

The Poverty Law Canon: Exploring the Major Cases

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CASE SUPPLEMENT 2017

PREFACE

The **Poverty Law Canon: Exploring the Major Cases**, published in 2016, was an effort by a dedicated and seasoned group of poverty law professors, many of whom have represented low-income people as attorneys, to help the wider public understand the historical currents and personal stories that have shaped some of the great poverty law controversies of the 20th century.

Many of the legal cases that bear the names of indigent plaintiffs hardly mention those litigants. When they do, these litigants are reduced to a few words that do not fully explain their own personal struggles that led to the lawsuits which they mounted with compassionate lawyers by their sides. Nor do they provide the context of the history of social oppression and attempts at social reform that culminated in these lawsuits. And, apart from their names at the beginning of the case report, the lawyers who bring and defend these cases are also largely absent.

It was our hope that **The Poverty Law Canon** could deepen the experience of both students of the law and those studying social justice issues that culminated in legal battles from related disciplines such as sociology, social work, political science, history, and the like. We knew that hearing the actual stories of the people who experienced the oppressions and difficulties which the law caused and also tried to remedy would give readers new perspectives on the living experience of people whom they might not encounter in their daily lives. We knew that students of the law might understand better, and perhaps be inspired by, the role of lawyers in the struggle for social justice. And, we knew that readers of this text would grasp, in a deeper way, why achieving justice for all is so difficult and elusive, given the social and political dynamics surrounding legal programs and rules governing the lives of the poor, and the constraints of the law to make equal justice under law real in America.

One use we envisioned was in classrooms in which students were already using texts of poverty law cases; the text, we thought, would provide a richer experience from which case readers could understand and critique the legal arguments that justices used to defend their decisions or to dissent from majority opinions. We thought that the contrast between the case in the books and the case in context as experienced by the litigants and their lawyers would be telling.

As the text began to be employed in classrooms, it became apparent to us that many other readers who could profit from this book might not have convenient access to the texts of the actual cases all in one place. This case supplement, then, serves as an adjunct for those teachers, students and others who wish to understand the significant differences between the way the text of a case can read, and the social and political dynamics surrounding the litigation which culminated in that opinion.

The cases are organized in the same order as the chapters in **The Poverty Law Canon**, and each case references the chapter of the book which it accompanies. Most of the original authors of **The Poverty Law Canon** did the major edits to these cases to ensure that the case material relevant to their chapters was preserved. Procedural and similar discussions in the cases have been omitted unless they were critical to the main holdings of the case. Similarly, to make these cases more readable, most of the case citations have been removed except for those central to the

case itself, and footnotes have been pared to those important for understanding the court's argument in full. Footnotes are numbered sequentially throughout the text, but the original footnote number in the case is given in parentheses.

Many ways of using **The Poverty Law Canon** in a classroom setting have been suggested to us. As noted, the Canon stories can be assigned as an adjunct to a study of poverty law or the history of poverty programs, with a discussion about what critical parts of the narrative are omitted from the case treatment of the facts, and how a larger context might have changed the way in which the court opinions were written. Chapters could be grouped based on the legal rights at the heart of the decisions, such as the right to travel or the right to welfare.

Another way to utilize this material is to explore the role of lawyers in shaping constitutional and statutory law, and the ethics of lawyering for those who represent low-income people in impact litigation. The text and supplement might also be used to explore the inner dynamics of the Supreme Court since a number of these cases culminated in Supreme Court discussions about how they should be decided.

The Poverty Law Canon stories also represents an historical ebb and flow in American social understanding of the intersection of poverty, race, class, and the role of government in the lives of the vulnerable. These cases and stories can help students of current American social programs and political controversies understand the roots of discussions we are having in communities all over the United States, even today.

We owe our thanks to the authors of **The Poverty Law Canon** who pitched in to edit these cases, and to our research assistant, Joshua Weichsel, who carefully reviewed the cases to make sure that the original case details were preserved in the editing process.

We welcome your exploration of these narratives and their accompanying legal cases, and hope that they will prove as fascinating and sometimes even inspirational as they have been for their authors.

Marie A. Failing and Ezra Rosser, Editors

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EDWARDS v. PEOPLE OF THE STATE OF CALIFORNIA

314 U.S. 160 (1941)

(to accompany Clare Pastore, *When Paupers Became People: Edwards v. California (1941)* in **The Poverty Law Canon**, page 13)

Mr. Justice BYRNES delivered the opinion of the Court.

The facts of this case are simple and are not disputed. Appellant [Fred Edwards] is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville, his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas. When he arrived in Texas, Edwards learned that Duncan had last been employed by the Works Progress Administration. [Edwards]¹ thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that Edwards should transport Duncan from Texas to Marysville in Edward's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about \$20. It had all been spent by the time he reached Marysville. He lived with Edwards for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten day interval, he had no employment.

In Justice Court [a low-level county court], a complaint was filed against Edwards under Section 2615 of the Welfare and Institutions Code of California, which provides: "Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." Edwards was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

On appeal to the Superior Court of Yuba County, the facts as stated above were stipulated. The Superior Court, although regarding as "close" the question of the validity of the Section, felt "constrained to uphold the statute as a valid exercise of the police power of the State of California." Consequently, the conviction was affirmed. No appeal to a higher state court was open to Edwards.

¹Throughout this excerpt, "Edwards" has been substituted for the term "Appellant."

At the threshold of our inquiry a question arises with respect to the interpretation of Section 2615. The [State] claims for the Section a very limited scope. It urges that the term “indigent person” must be taken to include only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. It is conceded, however, that the term is not confined to those who are physically or mentally incapacitated. While the generality of the language of the Section contains no hint of these limitations, we are content to assign to the term this narrow meaning.

Article I, Section 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is “commerce,” within the meaning of that provision. It is nevertheless true that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce. The issue presented in this case, therefore, is whether the prohibition embodied in Section 2615 against the “bringing” or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon ‘the wisdom, need, or appropriateness’ of the legislative efforts of the States to solve such difficulties.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: “The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division.”

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

It is urged, however, that the concept which underlies Section 2615 enjoys a firm basis in English and American history. This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent non-residents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that in an industrial society the task of providing assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments cooperate for the care of the aged, the blind and dependent children. It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximately 75% of the cost. It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government.

Indeed the record in this very case illustrates the inadequate basis in fact for the theory that relief is presently a local matter. Before leaving Texas, Duncan had received assistance from the Works Progress Administration. After arriving in California he was aided by the Farm Security Administration, which, as we have said, is wholly financed by the Federal government. This is not to say that our judgment would be different if Duncan had received relief from local agencies in Texas and California. Nor is it to suggest that the financial burden of assistance to indigent persons does not continue to fall heavily upon local and State governments. It is only to illustrate that in not inconsiderable measure the relief of the needy has become the common responsibility and concern of the whole nation.

What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode. Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent non-residents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many states. "This court has repeatedly declared that the commerce clause established the immunity of interstate commerce from the control of the states respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority." We are of the opinion that the transportation of indigent persons from State to State clearly falls within this class of subjects. The scope of Congressional power to deal with this problem we are not now called upon to decide.

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers." It

is true that support for this contention may be found in early decisions of this Court. In *City of New York v. Miln* (1837), it was said that it is “as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported” This language has been casually repeated in numerous later cases up to the turn of the century. In none of these cases, however, was the power of a State to exclude “paupers” actually involved.

Whether an able-bodied but unemployed person like Duncan is a “pauper” within the historical meaning of the term is open to considerable doubt. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. *City of New York v. Miln* was decided in [1837]. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a “moral pestilence.” Poverty and immorality are not synonymous.

We are of the opinion that Section 2615 is not a valid exercise of the police power of California, that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

Reversed.

Mr. Justice DOUGLAS, concurring:

I express no view on whether or not the statute here in question runs afoul of Art. I, Sec. 8 of the Constitution granting to Congress the power “to regulate Commerce with foreign Nations, and among the several States.” But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present.

The right to move freely from State to State is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference.

The conclusion that the right of free movement is a right of national citizenship stands on firm historical ground. If a state tax on that movement, as in the *Crandall* case, is invalid, *a fortiori* a state statute which obstructs or in substance prevents that movement must fall. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of national citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial

dilution of the rights of national citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the Fourteenth Amendment.

Mr. Justice JACKSON, concurring:

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any state to abridge his privileges or immunities as such.

This Court should hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

The right of the citizen to migrate from state to state which, I agree with Mr. Justice DOUGLAS, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. [A citizen] may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

It is here that we meet the real crux of this case. Does “indigence” as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction’ [sic] We should say now, and in no uncertain terms, that a man’s mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. “Indigence” in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship no state may impose such a test, and whether the Congress could do so we are not called upon to inquire.

WILLIAMS v. WALKER-THOMAS FURNITURE COMPANY

350 F.2d 445 (D.C. Circuit 1965)

(to accompany Anne Fleming, *Remaking the "Law of the Poor": Williams v. Walker-Thomas Furniture Co. (1965)* in **The Poverty Law Canon**, page 32)

J. SKELLY WRIGHT, Circuit Judge:

Appellee, Walker-Thomas Furniture Company, operates a retail furniture store in the District of Columbia. During the period from 1957 to 1962 each appellant in these cases purchased a number of household items from Walker-Thomas, for which payment was to be made in installments. The terms of each purchase were contained in a printed form contract which set forth the value of the purchased item and purported to lease the item to appellant for a stipulated monthly rent payment. The contract then provided, in substance, that title would remain in Walker-Thomas until the total of all the monthly payments made equaled the stated value of the item, at which time appellants could take title. In the event of a default in the payment of any monthly installment, Walker-Thomas could repossess the item.

The contract further provided that 'the amount of each periodical installment payment to be made by (purchaser) to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by (purchaser) under such prior leases, bills or accounts; and all payments now and hereafter made by (purchaser) shall be credited pro rata on all outstanding leases, bills and accounts due the Company by (purchaser) at the time each such payment is made.' The effect of this rather obscure provision was to keep a balance due on every item purchased until the balance due on all items, whenever purchased, was liquidated. As a result, the debt incurred at the time of purchase of each item was secured by the right to repossess all the items previously purchased by the same purchaser, and each new item purchased automatically became subject to a security interest arising out of the previous dealings.

On May 12, 1962, appellant Thorne purchased an item described as a Daveno, three tables, and two lamps, having total stated value of \$391.10. Shortly thereafter, he defaulted on his monthly payments and appellee sought to replevy all the items purchased since the first transaction in 1958. Similarly, on April 17, 1962, appellant Williams bought a stereo set of stated value of \$514.95.² She too defaulted shortly thereafter, and appellee sought to replevy all the items purchased since December, 1957. The Court of General Sessions granted judgment for appellee. The District of Columbia Court of Appeals affirmed, and we granted appellants' motion for leave to appeal to this court.

² At the time of this purchase her account showed a balance of \$164 still owing from her prior purchases. The total of all the purchases made over the years in question came to \$1,800. The total payments amounted to \$1,400. (original footnote 1)

Appellants' principal contention, rejected by both the trial and the appellate courts below, is that these contracts, or at least some of them, are unconscionable and, hence, not enforceable. In its opinion in, the District of Columbia Court of Appeals explained its rejection of this contention as follows:

'Appellant's second argument presents a more serious question. The record reveals that prior to the last purchase appellant had reduced the balance in her account to \$164. The last purchase, a stereo set, raised the balance due to \$678. Significantly, at the time of this and the preceding purchases, appellee was aware of appellant's financial position. The reverse side of the stereo contract listed the name of appellant's social worker and her \$218 monthly stipend from the government. Nevertheless, with full knowledge that appellant had to feed, clothe and support both herself and seven children on this amount, appellee sold her a \$514 stereo set.

'We cannot condemn too strongly appellee's conduct. It raises serious questions of sharp practice and irresponsible business dealings. A review of the legislation in the District of Columbia affecting retail sales and the pertinent decisions of the highest court in this jurisdiction disclose, however, no ground upon which this court can declare the contracts in question contrary to public policy. We note that were the Maryland Retail Installment Sales Act, or its equivalent, in force in the District of Columbia, we could grant appellant appropriate relief. We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar.'

We do not agree that the court lacked the power to refuse enforcement to contracts found to be unconscionable. In other jurisdictions, it has been held as a matter of common law that unconscionable contracts are not enforceable. While no decision of this court so holding has been found, the notion that an unconscionable bargain should not be given full enforcement is by no means novel. In *Scott v. United States* (1870), the Supreme Court stated: 'If a contract be unreasonable and unconscionable, but not void for fraud, a court of law will give to the party who sues for its breach damages, not according to its letter, but only such as he is equitably entitled to.'

Since we have never adopted or rejected such a rule, the question here presented is actually one of first impression.

Congress has recently enacted the Uniform Commercial Code, which specifically provides that the court may refuse to enforce a contract which it finds to be unconscionable at the time it was made. The enactment of this section, which occurred subsequent to the contracts here in suit, does not mean that the common law of the District of Columbia was otherwise at the time of enactment, nor does it preclude the court from adopting a similar rule in the exercise of its powers to develop the common law for the District of Columbia. In fact, in view of the absence of prior authority on the point, we consider the congressional adoption of [the UCC] persuasive authority for following the rationale of the cases from which the section is explicitly derived. Accordingly, we hold that where the element of unconscionability is present at the time a contract is made, the contract should not be enforced.

Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. Whether a meaningful choice is present in a particular case can only be determined by consideration of all the circumstances surrounding the transaction. In many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power. The manner in which the contract was entered is also relevant to this consideration. Did each party to the contract, considering his obvious education or lack of it, have a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print and minimized by deceptive sales practices? Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms. In such a case the usual rule that the terms of the agreement are not to be questioned should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld.

In determining reasonableness or fairness, the primary concern must be with the terms of the contract considered in light of the circumstances existing when the contract was made. The test is not simple, nor can it be mechanically applied. The terms are to be considered 'in the light of the general commercial background and the commercial needs of the particular trade or case.' Corbin suggests the test as being whether the terms are 'so extreme as to appear unconscionable according to the mores and business practices of the time and place.' We think this formulation correctly states the test to be applied in those cases where no meaningful choice was exercised upon entering the contract.

Because the trial court and the appellate court did not feel that enforcement could be refused, no findings were made on the possible unconscionability of the contracts in these cases. Since the record is not sufficient for our deciding the issue as a matter of law, the cases must be remanded to the trial court for further proceedings.

So ordered.

DANAHER, Circuit Judge (dissenting):

The District of Columbia Court of Appeals obviously was as unhappy about the situation here presented as any of us can possibly be. Its opinion in the Williams case, quoted in the majority text, concludes: 'We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar.'

My view is thus summed up by an able court which made no finding that there had actually been sharp practice. Rather the appellant seems to have known precisely where she stood.

There are many aspects of public policy here involved. What is a luxury to some may seem an outright necessity to others. Is public oversight to be required of the expenditures of relief funds? A washing machine, e.g., in the hands of a relief client might become a fruitful source of income. Many relief clients

may well need credit, and certain business establishments will take long chances on the sale of items, expecting their pricing policies will afford a degree of protection commensurate with the risk. Perhaps a remedy when necessary will be found within the provisions of the 'Loan Shark' law.

I mention such matters only to emphasize the desirability of a cautious approach to any such problem, particularly since the law for so long has allowed parties such great latitude in making their own contracts. I dare say there must annually be thousands upon thousands of installment credit transactions in this jurisdiction, and one can only speculate as to the effect the decision in these cases will have.

I join the District of Columbia Court of Appeals in its disposition of the issues.

KING V. SMITH

392 U.S. 309 (1968)

(to accompany Henry Freedman, *Sylvester Smith: Unlikely Heroine: King v. Smith (1968)* in **The Poverty Law Canon**, page 51)

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

Alabama, together with every other State, Puerto Rico, the Virgin Islands, the District of Columbia, and Guam, participates in the Federal Government's Aid to Families With Dependent Children (AFDC) program, which was established by the Social Security Act of 1935.³ This appeal presents the question whether a regulation of the Alabama Department of Pensions and Security, employed in that Department's administration of the State's federally funded AFDC program, is consistent with the Social Security Act⁴ and the Equal Protection Clause of the Fourteenth Amendment. At issue is the validity of Alabama's so-called 'substitute father' regulation, which denies AFDC payments to the children of a mother who 'cohabits' in or outside her home with any single or married able-bodied man.

Appellees brought this class action in the United States District Court for the Middle District of Alabama, seeking declaratory and injunctive relief. A properly convened three-judge District Court correctly found the regulation to be inconsistent with the Social Security Act and the Equal Protection Clause.⁵ For reasons which will appear, we affirm without reaching the constitutional issue.

I.

The AFDC program is one of three major categorical public assistance programs established by the Social Security Act of 1935. The category singled out for welfare assistance by AFDC is the 'dependent child,' who is defined as a needy child under the age of 18, or under the age of 21 and a student, 'who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with' any one of several listed relatives. Under this provision, aid can be granted only if 'a parent' of the needy child is continually absent from the home. Alabama considers a man who qualifies as a 'substitute father' under its regulation to be a nonabsent parent. The State therefore denies aid to an otherwise eligible needy child on the basis that his substitute parent is not absent from the home.

Under the Alabama regulation, an 'able-bodied man, married or single, is considered a substitute father of *all the children of the applicant . . . mother*' in three different situations: (1) if 'he lives in the home

³ 42 U.S.C. §§ 301-1394. The program was originally known as 'Aid to Dependent Children.' Alabama's program still bears this title. In the 1962 amendments to the Act, however, the name of the program was changed. Throughout this opinion, the program will be referred to as 'Aid to Families With Dependent Children,' or AFDC. (original footnote 1)

⁴ 42 U.S.C. §§ 601-609. (original footnote 2)

⁵ *Smith v. King*, 277 F. Supp. 31 (D.C.M.D.Ala.1967) (original footnote 5)

with the child's natural or adoptive mother for the purpose of cohabitation'; (2) if 'he visits the home frequently for the purpose of cohabiting with the child's natural or adoptive mother'; or (3) if 'he does not frequent the home, but cohabits with the child's natural or adoptive mother elsewhere.' Whether the substitute father is actually the father of the children is irrelevant. It is also irrelevant whether he is legally obligated to support the children, and whether he does in fact contribute to their support. What is determinative is simply whether he 'cohabits' with the mother.⁶

The testimony below by officials responsible for the administration of Alabama's AFDC program establishes that 'cohabitation,' as used in the regulation, means essentially that the man and woman have 'frequent' or 'continuing' sexual relations. With regard to how frequent or continual these relations must be, the testimony is conflicting. One state official testified that the regulation applied only if the parties had sex at least once a week; another thought once every three months would suffice, and still another believed once every six months sufficient. The regulation itself provides that pregnancy or a baby under six months of age is *prima facie* evidence of a substitute father.

Between June 1964, when Alabama's substitute father regulation became effective, and January 1967, the total number of AFDC recipients in the State declined by about 20,000 persons, and the number of children recipients by about 16,000, or 22%. As applied in this case, the regulation has caused the termination of all AFDC payments to Mrs. Sylvester Smith and her four minor children.

Mrs. Smith and her four children, ages 14, 12, 11, and 9, reside in Dallas County, Alabama. For several years prior to October 1, 1966, they had received aid under the AFDC program. By notice dated October 11, 1966, they were removed from the list of persons eligible to receive such aid. This action was taken by the Dallas County welfare authorities pursuant to the substitute father regulation, on the ground that a Mr. Williams came to her home on weekends and had sexual relations with her.

Three of Mrs. Smith's children have not received parental support or care from a father since their natural father's death in 1955. The fourth child's father left home in 1963, and the child has not received the support or care of his father since then. All the children live in the home of their mother, and except for the substitute father regulation are eligible for aid. The family is not receiving any other type of public assistance, and has been living, since the termination of AFDC payments, on Mrs. Smith's salary of between \$16 and \$20 per week which she earns working from 3:30 a.m. to 12 noon as a cook and waitress.

Mr. Williams, the alleged 'substitute father' of Mrs. Smith's children, has nine children of his own and lives with his wife and family, all of whom are dependent upon him for support. Mr. Williams is not the father of any of Mrs. Smith's children. He is not legally obligated, under Alabama law, to support any of

⁶ Under the regulation, when 'there appears to be a substitute father,' the mother bears the burden of proving that she has discontinued her relationship with the man before her AFDC assistance will be resumed. The mother's claim of discontinuance must be 'corroborated by at least two acceptable references in a position to know. Examples of acceptable references are: law enforcement officials; ministers; neighbors; grocers.'(original footnote 9)

Mrs. Smith's children. Further, he is not willing or able to support the Smith children, and does not, in fact, support them. His wife is required to work to help support the Williams household.

II.

The AFDC program is based on a scheme of cooperative federalism. It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education, and Welfare (HEW). The plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW.

One of the statutory requirements is that 'aid to families with dependent children . . . shall be furnished with reasonable promptness to all eligible individuals . . . ' 42 U.S.C. § 602(a)(9). Section 406(a) defines a 'dependent child' as one who has been deprived of 'parental' support or care by reason of the death, continued absence, or incapacity of a 'parent.' 42 U.S.C. § 606(a). In combination, these two provisions of the Act clearly require participating States to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible.

The State argues that its substitute father regulation simply defines who is a nonabsent 'parent' under § 406(a). The State submits that the regulation is a legitimate way of allocating its limited resources available for AFDC assistance, in that it reduces the caseload of its social workers and provides increased benefits to those still eligible for assistance. Two state interests are asserted in support of the regulation: first, it discourages illicit sexual relationships and illegitimate births; second, it puts families in which there is an informal 'marital' relationship on a par with those in which there is an ordinary marital relationship, because families of the latter sort are not eligible for AFDC assistance.

We think it well to note at the outset what is *not* involved in this case. There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program. Further, there is no question that regular and actual contributions to a needy child, including contributions from the kind of person Alabama calls a substitute father, can be taken into account in determining whether the child is needy. In other words, if, by reason of such a man's contribution, the child is not in financial need, the child would be ineligible for AFDC assistance without regard to the substitute father rule. The appellees here, however, meet Alabama's need requirements; their alleged substitute father makes no contribution to their support, and they have been denied assistance solely on the basis of the substitute father regulation.

Also not involved in this case is Alabama's general power to deal with conduct it regards as immoral and with the problem of illegitimacy. This appeal raises only the question whether the State may deal with these problems in the manner that it has here -- by flatly denying AFDC assistance to otherwise eligible dependent children.

Alabama's argument based on its interests in discouraging immorality and illegitimacy would have been quite relevant at one time in the history of the AFDC program. However, subsequent developments clearly establish that these state interests are not presently legitimate justifications for AFDC disqualification. Insofar as this or any similar regulation is based on the State's asserted interest in discouraging illicit sexual behavior and illegitimacy, it plainly conflicts with federal law and policy.

A significant characteristic of public welfare programs during the last half of the 19th century in this country was their preference for the 'worthy' poor. Some poor persons were thought worthy of public assistance, and others were thought unworthy because of their supposed incapacity for 'moral regeneration.' This 'worthy person' concept characterized the mothers' pension welfare programs which were the precursors of AFDC. Benefits under the mothers' pension programs were customarily restricted to widows who were considered morally fit.

In this social context, it is not surprising that the House and Senate Committee Reports on the Social Security Act of 1935 indicate that States participating in AFDC were free to impose eligibility requirements relating to the 'moral character' of applicants. During the following years, many state AFDC plans included provisions making ineligible for assistance dependent children not living in 'suitable homes.' As applied, these suitable home provisions frequently disqualified children on the basis of the alleged immoral behavior of their mothers.⁷

In the 1940's, suitable home provisions came under increasing attack. Critics argued, for example, that such disqualification provisions undermined a mother's confidence and authority, thereby promoting continued dependency; that they forced destitute mothers into increased immorality as a means of earning money; that they were habitually used to disguise systematic racial discrimination, and that they senselessly punished impoverished children on the basis of their mothers' behavior, while inconsistently permitting them to remain in the allegedly unsuitable homes. In 1945, the predecessor of HEW produced a state letter arguing against suitable home provisions and recommending their abolition. Although 15 States abolished their provisions during the following decade, numerous other States retained them.

In the 1950's, matters became further complicated by pressures in numerous States to disqualify illegitimate children from AFDC assistance. Attempts were made in at least 18 States to enact laws excluding children on the basis of their own or their siblings' birth status. All but three attempts failed to pass the state legislatures, and two of the three successful bills were vetoed by the governors of the States involved. In 1960, the federal agency strongly disapproved of illegitimacy disqualifications.

Nonetheless, in 1960, Louisiana enacted legislation requiring, as a condition precedent for AFDC eligibility, that the home of a dependent child be 'suitable,' and specifying that any home in which an illegitimate child had been born subsequent to the receipt of public assistance would be considered unsuitable. In the summer of 1960, approximately 23,000 children were dropped from Louisiana's

⁷ Bell quotes a case record where a mother whose conduct with men displeased a social worker was required, as a condition of continued assistance, to sign an affidavit stating that 'I . . . do hereby promise and agree that . . . I will not have any male callers coming to my home nor meeting me elsewhere under improper conditions.' (original footnote 18)

AFDC rolls. In disapproving this legislation, then HEW Secretary Flemming issued what is now known as the Flemming Ruling, stating that, as of July 1, 1961,

‘A State plan . . . may not impose an eligibility condition that would deny assistance with respect to a needy child on the basis that the home conditions in which the child lives are unsuitable, while the child continues to reside in the home. Assistance will therefore be continued during the time efforts are being made either to improve the home conditions or to make arrangements for the child elsewhere.’

Congress quickly approved the Flemming Ruling, while extending until September 1, 1962, the time for state compliance. At the same time, Congress acted to implement the ruling by providing, on a temporary basis, that dependent children could receive AFDC assistance if they were placed in foster homes after a court determination that their former homes were ‘unsuitable because of the immoral or negligent behavior of the parent.’

In 1962, Congress made permanent the provision for AFDC assistance to children placed in foster homes and extended such coverage to include children placed in child-care institutions. At the same time, Congress modified the Flemming Ruling by amending § 404(b) of the Act. As amended, the statute permits States to disqualify from AFDC aid children who live in unsuitable homes, provided they are granted other ‘adequate care and assistance.’

Thus, under the 1961 and 1962 amendments to the Social Security Act, the States are permitted to remove a child from a home that is judicially determined to be so unsuitable as to ‘be contrary to the welfare of such child.’ The States are also permitted to terminate AFDC assistance to a child living in an unsuitable home, if they provide other adequate care and assistance for the child. The statutory approval of the Flemming Ruling, however, precludes the States from otherwise denying AFDC assistance to dependent children on the basis of their mothers' alleged immorality or to discourage illegitimate births.

The most recent congressional amendments to the Social Security Act further corroborate that federal public welfare policy now rests on a basis considerably more sophisticated and enlightened than the ‘worthy person’ concept of earlier times. State plans are now required to provide for a rehabilitative program of improving and correcting unsuitable homes, to provide voluntary family planning services for the purpose of reducing illegitimate births, and to provide a program for establishing the paternity of illegitimate children and securing support for them.

In sum, Congress has determined that immorality and illegitimacy should be dealt with through rehabilitative measures, rather than measures that punish dependent children, and that protection of such children is the paramount goal of AFDC. In light of the Flemming Ruling and the 1961, 1962, and 1968 amendments to the Social Security Act, it is simply inconceivable, as HEW has recognized, that Alabama is free to discourage immorality and illegitimacy by the device of absolute disqualification of needy children. Alabama may deal with these problems by several different methods under the Social Security Act. But the method it has chosen plainly conflicts with the Act.

III.

Alabama's second justification for its substitute father regulation is that 'there is a public interest in a State's not undertaking the payment of these funds to families who, because of their living arrangements, would be in the same situation as if the parents were married, except for the marriage.'

In other words, the State argues that, since, in Alabama, the needy children of married couples are not eligible for AFDC aid so long as their father is in the home, it is only fair that children of a mother who cohabits with a man not her husband and not their father be treated similarly. The difficulty with this argument is that it fails to take account of the circumstance that children of fathers living in the home are in a very different position from children of mothers who cohabit with men not their fathers: the child's father has a legal duty to support him, while the unrelated substitute father does not. We believe Congress intended the term 'parent' in § 406(a) to include only those persons with a legal duty of support.

The Social Security Act of 1935 was part of a broad legislative program to counteract the depression. Congress was deeply concerned with the dire straits in which all needy children in the Nation then found themselves. In agreement with the President's Committee on Economic Security, the House Committee Report declared, 'the core of any social plan must be the child.' The AFDC program, however, was not designed to aid all needy children. The plight of most children was caused simply by the unemployment of their fathers. With respect to these children, Congress planned that 'the work relief program and . . . the revival of private industry' would provide employment for their fathers. The Senate Committee Report stated: 'Many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family.' Implicit in this statement is the assumption that children would, in fact, be supported by the family 'breadwinner.'

The AFDC program was designed to meet a need unmet by programs providing employment for breadwinners. It was designed to protect what the House Report characterized as '[o]ne clearly distinguishable group of children' composed of children in families without a 'breadwinner,' 'wage earner,' or 'father,' as the repeated use of these terms throughout the Report of the President's Committee, Committee Hearings and Reports and the floor debates makes perfectly clear. To describe the sort of breadwinner that it had in mind, Congress employed the word 'parent.' A child would be eligible for assistance if his parent was deceased, incapacitated or continually absent.

