security Regulations confirm that the child, not the disabled parent, is entitled to the child's benefits. (20 C.F.R. sec. 404.350 et seq. (2014).)<sup>33</sup>

## PAYMENTS FOR EDUCATION EXPENSES OF ADULT CHILDREN

### California Courts Consider the Expenses as Affecting Support

In the case of In Re Marriage of Maher & Strawn, the California Court of Appeals for the Fourth Appellate District, Division 1, held that the lower court was within its discretion considering an adult child's college education expenses like any other expenditure of discretionary income in determining whether the expense is reasonable and will result in a just and equitable award.<sup>34</sup> The Maher & Strawn court acknowledged that California Family Code Section 3901 prohibited the compelling of payment of adult child support.<sup>35</sup> The court reasoned that California Family Code Section 4330 authorized the trial court to order a party to pay spousal support that was just and reasonable, based on a standard of living determined during the marriage, taking into consideration circumstances listed in California Family Code Section 4320.<sup>36</sup> In reaching its decision, the court reasoned, "College expenses for adult children are among the circumstances to be considered in setting spousal support under subdivision (e) of Section 4320 (each party's financial 'obligations'), subdivision (k) (the 'balance of hardships on each party'), and subdivision (n) ('[a]ny other factors' that are 'just and equitable')."<sup>37</sup>

The Maher & Strawn court interpreted the California Supreme Court case In Re Marriage of Epstein as indicating that a court has discretion to consider an adult child's college expenses like any other

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<sup>33</sup> *Id.* at 430, 2 Cal. App. 4th at 466-67.

<sup>34</sup> *In re Marriage of Maher & Strawn*, 63 Cal. App. 5th 356, 359-60, 277 Cal. Rptr. 3d 689, 691-92 (4th Dist. 2021).

<sup>35</sup> *Id.* at 359, 277 Cal. Rptr. 3d at 692 (referencing CAL. FAM. CODE § 3901(a)(1) (West 2021-22) which states "[t]he duty of support imposed by Section 3900 continues as to an unmarried child who has attained 18 years of age, is a full-time high school student, unless excused pursuant to paragraph (2) ['has a medical condition documented by a physician that prevents full-time school attendance], and who is not self-supporting, until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first.').

<sup>36</sup> *Id.* at 363, 277 Cal. Rptr. 3d at 694 (citing CAL. FAM. CODE §§ 4320, 4330 (West 2021-22)).

<sup>37</sup> *Id.* at 365, 277 Cal. Rptr. 3d at 696 (citing CAL. FAM. CODE § 4320 (West 2021-22)).

expenditure of discretionary income in determining whether the expense is reasonable and will result in a just and equitable award of spousal support.<sup>38</sup> The Maier & Strawn court rejected the reasoning and holding of In Re Marriage of Serna.<sup>39</sup>

We [] depart from Serna because it reads Epstein too narrowly. Serna recognized that Epstein is “sometimes cited” for the “idea” that a court may consider a supporting spouse’s payment of an adult child’s college expenses “for purposes of lowering support.” ....

We read Epstein differently. The Supreme Court held that the trial court “did not abuse its discretion in limiting spousal support ...” In light of the supporting spouse’s total monthly expenses which included ... for the adult child’s college.... Implicit in that holding is that the trial court applied the correct legal standard.<sup>40</sup>

The Maier & Strawn court then added that, even if the Serna court had correctly distinguished Epstein, it would hold differently.<sup>41</sup> The Maier & Strawn court held that there was a State of California public policy “that a college education ‘should be had, if possible, by all of its citizens’” and “it is both unrealistic and inequitable to preclude the trial court from considering parental contributions to post-high school educational expenses as a factor in determining the supporting spouse’s ability to pay spousal support.”<sup>42</sup>

The Maier & Strawn court listed 10 factors among the relevant factors for a court to consider in making the determination to evaluate a supporting spouse’s payment of adult children’s college expenses for reasonableness.<sup>43</sup> The Maier & Strawn court cited several

<sup>38</sup> *Id.* at 359, 277 Cal. Rptr. 3d at 691 (citing *In re Marriage of Epstein*, 24 Cal. 3d 76, 154 Cal. Rptr. 413 (1979)).