The question for decision here is whether Congress could have intended that a man was to be regarded as a child's parent so as to deprive the child of AFDC eligibility despite the circumstances: (1) that the man did not, in fact, support the child, and (2) that he was not legally obligated to support the child. The State correctly observes that the fact that the man in question does not actually support the child cannot be determinative, because a natural father at home may fail actually to support his child, but his presence will still render the child ineligible for assistance. On the question whether the man must be legally obligated to provide support before he can be regarded as the child's parent, the State has no such cogent answer. We think the answer is quite clear: Congress must have meant by the term 'parent' an individual who owed to the child a state-imposed legal duty of support.

It is clear, as we have noted, that Congress expected ‘breadwinners’ who secured employment would support their children. This congressional expectation is most reasonably explained on the basis that the kind of breadwinner Congress had in mind was one who was legally obligated to support his children. We think it beyond reason to believe that Congress would have considered that providing employment for the paramour of a deserted mother would benefit the mother's children whom he was not obligated to support.

By a parity of reasoning, we think that Congress must have intended that the children in such a situation remain eligible for AFDC assistance notwithstanding their mother's impropriety. AFDC was intended to provide economic security for children whom Congress could not reasonably expect would be provided for by simply securing employment for family breadwinners. We think it apparent that neither Congress nor any reasonable person would believe that providing employment for some man who is under no legal duty to support a child would in any way provide meaningful economic security for that child.

A contrary view would require us to assume that Congress, at the same time that it intended to provide programs for the economic security and protection of all children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection. Such an interpretation of congressional intent would be most unreasonable, and we decline to adopt it.

Our interpretation of the term ‘parent’ in § 406(a) is strongly supported by the way the term is used in other sections of the Act. Section 402(a)(10) requires that a state plan must: ‘provide for prompt notice to appropriate law enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a *parent*.’

The ‘parent’ whom this provision requires to be reported to law enforcement officials is surely the same ‘parent’ whose desertion makes a child eligible for AFDC assistance in the first place. And Congress obviously did not intend that a so-called ‘parent’ who has no legal duties of support be referred to law enforcement officials (as Alabama's own welfare regulations recognize), for the very purpose of such referrals is to institute nonsupport proceedings. Whatever doubt there might have been over this proposition has been completely dispelled by the 1968 amendments to the Social Security Act, which provide that the States must develop a program:

‘(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the *paternity of such child and secure support for him*, and’

‘(ii) in the case of any child receiving such aid who has been deserted or abandoned *by his parent, to secure support for such child from such parent (or from any other person legally liable for such support)*’

Another provision in the 1968 amendments requires the States to report to HEW any ‘*parent . . . against whom an order for the support and maintenance of such [dependent] child or children has been issued by*’ a court, if such parent is not making the required support payments.

The pattern of this legislation could not be clearer. Every effort is to be made to locate and secure support payments from persons legally obligated to support a deserted child. The underlying policy and consistency in statutory interpretation dictate that the 'parent' referred to in these statutory provisions is the same parent as that in § 406(a). The provisions seek to secure parental support in lieu of AFDC support for dependent children. Such parental support can be secured only where the parent is under a state-imposed legal duty to support the child. We think that these provisions corroborate the intent of Congress that the only kind of 'parent,' under § 406(a), whose presence in the home would provide adequate economic protection for a dependent child is one who is legally obligated to support him. If Alabama believes it necessary to disqualify a child on the basis of a man who is not under such a duty of support, its arguments should be addressed to Congress.

IV.

Alabama's substitute father regulation requires the disqualification of otherwise eligible dependent children if their mother 'cohabits' with a man who is not obligated by Alabama law to support the children. The regulation is therefore invalid because it defines 'parent' in a manner that is inconsistent with § 406(a) of the Social Security Act. In denying AFDC assistance to appellees on the basis of this invalid regulation, Alabama has breached its federally imposed obligation to furnish 'aid to families with dependent children . . . with reasonable promptness to all eligible individuals . . . ' 42 U.S.C. § 602(a)(9). Our conclusion makes unnecessary consideration of appellees' equal-protection claim, upon which we intimate no views.

We think it well, in concluding, to emphasize that no legitimate interest of the State of Alabama is defeated by the decision we announce today. The State's interest in discouraging illicit sexual behavior and illegitimacy may be protected by other means, subject to constitutional limitations, including state participation in AFDC rehabilitative programs. Its interest in economically allocating its limited AFDC resources may be protected by its undisputed power to set the level of benefits and the standard of need, and by its taking into account in determining whether a child is needy all actual and regular contributions to his support.

All responsible governmental agencies in the Nation today recognize the enormity and pervasiveness of social ills caused by poverty. The causes of and cures for poverty are currently the subject of much debate. We hold today only that Congress has made at least this one determination: that destitute children who are legally fatherless cannot be flatly denied federally funded assistance on the transparent fiction that they have a substitute father

Affirmed.

MR JUSTICE DOUGLAS, concurring.

The Court follows the statutory route in reaching the result that I reach on constitutional grounds. It is, of course, traditional that our disposition of cases should, if possible, be on statutory, rather than constitutional, grounds.

We do have, however, in this case, a longstanding administrative construction that approves state AFDC plans containing a man-in-the-house provision which, so far as I can ascertain, has been a consistent one.

HEW balked at the Alabama provision only because it reached all nonmarital sexual relations of the mother, not just nonmarital relations on a regular basis in the mother's house. Since I cannot distinguish between the two categories, I reach the constitutional question.

The Alabama regulation describes three situations in which needy children, otherwise eligible for relief, are to be denied financial assistance. In none of these is the child to blame. The disqualification of the family, and hence the needy child, turns upon the 'sin' of the mother.

First, if a man not married to the mother and not the father of the children lives in her home for purposes of cohabiting with her, the children are cast into the outer darkness.

Second, if a man who is not married to the mother and is not the father of the children visits her home for the purpose of cohabiting with her, the needy children meet the same fate.

Third, if a man not married to the mother and not the father of the children cohabits with her outside the home, then the needy children are likewise denied relief.

In each of these three situations, the needy family is wholly cut off from AFDC assistance without considering whether the mother's paramour is, in fact, aiding the family, is financially able to do so, or is legally required to do so. In other words, the Alabama regulation is aimed at punishing mothers who have nonmarital sexual relations. The economic need of the children, their age, their other means of support, are all irrelevant. The standard is the so-called immorality of the mother.

The other day in a comparable situation we held that the Equal Protection Clause of the Fourteenth Amendment barred discrimination against illegitimate children. We held that they cannot be denied a cause of action because they were conceived in 'sin,' that the making of such a disqualification was an invidious discrimination. *Levy v. Louisiana* (1968). I would think precisely the same result should be reached here. I would say that the immorality of the mother has no rational connection with the need of her children under any welfare program.

I would affirm this judgment for the reasons more fully elaborated in the opinion of the three-judge District Court.

APPENDIX TO OPINION OF MR. JUSTICE DOUGLAS

States which, according to HEW, currently have man-in-the-house policies in their AFDC plans: Alabama, Arizona, Arkansas, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

SHAPIRO v. THOMPSON

394 U.S. 618 (1969)

(to accompany Elisa Minoff, *Legal Services Attorneys and Migrant Advocates Join Forces: Shapiro v. Thompson (1969)* in **The Poverty Law Canon**, page 72)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

These three appeals were restored to the calendar for reargument. Each is an appeal from a decision of a three-judge District Court holding unconstitutional a State or District of Columbia statutory provision which denies welfare assistance to residents of the State or District who have not resided within their jurisdictions for at least one year immediately preceding their applications for such assistance. We affirm the judgments of the District Courts in the three cases.

I.

In No. 9, the Connecticut Welfare Department invoked § 17-2d of the Connecticut General Statutes to deny the application of appellee Vivian Marie Thompson for assistance under the program for Aid to Families with Dependent Children (AFDC). She was a 19-year-old unwed mother of one child and pregnant with her second child when she changed her residence in June 1966 from Dorchester, Massachusetts, to Hartford, Connecticut, to live with her mother, a Hartford resident. She moved to her own apartment in Hartford in August 1966, when her mother was no longer able to support her and her infant son. Because of her pregnancy, she was unable to work or enter a work training program. Her application for AFDC assistance was denied solely on the ground that, as required by § 17-2d, she had not lived in the State for a year before her application was filed.

In No. 33, there are four appellees. Three of them— appellees Harrell, Brown, and Legrant—applied for and were denied AFDC aid. The fourth, appellee Barley, applied for and was denied benefits under the program for Aid to the Permanently and Totally Disabled. The denial in each case was on the ground that the applicant had not resided in the District of Columbia for one year immediately preceding the filing of her application.

Appellee Minnie Harrell, now deceased, had moved with her three children from New York to Washington in September 1966. She suffered from cancer and moved to be near members of her family who lived in Washington.

Appellee Barley, a former resident of the District of Columbia, returned to the District in March 1941 and was committed a month later to St. Elizabeths Hospital as mentally ill. She has remained in that hospital ever since. She was deemed eligible for release in 1965, and a plan was made to transfer her

from the hospital to a foster home. The plan depended, however, upon Mrs. Barley's obtaining welfare assistance for her support. Her application for assistance under the program for Aid to the Permanently and Totally Disabled was denied because her time spent in the hospital did not count in determining compliance with the one-year requirement.

Appellee Brown lived with her mother and two of her three children in Fort Smith, Arkansas. Her third child was living with appellee Brown's father in the District of Columbia. When her mother moved from Fort Smith to Oklahoma, appellee Brown, in February 1966, returned to the District of Columbia where she had lived as a child. Her application for AFDC assistance was approved insofar as it sought assistance for the child who had lived in the District with her father but was denied to the extent it sought assistance for the two other children.

Appellee Legrant moved with her two children from South Carolina to the District of Columbia in March 1967 after the death of her mother. She was pregnant and in ill health when she applied for and was denied AFDC assistance in July 1967.

In No. 34, there are two appellees, Smith and Foster, who were denied AFDC aid on the sole ground that they had not been residents of Pennsylvania for a year prior to their applications as required by the Pennsylvania Welfare Code. Appellee Smith and her five minor children moved in December 1966 from Delaware to Philadelphia, Pennsylvania, where her father lived. Her father supported her and her children for several months until he lost his job. Appellee then applied for AFDC assistance and had received two checks when the aid was terminated. Appellee Foster, after living in Pennsylvania from 1953 to 1965, had moved with her four children to South Carolina to care for her grandfather and invalid grandmother and had returned to Pennsylvania in 1967.

II.

There is no dispute that the effect of the waiting-period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life. On reargument, appellees' central contention is that the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws. We agree. The interests which appellants assert are promoted by the classification either may not constitutionally be promoted by government or are not compelling governmental interests.

III.

Primarily, appellants justify the waiting-period requirement as a protective device to preserve the fiscal integrity of state public assistance programs. It is asserted that people who require welfare assistance during their first year of residence in a State are likely to become continuing burdens on state welfare programs. Therefore, the argument runs, if such people can be deterred from entering the jurisdiction by denying them welfare benefits during the first year, state programs to assist long-time residents will not be impaired by a substantial influx of indigent newcomers.⁸

There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions. In the Congress, sponsors of federal legislation to eliminate all residence requirements have been consistently opposed by representatives of state and local welfare agencies who have stressed the fears of the States that elimination of the requirements would result in a heavy influx of individuals into States providing the most generous benefits. The sponsor of the Connecticut requirement said in its support: 'I doubt that Connecticut can and should continue to allow unlimited migration into the state on the basis of offering instant money and permanent income to all who can make their way to the state regardless of their ability to contribute to the economy.' In Pennsylvania, shortly after the enactment of the one-year requirement, the Attorney General issued an opinion construing the one-year requirement strictly because '[a]ny other conclusion would tend to attract the dependents of other states to our Commonwealth.' In the District of Columbia case, the constitutionality of § 3-203 was frankly defended in the District Court and in this Court on the ground that it is designed to protect the jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere.

We do not doubt that the one-year waiting-period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most

⁸ The waiting-period requirement has its antecedents in laws prevalent in England and the American Colonies centuries ago which permitted the ejection of individuals and families if local authorities thought they might become public charges. For example, the preamble of the English Law of Settlement and Removal of 1662 expressly recited the concern, also said to justify the three statutes before us, that large numbers of the poor were moving to parishes where more liberal relief policies were in effect. The 1662 law and the earlier Elizabethan Poor Law of 1601 were the models adopted by the American Colonies. Newcomers to a city, town, or county who might become public charges were "warned out" or "passed on" to the next locality. Initially, the funds for welfare payments were raised by local taxes, and the controversy as to responsibility for particular indigents was between localities in the same State. As States—first alone and then with federal grants—assumed the major responsibility, the contest of nonresponsibility became interstate (original footnote 7)

acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the *Passenger Cases* (1849):

‘For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.’

We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as MR. JUSTICE STEWART said for the Court in *United States v. Guest* (1966):

‘The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

‘. . . [T]he right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.’

Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible.

Alternatively, appellants argue that even if it is impermissible for a State to attempt to deter the entry of all indigents, the challenged classification may be justified as a permissible state attempt to discourage those indigents who would enter the State solely to obtain larger benefits. We observe first that none of the statutes before us is tailored to serve that objective. Rather, the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what in effect are non-rebuttable presumptions that every applicant for assistance in his first year of residence came to the jurisdiction solely to obtain higher benefits. Nothing whatever in any of these records supplies any basis in fact for such a presumption.

More fundamentally, a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. We do not perceive why a mother who is

seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among others factors, the level of a State's public assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.

Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes. Appellants' reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.

We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens.

IV.

Appellants next advance as justification certain administrative and related governmental objectives allegedly served by the waiting-period requirement. They argue that the requirement (1) facilitates the planning of the welfare budget; (2) provides an objective test of residency; (3) minimizes the opportunity for recipients fraudulently to receive payments from more than one jurisdiction; and (4) encourages early entry of new residents into the labor force.

At the outset, we reject appellants' argument that a mere showing of a rational relationship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification. The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.

The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year.

The argument that the waiting period serves as an administratively efficient rule of thumb for determining residency similarly will not withstand scrutiny. The residence requirement and the one-year

waiting-period requirement are distinct and independent prerequisites for assistance under these three statutes, and the facts relevant to the determination of each are directly examined by the welfare authorities.

Similarly, there is no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for less drastic means are available, and are employed, to minimize that hazard.

Pennsylvania suggests that the one-year waiting period is justified as a means of encouraging new residents to join the labor force promptly. But this logic would also require a similar waiting period for long-term residents of the State. A state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only.

We conclude therefore that appellants in these cases do not use and have no need to use the one-year requirement for the governmental purposes suggested. Thus, even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional. Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause.⁹

V.

Connecticut and Pennsylvania argue, however, that the constitutional challenge to the waiting-period requirements must fail because Congress expressly approved the imposition of the requirement by the States as part of the jointly funded AFDC program.

Section 402 (b) of the Social Security Act of 1935, as amended, 42 U. S. C. § 602 (b), provides that:

‘The Secretary shall approve any [state assistance] plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1)

⁹ We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel (original footnote 21.)

who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.’

On its face, the statute does not approve, much less prescribe, a one-year requirement. It merely directs the Secretary of Health, Education, and Welfare not to disapprove plans submitted by the States because they include such a requirement. The legislative history discloses that Congress enacted the directive to curb hardships resulting from lengthy residence requirements.

But even if we were to assume, *arguendo*, that Congress did approve the imposition of a one-year waiting period, it is the responsive state legislation which infringes constitutional rights.

Finally, even if it could be argued that the constitutionality of § 402 (b) is somehow at issue here, it follows from what we have said that the provision, insofar as it permits the one-year waiting-period requirement, would be unconstitutional. Congress may not authorize the States to violate the Equal Protection Clause.

VI.

The waiting-period requirement in the District of Columbia Code involved in No. 33 is also unconstitutional even though it was adopted by Congress as an exercise of federal power. In terms of federal power, the discrimination created by the one-year requirement violates the Due Process Clause of the Fifth Amendment.

Accordingly, the judgments in Nos. 9, 33, and 34 are *Affirmed*.

MR. JUSTICE STEWART, concurring.

In joining the opinion of the Court, I add a word in response to the dissent of my Brother HARLAN, who, I think, has quite misapprehended what the Court’s opinion says.

The Court today does not ‘pick out particular human activities, characterize them as ‘fundamental,’ and give them added protection’ To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.

MR. CHIEF JUSTICE WARREN, with whom MR. JUSTICE BLACK joins, dissenting.

In my opinion the issue before us can be simply stated: May Congress, acting under one of its enumerated powers, impose minimal nationwide residence requirements or authorize the States to do so? Since I believe that Congress does have this power and has constitutionally exercised it in these cases, I must dissent.

I.

The Court insists that § 402 (b) of the Social Security Act ‘does not approve, much less prescribe, a one-year requirement.’ An examination of the relevant legislative materials compels, in my view, the opposite conclusion, i. e., Congress intended to authorize state residence requirements of up to one year.

The Great Depression of the 1930’s exposed the inadequacies of state and local welfare programs and dramatized the need for federal participation in welfare assistance. Congress determined that the Social Security Act, containing a system of unemployment and old-age insurance as well as the categorical assistance programs now at issue, was to be a major step designed to ameliorate the problems of economic insecurity. The primary purpose of the categorical assistance programs was to encourage the States to provide new and greatly enhanced welfare programs.

Each of the categorical assistance programs contained in the Social Security Act allowed participating States to impose residence requirements as a condition of eligibility for benefits. Congress also imposed a one-year requirement for the categorical assistance programs operative in the District of Columbia. The congressional decision to allow the States to impose residence requirements and to enact such a requirement for the District was the subject of considerable discussion. Faced with the competing claims of States which feared that abolition of residence requirements would result in an influx of persons seeking higher welfare payments and of organizations which stressed the unfairness of such requirements to transient workers forced by the economic dislocation of the depression to seek work far from their homes, Congress chose a middle course.

Congress quickly saw evidence that the system of welfare assistance contained in the Social Security Act including residence requirements was operating to encourage States to expand and improve their categorical assistance programs. The decision to retain residence requirements, combined with Congress’ continuing desire to encourage wider state participation in categorical assistance programs, indicates to me that Congress has authorized the imposition by the States of residence requirements.

II.

Congress has imposed a residence requirement in the District of Columbia and authorized the States to impose similar requirements. The issue before us must therefore be framed in terms of whether Congress may create minimal residence requirements, not whether the States, acting alone, may do so. I am convinced that the extent of the burden on interstate travel when compared with the justification for its imposition requires the Court to uphold this exertion of federal power.

In only three cases have we been confronted with an assertion that Congress has impermissibly burdened the right to travel.

Zemel v. Rusk, the most recent of the three cases, provides a framework for analysis. The core inquiry is ‘the extent of the governmental restriction imposed’ and the ‘extent of the necessity for the restriction.’ As already noted, travel itself is not prohibited. Any burden inheres solely in the fact that a potential welfare recipient might take into consideration the loss of welfare benefits for a limited period of time if he changes his residence. Not only is this burden of uncertain degree, but appellees themselves assert there is evidence that few welfare recipients have in fact been deterred by residence requirements.

The insubstantiality of the restriction imposed by residence requirements must then be evaluated in light of the possible congressional reasons for such requirements. One fact which does emerge with clarity from the legislative history is Congress’ belief that a program of cooperative federalism combining federal aid with enhanced state participation would result in an increase in the scope of welfare programs and level of benefits. Given the apprehensions of many States that an increase in benefits without minimal residence requirements would result in an inability to provide an adequate welfare system, Congress deliberately adopted the intermediate course of a cooperative program. Our cases require only that Congress have a rational basis for finding that a chosen regulatory scheme is necessary to the furtherance of interstate commerce. Certainly, a congressional finding that residence requirements allowed each State to concentrate its resources upon new and increased programs of rehabilitation ultimately resulting in an enhanced flow of commerce as the economic condition of welfare recipients progressively improved is rational and would justify imposition of residence requirements under the Commerce Clause.

Appellees suggest, however, that Congress was not motivated by rational considerations. Residence requirements are imposed, they insist, for the illegitimate purpose of keeping poor people from migrating. Not only does the legislative history point to an opposite conclusion, but it also must be noted that ‘[i]nto the motives which induced members of Congress to [act] . . . this Court may not enquire.’ *Arizona v. California* (1931). Since the congressional decision is rational and the restriction on travel insubstantial, I conclude that residence requirements can be imposed by Congress as an exercise of its power to control interstate commerce consistent with the constitutionally guaranteed right to travel.

III.

The era is long past when this Court under the rubric of due process has reviewed the wisdom of a congressional decision that interstate commerce will be fostered by the enactment of certain regulations.

I am convinced that Congress does have power to enact residence requirements of reasonable duration or to authorize the States to do so and that it has exercised this power.

The Court’s decision reveals only the top of the iceberg. Lurking beneath are the multitude of situations in which States have imposed residence requirements including eligibility to vote, to engage in certain

professions or occupations or to attend a state-supported university. Although the Court takes pains to avoid acknowledging the ramifications of its decision, its implications cannot be ignored. I dissent.

MR. JUSTICE HARLAN, dissenting

For reasons which follow, I disagree both with the Court's result and with its reasoning.

I.

[T]he welfare residence requirements are alleged to be unconstitutional on two grounds: first, because they impose an undue burden upon the constitutional right of welfare applicants to travel interstate; second, because they deny to persons who have recently moved interstate and would otherwise be eligible for welfare assistance the equal protection of the laws assured by the Fourteenth Amendment (in the state cases) or the analogous protection afforded by the Fifth Amendment (in the District of Columbia case).

II.

In upholding the equal protection argument, the Court has applied an equal protection doctrine of relatively recent vintage: the rule that statutory classifications which either are based upon certain 'suspect' criteria or affect 'fundamental rights' will be held to deny equal protection unless justified by a 'compelling' governmental interest.

The 'compelling interest' doctrine, which today is articulated more explicitly than ever before, constitutes an increasingly significant exception to the long-established rule that a statute does not deny equal protection if it is rationally related to a legitimate governmental objective. The 'compelling interest' doctrine has two branches. The branch which requires that classifications based upon 'suspect' criteria be supported by a compelling interest apparently had its genesis in cases involving racial classifications, which have, at least since *Korematsu v. United States* (1944),² been regarded as inherently 'suspect.' Today the list apparently has been further enlarged to include classifications based upon recent interstate movement, and perhaps those based upon the exercise of any constitutional right.

I think that this branch of the 'compelling interest' doctrine is sound when applied to racial classifications, for historically the Equal Protection Clause was largely a product of the desire to eradicate legal distinctions founded upon race. However, I believe that the more recent extensions have been unwise.

The second branch of the 'compelling interest' principle is even more troublesome. For it has been held that a statutory classification is subject to the 'compelling interest' test if the result of the classification may be to affect a 'fundamental right'...

I think this branch of the ‘compelling interest’ doctrine particularly unfortunate and unnecessary. It is unfortunate because it creates an exception which threatens to swallow the standard equal protection rule. This branch of the doctrine is also unnecessary. When the right affected is one assured by the Federal Constitution, any infringement can be dealt with under the Due Process Clause.

[F]or the reasons just set forth, this nonracial classification should be judged by ordinary equal protection standards.

For reasons hereafter set forth, a legislature might rationally find that the imposition of a welfare residence requirement would aid in the accomplishment of at least four valid governmental objectives. In light of this undeniable relation of residence requirements to valid legislative aims, it cannot be said that the requirements are ‘arbitrary’ or ‘lacking in rational justification.’ Hence, I can find no objection to these residence requirements under the Equal Protection Clause of the Fourteenth Amendment or under the analogous standard embodied in the Due Process Clause of the Fifth Amendment.

III.

The next issue, which I think requires fuller analysis than that deemed necessary by the Court under its equal protection rationale, is whether a one-year welfare residence requirement amounts to an undue burden upon the right of interstate travel. Four considerations are relevant: First, what is the constitutional source and nature of the right to travel which is relied upon? Second, what is the extent of the interference with that right? Third, what governmental interests are served by welfare residence requirements? Fourth, how should the balance of the competing considerations be struck?

The initial problem is to identify the source of the right to travel asserted by the appellees. Congress enacted the welfare residence requirement in the District of Columbia, so the right to travel which is invoked in that case must be enforceable against congressional action. The residence requirements challenged in the Pennsylvania and Connecticut appeals were authorized by Congress in 42 U. S. C. § 602 (b), so the right to travel relied upon in those cases must be enforceable against the States even though they have acted with congressional approval.

Opinions of this Court and of individual Justices have suggested four provisions of the Constitution as possible sources of a right to travel enforceable against the federal or state governments: the Commerce Clause; the Privileges and Immunities Clause of Art. IV, § 2; the Privileges and Immunities Clause of the Fourteenth Amendment; and the Due Process Clause of the Fifth Amendment. The Commerce Clause can be of no assistance to these appellees, since that clause grants plenary power to Congress, and Congress either enacted or approved all of the residence requirements here challenged. The Privileges and Immunities Clause of Art. IV, § 2, is irrelevant, for it appears settled that this clause neither limits federal power nor prevents a State from distinguishing among its own citizens, but simply

‘prevents a State from discriminating against citizens of other States in favor of its own.’ *Hague v. CIO* (1939) (opinion of Roberts, J.)

The Privileges and Immunities Clause of the Fourteenth Amendment provides that: ‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.’ It is evident that this clause cannot be applicable in the District of Columbia appeal, since it is limited in terms to instances of state action. In the Pennsylvania and Connecticut cases, the respective States did impose and enforce the residence requirements. However, Congress approved these requirements in 42 U. S. C. § 602 (b). The fact of congressional approval, together with this Court’s past statements about the nature of the Fourteenth Amendment Privileges and Immunities Clause, leads me to believe that the clause affords no additional help to these appellees.

The last possible source of a right to travel is one which does operate against the Federal Government: the Due Process Clause of the Fifth Amendment.¹⁰ It is now settled that freedom to travel is an element of the ‘liberty’ secured by that clause. In *Kent v. Dulles* (1958), the Court said:

‘The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . Freedom of movement across frontiers . . . , and inside frontiers as well, was a part of our heritage. . . .’

I therefore conclude that the right to travel interstate is a ‘fundamental’ right which, for present purposes, should be regarded as having its source in the Due Process Clause of the Fifth Amendment.

The next questions are: (1) To what extent does a one-year residence condition upon welfare eligibility interfere with this right to travel?; and (2) What are the governmental interests supporting such a condition? If one accepts evidence put forward by the appellees, to the effect that there would be only a minuscule increase in the number of welfare applicants were existing residence requirements to be done away with, it follows that the requirements do not deter an appreciable number of persons from moving interstate.

Against this indirect impact on the right to travel must be set the interests of the States, and of Congress with respect to the District of Columbia, in imposing residence conditions. There appear to be four such interests. First, it is evident that a primary concern of Congress and the Pennsylvania and Connecticut

¹⁰ Professor Chafee has suggested that the Due Process Clause of the Fourteenth Amendment may similarly protect the right to travel against state interference. However, that clause surely provides no greater protection against the States than does the Fifth Amendment clause against the Federal Government; so the decisive question still is whether Congress may enact a residence requirement (original footnote 29.)

Legislatures was to deny welfare benefits to persons who moved into the jurisdiction primarily in order to collect those benefits. This seems to me an entirely legitimate objective.

A second possible purpose of residence requirements is the prevention of fraud. A residence requirement provides an objective and workable means of determining that an applicant intends to remain indefinitely within the jurisdiction. It therefore may aid in eliminating fraudulent collection of benefits by nonresidents and persons already receiving assistance in other States. There can be no doubt that prevention of fraud is a valid legislative goal. Third, the requirement of a fixed period of residence may help in predicting the budgetary amount which will be needed for public assistance in the future. Obviously, this is a proper objective. Fourth, the residence requirements conceivably may have been predicated upon a legislative desire to restrict welfare payments financed in part by state tax funds to persons who have recently made some contribution to the State's economy, through having been employed, having paid taxes, or having spent money in the State. This too would appear to be a legitimate purpose.

The next question is the decisive one: whether the governmental interests served by residence requirements outweigh the burden imposed upon the right to travel. In my view, a number of considerations militate in favor of constitutionality. First, as just shown, four separate, legitimate governmental interests are furthered by residence requirements. Second, the impact of the requirements upon the freedom of individuals to travel interstate is indirect and, according to evidence put forward by the appellees themselves, insubstantial. Third, these are not cases in which a State or States, acting alone, have attempted to interfere with the right of citizens to travel, but one in which the States have acted within the terms of a limited authorization by the National Government, and in which Congress itself has laid down a like rule for the District of Columbia. Fourth, the legislatures which enacted these statutes have been fully exposed to the arguments of the appellees as to why these residence requirements are unwise, and have rejected them.

Fifth, and of longer-range importance, the field of welfare assistance is one in which there is a widely recognized need for fresh solutions and consequently for experimentation. Invalidation of welfare residence requirements might have the unfortunate consequence of discouraging the Federal and State Governments from establishing unusually generous welfare programs in particular areas on an experimental basis, because of fears that the program would cause an influx of persons seeking higher welfare payments. Sixth and finally, a strong presumption of constitutionality attaches to statutes of the types now before us. Congressional enactments come to this Court with an extremely heavy presumption of validity.

Taking all of these competing considerations into account, I believe that the balance definitely favors constitutionality.

I conclude with the following observations. Today's decision, it seems to me, reflects to an unusual degree the current notion that this Court possesses a peculiar wisdom all its own whose capacity to lead this Nation out of its present troubles is contained only by the limits of judicial ingenuity in contriving new constitutional principles to meet each problem as it arises. For anyone who, like myself, believes that it is an essential function of this Court to maintain the constitutional divisions between state and federal authority and among the three branches of the Federal Government, today's decision is a step in the wrong direction. This resurgence of the expansive view of 'equal protection' carries the seeds of more judicial interference with the state and federal legislative process, much more indeed than does the judicial application of 'due process' according to traditional concepts . . . about which some members of this Court have expressed fears as to its potentialities for setting us judges 'at large.' I consider it particularly unfortunate that this judicial roadblock to the powers of Congress in this field should occur at the very threshold of the current discussions regarding the 'federalizing' of these aspects of welfare relief.

GOLDBERG v. KELLY

397 U.S. 254 (1970)

(to accompany Melanie B. Abbott, *Dignity and Passion: Goldberg v. Kelly (1970)* in **The Poverty Law Canon**, page 91)

Mr. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision is whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program. Their complaint alleged that the New York State and New York City officials administering these programs terminated, or were about to terminate, such aid without prior notice and hearing, thereby denying them due process of law. At the time the suits were filed there was no requirement of prior notice or hearing of any kind before termination of financial aid.¹¹ However, the State and city adopted procedures for notice and hearing after the suits were brought, and the plaintiffs, appellees here, then challenged the constitutional adequacy of those procedures.

The State Commissioner of Social Services amended the State Department of Social Services' Official Regulations to require that local social services officials proposing to discontinue or suspend a recipient's financial aid do so according to a procedure that conforms to either subdivision (a) or subdivision (b) of s 351.26 of the regulations as amended.¹² The City of New York elected to

¹¹ During the course of this litigation most, though not all, of the plaintiffs either received a 'fair hearing' or were restored to the rolls without a hearing. However, even in many of the cases where payments have been resumed, the underlying questions of eligibility that resulted in the bringing of this suit have not been resolved. For example, Mrs. Altigracia Guzman alleged that she was in danger of losing AFDC payments for failure to cooperate with the City Department of Social Services in suing her estranged husband. She contended that the departmental policy requiring such cooperation was inapplicable to the facts of her case. The record shows that payments to Mrs. Guzman have not been terminated, but there is no indication that the basic dispute over her duty to cooperate has been resolved, or that the alleged danger of termination has been removed. Home Relief payments to Juan DeJesus were terminated because he refused to accept counseling and rehabilitation for drug addiction. Mr. DeJesus maintains that he does not use drugs. His payments were restored the day after his complaint was filed. But there is nothing in the record to indicate that the underlying factual dispute in his case has been settled. (original footnote 2)

¹²

The adoption in February 1968 and the amendment in April of Regulation s 351.26 coincided with or followed several revisions by the Department of Health, Education, and Welfare of its regulations implementing 42 U.S.C. s 602(a)(4), which is the provision of the Social Security Act that requires a State to afford a 'fair hearing' to any recipient of aid under a

promulgate a local procedure according to subdivision (b). That subdivision, so far as here pertinent, provides that the local procedure must include the giving of notice to the recipient of the reasons for a proposed discontinuance or suspension at least seven days prior to its effective date, with notice also that upon request the recipient may have the proposal reviewed by a local welfare official holding a position superior to that of the supervisor who approved the proposed discontinuance or suspension, and, further, that the recipient may submit, for purposes of the review, a written statement to demonstrate why his grant should not be discontinued or suspended. The decision by the reviewing official whether to discontinue or suspend aid must be made expeditiously, with written notice of the decision to the recipient. The section further expressly provides that ‘(a)ssistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.’

Pursuant to subdivision (b), the New York City Department of Social Services promulgated Procedure No. 68—18. A caseworker who has doubts about the recipient’s continued eligibility must first discuss them with the recipient. If the caseworker concludes that the recipient is no longer eligible, he recommends termination of aid to a unit supervisor. If the latter concurs, he sends the recipient a letter stating the reasons for proposing to terminate aid and notifying him that within seven days he may request that a higher official review the record, and may support the request with a written statement prepared personally or with the aid of an attorney or other person. If the reviewing official affirms the determination of ineligibility, aid is stopped immediately and the recipient is informed by letter of the reasons for the action. Appellees’ challenge to this procedure emphasizes the absence of any provisions for the personal appearance of the recipient before the reviewing official, for oral presentation of evidence, and for confrontation and cross-examination of adverse witnesses. However, the letter does inform the recipient that he may request a post-termination ‘fair hearing.’ This is a proceeding before an independent state hearing officer at which the recipient may appear personally, offer oral evidence, confront and cross-examine the witnesses against him, and have a record made of the hearing. If the recipient prevails at the ‘fair hearing’ he is paid all funds erroneously withheld. A recipient whose aid is not restored by a ‘fair hearing’ decision may have judicial review.

I

federally assisted program before termination of his aid becomes final. This requirement is satisfied by a post-termination ‘fair hearing’ under regulations presently in effect. A new HEW regulation, now scheduled to take effect in July 1970, would require continuation of AFDC payments until the final decision after a ‘fair hearing’ and would give recipients a right to appointed counsel at ‘fair hearings.’ Another recent regulation now in effect requires a local agency administering AFDC to give ‘advance notice of questions it has about an individual’s eligibility so that a recipient has an opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance.’ Even assuming that the constitutional question might be avoided in the context of AFDC by construction of the Social Security Act or of the present federal regulations thereunder, or by waiting for the new regulations to become effective, the question must be faced and decided in the context of New York’s Home Relief program, to which the procedures also apply. (original footnote 3)

The constitutional issue to be decided, therefore, is the narrow one whether the Due Process Clause requires that the recipient be afforded an evidentiary hearing before the termination of benefits. The District Court held that only a pretermination evidentiary hearing would satisfy the constitutional command, and rejected the argument of the state and city officials that the combination of the post-termination 'fair hearing' with the informal pre-termination review disposed of all due process claims. The court said: 'While post-termination review is relevant, there is one overpowering fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets. Suffice it to say that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it.' The court rejected the argument that the need to protect the public's tax revenues supplied the requisite 'overwhelming consideration.' 'Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance. While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process. Under all the circumstances, we hold that due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result.' Although state officials were party defendants in the action, only the Commissioner of Social Services of the City of New York appealed. We affirm.

Appellant does not contend that procedural due process is not applicable to the termination of welfare benefits. Such benefits are a matter of statutory entitlement for persons qualified to receive them.¹³⁸ Their termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'" *Shapiro v. Thompson* (1969). Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to disqualification for unemployment compensation; or to denial of a tax exemption; or to discharge from public employment. The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in *Cafeteria & Restaurant Workers Union, etc. v. McElroy* (1961), 'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the

13 It may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity.' Much of the existing wealth in this country takes the form of rights that do not fall within traditional common-law concepts of property. It has been aptly noted that '(s)ociety today is built around entitlement. The automobile dealer has his franchise, the doctor and lawyer their professional licenses, the worker his union membership, contract, and pension rights, the executive his contract and stock options; all are devices to aid security and independence. Many of the most important of these entitlements now flow from government: subsidies to farmers and businessmen, routes for airlines and channels for television stations; long term contracts for defense, space, and education; social security pensions for individuals. Such sources of security, whether private or public, are no longer regarded as luxuries or gratuities; to the recipients they are essentials, fully deserved, and in no sense a form of charity. It is only the poor whose entitlements, although recognized by public policy, have not been effectively enforced.' Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 *Yale L.J.* 1245, 1255 (1965). See also Reich, *The New Property*, 73 *Yale L.J.* 733 (1964) (original footnote 8)

government function involved as well as of the private interest that has been affected by governmental action.’

It is true, of course, that some governmental benefits may be administratively terminated without affording the recipient a pre-termination evidentiary hearing. But we agree with the District Court that when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process.¹⁴ For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. Thus the crucial factor in this context—a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy.

Moreover, important governmental interests are promoted by affording recipients a pre-termination evidentiary hearing. From its founding the Nation’s basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to ‘promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.’ The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it; pre-termination evidentiary hearings are indispensable to that end.

Appellant does not challenge the force of these considerations but argues that they are outweighed by countervailing governmental interests in conserving fiscal and administrative resources. These interests, the argument goes, justify the delay of any evidentiary hearing until after discontinuance of the grants. Summary adjudication protects the public fisc by stopping payments promptly upon discovery of reason to believe that a recipient is no longer eligible. Since most terminations are accepted without challenge, summary adjudication also conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held.

We agree with the District Court, however, that these governmental interests are not overriding in the welfare context. The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof. But the State is not without weapons to minimize these

¹⁴ Administrative determination that a person is ineligible for welfare may also render him ineligible for participation in state-financed medical programs. (original footnote 11)

increased costs. Much of the drain on fiscal and administrative resources can be reduced by developing procedures for prompt pre-termination hearings and by skillful use of personnel and facilities. Indeed, the very provision for a post-termination evidentiary hearing in New York's Home Relief program is itself cogent evidence that the State recognizes the primacy of the public interest in correct eligibility determinations and therefore in the provision of procedural safeguards. Thus, the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens. As the District Court correctly concluded, '(t)he stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal.'

II

We also agree with the District Court, however, that the pre-termination hearing need not take the form of a judicial or quasi-judicial trial. We bear in mind that the statutory 'fair hearing' will provide the recipient with a full administrative review. Accordingly, the pre-termination hearing has one function only: to produce an initial determination of the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits. Thus, a complete record and a comprehensive opinion, which would serve primarily to facilitate judicial review and to guide future decisions, need not be provided at the pre-termination stage. We recognize, too, that both welfare authorities and recipients have an interest in relatively speedy resolution of questions of eligibility, that they are used to dealing with one another informally, and that some welfare departments have very burdensome caseloads. These considerations justify the limitation of the pre-termination hearing to minimum procedural safeguards, adapted to the particular characteristics of welfare recipients, and to the limited nature of the controversies to be resolved. We wish to add that we, no less than the dissenters, recognize the importance of not imposing upon the States or the Federal Government in this developing field of law any procedural requirements beyond those demanded by rudimentary due process.

'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean* (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo* (1965). In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.

We are not prepared to say that the seven-day notice currently provided by New York City is constitutionally insufficient per se, although there may be cases where fairness would require that a longer time be given. Nor do we see any constitutional deficiency in the content or form of the notice.

New York employs both a letter and a personal conference with a caseworker to inform a recipient of the precise questions raised about his continued eligibility. Evidently the recipient is told the legal and factual bases for the Department's doubts. This combination is probably the most effective method of communicating with recipients.

The city's procedures presently do not permit recipients to appear personally with or without counsel before the official who finally determines continued eligibility. Thus a recipient is not permitted to present evidence to that official orally, or to confront or cross-examine adverse witnesses. These omissions are fatal to the constitutional adequacy of the procedures.

The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decision maker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence.

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. What we said in *Greene v. McElroy* (1959) is particularly pertinent here:

'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.'

Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.

‘The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.’ *Powell v. Alabama* (1932). We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires. Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient. We do not anticipate that this assistance will unduly prolong or otherwise encumber the hearing. Evidently HEW has reached the same conclusion.

Finally, the decisionmaker’s conclusion as to a recipient’s eligibility must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. We agree with the District Court that prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as a decision maker. He should not, however, have participated in making the determination under review.

Affirmed.

Mr. Justice BLACK, dissenting.

In the last half century the United States, along with many, perhaps most, other nations of the world, has moved far toward becoming a welfare state, that is, a nation that for one reason or another taxes its most affluent people to help support, feed, clothe, and shelter its less fortunate citizens. The result is that today more than nine million men, women, and children in the United States receive some kind of state or federally financed public assistance in the form of allowances or gratuities, generally paid them periodically, usually by the week, month, or quarter. Since these gratuities are paid on the basis of need, the list of recipients is not static, and some people go off the lists and others are added from time to time. These ever-changing lists put a constant administrative burden on government and it certainly could not have reasonably anticipated that this burden would include the additional procedural expense imposed by the Court today.

The more than a million names on the relief rolls in New York,⁵ and the more than nine million names on the rolls of all the 50 States were not put there at random. The names are there because state welfare officials believed that those people were eligible for assistance. Probably in the officials’ haste to make out the lists many names were put there erroneously in order to alleviate immediate suffering, and undoubtedly some people are drawing relief who are not entitled under the law to do so. Doubtless some draw relief checks from time to time who know they are not eligible, either because they are not actually in need or for some other reason. Many of those who thus draw undeserved gratuities are without sufficient property to enable the government to collect back from them any money they wrongfully receive. But the Court today holds that it would violate the Due Process Clause of the Fourteenth Amendment to stop paying those people weekly or monthly allowances unless the government first affords them a full ‘evidentiary hearing’ even though welfare officials are persuaded that the recipients are not rightfully entitled to receive a penny under the law. In other words, although some recipients

might be on the lists for payment wholly because of deliberate fraud on their part, the Court holds that the government is helpless and must continue, until after an evidentiary hearing, to pay money that it does not owe, never has owed, and never could owe. I do not believe there is any provision in our Constitution that should thus paralyze the government's efforts to protect itself against making payments to people who are not entitled to them.

Particularly do I not think that the Fourteenth Amendment should be given such an unnecessarily broad construction. That Amendment came into being primarily to protect Negroes from discrimination, and while some of its language can and does protect others, all know that the chief purpose behind it was to protect ex-slaves. The Court, however, relies upon the Fourteenth Amendment and in effect says that failure of the government to pay a promised charitable instalment to an individual deprives that individual of his own property, in violation of the Due Process Clause of the Fourteenth Amendment. It somewhat strains credulity to say that the government's promise of charity to an individual is property belonging to that individual when the government denies that the individual is honestly entitled to receive such a payment.

I would have little, if any, objection to the majority's decision in this case if it were written as the report of the House Committee on Education and Labor, but as an opinion ostensibly resting on the language of the Constitution I find it woefully deficient. Once the verbiage is pared away it is obvious that this Court today adopts the views of the District Court 'that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable,' and therefore, says the Court, unconstitutional. The majority reaches this result by a process of weighing 'the recipient's interest in avoiding' the termination of welfare benefits against 'the governmental interest in summary adjudication.' Today's balancing act requires a 'pre-termination evidentiary hearing,' yet there is nothing that indicates what tomorrow's balance will be. Although the majority attempts to bolster its decision with limited quotations from prior cases, it is obvious that today's result doesn't depend on the language of the Constitution itself or the principles of other decisions, but solely on the collective judgment of the majority as to what would be a fair and humane procedure in this case.

For the foregoing reasons I dissent from the Court's holding. The operation of a welfare state is a new experiment for our Nation. For this reason, among others, I feel that new experiments in carrying out a welfare program should not be frozen into our constitutional structure. They should be left, as are other legislative determinations, to the Congress and the legislatures that the people elect to make our laws.

Rosado v. Wyman

397 U.S. 397 (1970)

(to accompany Wendy A. Bach, *Litigating in the Zeitgeist: Rosado v. Wyman* (1970) in **The Poverty Law Canon**, page 109)

Mr. Justice HARLAN delivered the opinion of the Court.

The present controversy, which involves the compatibility of the New York Social Services Law, with s 402(a)(23) of the Social Security Act of 1935, arises out of a pendent claim bringing a class action challenging the same New York statute as violative of equal protection by virtue of its provision for lesser payments to Aid to Families With Dependent Children recipients in Nassau County than those allowed for New York City residents.

I

[The Supreme Court upheld the district court jurisdiction over the statutory claim, and the court's decision that the case was not moot and that the plaintiffs did not have to exhaust an administrative remedy with the Department of Health, Education and Welfare before filing their lawsuit.]

II

We turn to the merits which may be broadly characterized as involving the interpretation of s 402(a)(23) of the Social Security Amendments of 1967 and its application to certain changes inaugurated by New York in its method of computing welfare benefits that have resulted in reduced payments to these petitioners and, on a broader scale, decreased by some \$40 million the State's public assistance undertaking.

A

The general topography of the AFDC program was mapped in part by this Court in and several lower court opinions, have surveyed the pertinent statutory and regulatory provisions.²⁰ While participating States must comply with the terms of the federal legislation, the program is

²⁰ According to information supplied by HEW in 1967, reported in the Explanation of Provisions of H.R. 5710, p. 36, \$3,100 annually for a family of four marked the 'poverty' level. According to the report, 'Although a few States define need at or above the poverty level, no State pays as much as that amount.' It further appears that at that time 33 States provided less than their avowed standard of need which frequently fell short of the poverty mark. While New York purports to have paid its full standard, it would thus appear not to have paid enough to take a family out of poverty. (original footnote 11)

basically voluntary and States have traditionally been at liberty to pay as little or as much as they choose, and there are, in fact, striking differences in the degree of aid provided among the States.

There are two basic factors that enter into the determination of what AFDC benefits will be paid. First, it is necessary to establish a 'standard of need,' a yardstick for measuring who is eligible for public assistance. Second, it must be decided how much assistance will be given, that is, what 'level of benefits' will be paid. On both scores Congress has always left to the States a great deal of discretion. Thus, some States include in their 'standard of need' items that others do not take into account. Diversity also exists with respect to the level of benefits in fact paid. Some States impose so-called dollar maximums on the amount of public assistance payable to any one individual or family. Such maximums establish the upper limit irrespective of how far short the limitation may fall of the theoretical standard of need. Other States curtail the payments of benefits by a system of 'ratable reductions' whereby all recipients will receive a fixed percentage of the standard of need.²¹ It is, of course, possible to pay 100% of need as defined. New York, in fact, purports to do so.

B

In 1967 the Administration introduced omnibus legislation to amend the social security laws. The relevant AFDC proposals provided for more adequate assistance to welfare recipients and set up several programs for education and training accompanied by child care provisions designed to permit AFDC parents to take advantage of the training programs. [This provision], however, was stillborn and no such provision was contained in the ultimate bill reported out by the House Ways and Means Committee.

The Administration's renewed efforts, on behalf of a mandatory increase in benefit payments under the categorical assistance programs, met with only limited success, resulting in [section 213(a)] in the Senate version, which provided for a mandatory \$7.50 per month increase in the standards and benefits for the adult categories, and s 213 (b) which is, in substance, the present s 402(a) (23). The Committee's comment on 213(b), to the effect that States would be required 'to price their standards . . . to reflect changes in living costs,' tracks the statutory language.'²²

21 A maximum may either be fixed in relation to the number of persons on welfare, e.g., X dollars per child, no matter what age, or in terms of a family, X dollars per family unit, irrespective of the number of persons in the unit. This latter procedure has been challenged on equal protection grounds. A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is some income that is first deducted, the ratable reduction is applied to the amount by which the individual or family income falls short of need. (original footnote 13)

22 The comment to s 213 in the Senate Report reads: 'Social security benefits have been increased 15 percent across the board by the committee with a minimum of \$70, for an average increase of 20 percent. However, there is no similar across-the-board increase in the amount of benefits payable to aged welfare recipients. In view of this situation and the need to recognize that the increase in the cost of living since the last change made in the Federal matching formula in 1965 also is detrimental to the well-being of these recipients, the committee is recommending a further change in the law. It is proposed that the law be amended to provide that recipients of old-age assistance, aid to the blind, and aid to the permanently and totally

The Conference Committee eliminated the Senate provision in s 213 which would have required an annual adjustment for cost of living, and s 402 was enacted. It now provides:

‘(The States shall) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.’

C

The background of s 402(a)(23) reveals little except that we have before us a child born of the silent union of legislative compromise. Thus, Congress, as it frequently does, has voiced its wishes in muted strains and left it to the courts to discern the theme in the cacophony of political understanding. Our chief resources in this undertaking are the words of the statute and those common-sense assumptions that must be made in determining direction without a compass.

Reverting to the language of s 402(a)(23) we find two separate mandates: first, the States must re-evaluate the component factors that compose their need equation; and, second, any ‘maximums’ must be adjusted.

We think two broad purposes may be ascribed to s 402(a)(23): First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second to prod the States to apportion their payments on a more equitable basis. Consistent with this interpretation of s 402(a) (23), a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need.

The congressional purpose we discern does not render s 402(a)(23) a meaningless exercise in ‘bookkeeping.’ Congress sometimes legislates by innuendo, making declarations of policy and indicating a preference while requiring measures that though falling short of legislating its goals, serve as a nudge in the preferred directions. In 402(a)(23) Congress has spoken in favor of

disabled shall receive an average increase in assistance plus social security or assistance alone (for the recipients who do not receive social security benefits) of \$7.50 a month.

‘To accomplish these changes, the States would have to adjust their standards and any maximums imposed on payments by July 1, 1968, so as to produce an average increase of \$7.50 from assistance alone or assistance and social security benefits (or other income). Any State which wishes to do so can claim credit for any increase it may have made since December 31, 1966. Thus, no State needs to make an increase to the extent that it has recently done so.

‘States would be required to price their standards used for determining the amount of assistance under the AFDC program by July 1, 1969 and to reprice them at least annually thereafter, adjusting the standards and any maximums imposed on payments to reflect changes in living costs. (original footnote 16)

increases in AFDC payments. While Congress rejected the mandatory adjustment provision in the administration bill, it embodied in legislation the cost-of-living exercise which has both practical and political consequences.

It has the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions. Secondly, while it leaves the States free to effect downward adjustments in the level of benefits paid, it accomplishes within that framework the goal, however modest, of forcing a State to accept the political consequence of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable. Lastly, by imposing on those States that desire to maintain ‘maximums’ the requirement of an appropriate adjustment, Congress has introduced an incentive to abandon a flat ‘maximum’ system, thereby encouraging those States desirous of containing their welfare budget to shift to a percentage system that will more equitably apportion those funds in fact allocated for welfare and also more accurately reflect the real measure of public assistance being given.

While we do not agree with the broad interpretation given s 402(a)(23) by the District Court, we cannot accept the conclusion reached by the two-judge majority in the Court of Appeals—that s 42(a)(23) does not affect New York. It follows from what we fathom to be the congressional purpose that a State may not redefine its standard of need in such a way that it skirts the requirement of re-evaluating its existing standard. This would render the cost-of-living reappraisal a futile, hollow, and, indeed, a deceptive gesture, and would avoid the consequences of increasing the numbers of those eligible and facing up to the failure to allocate sufficient funds to provide for them.

These conclusions, if not compelled by the words of the statute or manifested by legislative history, represent the natural blend of the basic axiom—that courts should construe all legislative enactments to give them some meaning—with the compromise origins of s 402(a)(23), set forth above. This background, we think, precludes the more adventuresome reading that petitioners and the District Court would give the statute. This reading is also buttressed by the fact that this construction has been placed on the statute by the Department of Health, Education, and Welfare. While, in view of Congress’ failure to track the Administration proposals and its substitution without comment of the present compromise section, HEW’s construction commands less than the usual deference that may be accorded an administrative interpretation based on its expertise, it is entitled to weight as the attempt of an experienced agency to harmonize an obscure enactment with the basic structure of a program it administers.

D

While the application of the statute to the New York program is by no means simple, we think the evidence adduced supports the ultimate finding of the District Court, unquestioned by the Court of Appeals, that New York has, in effect, impermissibly lowered its standard of need by eliminating items that were included prior to the enactment of s 402(a)(23).

Prior to March 31, 1969, New York computed its standard of need on an individualized basis. Schedules existed showing the cost of particular items of recurring need, for example, food and clothing required by children at given ages. Payments of 'recurring' grants were made to families based on the number of children per household and the age of the oldest child. Additional payments, designated as 'special needs grants,' were also made. Under an experiment in New York City instituted August 27, 1968, many allowances for special needs were eliminated and a flat grant of \$100 per person was substituted.

Chapter 184 of the Session Laws, the present s 131a, radically altered the New York approach. In lieu of individualized grants for 'recurring' needs to be supplemented by special grants or the flat \$100 grant, New York adopted a system fixing maximum allowances per family based on the number of individuals per household. The maximum dollar amounts were established by ascertaining '(t)he mean age of the oldest child in each size family.' While these family maximums are exclusive of rent and fuel costs the District Court found that '(s)pecial grants were seemingly not included in these computations. No attempt was made to average them out across the state and then to add that figure to that of the basic recurring grant.'

The impact of the new system has been to reduce substantially benefits paid to families of these petitioners and of those similarly situated, and to decrease benefits to New York City recipients by almost \$40,000,000. The effect of the new program on upstate cases is less severe, with gains to some families apparently cancelling out losses to others, but the net effect is a drastic reduction in overall payments since New York City recipients compose approximately 72% of the State's welfare clientele.

E

Notwithstanding this \$40,000,000 decrease in welfare payments after adjustment for increases in the cost of living, the State argues that the present s 131a represents neither an attempt to circumvent federal requirements nor a reduction in the content of its former standard. The conversion to a flat grant maximum system is justified as an advance in administrative efficiency.

While s 402(a)(23) does not prevent the State from pursuing what is beyond dispute the laudable goal of administrative efficiency,²³ we think Congress has foreclosed them from achieving this purpose at the expense of significantly reducing the content of their standard of need. The findings and conclusions of the District Court, undisturbed by the Court of Appeals and

23 HEW's position, set forth in the Government's Amicus Memorandum, p. 12, seems to be that under its regulations, a 'reduction of content' does not necessarily result from 'reductions in the recognition of special needs.' The Department has, however, recognized both administratively and in the Government's Memorandum that certain 'special' needs should properly be regarded as part of the basic standard. Thus, which the memorandum suggests that payments for special diets or special attendants are extraordinary and not susceptible of averaging, it leaves open the question whether New York's special grants have not been for recurring items which are basic. (original footnote 21)

supported by the record, clearly demonstrate that a significant reduction has here occurred. It is conceded by respondents that the present program does not include allowances for the items formerly covered by the so-called 'special' grants.

We have no occasion to decide on the record before us whether we agree with that part of HEW's interpretation of s 402(a)(23) that might approve elimination of grants for particular needs, without out some averaging or other provision therefor such as direct payments to the provider of services. It suffices in this case that particular items such as laundry and telephones, had formerly been deemed essential by New York, and were considered regular recurring expenses to a significant number of New York City welfare residents. We need look no farther than the state social service department's own regulations and the action taken by the state administrators in providing the \$25 per quarter cyclical grant to city residents in the 1968 pilot project.

This persuasive, if not conclusive, evidence of what constituted the standard of need is further supported by testimony of the administrators of New York's welfare program to the effect that these grants covered costs for essentials of life for numerous welfare residents in New York City.

F

We reach our conclusions without relying on the finding made by the court below that in s 131a New York was attempting to constrict its welfare payments. Speculation as to legislative and executive motive is to be shunned. Section 402(a)(23) invalidates any state program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of s 402(a)(23), unless a State can demonstrate that the items formerly included no longer constituted part of the reality of existence for the majority of welfare recipients. We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages. Obviously such averaging may affect some families adversely and benefit others. Moreover, it is conceivable that the net payout, assuming no change in the level of benefits, may be somewhat less under a streamlined program. Providing all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with s 402(a)(23) redefine its method for determining need. A State may, moreover, as we have noted, accommodate any increases in its standard by reason of 'cost-of-living' factors to its budget by reducing its level of benefits. What is at the heart of this dispute is the elimination of special grants in the New York program, not the system of maximum grants based on average age. Lest there be uncertainty we also reiterate that New York is not foreclosed from accounting for basic and recurring items of need formerly subsumed in the special grant category by an averaging system like that adopted in the 1968 New York City experiment with cyclical grants.

III

New York is, of course, in no way prohibited from using only state funds according to whatever plan it chooses, providing it violates no provision of the Constitution. It follows, however, from

our conclusion that New York's program is incompatible with s 402(a)(23), that petitioners are entitled to declaratory relief and an appropriate injunction by the District Court against the payment of federal monies according to the new schedules, should the State not develop a conforming plan within a reasonable period of time.

We have considered and rejected the argument that a federal court is without power to review state welfare provisions or prohibit the use of federal funds by the States in view of the fact that Congress has lodged in the Department of HEW the power to cut off federal funds for noncompliance with statutory requirements. We are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program.

We see no justification in principle for drawing a distinction between invalidating a single nonconforming provision or an entire program. In both circumstances federal funds are being allocated and paid in a manner contrary to that intended by Congress. In the case before us, noncompliance with s 402(a)(23) may result in limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress. We may also assume that Congress would not countenance the circumnavigation of the political consequences of s 402(a)(23) by permitting States to use federal funds while obscuring the actual extent to which their programs fall short of the ideal.

Unlike *King v. Smith*, however, any incremental cost to the State, assuming a desire to comply with s 402(a)(23), is massive; nor is there a discreet and severable provision whose enforcement can be prohibited. Accordingly, we remand the case to the District Court to fix a date that will afford New York an opportunity to revise its program in accordance with the requirements of s 402 if the State wishes to do so.

In conclusion, we add simply this. While we view with concern the escalating involvement of federal courts in this highly complicated area of welfare benefits, one that should be formally placed under the supervision of HEW, at least in the first instance, we find not the slightest indication that Congress meant to deprive federal courts of their traditional jurisdiction to hear and decide federal questions in this field. It is, of course, no part of the business of this Court to evaluate, apart from federal constitutional or statutory challenge, the merits or wisdom of any welfare programs, whether state or federal, in the large or in the particular. It is, on the other hand, peculiarly part of the duty of this tribunal, no less in the welfare field than in other areas of the law, to resolve disputes as to whether federal funds allocated to the States are being expended in consonance with the conditions that Congress has attached to their use. As Mr. Justice Cardozo stated, speaking for the Court of *Helvering v. Davis*, 'When (federal) money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states.'

Reversed and remanded.

Mr. Justice DOUGLAS, concurring.
While I join this opinion of the Court, I add a few words.