<sup>39</sup> *Id.* at 365-66, 277 Cal. Rptr. 3d at 696-97 (citing *In re Marriage of Serna*, 85 Cal. App 4th 482, 102 Cal. Rptr. 2d 188 (2000)).

<sup>40</sup> *Id.* at 366, 277 Cal. Rptr. 3d at 697 (first quoting *In re Marriage of Serna*, 85 Cal. App 4th 482, 102 Cal. Rptr. 2d 188; and then quoting *In re Marriage of Epstein*, 24 Cal. 3d 76, 154 Cal. Rptr. 413) (ellipses added).

<sup>41</sup> *Id.* at 366, 277 Cal. Rptr. 3d at 697.

<sup>42</sup> *Id.* at 366-67, 277 Cal. Rptr. 3d at 697 (citing and quoting *Hale v. Hale*, 55 Cal. App. 2d 879, 882-83 (1942)).

<sup>43</sup> *Id.* at 366, 277 Cal. Rptr. 3d at 696-97.

“In making that determination, the court should consider all relevant factors, including but not limited to: (1) whether the supported spouse, if still living with the child, would have contributed toward to the educational costs; (2) the effect of the background, values and goals of the parents on the reasonableness of the child’s expectation of higher education; (3) the amount expended; (4) the supporting spouse’s ability to pay [the] cost; (5) the parents’ respective financial resources; (6) the commitment to and aptitude of the child for the education; (7) the adult child’s financial resources; (8) the child’s ability to earn income during the school year or on vacation[s]; (9) the availability of financial aid including reasonable amount of loans; and (10)

other California Courts of Appeal that had held it was reasonable to consider the payment of an adult child's education expenses in determining the reasonableness of support including In Re Marriage of Kelly, In Re Marriage of Meegan, and In Re Marriage of Paul.<sup>44</sup>

### **Unconstitutionality of Requiring Payment of Education Expenses of Adult Children**

California courts have apparently interpreted California Family Code Section 3901 to prohibit a court from requiring payment of education expenses of an adult child as support in a divorce.<sup>45</sup> As described above, there is at least apparently a majority of authority in California allowing the payment of an adult child's education expenses to be considered by a court in determining support.<sup>46</sup> By not requiring the payment of an adult child's education expenses in a divorce, the California courts avoid a potential constitutional problem of denial of equal protection likely under a rational basis analysis. The Pennsylvania Supreme Court in Curtis v. Kline held that a Pennsylvania statute permitting courts to order parents in non-intact families to contribute to their children's post-secondary education expenses was unconstitutional.<sup>47</sup>

In Curtis v. Kline, the Supreme Court of Pennsylvania held that the state's post-secondary school support statute violated equal protection.<sup>48</sup> The Pennsylvania Supreme Court reasoned that the Pennsylvania statute classified adult children according to the marital status of their parents and that there was no rational basis for the classification.<sup>49</sup>

Title 23, section 4327(a) of the Pennsylvania Consolidated Statutes provided, "[A] court may order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of their child whether an application for this support is made before or after the child has reached 18 years of age."<sup>50</sup> The lower court in Curtis v. Kline had reasoned that the Pennsylvania statute violated equal

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the relationship of the education to the adult child's long-range career goals as affected by the family circumstances and values during the marriage."

<sup>44</sup> *Id.* at 364, 277 Cal. Rptr. 3d at 695 (first citing *In re Marriage of Paul*, 173 Cal. App. 3d 913, 219 Cal. Rptr. 318 (1985); then citing *In re Marriage of Kelly*, 64 Cal. App. 3d 82, 134 Cal. Rptr. 259 (1976); and then citing *In re Marriage of Meegan*, 11 Cal. App. 4th 156, 13 Cal. Rptr. 2d 799 (1992)).

<sup>45</sup> *Id.* at 359, 277 Cal. Rptr. 3d at 692.

<sup>46</sup> See *supra* notes 34-44 and accompanying text.

<sup>47</sup> *Curtis v. Kline*, 666 A.2d 265, 265, 270 (Pa. 1995).

<sup>48</sup> *Id.* at 265.

<sup>49</sup> *Id.* at 269-70.

<sup>50</sup> 23 PA. STAT. AND CONS. STAT. ANN. § 4327(a) (West 2021-22).

protection because there was no rational basis for the legislature to conclude that a classification of two groups of parents could be treated differently.<sup>51</sup> The lower court in *Curtis v. Kline* had also concluded that the Pennsylvania statute classified students into two groups based on marital status of parents without a rational basis.<sup>52</sup> The Pennsylvania legislature passed the statute in response to an earlier Pennsylvania Supreme Court case that held neither case law nor statutory law imposed a duty on parents to support post-secondary education of their children.<sup>53</sup>

In both *McLeod v. Starnes* and *Donnelly v. Donnelly*, the Supreme Court of South Carolina and the Connecticut Superior Court held that classifications treating parents and children differently based on marital status of the parents were rationally related to a legitimate government purpose of a state policy either of promoting higher education or of protecting children of divorced parents.<sup>54</sup>

Thus, there are judicial decisions, legislative enactments, and secondary commentary finding a post-secondary educational support obligation both unconstitutional and constitutional. As indicated, California courts, as in *Maher & Strawn*, have avoided the controversy by deferring to the legislature in interpreting a statute prohibiting support of adult children as also prohibiting a requirement to pay for education of such adult children.<sup>55</sup> As discussed above, many of the California courts have held that a court may consider an adult child's education expenses similar to any other expenditure of discretionary income in determining whether the expense is reasonable and will result in a just and equitable award of support.<sup>56</sup>

## CONCLUSION

The 2017 Tax Cuts and Jobs Act made alimony in divorce decrees and separation agreements entered into after December 31, 2018, neither deductible by the payor nor income to the payee for federal income tax purposes. Likely, that change in the tax law will result in less income to payees in a divorce and higher taxes for

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<sup>51</sup> *Curtis v. Kline*, 25 Pa. D. & C. 4th 276, 284 (1994).

<sup>52</sup> *Id.* at 279-80.

<sup>53</sup> See e.g. David Gould, *Family Law - Noncustodial Post-Secondary Educational Support – the Pennsylvania Supreme Court Held that a Pennsylvania Statute Allowing Courts to Order Noncustodial Parents to the Absence of an Express Agreement by the Parents to Contribute Violated the Equal Protection Clause*, 35 DUQ. L. REV. 727, nn. 3-4 and accompanying text (1997) (first citing *Blue v. Blue*, 616 A.2d 628 (Pa. 1992); then citing 23 PA. STAT. AND CONS. STAT. ANN. § 4327; and then citing *Curtis v. Klein*, 666 A.2d 265 (Pa. 1995)).

<sup>54</sup> *Sophia Arzoumanidis, Why Requiring Parents to Pay for Post-Secondary Education Is Unconstitutional and Bad Policy*, 55 FAM. CT. REV. 314, 327 n. 137 and accompanying text (2016) (first citing *McLeod v. Starnes*, 723 S.E. 2d 198 (S.C. 2012); and then citing *Donnelly v. Donnelly*, 2012 WL 3667312 (Conn. Super. Ct. 2012)).

<sup>55</sup> See *supra* notes 34-35 and accompanying text.

<sup>56</sup> *Id.*

payors. In California, support in divorces is basically calculated by the software program Dissomaster. With payors facing higher taxes, such payors may look for possible sources of additional income for paying support. Payors may receive a credit in California against the support obligation for children for Social Security paid to such children, particularly on account of the payors' Social Security status. In addition, there is at least a majority of authority in California that payments for post-secondary education expenses of adult children may be considered by California courts in determining a just and equitable award of support.