I

[Justice Douglas concurred in the Court's ruling that the district court had pendent jurisdiction over the statutory ground after the three-judge court dissolved itself.]

II

The fact that the Department of Health, Education, and Welfare is studying the relationship between the contested provision of the New York statute and the relevant section of the Social Security Act is irrelevant to the judicial problem. Once a State's AFDC plan is initially approved by the Secretary of HEW, federal funds are provided the State until the Secretary finds, after notice and opportunity for hearing to the State, that changes in the plan or the administration of the plan are in conflict with the federal requirements.

The statutory provisions for review by HEW of state AFDC plans do not permit private individuals, namely, present or potential welfare recipients, to initiate or participate in these compliance hearings. Thus, there is no sense in which these individuals can be held to have failed to exhaust their administrative remedies by the fact that there has been no HEW determination on the compliance of a state statute with the federal requirements. In the present case, that problem was discussed in terms of the District Court's discretion to refuse to exercise pendent jurisdiction. The argument for such a refusal has little to comment it. HEW has been extremely reluctant to apply the drastic sanction of cutting off federal funds to States that are not complying with federal law. Instead, HEW usually settles its differences with the offending States through informal negotiations.

Whether HEW could provide a mechanism by which welfare recipients could theoretically get relief is immaterial. It has not done so, which means there is no basis for the refusal of federal courts to adjudicate the merits of these claims. Their refusal to act merely forces plaintiffs into the state courts which certainly are no more competent to decide the federal question than are the federal courts. The terms of the New York statute are clear, and there is no way in which a state court could interpret the challenged law in a way that would avoid the statutory claim pressed here.

State participation in federal welfare programs is not required. States may choose not to apply for federal assistance or may join in some, but not all, of the various programs, of which AFDC is only one. That a State may choose to refuse to comply with the federal requirements at the cost of losing federal funds is, of course, a risk that any welfare plaintiff takes. As long as a State is receiving federal funds, however, it is under a legal requirement to comply with the federal conditions placed on the receipt of those funds; and individuals who are adversely affected by the failure of the State to comply with the federal requirements in distributing those federal funds are entitled to a judicial determination of such a claim. The duty of a State, which receives this

federal bounty to comply with the conditions imposed by Congress was adverted to by Mr. Justice Cardozo who wrote for the Court in *Steward Machine Co. v. Davis*, sustaining the constitutionality of the Social Security Act:

‘Alabama is seeking and obtaining a credit of many millions in favor of her citizens out of the Treasury of the nation. Nowhere in our scheme of government—in the limitations express or implied of our Federal Constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received.’

Where the suit involves an alleged conflict between the state regulation and the federal law, neither the United States nor HEW is a necessary party to such an action. The wrong alleged is the State’s failure to comply with federal requirements in its use of federal funds, not HEW’s failure to withhold funds from the State.

Whether HEW should withhold federal funds is entrusted to it, at least as a preliminary matter, by s 404(a) of the Social Security Act. Whether the courts have any role to perform beyond ruling on an alleged conflict between the state regulation and the federal law is a question we need not reach.

Mr. Justice BLACK, with whom THE CHIEF JUSTICE joins, dissenting.

I regret that I cannot join an opinion which fails to give due consideration to the unmistakable intent of the Social Security Act to give HEW primary jurisdiction over these highly technical and difficult welfare questions, which affirms what is to me a clear abuse of discretion by the District Court, and which plunges this Court and other federal courts into an ever-increasing and unnecessary involvement in the administration of the Nation’s categorical assistance programs administered by the States.

So that HEW may determine whether the state plan continues at all times to meet the federal requirements, each State is required by regulation to submit all relevant changes, such as new state statutes, regulations, and court decisions, to HEW for its review. If, after affording the State reasonable notice and an opportunity for a hearing, HEW determines that the state plan does not conform to the federal requirements, the federal agency then has a legal obligation to terminate federal aid to which the State would otherwise be entitled. Waiver by the Secretary of any of the federal requirements is permitted only where the Secretary and state welfare officials have together undertaken a ‘demonstration’ or experimental welfare project. The administrative procedures that the Secretary must afford a State before denying or curtailing the use of federal funds are elaborated in 42 U.S.C. s 1316 (1964 ed., Supp. IV), and this section also provides that a State can obtain judicial review in a United States court of appeals of an adverse administrative determination.

This unified, coherent scheme for reviewing state welfare rules and practices was established by Congress to ensure that the federal purpose behind AFDC is fully carried out. The statutory provisions evidence a clear intent on the part of Congress to vest in HEW the primary

responsibility for interpreting the federal Act and enforcing its requirements against the States. Although the agency's sanction, the power to terminate federal assistance, might seem at first glance to be a harsh and inflexible remedy, Congress wisely saw that in the vast majority of cases a credible threat of termination will be more than sufficient to bring about compliance.

These procedures, if followed as Congress intended, would render unnecessary countless lawsuits by welfare recipients. In the case before the Court today it is undisputed that HEW had by the time of the proceedings in the District Court commenced its own administrative proceedings to determine whether s 131a conforms to the Social Security Act's provisions. The agency had requested the New York welfare officials to provide detailed information regarding the statute and was preparing to make its statutorily required decision on the conformity or nonconformity of s 131a. It was at this point, when HEW was in the midst of performing its statutory obligation, that the District Court assumed jurisdiction over petitioners' claim and decided the very state-federal issue then pending before HEW.

I agree with the Court of Appeals that the District Court abused its discretion in taking jurisdiction over this case, but I would go further than holding that the District Court's action was a mere abuse of discretion. Ensuring that the federal courts have the benefit of HEW's expertise in the welfare area is an important but by no means the only consideration supporting the limitation of judicial intervention at this stage. Congress has given to HEW the grave responsibility of guaranteeing that in each case where federal AFDC funds are used, federal policies are followed, and it has established procedures through which HEW can enforce the federal interests against the States. I think these congressionally mandated compliance procedures should be the exclusive ones until they have run their course. The explicitness with which Congress set out the HEW compliance procedures without referring to other remedies suggests that such was the congressional intent.

But more fundamentally, I think it will be impossible for HEW to fulfill its function under the Social Security Act if its proceedings can be disrupted and its authority undercut by courts which rush to make precisely the same determination that the agency is directed by the Act to make. And in instances when HEW is confronted with a particularly sensitive question, the agency might be delighted to be able to pass on to the courts its statutory responsibility to decide the question. In the long run, then, judicial pre-emption of the agency's rightful responsibility can only lead to the collapse of the enforcement scheme envisioned by Congress, and I fear that this case and others have carried such a process well along its way.

Finally, there is the very important consideration of judicial economy and the prevention of premature and unnecessary lawsuits, particularly at this time when the courts are overrun with litigants on every subject. If courts are permitted to consider the identical questions pending before HEW for its determination, inevitably they will hand down a large number of decisions that could have been mooted if only they had postponed deciding the issues until the administrative proceedings were completed.

For all these reasons I would go one step further than the Court of Appeals majority and hold that all judicial examinations of alleged conflicts between state and federal AFDC programs prior to a final HEW decision approving or disapproving the state plan are fundamentally inconsistent with the enforcement scheme created by Congress and hence such suits should be completely precluded. This preclusion of judicial action does not, of course, necessarily mean that the individual welfare recipient has no legal remedies. The precise questions of when and under what circumstances individual welfare recipients can properly seek federal judicial review are not before the Court, however, and I express no views about those issues.

Dandridge v. Williams

397 U.S. 471 (1970)

(to accompany Julie A. Nice, *A Sweeping Refusal of Equal Protection: Dandridge v. Williams (1970)*, in **The Poverty Law Canon**, page 129)

Mr. Justice STEWART delivered the opinion of the Court.

This case involves the validity of a method used by Maryland, in the administration of an aspect of its public welfare program, to reconcile the demands of its needy citizens with the finite resources available to meet those demands. Like every other State in the Union, Maryland participates in the Federal Aid to Families With Dependent Children, which originated with the Social Security Act of 1935. Under this jointly financed program, a State computes the so-called 'standard of need' of each eligible family unit within its borders. Some States provide that every family shall receive grants sufficient to meet fully the determined standard of need. Other States provide that each family unit shall receive a percentage of the determined need. Still others provide grants to most families in full accord with the ascertained standard of need, but impose an upper limit on the total amount of money any one family unit may receive. Maryland, through administrative adoption of a 'maximum grant regulation,' has followed this last course. This suit was brought by several AFDC recipients to enjoin the application of the Maryland maximum grant regulation on the ground that it is in conflict with the Social Security Act of 1935 and with the Equal Protection Clause of the Fourteenth Amendment. A three-judge District Court held that the Maryland regulation violates the Equal Protection Clause.

The operation of the Maryland welfare system is not complex. By statute the State participates in the AFDC program. It computes the standard of need for each eligible family based on the number of children in the family and the circumstances under which the family lives. In general, the standard of need increases with each additional person in the household, but the increments become proportionately smaller. The regulation here in issue imposes upon the grant that any single family may receive an upper limit of \$250 per month in certain counties and Baltimore City, and of \$240 per month elsewhere in the State. The appellees all have large families, so that their standards of need as computed by the State substantially exceed the maximum grants that they actually receive under the regulation. The appellees urged in the District Court that the maximum grant limitation operates to discriminate against them merely because of the size of their families, in violation of the Equal Protection Clause of the Fourteenth Amendment. They claimed further that the regulation is incompatible with the purpose of the Social Security Act of 1935, as well as in conflict with its explicit provisions.

In its original opinion the District Court held that the Maryland regulation does conflict with the federal statute, and also concluded that it violates the Fourteenth Amendment's equal protection guarantee. After reconsideration on motion, the court issued a new opinion resting its determination of the regulation's invalidity entirely on the constitutional ground. Both the statutory and constitutional issues have been fully briefed and argued here, and the judgment of

the District Court must, of course, be affirmed if the Maryland regulation is in conflict with either the federal statute or the Constitution. We consider the statutory question first, because if the appellees' position on this question is correct, there is no occasion to reach the constitutional issues.

I

The appellees contend that the maximum grant system is contrary to s 402(a) (10) of the Social Security Act which requires that a state plan shall

‘provide . . . that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.’

The argument is that the state regulation denies benefits to the younger children in a large family. Thus, the appellees say, the regulation is in patent violation of the Act, since those younger children are just as ‘dependent’ as their older siblings under the definition of ‘dependent child’ fixed by federal law. Moreover, it is argued that the regulation, in limiting the amount of money any single household may receive, contravenes a basic purpose of the federal law by encouraging the parents of large families to ‘farm out’ their children to relatives whose grants are not yet subject to the maximum limitation.

It cannot be gainsaid that the effect of the Maryland maximum grant provision is to reduce the per capita benefits to the children in the largest families. Although the appellees argue that the younger and more recently arrived children in such families are totally deprived of aid, a more realistic view is that the lot of the entire family is diminished because of the presence of additional children without any increase in payments. It is no more accurate to say that the last child's grant is wholly taken away than to say that the grant of the first child is totally rescinded. In fact, it is the family grant that is affected. Whether this per capita diminution is compatible with the statute is the question here. For the reasons that follow, we have concluded that the Maryland regulation is permissible under the federal law.

In *King v. Smith*, we stressed the States' ‘undisputed power,’ under these provisions of the Social Security act, ‘to set the level of benefits and the standard of need.’ We described the AFDC enterprise as ‘a scheme of cooperative federalism,’ and noted carefully that ‘(t)here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.’

Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds.

Congress has been so desirous of keeping dependent children within a family that in the Social Security Amendments of 1967 it provided that aid could go to children whose need arose merely from their parents' unemployment, under federally determined standards, although the parent was not incapacitated.

The States must respond to this federal statutory concern for preserving children in a family environment. Given Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family. We see nothing in the federal statute that forbids a State to balance the stresses that uniform insufficiency of payments would impose on all families against the greater ability of large families—because of the inherent economies of scale—to accommodate their needs to diminished per capita payments. The strong policy of the statute in favor of preserving family units does not prevent a State from sustaining as many families as it can, and providing the largest families somewhat less than their ascertained per capita standard of need. Nor does the maximum grant system necessitate the dissolution of family bonds. For even if a parent should be inclined to increase his per capita family income by sending a child away, the federal law requires that the child, to be eligible for AFDC payments, must live with one of several enumerated relatives. The kinship tie may be attenuated but it cannot be destroyed.

The appellees rely most heavily upon the statutory requirement that aid 'shall be furnished with reasonable promptness to all eligible individuals.' 42 U.S.C. s 602(a)(10). But since the statute leaves the level of benefits within the judgment of the State, this language cannot mean that the 'aid' furnished must equal the total of each individual's standard of need in every family group. Indeed the appellees do not deny that a scheme of proportional reductions for all families could be used that would result in no individual's receiving aid equal to his standard of need. As we have noted, the practical effect of the Maryland regulation is that all children, even in very large families, do receive some aid. We find nothing in 42 U.S.C. s 602(a)(10) that requires more than this. So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated.

This is the view that has been taken by the Secretary of Health, Education, and Welfare (HEW), who is charged with the administration of the Social Security Act and the approval of state welfare plans. The parties have stipulated that the Secretary has, on numerous occasions, approved the Maryland welfare scheme, including its provision of maximum payments to any one family, a provision that has been in force in various forms since 1947. Moreover, a majority of the States pay less than their determined standard of need, and 20 of these States impose maximums on family grants of the kind here in issue. The Secretary has not disapproved any state plan because of its maximum grant provision. On the contrary, the Secretary has explicitly recognized state maximum grant systems.

Finally, Congress itself has acknowledged a full awareness of state maximum grant limitations. In the Amendments of 1967 Congress added to s 402(a) a subsection, (23):

‘(The State shall) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.’

This specific congressional recognition of the state maximum grant provisions is not, of course, an approval of any specific maximum. The structure of specific maximums Congress left to the States, and the validity of any such structure must meet constitutional tests. However, the above amendment does make clear that Congress fully recognized that the Act permits maximum grant regulations.

For all of these reasons, we conclude that the Maryland regulation is not prohibited by the Social Security Act.

II

Although a State may adopt a maximum grant system in allocating its funds available for AFDC payments without violating the Act, it may not, of course, impose a regime of invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. Maryland says that its maximum grant regulation is wholly free of any invidiously discriminatory purpose or effect, and that the regulation is rationally supportable on at least four entirely valid grounds. The regulation can be clearly justified, Maryland argues, in terms of legitimate state interests in encouraging gainful employment, in maintaining an equitable balance in economic status as between welfare families and those supported by a wage-earner, in providing incentives for family planning, and in allocating available public funds in such a way as fully to meet the needs of the largest possible number of families. The District Court, while apparently recognizing the validity of at least some of these state concerns, nonetheless held that the regulation ‘is invalid on its face for overreaching’—that it violates the Equal Protection Clause ‘(b)ecause it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply’

If this were a case involving government action claimed to violate the First Amendment guarantee of free speech, a finding of ‘overreaching’ would be significant and might be crucial. For when otherwise valid governmental regulation sweeps so broadly as to impinge upon activity protected by the First Amendment, its very overbreadth may make it unconstitutional. But the concept of ‘overreaching’ has no place in this case. For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families. For this Court to approve the invalidation of state economic or social regulation as ‘overreaching’ would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws ‘because they may be unwise, improvident, or out of harmony with a particular school of thought.’ *Williamson v. Lee Optical of Oklahoma, Inc.* That era long ago passed into

history.

In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley v. Carbonic Gas Co.* The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.'

To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for applying a different constitutional standard. It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy.

Under this long-established meaning of the Equal Protection Clause, it is clear that the Maryland Maximum grant regulation is constitutionally valid. We need not explore all the reasons that the State advances in justification of the regulation. It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment. And by keying the maximum family AFDC grants to the minimum wage a steadily employed head of a household receives, the State maintains some semblance of an equitable balance between families on welfare and those supported by an employed breadwinner.

It is true that in some AFDC families there may be no person who is employable. It is also true that with respect to AFDC families whose determined standard of need is below the regulatory maximum, and who therefore receive grants equal to the determined standard, the employment incentive is absent. But the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the State's action be rationally based and free from invidious discrimination. The regulation before us meets that test.

We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But

the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, . But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

The judgment is reversed.

Mr. Justice BLACK, with whom THE CHIEF JUSTICE joins, concurring.

Assuming, as the Court apparently does, that individual welfare recipients can bring an action against state welfare authorities challenging an aspect of the State's welfare plan as inconsistent with the provisions of the Social Security Act, even though the Secretary of Health, Education, and Welfare has determined as he has here that the federal and state provisions are consistent, I join in the opinion of the Court in this case.

Mr. Justice HARLAN, concurring.

As I stated in dissent in *Shapiro v. Thompson*, 394 U.S. 618, 658–663 (1969), I find no solid basis for the doctrine there expounded that certain statutory classifications will be held to deny equal protection unless justified by a 'compelling' governmental interest, while others will pass muster if they meet traditional equal protection standards. Except with respect to racial classifications, to which unique historical considerations apply, I believe the constitutional provisions assuring equal protection of the laws impose a standard of rationality of classification, long applied in the decisions of this Court, that does not depend upon the nature of the classification or interest involved.

It is on this basis, and not because this case involves only interests in 'the area of economics and social welfare,' that I join the Court's constitutional holding.

Mr. Justice DOUGLAS, dissenting.

I do not find it necessary to reach the constitutional argument in this case, for in my view the Maryland regulation is inconsistent with the terms and purposes of the Social Security Act.

The Maryland regulation under attack places an absolute limit of \$250 per month on the amount of a grant under AFDC, regardless of the size of the family and its actual need. The effect of this regulation is to deny benefits to additional children born into a family of six, thus making it impossible for families of seven persons or more to receive an amount commensurate with their actual need in accordance with standards formulated by the Maryland Department of Social Services whereas families of six or less can receive the full amount of their need as so determined. Appellee Williams, according to the computed need for herself and her eight children, should receive \$296.15 per month. Appellees Gary should receive \$331.50 for themselves and their eight children. Instead, these appellees received the \$250 maximum grant.

In *King v. Smith*, this Court stated: 'There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to

determine the level of benefits by the amount of funds it devotes to the program.’ That dictum, made in the context of a case that dealt with Alabama’s ‘substitute father’ regulation, does little to clarify the limits of state authority. The holding in *King* was that the Alabama regulation, which denied AFDC benefits to the children of a mother who ‘cohabited’ in or outside her home with an able-bodied man, was invalid because it defined ‘parent’ in a manner inconsistent with s 406(a) of the Social Security Act. The Court rejected the State’s contention that its regulation was ‘a legitimate way of allocating its limited resources available for AFDC assistance. Thus, whatever else may be said of the ‘latitude’ extended to States in determining the benefits payable under AFDC, the holding in *King* makes clear that it does not include restrictions on the payment of benefits that are incompatible with the Social Security Act.

Assuming, *arguendo*, that a State need not appropriate sufficient funds to pay all eligible AFDC recipients the full amount of their need, it does not follow that it can distribute such funds as it deems appropriate in a manner inconsistent with the Social Security Act. The question involved here is not one of ends; it is one of means.

The aid provided through the AFDC program has always been intended for the individual dependent children, not for those who apply for the aid on their behalf.

The Senate Committee on Finance, in its report on the Social Security Bill of 1935, stated this purpose in the following terms: ‘The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children.’

In sum, the provisions of the Act that compute the amount of federal contribution to state AFDC programs are related to state payments to individual recipients and have consistently excluded any limitation based upon family size. The limitation contained in s 403(d)(1) of the Act affects only the amount of federal matching funds in one category of aid, and in no way indicates congressional approval of maximum grants.

The purpose of the AFDC provisions of the Social Security Act is not only to provide for the needs of dependent children but also ‘to keep the young children with their mother in their own home, thus preventing the necessity of placing the children in institutions.’ As the District Court noted, however, ‘the maximum grant regulation provides a powerful economic incentive to break up large families by placing ‘dependent children in excess of those whose subsistence needs, when added to the subsistence needs of other members of the family, exceed the maximum grant, in the homes of persons included in the class of eligible relatives.’ By this device, payments for the ‘excess’ children can be obtained.

‘If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of \$79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of \$250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of \$65.00 per

month, and they and their six remaining children would still be eligible to receive the maximum grant of \$250.00.’

The District Court correctly states that this incentive to break up family units created by the maximum grant regulation is in conflict with a fundamental purpose of the Act. The history of the Social Security Act thus indicates that Congress intended the financial benefits, as well as the other benefits, of the AFDC program to reach each individual recipient eligible under the federal criteria. It was to this purpose that Congress had reference when it commanded in s 402(a)(10) of the Act that aid to families with dependent children shall be furnished to ‘all eligible individuals.’

The Court attempt to avoid the effect of this command by stating that ‘it is the family grant that is affected.’ The implication is that, regardless of how the AFDC payments are computed or to whom they apply, the payments will be used by the parents for the benefit of all the members of the family unit. This is no doubt true. But the fact that parents may take portions of the payments intended for certain children to give to other children who are not given payments under the State’s AFDC plan, does not alter the fact that aid is not being given by the State to the latter children. And it is payments by the State, not by the parents, to which the command of s 402(a)(10) is directed. The Court’s argument would equate family grant maximums with percentage reductions, but the two are, in fact, quite distinct devices for limiting welfare payments. If Congress wished to design a scheme under which each family received equal payments, irrespective of the size of the family, I see nothing that would prevent it from doing so. But that is not the scheme of Congress under the present Act.

In all of the legislative provisions relied upon by the appellants, the congressional reference to maximum grants has been made in the context of attempting to alleviate the harsh results of their application, not in a context of approving and supporting their operation. The three statutory references cited by appellants and discussed above are clearly inadequate to overcome the long history of concern manifested in the AFDC provisions of the Social Security Act for meeting the needs of each eligible recipient, and the command of s 402(a)(10) of the Act to that effect.

Appellants tender one further argument as to the compliance of the Maryland maximum grant regulation with the Social Security Act. That argument is that the Department of Health, Education, and Welfare has not disapproved of any of the Maryland plans that have included maximum grant provisions, and that this lack of disapproval by HEW is a binding administrative determination as to the conformity of the regulation with the Social Security Act. That argument was thoroughly explored by the District Court below in its supplemental opinion. The District Court accepted the claim that HEW considers the Maryland maximum grant regulation not to be violative of the Act, but held:

‘In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment, we believe that the various action and inactions on the part of HEW are

not entitled to substantial, much less to decisive, weight in our consideration of the instant case.’

HEW seldom has formally challenged the compliance of a state welfare plan with the terms of the Social Security Act. The mere absence of such a formal challenge, whatever may be said for its constituting an affirmative determination of the compliance of a state plan with the Social Security Act, is not such a determination as is entitled to decisive weight in the judicial determination of this question.

On the basis of the inconsistency of the Maryland maximum grant regulation with the Social Security Act, I would affirm the judgment below.

Mr. Justice MARSHALL, whom Mr. Justice BRENNAN joins, dissenting.

For the reasons stated by Mr. Justice DOUGLAS, to which I add some comments of my own, I believe that the Court has erroneously concluded that Maryland’s maximum grant regulation is consistent with the federal statute. In my view, that regulation is fundamentally in conflict with the basic structure and purposes of the Social Security Act.

More important in the long run than this misreading of a federal statute, however, is the Court’s emasculation of the Equal Protection Clause as a constitutional principle applicable to the area of social welfare administration. The Court holds today that regardless of the arbitrariness of a classification it must be sustained if any state goal can be imagined that is arguably furthered by its effects. This is so even though the classification’s underinclusiveness or overinclusiveness clearly demonstrates that its actual basis is something other than that asserted by the State, and even though the relationship between the classification and the state interests which it purports to serve is so tenuous that it could not seriously be maintained that the classification tends to accomplish the ascribed goals.

The Court recognizes, as it must, that this case involves ‘the most basic economic needs of impoverished human beings,’ and that there is therefore a ‘dramatically real factual difference’ between the instant case and those decisions upon which the Court relies. The acknowledgment that these dramatic differences exist is a candid recognition that the Court’s decision today is wholly without precedent. I cannot subscribe to the Court’s sweeping refusal to accord the Equal Protection Clause any role in this entire area of the law, and I therefore dissent from both parts of the Court’s decision.

II

I believe that in overruling the decision of this and every other district court that has passed on the validity of the maximum grant device, the Court both reaches the wrong result and lays down an insupportable test for determining whether a State has denied its citizens the equal protection of the laws.

The Maryland AFDC program in its basic structure operates uniformly with regard to all needy children by taking into account the basic subsistence needs of all eligible individuals in the formulation of the standards of need for families of various sizes. However, superimposed upon this uniform system is the maximum grant regulation, the operative effect of which is to create two classes of needy children and two classes of eligible families: those small families and their members who receive payments to cover their subsistence needs and those large families who do not.

This classification process effected by the maximum grant regulation produces a basic denial of equal treatment. Persons who are concededly similarly situated (dependent children and their families), are not afforded equal, or even approximately equal, treatment under the maximum grant regulation. Subsistence benefits are paid with respect to some needy dependent children; nothing is paid with respect to others. Some needy families receive full subsistence assistance as calculated by the State; the assistance paid to other families is grossly below their similarly calculated needs.

Yet, as a general principle, individuals should not be afforded different treatment by the State unless there is a relevant distinction between them and ‘a statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found.’

In the instant case, the only distinction between those children with respect to whom assistance is granted and those children who are denied such assistance is the size of the family into which the child permits himself to be born. The class of individuals with respect to whom payments are actually made (the first four or five eligible dependent children in a family), is grossly underinclusive in terms of the class that the AFDC program was designed to assist, namely, all needy dependent children. Such underinclusiveness manifests ‘a prima facie violation of the equal protection requirement of reasonable classification,’ compelling the State to come forward with a persuasive justification for the classification.

The Court never undertakes to inquire for such a justification; rather it avoids the task by focusing upon the abstract dichotomy between two different approaches to equal protection problems that have been utilized by this Court.

Under the so-called ‘traditional test,’ a classification is said to be permissible under the Equal Protection Clause unless it is ‘without any reasonable basis.’ On the other hand, if the classification affects a ‘fundamental right,’ then the state interest in perpetuating the classification must be ‘compelling’ in order to be sustained.

This case simply defies easy characterization in terms of one or the other of these ‘tests.’ The cases relied on by the Court, in which a ‘mere rationality’ test was actually used, e.g., *Williamson v. Lee Optical of Oklahoma, Inc.* (1955), are most accurately described as involving the application of equal protection reasoning to the regulation of business interests. The extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Court’s earlier excesses in using the

Constitution to protect interests that have more than enough power to protect themselves in the legislative halls. This case, involving the literally vital interests of a powerless minority—poor families without breadwinners—is far removed from the area of business regulation, as the Court concedes. Why then is the standard used in those cases imposed here? We are told no more than that this case falls in ‘the area of economics and social welfare,’ with the implication that from there the answer is obvious.

In my view, equal protection analysis of this case is not appreciably advanced by the a priori definition of a ‘right,’ fundamental or otherwise. Rather, concentration must be placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification. As we said only recently, ‘In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.’

It is the individual interests here at stake that, as the Court concedes, most clearly distinguish this case from the ‘business regulation’ equal protection cases. AFDC support to needy dependent children provides the stuff that sustains those children’s lives: food, clothing, shelter. And this Court has already recognized several times that when a benefit, even a ‘gratuitous’ benefit, is necessary to sustain life, stricter constitutional standards, both procedural and substantive, are applied to the deprivation of that benefit.

Nor is the distinction upon which the deprivation is here based—the distinction between large and small families—one that readily commends itself as a basis for determining which children are to have support approximating subsistence and which are not. Indeed, governmental discrimination between children on the basis of a factor over which they have no control—the number of their brothers and sisters—bears some resemblance to the classification between legitimate and illegitimate children which we condemned as a violation of the Equal Protection Clause in *Levy v. Louisiana*, 391 U.S. 68 (1968).

The asserted state interests in the maintenance of the maximum grant regulation, on the other hand, are hardly clear. In the early stages of this litigation, the State attempted to rationalize the maximum grant regulation on the theory that it was merely a device to conserve state funds, in the language of the motion to dismiss, ‘a legitimate way of allocating the State’s limited resources available for AFDC assistance.’ Indeed, the initial opinion of the District Court concluded that the sole reason for the regulation, as revealed by the record, was ‘to fit the total needs of the State’s dependent children, as measured by the State’s standards of their subsistence requirements, into an inadequate State appropriation.’ The District Court quire properly rejected this asserted justification, for ‘(t)he saving of welfare costs cannot justify an otherwise invidious classification.’

In post-trial proceedings in the District Court, and in briefs to this court, the State apparently abandoned reliance on the fiscal justification. In its place, there have now appeared several

different rationales for the maximum grant regulation, prominent among them being those relied upon by the majority—the notions that imposition of the maximum serves as an incentive to welfare recipients to find and maintain employment and provides a semblance of equality with persons earning a minimum wage.

With regard to the latter, Maryland has urged that the maximum grant regulation serves to maintain a rough equality between wage earning families and AFDC families, thereby increasing the political support for—or perhaps reducing the opposition to—the AFDC program. It is questionable whether the Court really relies on this ground, especially when in many States the prescribed family maximum bears no such relation to the minimum wage. But the Court does not indicate that a different result might obtain in other cases. Indeed, whether elimination of the maximum would produce welfare incomes out of line with other incomes in Maryland is itself open to question on this record. It is true that government in the United States, unlike certain other countries, has not chosen to make public aid available to assist families generally in raising their children. Rather, in this case Maryland, with the encouragement and assistance of the Federal Government, has elected to provide assistance at a subsistence level for those in particular need—the aged, the blind, the infirm, and the unemployed and unemployable, and their children. The only question presented here is whether, having once undertaken such a program, the State may arbitrarily select from among the concededly eligible those to whom it will provide benefits. And it is too late to argue that political expediency will sustain discrimination not otherwise supportable.

Vital to the employment-incentive basis found by the Court to sustain the regulation is, of course, the supposition that an appreciable number of AFDC recipients are in fact employable. For it is perfectly obvious that limitations upon assistance cannot reasonably operate as a work incentive with regard to those who cannot work or who cannot be expected to work. In this connection, Maryland candidly notes that ‘only a very small percentage of the total universe of welfare recipients are employable.’ The State, however, urges us to ignore the ‘total universe’ and to concentrate attention instead upon the heads of AFDC families. Yet the very purpose of the AFDC program since its inception has been to provide assistance for dependent children. The State’s position is thus that the State may deprive certain needy children of assistance to which they would otherwise be entitled in order to provide an arguable work incentive for their parents. But the State may not wield its economic whip in this fashion when the effect is to cause a deprivation to needy dependent children in order to correct an arguable fault of their parents.

Even if the invitation of the State to focus upon the heads of AFDC families is accepted, the minimum rationality of the maximum grant regulation is hard to discern. The District Court found that of Maryland’s more than 32,000 AFDC families, only about 116 could be classified as having employable members, and, of these, the number to which the maximum grant regulation was applicable is not disclosed by the record. The State objects that this figure includes only families in which the father is unemployed and fails to take account of families in which an employable mother is the head of the household. At the same time, however, the State itself has recognized that the vast proportion of these mothers are in fact unemployable because they are mentally or physically incapacitated, because they have no marketable skills, or, most

prominently, because the best interests of the children dictate that the mother remain in the home. Thus, it is clear, although the record does not disclose precise figures, that the total number of ‘employable’ mothers is but a fraction of the total number of AFDC mothers. Furthermore, the record is silent as to what proportion of large families subject to the maximum have ‘employable’ mothers. Indeed, one must assume that the presence of the mother in the home can be less easily dispensed with in the case of large families, particularly where small children are involved and alternative provisions for their care are accordingly more difficult to arrange. In short, not only has the State failed to establish that there is a substantial or even a significant proportion of AFDC heads of households as to whom the maximum grant regulation arguably serves as a viable and logical work incentive, but it is also indisputable that the regulation at best is drastically overinclusive since it applies with equal vigor to a very substantial number of persons who like appellees are completely disabled from working. Finally, it should be noted that, to the extent there is a legitimate state interest in encouraging heads of AFDC households to find employment, application of the maximum grant regulation is also grossly underinclusive because it singles out and affects only large families. No reason is suggested why this particular group should be carved out for the purpose of having unusually harsh ‘work incentives’ imposed upon them. Not only has the State selected for special treatment a small group from among similarly situated families, but it has done so on a basis—family size—that bears no relation to the evil that the State claims the regulation was designed to correct. There is simply no indication whatever that heads of large families, as opposed to heads of small families, are particularly prone to refuse to seek or to maintain employment.

In the final analysis, Maryland has set up an AFDC program structured to calculate and pay the minimum standard of need to dependent children. Having set up that program, however, the State denies some of those needy children the minimum subsistence standard of living, and it does so on the wholly arbitrary basis that they happen to be members of large families. One need not speculate too far on the actual reason for the regulation, for in the early stages of this litigation the State virtually conceded that it set out to limit the total cost of the program along the path of least resistance. Now, however, we are told that other rationales can be manufactured to support the regulation and to sustain it against a fundamental constitutional challenge.

However, these asserted state interests, which are not insignificant in themselves, are advanced either not at all or by complete accident by the maximum grant regulation. Clearly they could be served by measures far less destructive of the individual interests at stake. Moreover, the device assertedly chosen to further them is at one and the same time both grossly underinclusive—because it does not apply at all to a much larger class in an equal position—and grossly overinclusive—because it applies so strongly against a substantial class as to which it can rationally serve no end. Were this a case of pure business regulation, these defects would place it beyond what has heretofore seemed a borderline case, and I do not believe that the regulation can be sustained even under the Court’s ‘reasonableness’ test.

In any event, it cannot suffice merely to invoke the spectre of the past and to recite from *Lindsley v. Natural Carbonic Gas Co.* and *Williamson v. Lee Optical of Oklahoma, Inc.* to decide the case. Appellees are not a gas company or an optical dispenser; they are needy dependent children

and families who are discriminated against by the State. The basis of that discrimination—the classification of individuals into large and small families—is too arbitrary and too unconnected to the asserted rationale, the impact on those discriminated against—the denial of even a subsistence existence—too great, and the supposed interests served too contrived and attenuated to meet the requirements of the Constitution. In my view Maryland’s maximum grant regulation is invalid under the Equal Protection Clause of the Fourteenth Amendment.

I would affirm the judgment of the District Court.

WYMAN V. JAMES

400 U.S. 309 (1971)

(to accompany Michele Estrin Gilman, *Privacy as a Luxury Not for the Poor: Wyman v. James (1971)* in **The Poverty Law Canon**, page 153)

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This appeal presents the issue whether a beneficiary of the program for Aid to Families with Dependent Children (AFDC) may refuse a home visit by the caseworker without risking the termination of benefits.

I

The case comes to us on the pleadings and supporting affidavits and without the benefit of testimony which an extended hearing would have provided. The pertinent facts, however, are not in dispute.

Plaintiff Barbara James is the mother of a son, Maurice, who was born in May, 1967. They reside in New York City. Mrs. James first applied for AFDC assistance shortly before Maurice's birth. A caseworker made a visit to her apartment at that time without objection. The assistance was authorized.

Two years later, on May 8, 1969, a caseworker wrote Mrs. James that she would visit her home on May 14. Upon receipt of this advice, Mrs. James telephoned the worker that, although she was willing to supply information "reasonable and relevant" to her need for public assistance, any discussion was not to take place at her home. The worker told Mrs. James that she was required by law to visit in her home, and that refusal to permit the visit would result in the termination of assistance. Permission was still denied.

On May 13, the City Department of Social Services sent Mrs. James a notice of intent to discontinue assistance because of the visitation refusal. The notice advised the beneficiary of her right to a hearing before a review officer. The hearing was requested, and was held on May 27. Mrs. James appeared with an attorney at that hearing. They continued to refuse permission for a worker to visit the James home, but again expressed willingness to cooperate and to permit visits elsewhere. The review officer ruled that the refusal was a proper ground for the termination of assistance.

A notice of termination issued on June 2.

Thereupon, without seeking a hearing at the state level, Mrs. James, individually and on behalf of Maurice, and purporting to act on behalf of all other persons similarly situated, instituted the present civil rights suit She further alleged that she and her son have no income, resources, or

support other than the benefits received under the AFDC program. She asked for declaratory and injunctive relief. A temporary restraining order was issued on June 13, and the three-judge District Court was convened [which ruled in Ms. James' favor].

III

When a case involves a home and some type of official intrusion into that home, as this case appears to do, an immediate and natural reaction is one of concern about Fourth Amendment rights and the protection which that Amendment is intended to afford. Its emphasis indeed is upon one of the most precious aspects of personal security in the home: "The right of the people to be secure in their persons, houses, papers, and effects. . . ." This Court has characterized that right as "basic to a free society."

IV

This natural and quite proper protective attitude, however, is not a factor in this case, for the seemingly obvious and simple reason that we are not concerned here with any search by the New York social service agency in the Fourth Amendment meaning of that term. It is true that the governing statute and regulations appear to make mandatory the initial home visit and the subsequent periodic "contacts" (which may include home visits) for the inception and continuance of aid. It is also true that the caseworker's posture in the home visit is perhaps, in a sense, both rehabilitative and investigative. But this latter aspect, we think, is given too broad a character and far more emphasis than it deserves if it is equated with a search in the traditional criminal law context. We note, too, that the visitation, in itself, is not forced or compelled, and that the beneficiary's denial of permission is not a criminal act. If consent to the visitation is withheld, no visitation takes place. The aid then never begins, or merely ceases, as the case may be. There is no entry of the home and there is no search.

V

If however, we were to assume that a caseworker's home visit, before or subsequent to the beneficiary's initial qualification for benefits, somehow (perhaps because the average beneficiary might feel she is in no position to refuse consent to the visit), and despite its interview nature, does possess some of the characteristics of a search in the traditional sense, we nevertheless conclude that the visit does not fall within the Fourth Amendment's proscription. This is because it does not descend to the level of unreasonableness. It is unreasonableness which is the Fourth Amendment's standard.

There are a number of factors that compel us to conclude that the home visit proposed for Mrs. James is not unreasonable:

1. The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child*, and, further, it is on the child who is *dependent*. There is no more worthy

object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights.

2. The agency, with tax funds provided from federal as well as from state sources, is fulfilling a public trust. The State, working through its qualified welfare agency, has appropriate and paramount interest and concern in seeing and assuring that the intended and proper objects of that tax produced assistance are the ones who benefit from the aid it dispenses. Surely it is not unreasonable, in the Fourth Amendment sense or in any other sense of that term, that the State have at its command a gentle means, of limited extent and of practical and considerate application, of achieving that assurance.

3. One who dispenses purely private charity naturally has an interest in, and expects to know, how his charitable funds are utilized and put to work. The public, when it is the provider, rightly expects the same. It might well expect more, because of the trust aspect of public funds, and the recipient, as well as the caseworker, has not only an interest, but an obligation.

4. The emphasis of the New York statutes and regulations is upon the home, upon "close contact" with the beneficiary, upon restoring the aid recipient "to a condition of self-support," and upon the relief of his distress. The federal emphasis is no different. It is upon "assistance and rehabilitation," upon maintaining and strengthening family life, and upon "maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection."

5. The home visit, it is true, is not required by federal statute or regulation. But it has been noted that the visit is "the heart of welfare administration"; that it affords "a personal, rehabilitative orientation, unlike that of most federal programs"; and that the "more pronounced service orientation" effected by Congress with the 1956 amendments to the Social Security Act "gave redoubled importance to the practice of home visiting." The home visit is an established routine in States besides New York.

6. The means employed by the New York agency are significant. Mrs. Janes received written notice several days in advance of the intended home visit.²⁴ The date was specified. Privacy is emphasized. The applicant-recipient is made the primary source of information as to eligibility. Outside informational sources, other than public records, are to be consulted only with the beneficiary's consent. Forcible entry or entry under false pretenses or visitation outside working hours or snooping in the home are forbidden. All this minimizes any "burden" upon the homeowner's right against unreasonable intrusion.

²⁴ It is true that the record contains 12 affidavits, all essentially identical, of aid recipients (other than Mrs. James) which recite that a caseworker 'most often' comes without notice; that when he does, the plans the recipient had for that time cannot be carried out; that the visit is 'very embarrassing to me if the caseworker comes when I have company'; and that the caseworker 'sometimes asks very personal questions' in front of children. (original footnote 8)

7. Mrs. James, in fact, on this record presents no specific complaint of any unreasonable intrusion of her home and nothing that supports an inference that the desired home visit had as its purpose the obtaining of information as to criminal activity. She complains of no proposed visitation at an awkward or retirement hour. She suggests no forcible entry. She refers to no snooping. She describes no impolite or reprehensible conduct of any kind. She alleges only, in general and nonspecific terms, that, on previous visits and, on information and belief, on visitation at the home of other aid recipients, "questions concerning personal relationships, beliefs and behavior are raised and pressed which are unnecessary for a determination of continuing eligibility." Paradoxically, this same complaint could be made of a conference held elsewhere than in the home, and yet this is what is sought by Mrs. James. The same complaint could be made of the census taker's questions. What Mrs. James appears to want from the agency that provides her and her infant son with the necessities for life is the right to receive those necessities upon her own informational terms, to utilize the Fourth Amendment as a wedge for imposing those terms, and to avoid questions of any kind.²⁵

8. We are not persuaded, as Mrs. James would have us be, that all information pertinent to the issue of eligibility can be obtained by the agency through an interview at a place other than the home, or, as the District Court majority suggested, by examining a lease or a birth certificate, or by periodic medical examinations, or by interviews with school personnel. Although these secondary sources might be helpful, they would not always assure verification of actual residence or of actual physical presence in the home, which are requisites for AFDC benefits, or of impending medical needs. And, of course, little children, such as Maurice James, are not yet registered in school.

9. The visit is not one by police or uniformed authority. It is made by a caseworker of some training whose primary objective is, or should be, the welfare, not the prosecution, of the aid recipient for whom the worker has profound responsibility. As has already been stressed, the program concerns dependent children and the needy families of those children. It does not deal with crime or with the actual or suspected perpetrators of crime. The caseworker is not a sleuth, but rather, we trust, is a friend to one in need.

10. The home visit is not a criminal investigation, does not equate with a criminal investigation, and despite the announced fears of Mrs. James and those who would join her, is not in aid of any criminal proceeding.

11. It seems to us that the situation is akin to that where an Internal Revenue Service agent, in making a routine civil audit of a taxpayer's income tax return, asks that the taxpayer produce for the agent's review some proof of a deduction the taxpayer has asserted to his benefit in the

²⁵ We have examined Mrs. James' case record with the New York City Department of Social Services, which, as an exhibit, accompanied defendant Wyman's answer. It discloses numerous interviews from the time of the initial one on April 27, 1967, until the attempted termination in June 1969. The record is revealing as to Mrs. James' failure ever really to satisfy the requirements for eligibility; as to constant and repeated demands; as to attitude toward the caseworker; as to reluctance to cooperate; as to evasiveness; and as to occasional belligerency. There are indications that all was not always well with the infant Maurice (skull fracture, a dent in the head, a possible rat bite). The picture is a sad and unhappy one. (original footnote 9)

computation of his tax. If the taxpayer refuses, there is, absent fraud, only a disallowance of the claimed deduction and a consequent additional tax. The taxpayer is fully within his “rights” in refusing to produce the proof, but, in maintaining and asserting those rights, a tax detriment results, and it is a detriment of the taxpayer’s own making. So here, Mrs. James has the “right” to refuse the home visit, but a consequence in the form of cessation of aid, similar to the taxpayer’s resultant additional tax, flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved.

VII

Our holding today does not mean, of course, that a termination of benefits upon refusal of a home visit is to be upheld against constitutional challenge under all conceivable circumstances. The early morning mass raid upon homes of welfare recipients is not unknown. But that is not this case. Facts of that kind present another case for another day.

We therefore conclude that the home visitation as structured by the New York statutes and regulations is a reasonable administrative tool; that it serves a valid and proper administrative purpose for the dispensation of the AFDC program; that it is not an unwarranted invasion of personal privacy; and that it violates no right guaranteed by the Fourth Amendment.

Reversed and remanded with directions to enter a judgment of dismissal.

It is so ordered.

MR. JUSTICE DOUGLAS, dissenting.

In 1969 roughly 127 billion dollars were spent by the federal, state, and local governments on “social welfare.” To farmers alone almost four billion dollars were paid, in part for not growing certain crops. Almost 129,000 farmers received \$5,000 or more, their total benefits exceeding \$1,450,000,000. Those payments were in some instances very large, a few running a million or more a year. But the majority were payments under \$5,000 each.

Yet almost every beneficiary whether rich or poor, rural or urban, has a “house” one of the places protected by the Fourth Amendment against “unreasonable searches and seizures.” The question in this case is whether receipt of largesse from the government makes the home of the beneficiary subject to access by an inspector of the agency of oversight, even though the beneficiary objects to the intrusion and even though the Fourth Amendment’s procedure for access to one’s *house* or *home* is not followed. The penalty here is not, of course, invasion of the privacy of Barbara James, only her loss of federal or state largesse. That, however, is merely rephrasing the problem. Whatever the semantics, the central question is whether the government, by force of its largesse, has the power to “buy up” rights guaranteed by the Constitution. But for the assertion of her constitutional right, Barbara James in this case would have received the welfare benefit.

If the regime under which Barbara James lives were enterprise capitalism as, for example, if she ran a small factory geared into the Pentagon's procurement program, she certainly would have a right to deny inspectors access to her *home* unless they came with a warrant.

It is a strange jurisprudence indeed which safeguards the businessman at his place of work from warrantless searches, but will not do the same for a mother in her *home*.

Is a search of her home without a warrant made "reasonable" merely because she is dependent on government largesse? Judge Skelly Wright has stated the problem succinctly:

"Welfare has long been considered the equivalent of charity, and its recipients have been subjected to all kinds of dehumanizing experiences in the government's effort to police its welfare payments. In fact, over half a billion dollars are expended annually for administration and policing in connection with the Aid to Families with Dependent Children program.

Why such large sums are necessary for administration and policing has never been adequately explained. No such sums are spent policing the government subsidies granted to farmers, airlines, steamship companies, and junk mail dealers, to name but a few. The truth is that, in this subsidy area, society has simply adopted a double standard, one for aid to business and the farmer and a different one for welfare."

If the welfare recipient was not Barbara James but a prominent, affluent cotton or wheat farmer receiving benefit payments for not growing crops, would not the approach be different? Welfare in aid of dependent children, like social security and unemployment benefits, has an aura of suspicion. There doubtless are frauds in every sector of public welfare whether the recipient be a Barbara James or someone who is prominent or influential. But constitutional rights -- here the privacy of the home -- are obviously not dependent on the poverty or on the affluence of the beneficiary. It is the precincts of the home that the Fourth Amendment protects; and their privacy is as important to the lowly as to the mighty.

MR. JUSTICE MARSHALL, whom MR. JUSTICE BRENNAN joins, dissenting.

We are told that the plight of Mrs. James is no different from that of a taxpayer who is required to document his right to a tax deduction, but this analogy is seriously flawed. The record shows that Mrs. James has offered to be interviewed anywhere other than her home, to answer any questions, and to provide any documentation that the welfare agency desires. The agency curtly refused all these offers and insisted on its "right" to pry into appellee's home. Tax exemptions are also governmental "bounty." A true analogy would be an Internal Revenue Service requirement that, in order to claim a dependency exemption, a taxpayer must allow a specially trained IRS agent to invade the home for the purpose of questioning the occupants and looking for evidence that the exemption is being properly utilized for the benefit of the dependent. If such a system were even proposed, the cries of constitutional outrage would be unanimous.

JEFFERSON V. HACKNEY

406 U.S. 535 (1972)

(to accompany Marie A. Failinger, *A Tragedy of Two Americas: Jefferson v. Hackney (1972)* in **The Poverty Law Canon**, page 170)

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellants in this case challenge certain computation procedures that the State of Texas uses in its federally assisted welfare program. Believing that neither the Constitution nor the federal welfare statute prohibits the State from adopting these policies, we affirm the judgment of the three-judge court below upholding the state procedures.

I

The Texas State Constitution provides a ceiling on the amount the State can spend on welfare assistance grants.²⁶ In order to allocate this fixed pool of welfare money among the numerous individuals with acknowledged need, the State has adopted a system of percentage grants. Under this system the State first computes the monetary needs of individuals eligible for relief under each of the federally aided categorical assistance programs. Then, since the constitutional ceiling on welfare is insufficient to bring each recipient up to this full standard of need, the State applies a percentage reduction factor²⁷ in order to arrive at a reduced standard of need in each category that the State can guarantee.

Appellants challenge the constitutionality of applying a lower percentage reduction factor to AFDC than to the other categorical assistance programs. They claim a violation of equal protection because the proportion of AFDC recipients who are black or Mexican-American is higher than the proportion of the aged, blind, or disabled welfare recipients who fall within these minority groups. Appellants claim that the distinction between the programs is not rationally related to the purposes of the Social Security Act, and violates the Fourteenth Amendment for that reason as well. In their original complaint, appellants also argued that any percentage

26 Originally, the Texas Constitution prohibited all welfare programs. Section 51 of Art. III of the Constitution provided that the legislature “shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever. . . .” However, beginning in 1933, exceptions to this rule were added to the state constitution in § 51-a, which now allows participation in the federal welfare programs, but limits state financing to the sum of \$80,000,000. The legislature cannot exceed this welfare budget without a state constitutional amendment. (original footnote 1)

27 At the present time these factors are: OAA – 100%; AB – 96%; APTD – 95%; and AFDC – 75%. At the time this suit was instituted the AFDC percentage was 50%, but it was raised to 75% following a recent amendment of § 51-a. (original footnote 3)

reduction system violated § 402(a)(23) of the Social Security Act of 1935, which required each State to make certain cost-of-living adjustments to its standard of need.

Subsequent to [the decision of the three-judge court granting plaintiffs statutory relief], this Court decided *Rosado v. Wyman*. *Rosado* held that, although 402(a)(23) required States to make cost-of-living adjustments in their standard of need calculations, it did not prohibit use of percentage-reduction systems that limited the amount of welfare assistance actually paid. [On remand, the District Court denied appellants' statutory claims.]

II

Appellants' statutory argument relates to the method that the State uses to compute the percentage reduction when the recipient also has some outside income. Texas, like many other States,²⁸ first applies the percentage reduction factor to the recipient's standard of need, thus arriving at a reduced standard of need that the State can guarantee for each recipient within the present budgetary restraints. After computing this reduced standard of need, the State then subtracts any nonexempt income in order to arrive at the level of benefits that the recipient needs in order to reach his reduced standard of need. This is the amount of welfare the recipient is given.

Under an alternative system used by other States, the order of computation is reversed. First, the outside income is subtracted from the standard of need, in order to determine the recipient's "unmet need." Then the percentage reduction factor is applied to the unmet need in order to determine the welfare benefits payable.

The two systems of accounting for outside income yield different results.²⁹ Under the Texas system, all welfare recipients with the same needs have the same amount of money available each month, whether or not they have outside income. Since the outside income is applied dollar for dollar to the reduced standard of need, which the welfare department would otherwise pay in full, it does not result in a net improvement in the financial position of the recipient. Under the alternative system, on the other hand, any welfare recipient who also has outside income is in a

28 Nineteen of the 26 States that use a percentage reduction system follow the Texas procedure of accounting for outside income. (original footnote 4)

29 Assuming two identical families, each with a standard of need of \$200 and outside, nonexempt income of \$100, the two systems would produce these results:

<i>Texas System</i>	<i>Alternative System</i>
\$ 200 (need)	\$ 200 (need)
x.75 (% reduction factor)	- 100 (outside income)
-----	-----
\$ 150 (reduced need)	\$ 100 (unmet need)
-100 (outside income)	x.75 (% reduction factor)
-----	-----
\$ 50 (benefits payable)	\$ 75 (benefits payable)

(original footnote 6)

better financial position because of it. The reason is that the percentage reduction factor there is applied to the “unmet need,” after the income has been subtracted. Thus, in effect, the income-earning recipient is able to “keep” all his income, while he receives only a percentage of the remainder of his standard of need.³⁰

Each of the two systems has certain advantages. Appellants note that, under the alternative system, there is a financial incentive for welfare recipients to obtain outside income. The Texas computation method eliminates any such financial incentive, so long as the outside income remains less than the recipient’s reduced standard of need. However, since Texas’ pool of available welfare funds is fixed, any increase in benefits paid to the working poor would have to be offset by reductions elsewhere. Thus, if Texas were to switch to the alternative system of recognizing outside income, it would be forced to lower its percentage reduction factor, in order to keep down its welfare budget. Lowering the percentage would result in less money for those who need the welfare benefits the most – those with no outside income – and the State has been unwilling to do this.

Striking the proper balance between these competing policy considerations is, of course, not the function of this Court. So long as the State’s actions are not in violation of any specific provision of the Constitution or the Social Security Act, appellants’ policy arguments must be addressed to a different forum.

Appellants assert, however, that the Texas computation procedures are contrary to § 402(a)(23):

“(a) A State plan for aid and services to needy families with children must”

“(23) provide that, by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.”

Assuming two families with identical standards of need, but only one with outside income, the alternative system leaves more money in the hands of the family with outside income:

Outside Income	No Outside Income
\$ 200 (need)	\$ 200 (need)
-100 (outside income)	- 0 (outside income)
-----	-----
\$ 100 (unmet need)	\$ 200 (unmet need)
x.75 (% reduction factor)	x.75 (% reduction factor)
-----	-----
\$ 75 (benefits payable)	\$ 150 (benefits payable)
TOTAL INCOME (outside	TOTAL INCOME (outside
income plus benefits	income plus benefits
payable) =\$175	payable) =\$150
(original footnote 7)	

Recognizing that this statutory language, by its terms, hardly provides much support for their theory, appellants seek to rely on what they perceive to have been the broad congressional purpose in enacting the provision. [T]he *Rosado* Court dismissed as “adventuresome” any interpretation of § 402(a)(23) that would deprive the States of their traditional discretion to set the levels of payments. Instead, the statute was meant to require the States to make cost of living adjustments to their standards of need, thereby serving “two broad purposes”:

“First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis.”

Texas has complied with these two requirements. Effective May 1, 1969, the standard of need for AFDC recipients was raised 11% to reflect the rise in the cost of living, and the State shifted from a maximum grant system to its present percentage reduction system. In this way, the State has fairly recognized and exposed the precise level of unmet need, and, by using a percentage reduction system, it has attempted to apportion the State’s limited benefits more equitably.

We do not agree that Congress intended § 402(a)(23) to invalidate any state computation procedures that do not absolutely maximize individual eligibility for subsidiary benefits. The cost of living increase that Congress mandated would, of course, generally tend to increase eligibility but there is nothing in the legislative history indicating that this was part of the statutory purpose.

Appellants also argue that the Texas system should be held invalid because the alternative computation method results in greater work incentives for welfare recipients. The history and purpose of the Social Security Act do indicate Congress’ desire to help those on welfare become self-sustaining. Indeed, Congress has specifically mandated certain work incentives in § 402(a)(8). There is no dispute here, however, about Texas’ compliance with these very detailed provisions for work incentives. Neither their inclusion in the Act nor the language used by Congress in other sections of the Act supports the inference that Congress mandated the States to change their income-computation procedures in other, completely unmentioned areas.

Nor are appellants aided by their reference to Social Security Act § 402(a)(10), 42 U.S.C. § 602(a)(10), which provides that AFDC benefits must “be furnished with reasonable promptness to all eligible individuals.” That section was enacted at a time when persons whom the State had determined to be eligible for the payment of benefits were placed on waiting lists, because of the shortage of state funds. The statute was intended to prevent the States from denying benefits, even temporarily, to a person who has been found fully qualified for aid. Section 402(a)(10) also prohibits a State from creating certain exceptions to standards specifically enunciated in the federal Act. It does not, however, enact by implication a generalized federal criterion to which States must adhere in their computation of standards of need, income, and benefits. Such an interpretation would be an intrusion into an area in which Congress has given the States broad discretion, and we cannot accept appellants’ invitation to change this longstanding statutory scheme simply for policy consideration reasons of which we are not the arbiter.

III

We turn, then, to appellants' claim that the Texas system of percentage reductions violates the Fourteenth Amendment. Appellants believe that, once the State has computed a standard of need for each recipient, it is arbitrary and discriminatory to provide only 75% of that standard to AFDC recipients, while paying 100% of recognized need to the aged, and 95% to the disabled and the blind. They argue that, if the State adopts a percentage reduction system, it must apply the same percentage to each of its welfare programs.

This claim was properly rejected by the court below. It is clear from the statutory framework that, although the four categories of public assistance found in the Social Security Act have certain common elements, the States were intended by Congress to keep their AFDC plans separate from plans under the other titles of the Act. A State is free to participate in one, several, or all of the categorical assistance programs, as it chooses. It is true that each of the programs is intended to assist the needy, but it does not follow that there is only one constitutionally permissible way for the State to approach this important goal.

This Court emphasized only recently, in *Dandridge v. Williams*, that, in "the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." A legislature may address a problem "one step at a time," or even "select one phase of one field and apply a remedy there, neglecting the others." So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them.

The standard of judicial review is not altered because of appellants' unproved allegations of racial discrimination. The three-judge court found that the "payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice, and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment."

The District Court obviously gave careful consideration to this issue, and we are cited by its opinion to a number of subsidiary facts to support its principal finding quoted above. There has never been a reduction in the amount of money appropriated by the legislature to the AFDC program, and, between 1943 and the date of the opinion below, there had been five increases in the amount of money appropriated by the legislature for the program, two of them having occurred since 1959.³¹ The overall percentage increase in appropriation for the programs

31 Since the original opinion below, there has been an additional increase. Following a constitutional amendment, the appropriation has risen from \$6,150,000 to \$23,100,000. (original footnote 16)

between 1943 and the time of the District Court’s hearing in this case was 410% for AFDC, as opposed to 211% for OAA and 200% for AB. The court further concluded:

“The depositions of Welfare officials conclusively establish that the defendants did not know the racial make-up of the various welfare assistance categories prior to or at the time when the orders here under attack were issued.”

Appellants are thus left with their naked statistical argument: that there is a larger percentage of Negroes and Mexican-Americans in AFDC than in the other programs,³² and that the AFDC is funded at 75%, whereas the other programs are funded at 95% and 100% of recognized need. As the statistics cited in the footnote demonstrate, the number of minority members in all categories is substantial. The basic outlines of eligibility for the various categorical grants are established by Congress, not by the States; given the heterogeneity of the Nation’s population, it would be only an infrequent coincidence that the racial composition of each grant class was identical to that of the others. The acceptance of appellants’ constitutional theory would render suspect each difference in treatment among the grant classes, however lacking in racial motivation and however otherwise rational the treatment might be. Few legislative efforts to deal with the difficult problems posed by current welfare programs could survive such scrutiny, and we do not find it required by the Fourteenth Amendment.

Applying the traditional standard of review under that amendment, we cannot say that Texas’ decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are, of course, possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly, especially because the latter have less

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Program	Year	Percentage of Negroes and Mexican-Americans	Percentage of White-Anglos	Number of Recipients
OAA	1969	39.8	60.2	230,000
	1968	38.7	61.3	
	1967	37.0	63.0	
APTD	1969	46.9	53.1	4,213
	1968	45.6	54.4	
	1967	46.2	53.8	
AB	1969	55.7	44.3	14,043
	1968	54.9	45.1	
AFDC	1969	87.0	13.0	136,000
	1968	84.9	15.1	
	1967	86.0	14.0	

(original footnote 17)

hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it.³³

In conclusion, we reemphasize what the Court said in *Dandridge v. Williams*, “We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.”

Affirmed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting. I would read the Act more generously than does the Court. It is stipulated that 87% of those receiving AFDC aid are blacks or Chicanos. I would therefore read the Act against the background of rank discrimination against the blacks and the Chicanos and in light of the fact that Chicanos in Texas fare even more poorly than the blacks. In *Rosado v. Wyman*, , we said that, in administering such a program, a State “may not obscure the actual standard of need.” Texas does precisely that, by manipulating a mathematical formula.”

Under Texas’ method of computation, a family – otherwise eligible for AFDC benefits but with nonexempt income greater than the level of benefits and less than the standard of need – is denied both AFDC cash benefits and other non-cash benefits such as medicaid. It seems inconceivable that Congress could have intended that non-cash benefits be denied those with incomes less than the standard of need solely because that income was earned, rather than from categorical assistance. Yet this is precisely the result sanctioned by the Court today because eligibility for these programs is tied to the receipt of cash benefits.

One of the stated purposes of the AFDC program is “to help such parents or relatives [of needy dependent children] *to attain or retain capability for the maximum self-support and personal independence.*” But it nonetheless ignores the explicit congressional policy in favor of work

³³ Just as the State’s actions here do not violate the Fourteenth Amendment, we conclude that they do not violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The Civil Rights Act prohibits discrimination in federally financed programs. We have, however, upheld the findings of nondiscriminatory purpose in the percentage reductions used by Texas, and have concluded that the variation in percentages is rationally related to the purposes of the separate welfare programs. Since the Texas procedure challenged here is related to the purposes of the welfare programs, it is not proscribed by Title VI simply because of variances in the racial composition of the different categorical programs. (original footnote 19)

incentives, and upholds a system which provides penalties and disincentives for those who seek employment.

Since the grant is always less than the standard of need, in many instances, the system adopted by the Welfare Reform Act will result in an individual's need not being met even after adding both exempt and nonexempt income to the AFDC payment. Such recipients will be forced to exist below the bare minimum necessary for adequate care, even though they have commenced, by obtaining employment, to break free from the debilitating 'welfare syndrome.' It is conceded that plaintiff Maria T. Davilla and 2,470 other families are denied aid in Texas by reason of its new formula, despite the fact that their income is below the standard of need and that of those receiving AFDC aid only 75% of their needs is met.³⁴

The decision to participate or not in the federal program is left to the States. When, as here, federal and state funds are in short supply, the problem is not to lop off some categories of those in "need," but to design a way of managing the system of "need" so as not to raise equal protection questions.

The family with nonexempt income equal to Texas' level of benefits stands in much the same cash position as the AFDC recipient, but, solely because that family has earned that last marginal dollar that makes it no longer eligible for categorical assistance, it also is denied medical assistance, social services, and training. The Solicitor General tells us that the value of the medical services alone is worth \$50-\$60 per month to the average Texas AFDC family.

To be sure, "[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program."

Accommodation of a State's limited financial resources, however, is to be made in setting the level of benefits, and not by gerrymandering the standard of need.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, and with whom MR. JUSTICE STEWART joins as to Part I only, dissenting.

Far from emasculating the [AFDC] statute, our reading [in *Rosado*] recognized that the statute had at least three specific salutary effects, and that these were the effects that Congress intended in enacting the legislation:

34 The percentages of need that will be met by Texas under the various heads are as follows:

Old Age Assistance.100%

Aid to the Blind. 95%

Aid to the Permanently and Totally Disabled . . . 95%

Aid to Families with Dependent Children 75%

When this action was instituted, Texas' AFDC percentage level of benefits was only 50% of the standard of need. During the course of this litigation, Texas increased the AFDC level of benefits to 75% of need. (original footnote 2/4)

In *Rosado*, we read section 402 (g)] as expressing Congress' willingness to permit reductions in actual payments in return for the addition of more families to the rolls of AFDC recipients. As I have pointed out above, the Texas system limits the number of AFDC recipients and eliminates marginal cases. This is directly contrary to the intent of Congress as we saw it in *Rosado*.

A second legislative aim that we saw in the section was to force States to realize the political consequences of reducing welfare payments. It must be clear that the Texas system of administering AFDC payments effectively undermines this aim by enabling the State to maintain a constant percentage reduction factor so that the system on its face appears to contain no reductions in payments. Welfare reductions are surreptitiously accomplished by eliminating those persons who have marginal income from eligibility for AFDC payments. While the congressional intent may not be totally emasculated by this system, it is certainly not well served.

The third and final purpose that we found that Congress had specifically in mind in enacting § 402(a)(23) was to provide an incentive to States to abandon a flat "maximum" system. Even though Texas does not now use such a system, the Court's approval of the system that Texas does use will effectively remove the incentive from the statute. In order to maintain the maximums without increasing expenditures, States could, under the Court's opinion, begin to use the maximum to determine AFDC eligibility, rather than the standard of need. The result of this approach would be to reduce the number of persons eligible for assistance and to reduce the grants of anyone with any outside income. Rather than serve as an incentive to States to change to a percentage reduction system, as Congress intended, § 402(a)(23) may now be a powerful incentive to States to maintain or revert to maximum grants.[Justice Marshall then illustrated with the case study described in the majority opinion footnote.]

C. The second provision in the AFDC legislation that I believe is relevant is § 402(a)(8) of the Social Security Act. The purpose of this section is to encourage AFDC recipients to seek private employment and to end their need for public assistance. To accomplish this objective, the statute provides that all of the earned income of each dependent child receiving AFDC aid who is a full or part-time student, and a portion of the earned income of certain other relatives, will be disregarded in the State's determination of need.

It might be argued that Congress only sought to encourage certain AFDC recipients to earn income and only in a certain amount – the persons and amounts specified in § 402(a)(8). This argument might be persuasive but for one fact – Congress never had any idea that a State would attempt to employ a system such as that used by Texas. Nowhere in the legislative history is there any mention of such a system required. Until very recently, every indication by HEW was that the Texas system would be unlawful. In light of the state of ignorance in which Congress found itself, it is not surprising that there is no specific rejection of the Texas system in the 1968 amendments. But § 402(a)(8) and everything in the legislative history certainly indicate that Congress had a strong desire to encourage AFDC recipients to work. Because the Texas program

is inconsistent with this desire, I believe it is illegal. [Justice Marshall also argued that the Texas scheme violated the 402(a)(7) requirement of furnishing aid with reasonable promptness

Because I believe the Texas system violates § 402(a)(7), it seems to me that eligible persons are being denied aid in violation of § 402(a)(10), which requires that aid be furnished to all eligible persons promptly. For me, this case is no different from *King v. Smith*, 392 U. S. 309 (1968) (striking down substitute father regulation) or *Townsend v. Swank*, 404 U. S. 282 (1971) (striking down restriction on receipt of aid by college students). The state procedure denies eligible persons aid, and, regardless of the State's purposes, the procedure cannot stand in conflict with the federal statute.

E. The last portion of the federal statute that I believe should be considered is that portion dealing with the social services that are available to AFDC recipients.. By limiting the number of such persons and families receiving aid, Texas has also limited the availability of these social services. At least one other court has concluded that

“ . . . Congress' major concern was the provision of family counseling and rehabilitation services, work incentives, and family planning programs to reduce out-of-wedlock births, for all persons in the family, in order to promote self-support and child development and to strengthen family life. . . . By making those with marginal incomes eligible for AFDC by raising the standard of need, more persons would be eligible for such services, which Congress considered vital to cut down in the long run the numbers dependent on welfare.” Since I believe that Congress intended that as many needy persons as possible be permitted to avail themselves of the various services provided or improved in the 1968 amendments, I again disagree with the conclusions of the Court.

II

A. Appellants base their primary attack on the Fourteenth Amendment; they argue that the percentage distinctions between the other welfare programs and AFDC reflect a racially discriminatory motive on the part of Texas officials. Thus, they argue that there is a violation of the Equal Protection Clause. I believe that it is unnecessary to reach the constitutional issue that appellants raise, and, therefore, I offer no opinion on its ultimate merits. I do wish to make it clear, however, that I do not subscribe in any way to the manner in which the Court treats the issue.

If I were to face this question, I would certainly have more difficulty with it than either the District Court had or than this Court seems to have. The record contains numerous statements by state officials to the effect that AFDC is funded at a lower level than the other programs because it is not a politically popular program. There is also evidence of a stigma that seemingly attaches to AFDC recipients and no others. This Court noted in *King v. Smith*, that AFDC recipients were often frowned upon by the community. The evidence also shows that 87% of the AFDC recipients in Texas are either Negro or Mexican-American. Yet both the District Court and this Court have little difficulty in concluding that the fact that AFDC is politically unpopular and the

fact that AFDC recipients are disfavored by the State and its citizens have nothing whatsoever to do with the racial makeup of the program. This conclusion is neither so apparent nor so correct, in my view.

Moreover, because I find that each one of the State's reasons for treating AFDC differently from the other programs dissolves under close scrutiny, I am not at all certain who should bear the burden of proof on the question of racial discrimination. Nor am I sure that the "traditional" standard of review would govern the case as the Court holds. In *Dandridge v. Williams*, on which the Court relies for the proposition that strict scrutiny of the State's action is not required, the Court never faced a question of possible racial discrimination. Percentages themselves are certainly not conclusive, but, at some point, a showing that state action has a devastating impact on the lives of minority racial groups must be relevant.

The Court reasons backwards to conclude that, because appellants have not proved racial discrimination, a less strict standard of review is necessarily tolerated. In my view, the first question that must be asked is what is the standard of review, and the second question is whether racial discrimination has been proved under the standard. It seems almost too plain for argument that the standard of review determines, in large measure, whether or not something has been proved.

These are all complex problems, and I do not propose to resolve any of them here. It is sufficient for me to note that I believe that the constitutional issue raised by appellants need not be reached, and that, in choosing to reach it, the Court has so greatly oversimplified the issue as to distort it. [Justice Marshall also avoided deciding whether the Texas scheme violated Title VI, while noting that in *Griggs*, "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation."

C. This brings me to what I believe disposes of the question presented: the disparity between the various social welfare programs is not permissible under the federal statutory framework.

There is no doubt that States are free to choose whether or not to participate in these programs, and it is also clear that each State has considerable freedom to allocate what it wants to one or more programs by establishing different standards of need to compute eligibility for aid. It is also true, however, that the basic aims of the four programs are identical. Indeed, when Congress first enacted the programs in 1935, it viewed them all as necessary to provide aid to families unable to obtain income from private employment. The beneficiaries of the various programs shared the basic characteristics of need and dependence.

Moreover, all four programs were simultaneously amended in 1956 to provide for social and rehabilitative services to enable all needy individuals to attain the maximum economic and personal independence of which they were capable.

[I]t is my opinion that Congress required that the State treat all recipients equally with respect to actual aid. In other words, as I read the federal statutes, they are designed to accomplish the same objectives, albeit for persons disadvantaged by different circumstances.

States clearly have the freedom to make a *bona fide* determination that blind persons have a greater need than dependent children, that adults have a higher standard of need than children, that the aged have more need than the blind, and so forth.

But, in this case, Texas made an independent determination of need, and it determined that the need of all recipients was equal. In this circumstance, I find nothing in the federal statute to enable a State to favor one group of recipients by satisfying more of its need, while at the same time denying an equally great need of another group. The purposes and objectives of the statutes are the same, those eligible for aid are suffering equally, and Congress intended that, once a State chose to participate in the programs, similarly situated persons would be treated similarly.

Everything in this record indicates that the recipients of the various forms of aid are identically situated.

First, Texas argues that AFDC children can be employed, whereas recipients of other benefits cannot be. Assuming *arguendo* that this is true, it is an argument that falls of its own weight. Whatever income the children earn is subtracted from need, or it is excluded from consideration under § 402(a)(8) to encourage self-help.

Second, the State maintains that AFDC families can secure help from legally responsible relatives more easily than recipients under other programs. Assuming again, for purposes of discussion, that this is true, it should be plain that any support from any relatives is subtracted from the State's grant. Moreover, appellants properly point out that recipients of aid in non-AFDC programs often have a source of aid unavailable to AFDC recipients – the federal old age insurance. Thus, there is no substance to this argument.

Third, Texas points to the likelihood of future employment for AFDC recipients, a likelihood that it says is nonexistent for older persons and others who receive aid. Federal law provides that a State may only consider income that is currently available in allocating funds. This contention is therefore irrelevant.

[The state also argues] that the numbers of AFDC recipients is rising, and this program should therefore bear the burden of monetary limitations. The obvious problem with this argument is that one fundamental purpose of AFDC aid is to enable people to escape the welfare rolls. But, under the Texas system, the aid is presently insufficient, people are unable to escape from dependency, and the rolls become larger. Had Texas not funded AFDC at a lower level than other programs, it is possible that the number of recipients would not have grown so large. The State's argument is a self-fulfilling prophecy on which it cannot rely to penalize AFDC recipients. Furthermore, there is nothing in the federal legislation to indicate that aid is to be reduced in a program merely because the number of beneficiaries of that program increases at a

more rapid rate than in other programs. It would be extreme irony if AFDC recipients were penalized by a State because their numbers grew in accordance with congressional intent.

The conclusion that I draw from the statutes is that Congress intended equal treatment for all persons similarly situated. Congress left to the States the determination of who was similarly situated by permitting States to determine levels of need. Since Texas has decided that AFDC recipients have precisely the same need as recipients of other social welfare benefits, it is my opinion that the federal legislation requires equal treatment for all.

Accordingly, I would reverse the judgment of the District Court and remand the case for formulation of relief consistent with this opinion.

UNITED STATES v. KRAS

409 U.S. 434 (1973)

(to accompany Henry Rose, *Denying the Poor Access to the Court: United States v. Kras* (1973), in **The Poverty Law Canon**, page 188)

Mr. JUSTICE BLACKMUN delivered the opinion of the Court.

The Bankruptcy Act and one of this Court's complementary Orders in Bankruptcy impose fees and make the payment of those fees a condition to a discharge in voluntary bankruptcy.

Appellee Kras, an indigent petitioner in bankruptcy, challenged the fees on Fifth Amendment grounds. Upon receiving notice of the constitutional issue in the District Court, the Government moved to intervene as of right. Leave to intervene was granted. The District Court held the fee provisions to be unconstitutional as applied to Kras. 331 F. Supp. 1207 (EDNY 1971). It reached this conclusion in the face of an earlier contrary holding by a unanimous First Circuit. *In re Garland*, 428 F.2d 1185 (1st Cir. 1970), *cert. denied*, 402 U.S. 966 (1971). The Government appealed.

I

Section 14(b)(2) of the Bankruptcy Act, 11 U.S.C. s 32(b)(2), provides that, upon the expiration of the time fixed by the court for filing of objections, 'the court shall discharge the bankrupt if no objection has been filed and if the filing fees required to be paid by this title have been paid in full.' Section 14(c), 11 U.S.C. s 32(c), similarly provides that the court 'shall grant the discharge unless satisfied that the bankrupt . . . (8) has failed to pay the filing fees required to be paid by this title in full.' Section 59(g), 11 U.S.C. s 95(g), relates to the dismissal of a petition in bankruptcy and states that 'in the case of a dismissal for failure to pay the costs,' notice to creditors shall not be required. Three separate sections of the Act thus contemplate the imposition of fees and condition a discharge upon payment of those fees.

Three charges are imposed: \$37 for the referee's salary and expense fund, \$10 for compensation of the trustee, and \$3 for the clerk's services. These total \$50. The fees are payable upon the filing of the petition. Section 40(c) (1), however, contains a proviso that in cases of voluntary bankruptcy, all the fees 'may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.'

The Court's General Order in Bankruptcy No. 35(4), as amended June 23, 1947, complements s 40(c)(1) and provides that, upon a proper showing by the bankrupt, the fees may be paid in installments within a six-month period, which may be extended not to exceed three months.

II

Robert William Kras presented his voluntary petition in bankruptcy to the United States District Court for the Eastern District of New York on May 28, 1971. The petition was accompanied by Kras' motion for leave to file and proceed in bankruptcy without payment of any of the filing fees as a condition precedent to discharge. The motion was supported by Kras' affidavit containing the following allegations that have not been controverted by the Government:

1. Kras resides in a 2 1/2-room apartment with his wife, two children, ages 5 years and 8 months, his mother, and his mother's 6-year-old daughter. His younger child suffers from cystic fibrosis and is undergoing treatment in a medical center.

2. Kras has been unemployed since May 1969 except for odd jobs producing about \$300 in 1969 and a like amount in 1970. His last steady job was as an insurance agent with Metropolitan Life Insurance Company. He was discharged by Metropolitan in 1969 when premiums he had collected were stolen from his home and he was unable to make up the amount to his employer. Metropolitan's claim against him has increased to over \$1,000 and is one of the debts listed in his bankruptcy petition. He has diligently sought steady employment in New York City, but, because of unfavorable references from Metropolitan, he has been unsuccessful. Mrs. Kras was employed until March 1970, when she was forced to stop because of pregnancy. All her attention now will be devoted to caring for the younger child who is coming out of the hospital soon.

3. The Kras household subsists entirely on \$210 per month public assistance received for Kras' own family and \$156 per month public assistance received for his mother and her daughter. These benefits are all expended for rent and day-to-day necessities. The rent is \$102 per month. Kras owns no automobile and no asset that is non-exempt under the bankruptcy law. He receives no unemployment or disability benefit. His sole assets are wearing apparel and \$50 worth of essential household goods that are exempt under s 6 of the Act, and under New York Civil Practice Laws and Rules. He has a couch of negligible value in storage on which a \$6 payment is due monthly.

4. Because of his poverty, Kras is wholly unable to pay or promise to pay the bankruptcy fees, even in small installments. He has been unable to borrow money. The New York City Department of Social Services refuses to allot money for payment of the fees. He has no prospect of immediate employment.

5. Kras seeks a discharge in bankruptcy of \$6,428.69 in total indebtedness in order to relieve himself and his family of the distress of financial insolvency and creditor harassment and in order to make a new start in life. It is especially important that he obtain a discharge of his debt to Metropolitan soon 'because until that is cleared up Metropolitan will continue to falsely charge me with fraud and give me bad references which prevent my getting employment.'

The District Court's opinion contains an order, 331 F.Supp. at 1215, granting Kras' motion for leave to file his petition in bankruptcy without prepayment of fees. He was adjudged a bankrupt on September 13, 1971. Later, the referee, upon consent of the parties, entered an order allowing Kras to conduct all necessary proceedings in bankruptcy up to but not including discharge. The referee stayed the discharge pending disposition of this appeal.

III

In the District Court Kras first presented a statutory argument—and, alternatively, one based in common law—that he was entitled to relief from payment of the bankruptcy charges because of the provisions of 28 U.S.C. s 1915(a). This is the in forma pauperis statute that has its origin in the Act of July 20, 1892, c. 209, 27 Stat. 252.

The District Court rejected the argument despite the seeming facial application of s 1915(a) to a bankruptcy proceeding as well as to any other. It reached this result by noting that s 51(2) of the Bankruptcy Act, as originally adopted in 1898, had provided for a waiver of fees upon the filing of an affidavit of inability to pay; that by the passage of the Referees' Salary Bill in 1946, bankruptcy petitions in forma pauperis were abolished; and that the 1946 statute, being later and having a positive and specific provision for postponement of fees in cases of indigency, overrode the earlier general provisions of s 1915(a). To the same effect are *In re Garland* and *In re Smith*, the reasoning of which the District Court adopted.

The appellee may well have abandoned the argument on this appeal. In any event, we agree, for the reasons stated by the District Court and by the courts in *Garland* and in the two *Smith* cases, supra, that s 1915(a) is not now available in bankruptcy. Neither do we perceive any common-law right to proceed without payment of fees. Congress, of course, sometime might conclude that s 1915(a) should be made applicable to bankruptcy and legislate accordingly.

The District Court went on to hold, however, that the prescribed fees, payment of which was required as a condition precedent to discharge, served to deny Kras 'his Fifth Amendment right of due process, including equal protection.' It held that a discharge in bankruptcy was a 'fundamental interest' that could be denied only when a 'compelling government interest' was demonstrated. It noted that provision should be made by the referee for the survival, beyond bankruptcy, of the bankrupt's obligation to pay the fees. The court rested its decision primarily upon *Boddie v. Connecticut*, which came down after the First Circuit's decision in *Garland*, supra. A number of other district courts and bankruptcy referees have reached the same result.

Kras contends that his case falls squarely within *Boddie*. The Government, on the other hand, stresses the differences between divorce (with which *Boddie* was concerned) and bankruptcy, and claims that *Boddie* is not controlling and that the fee requirements constitute a reasonable exercise of Congress' plenary power over bankruptcy.

IV

Boddie was a challenge by welfare recipients to certain Connecticut procedures, including the payment of court fees and costs, that allegedly restricted their access to the courts for divorce. The plaintiffs, simply by reason of their indigency, were unable to bring their actions. The Court reversed a district court judgment that a State could limit access to its courts by fees 'which effectively bar persons on relief from commencing actions therein.' Mr. Justice Harlan, writing for the Court, stressed state monopolization of the means for legally dissolving marriage and identified

the would-be indigent divorce plaintiff with any other action's impoverished defendant forced into court by the institution of a lawsuit against him. He declared that 'a meaningful opportunity to be heard' was firmly imbedded in our due process jurisprudence, and that this was to be protected against denial by laws that operate to jeopardize it for particular individuals. The Court then concluded that Connecticut's refusal to admit these good-faith divorce plaintiffs to its courts equated with the denial of an opportunity to be heard and, in the absence of a sufficient countervailing justification for the State's action, a denial of due process.

But the Court emphasized that 'we go no further than necessary to dispose of the case before us.'

'We do not decide that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual, for, as we have already noted, in the case before us this right is the exclusive precondition to the adjustment of a fundamental human relationship. The requirement that these appellants resort to the judicial process is entirely a state-created matter. Thus we hold only that a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so.'

Mr. Justice Douglas, concurring in the result, rested his conclusion on equal protection rather than due process. 'I do not see the length of the road we must follow if we accept my Brother Harlan's invitation.' Mr. Justice Brennan concurred in part, for he discerned no distinction between divorce and 'any other right arising under federal or state law' and he, also, found a denial of equal protection. Mr. Justice Black dissented, feeling that the Connecticut court costs were barred by neither the Due Process Clause nor the Equal Protection Clause of the Fourteenth Amendment.

Just two months after *Boddie* was decided, the Court denied certiorari in *Garland*. Mr. Justice Brennan was of the opinion that certiorari should have been granted. Mr. Justice Black, in an opinion applicable to *Garland* and to seven other then-pending cases, dissented and would have heard argument in all eight cases 'or reverse them outright on the basis of the decision in *Boddie*.' For him 'the need . . . to file for a discharge in bankruptcy seem(ed) . . . more 'fundamental' than a person's right to seek a divorce.' And Mr. Justice Douglas similarly dissented from the denial of certiorari in *Garland* and in four other cases because 'obtaining a fresh start in life through bankruptcy proceedings . . . (seemingly come(s) within) the Equal Protection Clause.'

Thus, although a denial of certiorari normally carries no implication or inference, the pointed dissents of Mr. Justice Black and Mr. Justice Douglas to the denial in *Garland* so soon after *Boddie*, and Mr. Justice Harlan's failure to join the dissenters, surely are not without some significance as to their and the Court's attitude about the application of the *Boddie* principle to bankruptcy fees.

V

We agree with the Government that our decision in *Boddie* does not control the disposition of this

case and that the District Court's reliance upon *Boddie* is misplaced.

A. *Boddie* was based on the notion that a State cannot deny access, simply because of one's poverty, to a 'judicial proceeding (that is) the only effective means of resolving the dispute at hand.' Throughout the opinion there is constant and recurring reference to Connecticut's exclusive control over the establishment, enforcement, and dissolution of the marital relationship. The Court emphasized that 'marriage involves interests of basic importance in our society,' and spoke of 'state monopolization of the means for legally dissolving this relationship.' '(R)esort to the state courts (was) the only avenue to dissolution of . . . marriages,' which was 'not only the paramount dispute-settlement technique, but, in fact, the only available one.' The Court acknowledged that it knew 'of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and more fundamentally the prohibition against remarriage, without invoking the State's judicial machinery.' In the light of all this, we concluded that resort to the judicial process was 'no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court' and we resolved the case 'in light of the principles enunciated in our due process decisions that delimit rights of defendants compelled to litigate their differences in the judicial forum.'

B. The appellants in *Boddie*, on the one hand, and Robert Kras, on the other, stand in materially different postures. The denial of access to the judicial forum in *Boddie* touched directly, as has been noted, on the marital relationship and on the associational interests that surround the establishment and dissolution of that relationship. On many occasions we have recognized the fundamental importance of these interests under our Constitution. The *Boddie* appellants' inability to dissolve their marriages seriously impaired their freedom to pursue other protected associational activities. Kras' alleged interest in the elimination of his debt burden, and in obtaining his desired new start in life, although important and so recognized by the enactment of the Bankruptcy Act, does not rise to the same constitutional level. If Kras is not discharged in bankruptcy, his position will not be materially altered in any constitutional sense. Gaining or not gaining a discharge will effect no change with respect to basic necessities. We see no fundamental interest that is gained or lost depending on the availability of a discharge in bankruptcy.

C. Nor is the Government's control over the establishment, enforcement, or dissolution of debts nearly so exclusive as Connecticut's control over the marriage relationship in *Boddie*. In contrast with divorce, bankruptcy is not the only method available to a debtor for the adjustment of his legal relationship with his creditors. The utter exclusiveness of court access and court remedy, as has been noted, was a potent factor in *Boddie*. But '(w)ithout a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts'

However unrealistic the remedy may be in a particular situation, a debtor, in theory, and often in actuality, may adjust his debts by negotiated agreement with his creditors. At times the happy passage of the applicable limitation period, or other acceptable creditor arrangement, will provide the answer. Government's role with respect to the private commercial relationship is qualitatively and quantitatively different from its role in the establishment, enforcement, and dissolution of marriage.

Resort to the court, therefore, is not Kras' sole path to relief. *Boddie's* emphasis on exclusivity finds no counterpart in the bankrupt's situation.

D. We are also of the opinion that the filing fee requirement does not deny Kras the equal protection of the laws. Bankruptcy is hardly akin to free speech or marriage or to those other rights, so many of which are imbedded in the First Amendment, that the Court has come to regard as fundamental and that demand the lofty requirement of a compelling governmental interest before they may be significantly regulated. Neither does it touch upon what have been said to be the suspect criteria of race, nationality, or alienage. Instead, bankruptcy legislation is in the area of economics and social welfare. This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational justification.

E. There is no constitutional right to obtain a discharge of one's debts in bankruptcy. The Constitution merely authorizes the Congress to 'establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.' Although the first bankruptcy law in England was enacted in 1542, and a discharge provision first appeared in 1705, primarily as a reward for cooperating debtors, voluntary bankruptcy was not known in this country at the adoption of the Constitution. Indeed, for the entire period prior to the present Act of 1898, the Nation was without a federal bankruptcy law except for three short periods aggregating about 15 1/2 years. The first statute was the Act of April 4, 1800, and it was repealed by the Act of December 19, 1803. The second was the Act of August 19, 1841, repealed less than two years later by the Act of March 3, 1843. The third was the Act of March 2, 1867; it was repealed by the Act of June 7, 1878. Voluntary petitions were permitted under the 1841 and 1867 Acts. Professor MacLachlan has said that the development of the discharge 'represents an independent . . . public policy in favor of extricating an insolvent debtor from what would otherwise be a financial impasse.' But this obviously is a legislatively created benefit, not a constitutional one, and, as noted, it was a benefit withheld, save for three short periods, during the first 110 years of the Nation's life. The mere fact that Congress has delegated to the District Court supervision over the proceedings by which a petition for discharge is processed does not convert a statutory benefit into a constitutional right of access to a court. Then, too, Congress might have delegated the responsibility to an administrative agency.

F. The rational basis for the fee requirement is readily apparent. Congressional power over bankruptcy, of course, is plenary and exclusive. By the 1946 Amendment, Congress, as has been noted, abolished the theretofore existing practices of the pauper petition and of compensating the referee from the fees he collected. It replaced that system with one for salaried referees and for fixed fees for every petition filed and a specified percentage of distributable assets. It sought to make the system self-sustaining and paid for by those who use it rather than by tax revenues drawn from the public at large. The propriety of the requirement that the fees be paid ultimately has been recognized even by those district courts that have held the payment of the fee as a precondition to a discharge to be unconstitutional, for those courts would make the payments survive the bankruptcy as a continuing obligation of the bankrupt.

Further, the reasonableness of the structure Congress produced, and congressional concern for the debtor, are apparent from the provisions permitting the debtor to file his petition without payment

of any fee, with consequent freedom of subsequent earnings and of after-acquired assets from the claims of then-existing obligations. These provisions, coupled with the bankrupt's ability to obtain a stay of all debt enforcement actions pending at the filing of the petition or thereafter commenced, enable a bankrupt to terminate his harassment by creditors, to protect his future earnings and property, and to have his new start with a minimum of effort and financial obligation. They serve also, as an incidental effect, to promote and not to defeat the purpose of making the bankruptcy system financially self-sufficient.

G. If the \$50 filing fees are paid in installments over six months as General Order No. 35 (4) permits on a proper showing, the required average weekly payment is \$1.92. If the payment period is extended for the additional three months as the Order permits, the average weekly payment is lowered to \$1.28. This is a sum less than the payments Kras makes on his couch of negligible value in storage, and less than the price of a movie and little more than the cost of a pack or two of cigarettes. If, as Kras alleges in his affidavit, a discharge in bankruptcy will afford him that new start he so desires, and the Metropolitan then no longer will charge him with fraud and give him bad references, and if he really needs and desires that discharge, this much available revenue should be within his able-bodied reach when the adjudication in bankruptcy has stayed collection and has brought to a halt whatever harassment, if any, he may have sustained from creditors.

VI

Mr. Justice Harlan, in his opinion for the Court in *Boddie*, meticulously pointed out, as we have noted above, that the Court went 'no further than necessary to dispose of the case before us' and did 'not decide that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual.' 401 U.S. at 382—383. The Court obviously stopped short of an unlimited rule that an indigent at all times and in all cases has the right to relief without the payment of fees.

We decline to extend the principle of *Boddie* to the no-asset bankruptcy proceeding. That relief, if it is to be forthcoming, should originate with Congress.

Reversed.

Mr. Chief Justice BURGER, concurring.

Surely there are strong arguments, as a matter of policy, for the result the dissenting view asserts. But Congress has not yet seen fit to declare the policy that the dissenters now find in the Constitution. In 1970 Congress authorized a tripartite commission to review the bankruptcy laws. The commission has been engaged in its task for more than two years and it is hardly likely that this problem will escape its consideration. The Constitution is not the exclusive source of law reform, even needed reform, in our system.

Mr. Justice STEWART, with whom Mr. Justice DOUGLAS, Mr. Justice BRENNAN, and Mr. Justice MARSHALL join, dissenting.

On May 28, 1971, Robert Kras, the appellee, sought to file a voluntary petition in bankruptcy. In an accompanying affidavit, he described his economic plight. He resided in a 2 1/2-room apartment with his wife, his two young children, his mother, and her child. His eight-month-old son had cystic fibrosis and at the time of the affidavit was undergoing hospital treatment. Unemployed since May 1969, except for odd jobs, he supported his household on a total public assistance allotment of \$366 per month—all of which was consumed on rent and the most basic necessities of life. His sole assets consisted of \$50 worth of clothing and essential household goods.

He sought a discharge from over \$6,000 in debts, particularly his indebtedness to a former employer that he contended hampered his present efforts to find a permanent job: ‘I earnestly seek a discharge in bankruptcy . . . in order to relieve myself and my family of the distress of financial insolvency and creditor harassment and in order to make a new start in life. . . . When I do get a job I want to be able to spend my wages for the support of myself and my family and for the medical care of my son, instead of paying them to my creditors and forcing my family to remain dependent on welfare.’

He indicated that he was unable to pay the \$50 bankruptcy filing fee in a lump sum, and could not promise to pay it in installments, as required before the petition could be filed. He contended that the fee requirement was unconstitutional as applied to him, and moved for leave to proceed without paying the fee.

The District Court held that under the doctrine of *Boddie v. Connecticut*, 401 U.S. 371, the statutory requirement of a prepaid bankruptcy filing fee would violate Kras’ Fifth Amendment right to due process of law. The court ordered the petition filed and directed the referee in bankruptcy to make provision for the survival of the appellee’s obligation to pay the filing fee. We noted probable jurisdiction of the Government’s appeal. I agree with the District Court and would, therefore, affirm its judgment.

Boddie held that a Connecticut statute requiring the payment of an average \$60 fee as a prerequisite to a divorce action was unconstitutional under the Due Process Clause of the Fourteenth Amendment, as applied to indigents unable to pay the fee. The Court reasoned that due process protections are traditionally viewed as safeguards for a defendant, because at the point when a plaintiff invokes the governmental power of a court, the judicial proceeding is ‘the only effective means of resolving the dispute at hand and denial of a defendant’s full access to that process raises grave problems for its legitimacy.’ But a party to a marriage remains under serious and continuing obligation imposed by the State, which cannot be removed except by judicial dissolution of the marital bond. Thus, we concluded that:

‘(A)lthough they assert here due process rights as would-be plaintiffs, we think appellants’ plight, because resort to the state courts is the only avenue to dissolution of their marriages, is akin to that of defendants faced with exclusion from the only forum effectively empowered to settle their disputes. Resort to the judicial process by these plaintiffs is no more voluntary in a realistic sense than that of the defendants called upon to defend his interests in court. For both groups this process

is not only the paramount dispute-settlement technique, but, in fact, the only available one.’

The violation of due process seems to me equally clear in the present case. It is undisputed that Kras is making a good-faith attempt to obtain a discharge in bankruptcy, and that he is in fact indigent. As was true in *Boddie*, the ‘welfare income . . . barely suffices to meet the costs of the daily essentials of life and includes no allotment that could be budgeted for the expense to gain access to the courts’

Similarly, the debtor, like the married plaintiffs in *Boddie*, originally entered into his contract freely and voluntarily. But it is the Government nevertheless that continues to enforce that obligation, and under our ‘legal system’ that debt is effective only because the judicial machinery is there to collect it. The bankrupt is bankrupt precisely for the reason that the State stands ready to exact all of his debts through garnishment, attachment, and the panoply of other creditor remedies. The appellee can be pursued and harassed by his creditors since they hold his legally enforceable debts.

And in the unique situation of the indigent bankrupt, the Government provides the only effective means of his ever being free of these Government-imposed obligations. As in *Boddie*, there are no ‘recognized, effective alternatives.’ While the creditors of a bankrupt with assets might well desire to reach a compromise settlement, that possibility is foreclosed to the truly indigent bankrupt. With no funds and not even a sufficient prospect of income to be able to promise the payment of a \$50 fee in weekly installments of \$1.28, the assetless bankrupt has absolutely nothing to offer his creditors. And his creditors have nothing to gain by allowing him to escape or reduce his debts; their only hope is that eventually he might make enough income for them to attach. Unless the Government provides him access to the bankruptcy court, Kras will remain in the totally hopeless situation he now finds himself. The Government has thus truly pre-empted the only means for the indigent bankrupt to get out from under a lifetime burden of debt.

The Government contends that the filing fee is justified by the congressional decision to make the bankruptcy system self-supporting. But in *Boddie* we rejected this same ‘pay as you go’ argument, finding it an insufficient justification for excluding the poor from the only available process to dissolve a marriage. The argument is no more persuasive here. The Constitution cannot tolerate achievement of the goal of self-support for a bankruptcy system, any more than for a domestic relations court, at the price of denying due process of law to the poor.

In my view, this case, like *Boddie*, does not require us to decide ‘that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the Due Process Clause . . . so that its exercise may not be placed beyond the reach of any individual’ It is sufficient to hold, as *Boddie* did, that ‘a State may not, consistent with the obligations imposed on it by the Due Process Clause . . . pre-empt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so.’

The Bankruptcy Act relieves ‘the honest debtor from the weight of oppressive indebtedness, and (permits) him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.’ It holds out a promise to the debtor of ‘a new opportunity in life and a clear

field for future effort, unhampered by the pressure and discouragement of pre-existing debt.’ Yet the Court today denies that promise to those who need it most, to those who every day must live face-to-face with abject poverty—who cannot spare even \$1.28 a week.

The Court today holds that Congress may say that some of the poor are too poor even to go bankrupt. I cannot agree.

Mr. Justice MARSHALL, dissenting.

The dissent of Mr. Justice STEWART, in which I have joined, makes clear the majority’s failure to distinguish this case from *Boddie v. Connecticut* (1971). I add only some comments on the extraordinary route by which the majority reaches its conclusion.

A. The majority notes that the minimum amount that appellee Kras must pay each week if he is permitted to pay the filing fees in installments is only \$1.28. It says that ‘this much available revenue should be within his able-bodied reach.’

Appellee submitted an affidavit in which he claimed that he was ‘unable to pay or promise to pay the filing fees, even in small installments.’ This claim was supported by detailed statements of his financial condition. The affidavit was unchallenged below, but the majority does challenge it. The District Judge properly accepted the factual allegations as true. The majority seems to believe that it is not restrained by the traditional notion that judges must accept unchallenged, credible affidavits as true, for it disregards the factual allegations and the inferences that necessarily follow from them. I cannot treat that notion so cavalierly.³⁵

Even if Kras’ statement that he was unable to pay the fees was an honest mistake, surely he cannot have been mistaken in saying that he could not promise to pay the fees. The majority does not directly impugn his good faith in making that statement. Yet if he cannot promise to pay the fees, he cannot get the interim relief from creditor harassment that, the majority says, may enable him to pay the fees.

But beyond all this, I cannot agree with the majority that it is so easy for the desperately poor to save \$1.92 each week over the course of six months. The 1970 Census found that over 800,000 families in the Nation had annual incomes of less than \$1,000 or \$19.23 a week. I see no reason to require that families in such straits sacrifice over 5% of their annual income as a prerequisite to

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The majority also misrepresents appellee’s financial condition. It says that \$1.28 ‘is a sum less than the payments Kras makes on his couch of negligible value in storage.’ Nowhere in the slender record of this case can I find any statement that appellee is actually paying anything for the storage of the couch. He said only that he ‘owed payments of \$6 per month’ for storage. He also stated that he owed \$6,428.69, but I would hardly read that to mean that he was paying that much to anyone. (original dissent footnote 1)

getting a discharge in bankruptcy.³⁶

It may be easy for some people to think that weekly savings of less than \$2 are no burden. But no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are. A sudden illness, for example, may destroy whatever savings they may have accumulated, and by eliminating a sense of security may destroy the incentive to save in the future. A pack or two of cigarettes may be, for them, not a routine purchase but a luxury indulged in only rarely. The desperately poor almost never go to see a movie, which the majority seems to believe is an almost weekly activity. They have more important things to do with what little money they have—like attempting to provide some comforts for a gravely ill child, as Kras must do.

It is perfectly proper for judges to disagree about what the Constitution requires. But it is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live.

B. The majority derives some solace from the denial of certiorari in *In re Garland*, 402 U.S. 966 (1971). Reliance on denial of certiorari for any proposition impairs the vitality of the discretion we exercise in controlling the cases we hear. For all that the legal community knows, Mr. Justice Harlan did not join the dissent from denial of certiorari in that case for reasons different from those that the majority uses to distinguish this case from *Boddie*. Perhaps he believed that lower courts should have some time to consider the implications of *Boddie*. Most of the lower courts have refused to follow the First Circuit's decision in *Garland*. Perhaps he thought that the record in that case made inappropriate any attempt to determine the scope of *Boddie* in that particular case. Or perhaps he had some other reason.

The point of our use of a discretionary writ is precisely to prohibit that kind of speculation. When we deny certiorari, no one, not even ourselves, should think that the denial indicates a view on the merits of the case. It ill serves judges of the courts throughout the country to tell them, as the majority does today, that in attempting to determine what the law is, they must read, not only the opinions of this Court, but also the thousands of cases in which we annually deny certiorari.

C. The majority says that '(t)he denial of access to the judicial forum in *Boddie* touched directly . . . on the marital relationship.' It sees 'no fundamental interest that is gained or lost depending on the availability of a discharge in bankruptcy.' If the case is to turn on distinctions between the role of courts in divorce cases and their role in bankruptcy cases,³⁷ I agree with Mr. Justice STEWART

³⁶ The majority, in citing the 'record of achievement' of the bankruptcy system in terminating 107,481 no-asset cases in the fiscal year 1969, relies on spectral evidence. Because the filing fees bar relief through the bankruptcy system, statistics showing how many people got relief through that system are unenlightening on the question of how many people could not use the system because they were too poor. I do not know how many people cannot afford to pay a \$50 fee in installments. But I find nothing in the majority's opinion to convince me that due process is afforded a person who cannot receive a discharge in bankruptcy because he is too poor. Even if only one person is affected by the filing fees, he is denied due process. (original dissent footnote 2)

³⁷ I am intrigued by the majority's suggestion that, because the granting of a divorce impinges on 'associational interests,' the right to a divorce is constitutionally protected. Are we to require that state divorce laws serve compelling state interests? For example, if a State chooses to allow divorces only when one party is shown to have committed

that this case and *Boddie* cannot be distinguished; the role of the Government in standing ready to enforce an otherwise continuing obligation is the same.

However, I would go further than Mr. Justice STEWART. I view the case as involving the right of access to the courts, the opportunity to be heard when one claims a legal right, and not just the right to a discharge in bankruptcy. When a person raises a claim of right or entitlement under the laws, the only forum in our legal system empowered to determine that claim is a court. Kras, for example, claims that he has a right under the Bankruptcy Act to be free of any duty to pay his creditors. There is no way to determine whether he has such a right except by adjudicating his claim.³⁸ Failure to do so denies him access to the courts.

The legal system is, of course, not so pervasive as to preclude private resolution of disputes. But private settlements do not determine the validity of claims of right. Such questions can be authoritatively resolved only in courts. It is in that sense, I believe, that we should consider the emphasis in *Boddie* on the exclusiveness of the judicial forum—and give Kras his day in court.

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adultery, must its refusal to allow them when the parties claim irreconcilable differences be justified by some compelling state interest? I raise these questions only to suggest that the majority's focus on the relative importance in the constitutional scheme of divorce and bankruptcy is misplaced. What is involved is the importance of access to the courts, either to remove an obligation that other branches of the government stand ready to enforce, as Mr. Justice STEWART sees it, or to determine claims of right, as I see it. (original dissent footnote 4)

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It might be said that the right he claims does not come into play until he has fulfilled a condition precedent by paying the filing fees. But the distinction between procedure and substance is not unknown in the law and can be drawn on to counter that argument. (original dissent footnote 6)

411 U.S. 1 (1973)

(to accompany Camille Walsh, “*The Poor People Have Lost Again:*” *San Antonio Independent School District v. Rodriguez*, 1973 in **The Poverty Law Canon**, page 198)

MR. JUSTICE POWELL delivered the opinion of the Court.

This suit attacking the Texas system of financing public education was initiated by Mexican-American parents whose children attend the elementary and secondary schools in the Edgewood Independent School District, an urban school district in San Antonio, Texas. They brought a class action on behalf of schoolchildren throughout the State who are members of minority groups or who are poor and reside in school districts having a low property tax base. Named as defendants were the State Board of Education, the Commissioner of Education, the State Attorney General, and the Bexar County (San Antonio) Board of Trustees. The complaint was filed in the summer of 1968 and a three-judge court was impaneled in January 1969. In December 1971 the panel rendered its judgment in a *per curiam* opinion holding the Texas school finance system unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The State appealed, and we noted probable jurisdiction to consider the far-reaching constitutional questions presented. For the reasons stated in this opinion, we reverse the decision of the District Court.

The school district in which appellees reside, the Edgewood Independent School District, has been compared throughout this litigation with the Alamo Heights Independent School District. This comparison between the least and most affluent districts in the San Antonio area serves to illustrate the manner in which the dual system of finance operates and to indicate the extent to which substantial disparities exist despite the State’s impressive progress in recent years. Edgewood is one of seven public school districts in the metropolitan area. Approximately 22,000 students are enrolled in its 25 elementary and secondary schools. The district is situated in the core-city sector of San Antonio in a residential neighborhood that has little commercial or industrial property. The residents are predominantly of Mexican-American descent: approximately 90% of the student population is Mexican-American and over 6% is Negro. The average assessed property value per pupil is \$5,960—the lowest in the metropolitan area—and the median family income (\$4,686) is also the lowest. At an equalized tax rate of \$1.05 per \$100 of assessed property—the highest in the metropolitan area—the district contributed \$26 to the education of each child for the 1967–1968 school year above its Local Fund Assignment for the Minimum Foundation Program. The Foundation Program contributed \$222 per pupil for a state-local total of \$248. Federal funds added another \$108 for a total of \$356 per pupil.

Alamo Heights is the most affluent school district in San Antonio. Its six schools, housing approximately 5,000 students, are situated in a residential community quite unlike the Edgewood District. The school population is predominantly “Anglo,” having only 18% Mexican-Americans and less than 1% Negroes. The assessed property value per pupil exceeds \$49,000, and the

median family income is \$8,001. In 1967–1968 the local tax rate of \$.85 per \$100 of valuation yielded \$333 per pupil over and above its contribution to the Foundation Program. Coupled with the \$225 provided from that Program, the district was able to supply \$558 per student. Supplemented by a \$36 per-pupil grant from federal sources, Alamo Heights spent \$594 per pupil.

Although the 1967–1968 school year figures provide the only complete statistical breakdown for each category of aid, more recent partial statistics indicate that the previously noted trend of increasing state aid has been significant. It appears then that, at least as to these two districts, the Local Fund Assignment does reflect a rough approximation of the relative taxpaying potential of each.

Despite these recent increases, substantial interdistrict disparities in school expenditures found by the District Court to prevail in San Antonio and in varying degrees throughout the State still exist. And it was these disparities, largely attributable to differences in the amounts of money collected through local property taxation, that led the District Court to conclude that Texas' dual system of public school financing violated the Equal Protection Clause. The District Court held that the Texas system discriminates on the basis of wealth in the manner in which education is provided for its people. 337 F. Supp., at 282. Finding that wealth is a "suspect" classification and that education is a "fundamental" interest, the District Court held that the Texas system could be sustained only if the State could show that it was premised upon some compelling state interest. On this issue the court concluded that "[n]ot only are defendants unable to demonstrate compelling state interests . . . they fail even to establish a reasonable basis for these classifications."

Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict judicial scrutiny that this Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights or that involve suspect classifications. If, as previous decisions have indicated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a "heavy burden of justification," that the State must demonstrate that its educational system has been structured with "precision," and is "tailored" narrowly to serve legitimate objectives and that it has selected the "less drastic means" for effectuating its objectives, the Texas financing system and its counterpart in virtually every other State will not pass muster. The State candidly admits that "[n]o one familiar with the Texas system would contend that it has yet achieved perfection." Apart from its concession that educational financing in Texas has "defects" and "imperfections," the State defends the system's rationality with vigor and disputes the District Court's finding that it lacks a "reasonable basis."

This, then, establishes the framework for our analysis. We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some

legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

The District Court's opinion does not reflect the novelty and complexity of the constitutional questions posed by appellees' challenge to Texas' system of school financing. In concluding that strict judicial scrutiny was required, that court relied on decisions dealing with the rights of indigents to equal treatment in the criminal trial and appellate processes, and on cases disapproving wealth restrictions on the right to vote. Those cases, the District Court concluded, established wealth as a suspect classification. Finding that the local property tax system discriminated on the basis of wealth, it regarded those precedents as controlling. It then reasoned, based on decisions of this Court affirming the undeniable importance of education, that there is a fundamental right to education and that, absent some compelling state justification, the Texas system could not stand.

We are unable to agree that this case, which in significant aspects is *sui generis*, may be so neatly fitted into the conventional mosaic of constitutional analysis under the Equal Protection Clause. Indeed, for the several reasons that follow, we find neither the suspect-classification nor the fundamental-interest analysis persuasive.

A

The wealth discrimination discovered by the District Court in this case, and by several other courts that have recently struck down school-financing laws in other States, is quite unlike any of the forms of wealth discrimination heretofore reviewed by this Court. Rather than focusing on the unique features of the alleged discrimination, the courts in these cases have virtually assumed their findings of a suspect classification through a simplistic process of analysis: since, under the traditional systems of financing public schools, some poorer people receive less expensive educations than other more affluent people, these systems discriminate on the basis of wealth. This approach largely ignores the hard threshold questions, including whether it makes a difference for purposes of consideration under the Constitution that the class of disadvantaged "poor" cannot be identified or defined in customary equal protection terms, and whether the relative—rather than absolute—nature of the asserted deprivation is of significant consequence. Before a State's laws and the justifications for the classifications they create are subjected to strict judicial scrutiny, we think these threshold considerations must be analyzed more closely than they were in the court below.

The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. Examination of the District Court's opinion and of appellees' complaint, briefs, and contentions at oral argument suggests, however, at least three ways in which the discrimination claimed here might be described. The Texas system of school financing might be regarded as discriminating (1) against "poor" persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally "indigent," or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts. Our task must be to

ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect.

However described, it is clear that appellees' suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts. The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class. But in recognition of the fact that this Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny, appellees have not relied solely on this contention. They also assert that the State's system impermissibly interferes with the exercise of a "fundamental" right and that accordingly the prior decisions of this Court require the application of the strict standard of judicial review. *Graham v. Richardson* (1971); *Kramer v. Union School District* (1969); *Shapiro v. Thompson* (1969). It is this question—whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution—which has so consumed the attention of courts and commentators in recent years.

B

Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement with the conclusion of the three-judge panel below that "the grave significance of education both to the individual and to our society" cannot be doubted. But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause.

Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted. These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental

interference. But they are not values to be pursued by a implemented by judicial intrusion into otherwise legitimate state activities.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short. Whatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.

Furthermore, the logical limitations on appellees' nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process, and that they derive the least enjoyment from the benefits of the First Amendment.

We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive. In one further respect we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny. The present case, in another basic sense, is significantly different from any of the cases in which the Court has applied strict scrutiny to state or federal legislation touching upon constitutionally protected rights. Each of our prior cases involved legislation which "deprived," "infringed," or "interfered" with the free exercise of some such fundamental personal right or liberty.

Every step leading to the establishment of the system Texas utilizes today—including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid—was implemented in an effort to *extend* public education and to improve its quality. Of course, every reform that benefits some more than others may be criticized for what it fails to accomplish. But we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution.

III

Appellees further urge that the Texas system is unconstitutionally arbitrary because it allows the availability of local taxable resources to turn on "happenstance." They see no justification for a system that allows, as they contend, the quality of education to fluctuate on the basis of the fortuitous positioning of the boundary lines of political subdivisions and the location of valuable

commercial and industrial property. But any scheme of local taxation—indeed the very existence of identifiable local governmental units—requires the establishment of jurisdictional boundaries that are inevitably arbitrary. It is equally inevitable that some localities are going to be blessed with more taxable assets than others. Nor is local wealth a static quantity. Changes in the level of taxable wealth within any district may result from any number of events, some of which local residents can and do influence. For instance, commercial and industrial enterprises may be encouraged to locate within a district by various actions—public and private.

Moreover, if local taxation for local expenditures were an unconstitutional method of providing for education then it might be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive no justification for such a severe denigration of local property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.

In sum, to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. Texas has acknowledged its shortcomings and has persistently endeavored—not without some success—to ameliorate the differences in levels of expenditures without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of responsible studies by qualified people. In its essential characteristics, the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution. We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 50 States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. We hold that the Texas plan abundantly satisfies this standard.

IV

In light of the considerable attention that has focused on the District Court opinion in this case and on its California predecessor, *Serrano v. Priest* (1971), a cautionary postscript seems appropriate. It cannot be questioned that the constitutional judgment reached by the District Court and approved by our dissenting Brothers today would occasion in Texas and elsewhere an unprecedented upheaval in public education. Some commentators have concluded that, whatever the contours of the alternative financing programs that might be devised and approved, the result could not avoid being a beneficial one. But, just as there is nothing simple about the

constitutional issues involved in these cases, there is nothing simple or certain about predicting the consequences of massive change in the financing and control of public education. Those who have devoted the most thoughtful attention to the practical ramifications of these cases have found no clear or dependable answers and their scholarship reflects no such unqualified confidence in the desirability of completely uprooting the existing system.

The complexity of these problems is demonstrated by the lack of consensus with respect to whether it may be said with any assurance that the poor, the racial minorities, or the children in overburdened core-city school districts would be benefited by abrogation of traditional modes of financing education. Unless there is to be a substantial increase in state expenditures on education across the board—an event the likelihood of which is open to considerable question—these groups stand to realize gains in terms of increased per-pupil expenditures only if they reside in districts that presently spend at relatively low levels, *i.e.*, in those districts that would benefit from the redistribution of existing resources. Yet, recent studies have indicated that the poorest families are not invariably clustered in the most impecunious school districts. Nor does it now appear that there is any more than a random chance that racial minorities are concentrated in property-poor districts. Additionally, several research projects have concluded that any financing alternative designed to achieve a greater equality of expenditures is likely to lead to higher taxation and lower educational expenditures in the major urban centers, a result that would exacerbate rather than ameliorate existing conditions in those areas.

These practical considerations, of course, play no role in the adjudication of the constitutional issues presented here. But they serve to highlight the wisdom of the traditional limitations on this Court's function. The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

Reversed.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting. The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside. The majority's decision represents an abrupt departure from the mainstream of recent state and federal court decisions concerning the unconstitutionality of state educational financing schemes dependent upon taxable local wealth. More unfortunately, though, the majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which

deprives children in their earliest years of the chance to reach their full potential as citizens. The Court does this despite the absence of any substantial justification for a scheme which arbitrarily channels educational resources in accordance with the fortuity of the amount of taxable wealth within each district.

In my judgment, the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which, contrary to the majority's suggestion, has proved singularly unsuited to the task of providing a remedy for this discrimination. I, for one, am unsatisfied with the hope of an ultimate "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that "may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Board of Education*, 347 U. S. 483, 494 (1954). I must therefore respectfully dissent.

A

To begin, I must once more voice my disagreement with the Court's rigidified approach to equal protection analysis. The Court apparently seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review—strict scrutiny or mere rationality. But this Court's decisions in the field of equal protection defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. I find in fact that many of the Court's recent decisions embody the very sort of reasoned approach to equal protection analysis for which I previously argued—that is, an approach in which "concentration [is] placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification."

I therefore cannot accept the majority's labored efforts to demonstrate that fundamental interests, which call for strict scrutiny of the challenged classification, encompass only established rights which we are somehow bound to recognize from the text of the Constitution itself. To be sure, some interests which the Court has deemed to be fundamental for purposes of equal protection analysis are themselves constitutionally protected rights. Thus, discrimination against the guaranteed right of freedom of speech has called for strict judicial scrutiny. Further, every citizen's right to travel interstate, although nowhere expressly mentioned in the Constitution, has long been recognized as implicit in the premises underlying that document: the right "was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." Consequently, the Court has required that a state classification affecting the constitutionally protected right to travel must be "shown to be necessary to promote a

compelling governmental interest.” But it will not do to suggest that the “answer” to whether an interest is fundamental for purposes of equal protection analysis is *always* determined by whether that interest “is a right . . . explicitly or implicitly guaranteed by the Constitution.”

I would like to know where the Constitution guarantees the right to procreate, or the right to vote in state elections, or the right to an appeal from a criminal conviction. These are instances in which, due to the importance of the interests at stake, the Court has displayed a strong concern with the existence of discriminatory state treatment. But the Court has never said or indicated that these are interests which independently enjoy full-blown constitutional protection. . .

The majority is, of course, correct when it suggests that the process of determining which interests are fundamental is a difficult one. But I do not think the problem is insurmountable. And I certainly do not accept the view that the process need necessarily degenerate into an unprincipled, subjective “picking-and-choosing” between various interests or that it must involve this Court in creating “substantive constitutional rights in the name of guaranteeing equal protection of the laws.” Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly. Thus, it cannot be denied that interests such as procreation, the exercise of the state franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with constitutional guarantees. Procreation is now understood to be important because of its interaction with the established constitutional right of privacy. The exercise of the state franchise is closely tied to basic civil and political rights inherent in the First Amendment. And access to criminal appellate processes enhances the integrity of the range of rights implicit in the Fourteenth Amendment guarantee of due process of law. Only if we closely protect the related interests from state discrimination do we ultimately ensure the integrity of the constitutional guarantee itself. This is the real lesson that must be taken from our previous decisions involving interests deemed to be fundamental.

A similar process of analysis with respect to the invidiousness of the basis on which a particular classification is drawn has also influenced the Court as to the appropriate degree of scrutiny to be accorded any particular case. The highly suspect character of classifications based on race, nationality, or alienage is well established. The reasons why such classifications call for close judicial scrutiny are manifold. Certain racial and ethnic groups have frequently been recognized as “discrete and insular minorities” who are relatively powerless to protect their interests in the political process. Moreover, race, nationality, or alienage is “in most circumstances irrelevant” to any constitutionally acceptable legislative purpose.” Instead, lines drawn on such bases are frequently the reflection of historic prejudices rather than legislative rationality. It may be that all of these considerations, which make for particular judicial solicitude in the face of discrimination

on the basis of race, nationality, or alienage, do not coalesce—or at least not to the same degree—in other forms of discrimination. Nevertheless, these considerations have undoubtedly influenced the care with which the Court has scrutinized other forms of discrimination.

B

Since the Court now suggests that only interests guaranteed by the Constitution are fundamental for purposes of equal protection analysis, and since it rejects the contention that public education is fundamental, it follows that the Court concludes that public education is not constitutionally guaranteed. It is true that this Court has never deemed the provision of free public education to be required by the Constitution. Indeed, it has on occasion suggested that state-supported education is a privilege bestowed by a State on its citizens. Nevertheless, the fundamental importance of education is amply indicated by the prior decisions of this Court, by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values.

.....

The special concern of this Court with the educational process of our country is a matter of common knowledge. Undoubtedly, this Court’s most famous statement on the subject is that contained in *Brown v. Board of Education*, 347 U. S., at 493:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. . . .

Only last Term, the Court recognized that “[p]roviding public schools ranks at the very apex of the function of a State.” *Wisconsin v. Yoder* (1972). This is clearly borne out by the fact that in 48 of our 50 States the provision of public education is mandated by the state constitution. No other state function is so uniformly recognized as an essential element of our society’s well-being. In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Yoder* on the facts that “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . . ,” and that “education prepares individuals to be self-reliant and self-sufficient participants in society.” Both facets of this observation are suggestive of the substantial relationship which education bears to guarantees of our Constitution.

Education directly affects the ability of a child to exercise his First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life. This Court’s decision in *Sweezy v. New Hampshire* (1957) speaks of the right of students “to inquire,

to study and to evaluate, to gain new maturity and understanding. . . .” Thus, we have not casually described the classroom as the “marketplace of ideas.” The opportunity for formal education may not necessarily be the essential determinant of an individual’s ability to enjoy throughout his life the rights of free speech and association guaranteed to him by the First Amendment. But such an opportunity may enhance the individual’s enjoyment of those rights, not only during but also following school attendance. Thus, in the final analysis, “the pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable.”

While ultimately disputing little of this, the majority seeks refuge in the fact that the Court has “never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice.” This serves only to blur what is in fact at stake. With due respect, the issue is neither provision of the most *effective* speech nor of the most *informed* vote. Appellees do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide with the same or even substantially less tax effort. The issue is, in other words, one of discrimination that affects the quality of the education which Texas has chosen to provide its children; and, the precise question here is what importance should attach to education for purposes of equal protection analysis of that discrimination. As this Court held in *Brown v. Board of Education*, 347 U. S., at 493, the opportunity of education, “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” The factors just considered, including the relationship between education and the social and political interests enshrined within the Constitution, compel us to recognize the fundamentality of education and to scrutinize with appropriate care the bases for state discrimination affecting equality of educational opportunity in Texas’ school districts—a conclusion which is only strengthened when we consider the character of the classification in this case.

C

The District Court found that in discriminating between Texas schoolchildren on the basis of the amount of taxable property wealth located in the district in which they live, the Texas financing scheme created a form of wealth discrimination. This Court has frequently recognized that discrimination on the basis of wealth may create a classification of a suspect character and thereby call for exacting judicial scrutiny. The majority, however, considers any wealth classification in this case to lack certain essential characteristics which it contends are common to the instances of wealth discrimination that this Court has heretofore recognized. We are told that in every prior case involving a wealth classification, the members of the disadvantaged class have “shared two distinguishing characteristics: because of their impecuniness they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.” I cannot agree. The Court’s distinctions may be sufficient to explain the decisions in *Williams v. Illinois* (1970), *Tate v. Short* (1971) and even *Bullock v. Carter* (1972). But they are not in fact consistent with the

decisions in *Harper v. Virginia Bd. of Elections* (1966), or *Griffin v. Illinois*, or *Douglas v. California*.

This is not to say that the form of wealth classification in this case does not differ significantly from those recognized in the previous decisions of this Court. Our prior cases have dealt essentially with discrimination on the basis of personal wealth. Here, by contrast, the children of the disadvantaged Texas school districts are being discriminated against not necessarily because of their personal wealth or the wealth of their families, but because of the taxable property wealth of the residents of the district in which they happen to live. The appropriate question, then, is whether the same degree of judicial solicitude and scrutiny that has previously been afforded wealth classifications is warranted here.

As the Court points out, no previous decision has deemed the presence of just a wealth classification to be sufficient basis to call forth rigorous judicial scrutiny of allegedly discriminatory state action. That wealth classifications alone have not necessarily been considered to bear the same high degree of suspectness as have classifications based on, for instance, race or alienage may be explainable on a number of grounds. The “poor” may not be seen as politically powerless as certain discrete and insular minority groups. Personal poverty may entail much the same social stigma as historically attached to certain racial or ethnic groups. But personal poverty is not a permanent disability; its shackles may be escaped. Perhaps most importantly, though, personal wealth may not necessarily share the general irrelevance as a basis for legislative action that race or nationality is recognized to have. While the “poor” have frequently been a legally disadvantaged group, it cannot be ignored that social legislation must frequently take cognizance of the economic status of our citizens. Thus, we have generally gauged the invidiousness of wealth classifications with an awareness of the importance of the interests being affected and the relevance of personal wealth to those interests.

When evaluated with these considerations in mind, it seems to me that discrimination on the basis of group wealth in this case likewise calls for careful judicial scrutiny. First, it must be recognized that while local district wealth may serve other interests, it bears no relationship whatsoever to the interest of Texas schoolchildren in the educational opportunity afforded them by the State of Texas. Given the importance of that interest, we must be particularly sensitive to the invidious characteristics of any form of discrimination that is not clearly intended to serve it, as opposed to some other distinct state interest. Discrimination on the basis of group wealth may not, to be sure, reflect the social stigma frequently attached to personal poverty. Nevertheless, insofar as group wealth discrimination involves wealth over which the disadvantaged individual has no significant control, it represents in fact a more serious basis of discrimination than does personal wealth. For such discrimination is no reflection of the individual’s characteristics or his abilities. And thus—particularly in the context of a disadvantaged class composed of children—we have previously treated discrimination on a basis which the individual cannot control as

The disability of the disadvantaged class in this case extends as well into the political processes upon which we ordinarily rely as adequate for the protection and promotion of all interests. Here legislative reallocation of the State’s property wealth must be sought in the face of inevitable

opposition from significantly advantaged districts that have a strong vested interest in the preservation of the status quo, a problem not completely dissimilar to that faced by underrepresented districts prior to the Court's intervention in the process of reapportionment.

Nor can we ignore the extent to which, in contrast to our prior decisions, the State is responsible for the wealth discrimination in this instance. *Griffin, Douglas, Williams, Tate*, and our other prior cases have dealt with discrimination on the basis of indigency which was attributable to the operation of the private sector. But we have no such simple *de facto* wealth discrimination here. The means for financing public education in Texas are selected and specified by the State. It is the State that has created local school districts, and tied educational funding to the local property tax and thereby to local district wealth. At the same time, governmentally imposed land use controls have undoubtedly encouraged and rigidified natural trends in the allocation of particular areas for residential or commercial use, and thus determined each district's amount of taxable property wealth. In short, this case, in contrast to the Court's previous wealth discrimination decisions, can only be seen as "unusual in the extent to which governmental action *is* the cause of the wealth classification."

In the final analysis, then, the invidious characteristics of the group wealth classification present in this case merely serve to emphasize the need for careful judicial scrutiny of the State's justifications for the resulting interdistrict discrimination in the educational opportunity afforded to the schoolchildren of Texas.

The Court seeks solace for its action today in the possibility of legislative reform. The Court's suggestions of legislative redress and experimentation will doubtless be of great comfort to the schoolchildren of Texas' disadvantaged districts, but considering the vested interests of wealthy school districts in the preservation of the status quo, they are worth little more. The possibility of legislative action is, in all events, no answer to this Court's duty under the Constitution to eliminate unjustified state discrimination. In this case we have been presented with an instance of such discrimination, in a particularly invidious form, against an individual interest of large constitutional and practical importance. To support the demonstrated discrimination in the provision of educational opportunity the State has offered a justification which, on analysis, takes on at best an ephemeral character. Thus, I believe that the wide disparities in taxable district property wealth inherent in the local property tax element of the Texas financing scheme render that scheme violative of the Equal Protection Clause.

I would therefore affirm the judgment of the District Court.



MATHEWS v. ELDRIDGE

424 U.S. 319 (1976)

(to accompany John J. Capowski, *Reflecting and Foreshadowing: Matthews v. Eldridge (1976)*
in the **Poverty Law Canon**, page 219)

Mr. Justice POWELL delivered the opinion of the Court.

The issue in this case is whether the Due Process Clause of the Fifth Amendment requires that prior to the termination of Social Security disability benefit payments the recipient be afforded an opportunity for an evidentiary hearing.

I

Cash benefits are provided to workers during periods in which they are completely disabled under the disability insurance benefits program created by the 1956 amendments to Title II of the Social Security Act. Respondent Eldridge was first awarded benefits in June 1968. In March 1972, he received a questionnaire from the state agency charged with monitoring his medical condition. Eldridge completed the questionnaire, indicating that his condition had not improved and identifying the medical sources, including physicians, from whom he had received treatment recently. The state agency then obtained reports from his physician and a psychiatric consultant. After considering these reports and other information in his file the agency informed Eldridge by letter that it had made a tentative determination that his disability had ceased in May 1972. The letter included a statement of reasons for the proposed termination of benefits, and advised Eldridge that he might request reasonable time in which to obtain and submit additional information pertaining to his condition.

In his written response, Eldridge disputed one characterization of his medical condition and indicated that the agency already had enough evidence to establish his disability.³⁹ The state agency then made its final determination that he had ceased to be disabled in May 1972. This determination was accepted by the Social Security Administration (SSA), which notified Eldridge in July that his benefits would terminate after that month. The notification also advised

³⁹ Eldridge originally was disabled due to chronic anxiety and back strain. He subsequently was found to have diabetes. The tentative determination letter indicated that aid would be terminated because available medical evidence indicated that his diabetes was under control, that there existed no limitations on his back movements which would impose severe functional restrictions, and that he no longer suffered emotional problems that would preclude him from all work for which he was qualified. In his reply letter he claimed to have arthritis of the spine rather than a strained back. (original footnote 2)

him of his right to seek reconsideration by the state agency of this initial determination within six months.

Instead of requesting reconsideration Eldridge commenced this action challenging the constitutional validity of the administrative procedures established by the Secretary of Health, Education, and Welfare for assessing whether there exists a continuing disability. He sought an immediate reinstatement of benefits pending a hearing on the issue of his disability.⁴⁰ The Secretary moved to dismiss on the grounds that Eldridge's benefits had been terminated in accordance with valid administrative regulations and procedures and that he had failed to exhaust available remedies. In support of his contention that due process requires a pretermination hearing, Eldridge relied exclusively upon this Court's decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970), which established a right to an "evidentiary hearing" prior to termination of welfare benefits. The Secretary contended that *Goldberg* was not controlling since eligibility for disability benefits, unlike eligibility for welfare benefits, is not based on financial need and since issues of credibility and veracity do not play a significant role in the disability entitlement decision, which turns primarily on medical evidence.

The District Court concluded that the administrative procedures pursuant to which the Secretary had terminated Eldridge's benefits abridged his right to procedural due process. The court viewed the interest of the disability recipient in uninterrupted benefits as indistinguishable from that of the welfare recipient in *Goldberg*. It further noted that decisions subsequent to *Goldberg* demonstrated that the due process requirement of pretermination hearings is not limited to situations involving the deprivation of vital necessities. Reasoning that disability determinations may involve subjective judgments based on conflicting medical and nonmedical evidence, the District Court held that prior to termination of benefits Eldridge had to be afforded an evidentiary hearing of the type required for welfare beneficiaries under Title IV of the Social Security Act. Relying entirely upon the District Court's opinion, the Court of Appeals for the Fourth Circuit affirmed the injunction barring termination of Eldridge's benefits prior to an evidentiary hearing. We reverse.

II

At the outset we are confronted by a question as to whether the District Court had jurisdiction over this suit. The only avenue for judicial review is 42 U.S.C. § 405(g), which requires exhaustion of the administrative remedies provided under the Act as a jurisdictional prerequisite.

On its face § 405(g) thus bars judicial review of any denial of a claim of disability benefits until after a "final decision" by the Secretary after a "hearing."

[The Court found that Mr. Eldridge satisfied the jurisdictional requirement of a final decision after a hearing. He had answered the state agency questionnaire and, in his response to the

⁴⁰ The District Court ordered reinstatement of Eldridge's benefits pending its final disposition on the merits.(original footnote 3)

tentative determination, stated that he was still disabled. The state agency denied his claim and the SSA accepted the agency's decision. The Court also found that he was not required to make or exhaust his constitutional claim before bringing the federal action, because "Eldridge's constitutional challenge is entirely collateral to his substantive claim of entitlement. A claim to a pre-deprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a post-deprivation hearing."]

III A

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. The Secretary does not contend that procedural due process is inapplicable to terminations of Social Security disability benefits. He recognizes, as has been implicit in our prior decisions that the interest of an individual in continued receipt of these benefits is a statutorily created "property" interest protected by the Fifth Amendment. Rather, the Secretary contends that the existing administrative procedures, detailed below, provide all the process that is constitutionally due before a recipient can be deprived of that interest.

This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Eldridge agrees that the review procedures available to a claimant before the initial determination of ineligibility becomes final would be adequate if disability benefits were not terminated until after the evidentiary hearing stage of the administrative process. The dispute centers upon what process is due prior to the initial termination of benefits, pending review.

In recent years this Court increasingly has had occasion to consider the extent to which due process requires an evidentiary hearing prior to the deprivation of some type of property interest even if such a hearing is provided thereafter. In only one case, *Goldberg v. Kelly*, has the Court held that a hearing closely approximating a judicial trial is necessary. In other cases requiring some type of pretermination hearing as a matter of constitutional right the Court has spoken sparingly about the requisite procedures. *Sniadach v. Family Finance Corp.*, involving garnishment of wages, was entirely silent on the matter. In *Fuentes v. Shevin*, the Court said only that in a replevin suit between two private parties the initial determination required something more than an ex parte proceeding before a court clerk. Similarly, *Bell v. Burson*, held, in the context of the revocation of a state-granted driver's license, that due process required only that the prerevocation hearing involve a probable-cause determination as to the fault of the licensee, noting that the hearing "need not take the form of a full adjudication of the question of liability." More recently, in *Arnett v. Kennedy*, we sustained the validity of procedures by which a federal employee could be dismissed for cause. They included notice of the action sought, a copy of the

charge, reasonable time for filing a written response, and an opportunity for an oral appearance. Following dismissal, an evidentiary hearing was provided.

These decisions underscore the truism that “‘(d)ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.” Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e.g., Goldberg v. Kelly.*

We turn first to a description of the procedures for the termination of Social Security disability benefits and thereafter consider the factors bearing upon the constitutional adequacy of these procedures.

B

The disability insurance program is administered jointly by state and federal agencies. State agencies make the initial determination whether a disability exists, when it began, and when it ceased.⁴¹ The standards applied and the procedures followed are prescribed by the Secretary, who has delegated his responsibilities and powers under the Act to the SSA.

In order to establish initial and continued entitlement to disability benefits a worker must demonstrate that he is unable

“to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months”

To satisfy this test the worker bears a continuing burden of showing, by means of “medically acceptable clinical and laboratory diagnostic techniques,” that he has a physical or mental impairment of such severity that

“he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work

⁴¹ In all but six States the state vocational rehabilitation agency acts as the “state agency” for purposes of the disability insurance program. (original footnote 13)

exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.”⁴²

The principal reasons for benefits terminations are that the worker is no longer disabled or has returned to work. As Eldridge’s benefits were terminated because he was determined to be no longer disabled, we consider only the sufficiency of the procedures involved in such cases.⁴³

The continuing-eligibility investigation is made by a state agency acting through a “team” consisting of a physician and a nonmedical person trained in disability evaluation. The agency periodically communicates with the disabled worker, usually by mail—in which case he is sent a detailed questionnaire—or by telephone, and requests information concerning his present condition, including current medical restrictions and sources of treatment, and any additional information that he considers relevant to his continued entitlement to benefits.

Information regarding the recipient’s current condition is also obtained from his sources of medical treatment. If there is a conflict between the information provided by the beneficiary and that obtained from medical sources such as his physician, or between two sources of treatment, the agency may arrange for an examination by an independent consulting physician. Whenever the agency’s tentative assessment of the beneficiary’s condition differs from his own assessment, the beneficiary is informed that benefits may be terminated, provided a summary of the evidence upon which the proposed determination to terminate is based, and afforded an opportunity to review the medical reports and other evidence in his case file. He also may respond in writing and submit additional evidence.

The state agency then makes its final determination, which is reviewed by an examiner in the SSA Bureau of Disability Insurance.⁴⁴ If, as is usually the case, the SSA accepts the agency determination it notifies the recipient in writing, informing him of the reasons for the decision, and of his right to seek *de novo* reconsideration by the state agency. Upon acceptance by the SSA, benefits are terminated effective two months after the month in which medical recovery is found to have occurred.

If the recipient seeks reconsideration by the state agency and the determination is adverse, the SSA reviews the reconsideration determination and notifies the recipient of the decision. He then

42 Work which “exists in the national economy” is in turn defined as “work which exists in significant numbers either in the region where such individual lives or in several regions of the country.” (original footnote 14)

43 Because the continuing-disability investigation concerning whether a claimant has returned to work is usually done directly by the SSA Bureau of Disability Insurance, without any state agency involvement, the administrative procedures prior to the post-termination evidentiary hearing differ from those involved in cases of possible medical recovery. They are similar, however, in the important respect that the process relies principally on written communications and there is no provision for an evidentiary hearing prior to the cutoff of benefits. (original footnote 15)

44 The SSA may not itself revise the state agency’s determination in a manner more favorable to the beneficiary. If, however, it believes that the worker is still disabled, or that the disability lasted longer than determined by the state agency, it may return the file to the agency for further consideration in light of the SSA’s views. The agency is free to reaffirm its original assessment. (original footnote 19)

has a right to an evidentiary hearing before an SSA administrative law judge. The hearing is nonadversary, and the SSA is not represented by counsel. As at all prior and subsequent stages of the administrative process, however, the claimant may be represented by counsel or other spokesmen. If this hearing results in an adverse decision, the claimant is entitled to request discretionary review by the SSA Appeals Council, and finally may obtain judicial review.⁴⁵

Should it be determined at any point after termination of benefits, that the claimant's disability extended beyond the date of cessation initially established, the worker is entitled to retroactive payments. If, on the other hand, a beneficiary receives any payments to which he is later determined not to be entitled, the statute authorizes the Secretary to attempt to recoup these funds in specified circumstances.

C

Despite the elaborate character of the administrative procedures provided by the Secretary, the courts below held them to be constitutionally inadequate, concluding that due process requires an evidentiary hearing prior to termination. In light of the private and governmental interests at stake here and the nature of the existing procedures, we think this was error.

Since a recipient whose benefits are terminated is awarded full retroactive relief if he ultimately prevails, his sole interest is in the uninterrupted receipt of this source of income pending final administrative decision on his claim. His potential injury is thus similar in nature to that of the welfare recipient in *Goldberg*, the nonprobationary federal employee in *Arnett*, and the wage earner in *Sniadach*.

Only in *Goldberg* has the Court held that due process requires an evidentiary hearing prior to a temporary deprivation. It was emphasized there that welfare assistance is given to persons on the very margin of subsistence:

“The crucial factor in this context—a factor not present in the case of . . . virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits.” (emphasis in original).

Eligibility for disability benefits, in contrast, is not based upon financial need. Indeed, it is wholly unrelated to the worker's income or support from many other sources, such as earnings of other family members, workmen's compensation awards, tort claims awards, savings, private insurance, public or private pensions, veterans' benefits, food stamps, public assistance, or the “many other important programs, both public and private, which contain provisions for disability payments affecting a substantial portion of the work force”

⁴⁵ Unlike all prior levels of review, which are *de novo*, the district court is required to treat findings of fact as conclusive if supported by substantial evidence. (original footnote 21)

As *Goldberg* illustrates, the degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any administrative decisionmaking process. The potential deprivation here is generally likely to be less than in *Goldberg*, although the degree of difference can be overstated. As the District Court emphasized, to remain eligible for benefits a recipient must be “unable to engage in substantial gainful activity.” Thus, in contrast to the discharged federal employee in *Arnett*, there is little possibility that the terminated recipient will be able to find even temporary employment to ameliorate the interim loss.

As we recognized last Term, “the possible length of wrongful deprivation of . . . benefits (also) is an important factor in assessing the impact of official action on the private interests.” The Secretary concedes that the delay between a request for a hearing before an administrative law judge and a decision on the claim is currently between 10 and 11 months. Since a terminated recipient must first obtain a reconsideration decision as a prerequisite to invoking his right to an evidentiary hearing, the delay between the actual cutoff of benefits and final decision after a hearing exceeds one year.

In view of the torpidity of this administrative review process, and the typically modest resources of the family unit of the physically disabled worker,⁴⁶ the hardship imposed upon the erroneously terminated disability recipient may be significant. Still, the disabled worker’s need is likely to be less than that of a welfare recipient. In addition to the possibility of access to private resources, other forms of government assistance will become available where the termination of disability benefits places a worker or his family below the subsistence level. In view of these potential sources of temporary income, there is less reason here than in *Goldberg* to depart from the ordinary principle, established by our decisions that something less than an evidentiary hearing is sufficient prior to adverse administrative action.

D

An additional factor to be considered here is the fairness and reliability of the existing pretermination procedures, and the probable value, if any, of additional procedural safeguards. Central to the evaluation of any administrative process is the nature of the relevant inquiry. In order to remain eligible for benefits the disabled worker must demonstrate by means of “medically acceptable clinical and laboratory diagnostic techniques,” that he is unable “to engage in any substantial gainful activity by reason of any *medically determinable* physical or mental impairment . . .” (emphasis supplied). In short, a medical assessment of the worker’s physical or mental condition is required. This is a more sharply focused and easily documented decision than the typical determination of welfare entitlement. In the latter case, a wide variety of information may be deemed relevant, and issues of witness credibility and veracity often are

⁴⁶ *Amici* cite statistics compiled by the Secretary which indicate that in 1965 the mean income of the family unit of a disabled worker was \$3,803, while the median income for the unit was \$2,836. The mean liquid assets i. e., cash, stocks, bonds of these family units was \$4,862; the median was \$940. These statistics do not take into account the family unit’s nonliquid assets i.e., automobile, real estate, and the like. (original footnote 26)

critical to the decisionmaking process. *Goldberg* noted that in such circumstances “written submissions are a wholly unsatisfactory basis for decision.”

By contrast, the decision whether to discontinue disability benefits will turn, in most cases, upon “routine, standard, and unbiased medical reports by physician specialists,” concerning a subject whom they have personally examined. In *Richardson* the Court recognized the “reliability and probative worth of written medical reports,” emphasizing that while there may be “professional disagreement with the medical conclusions” the “specter of questionable credibility and veracity is not present.” To be sure, credibility and veracity may be a factor in the ultimate disability assessment in some cases. But procedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions. The potential value of an evidentiary hearing, or even oral presentation to the decisionmaker, is substantially less in this context than in *Goldberg*.

The decision in *Goldberg* also was based on the Court’s conclusion that written submissions were an inadequate substitute for oral presentation because they did not provide an effective means for the recipient to communicate his case to the decisionmaker. Written submissions were viewed as an unrealistic option, for most recipients lacked the “educational attainment necessary to write effectively” and could not afford professional assistance. In addition, such submissions would not provide the “flexibility of oral presentations” or “permit the recipient to mold his argument to the issues the decision maker appears to regard as important.” In the context of the disability-benefits-entitlement assessment the administrative procedures under review here fully answer these objections.

The detailed questionnaire which the state agency periodically sends the recipient identifies with particularity the information relevant to the entitlement decision, and the recipient is invited to obtain assistance from the local SSA office in completing the questionnaire. More important, the information critical to the entitlement decision usually is derived from medical sources, such as the treating physician. Such sources are likely to be able to communicate more effectively through written documents than are welfare recipients or the lay witnesses supporting their cause. The conclusions of physicians often are supported by X-rays and the results of clinical or laboratory tests, information typically more amenable to written than to oral presentation.

A further safeguard against mistake is the policy of allowing the disability recipient’s representative full access to all information relied upon by the state agency. In addition, prior to the cutoff of benefits the agency informs the recipient of its tentative assessment, the reasons therefor, and provides a summary of the evidence that it considers most relevant. Opportunity is then afforded the recipient to submit additional evidence or arguments, enabling him to challenge directly the accuracy of information in his file as well as the correctness of the agency’s tentative conclusions. These procedures, again as contrasted with those before the Court in *Goldberg*, enable the recipient to “mold” his argument to respond to the precise issues which the decisionmaker regards as crucial.

Despite these carefully structured procedures, *amici* point to the significant reversal rate for appealed cases as clear evidence that the current process is inadequate. Depending upon the base selected and the line of analysis followed, the relevant reversal rates urged by the contending parties vary from a high of 58.6% for appealed reconsideration decisions to an overall reversal rate of only 3.3%.⁴⁷ Bare statistics rarely provide a satisfactory measure of the fairness of a decisionmaking process. Their adequacy is especially suspect here since the administrative review system is operated on an open-file basis. A recipient may always submit new evidence, and such submissions may result in additional medical examinations. Such fresh examinations were held in approximately 30% To 40% of the appealed cases, in fiscal 1973, either at the reconsideration or evidentiary hearing stage of the administrative process. In this context, the value of reversal rate statistics as one means of evaluating the adequacy of the pretermination process is diminished. Thus, although we view such information as relevant, it is certainly not controlling in this case.

E

In striking the appropriate due process balance the final factor to be assessed is the public interest. This includes the administrative burden and other societal costs that would be associated with requiring, as a matter of constitutional right, an evidentiary hearing upon demand in all cases prior to the termination of disability benefits. The most visible burden would be the incremental cost resulting from the increased number of hearings and the expense of providing benefits to ineligible recipients pending decision. No one can predict the extent of the increase, but the fact that full benefits would continue until after such hearings would assure the exhaustion in most cases of this attractive option. Nor would the theoretical right of the Secretary to recover undeserved benefits result, as a practical matter, in any substantial offset to the added outlay of public funds. The parties submit widely varying estimates of the probable additional financial cost. We only need say that experience with the constitutionalizing of government procedures suggests that the ultimate additional cost in terms of money and administrative burden would not be insubstantial.

Financial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision. But the Government's interest, and hence that of the public, in conserving scarce fiscal and administrative resources is a factor that must be weighed. At some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just, may be outweighed by the cost. Significantly, the cost of protecting those whom the preliminary administrative process has identified as likely to be found undeserving

⁴⁷ By focusing solely on the reversal rate for appealed reconsideration determinations *amici* overstate the relevant reversal rate. [I]n order fully to assess the reliability and fairness of a system of procedure, one must also consider the overall rate of error for all denials of benefits. Here that overall rate is 12.2%. Moreover, about 75% of these reversals occur at the reconsideration stage of the administrative process. Since the median period between a request for reconsideration review and decision is only two months, the deprivation is significantly less than that concomitant to the lengthier delay before an evidentiary hearing. Netting out these reconsideration reversals, the overall reversal rate falls to 3.3%. (original footnote 29)

may in the end come out of the pockets of the deserving since resources available for any particular program of social welfare are not unlimited.

But more is implicated in cases of this type than ad hoc weighing of fiscal and administrative burdens against the interests of a particular category of claimants. The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness. We reiterate the wise admonishment of Mr. Justice Frankfurter that differences in the origin and function of administrative agencies “preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts.” The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decisionmaking in all circumstances. The essence of due process is the requirement that “a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.” All that is necessary is that the procedures be tailored, in light of the decision to be made, to “the capacities and circumstances of those who are to be heard,” to insure that they are given a meaningful opportunity to present their case. In assessing what process is due in this case, substantial weight must be given to the good-faith judgments of the individuals charged by Congress with the administration of social welfare programs that the procedures they have provided assure fair consideration of the entitlement claims of individuals. This is especially so where, as here, the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also assure a right to an evidentiary hearing, as well as to subsequent judicial review, before the denial of his claim becomes final.

We conclude that an evidentiary hearing is not required prior to the termination of disability benefits and that the present administrative procedures fully comport with due process.

The judgment of the Court of Appeals is

Reversed.

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL concurs, dissenting.

For the reasons stated in my dissenting opinion in *Richardson v. Wright*, I agree with the District Court and the Court of Appeals that, prior to termination of benefits, Eldridge must be afforded an evidentiary hearing of the type required for welfare beneficiaries under Title IV of the Social Security Act. See *Goldberg v. Kelly*. I would add that the Court’s consideration that a discontinuance of disability benefits may cause the recipient to suffer only a limited deprivation is no argument. It is speculative. Moreover, the very legislative determination to provide disability benefits, without any prerequisite determination of need in fact, presumes a need by the recipient which is not this Court’s function to denigrate. Indeed, in the present case, it is indicated that because disability benefits were terminated there was a foreclosure upon the Eldridge home and the family’s furniture was repossessed, forcing Eldridge, his wife, and their children to sleep in one bed. Finally, it is also no argument that a worker, who has been placed in the untenable position of having been denied disability benefits, may still seek other forms of public assistance.

ZABLOCKI V. REDHAIL

434 U.S. 374 (1978)

(to accompany Tonya L. Brito, R. Kirk Anderson, and Monica Wedgewood, *Chronicle of a Debt Foretold: Zablocki v. Red Hail (1978)* in **The Poverty Law Canon** page 232)

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the constitutionality of a Wisconsin statute which provides that members of a certain class of Wisconsin residents may not marry, within the State or elsewhere, without first obtaining a court order granting permission to marry. The class is defined by the statute to include any "Wisconsin resident having minor issue not in his custody and which he is under obligation to support by any court order or judgment." The statute specifies that court permission cannot be granted unless the marriage applicant submits proof of compliance with the support obligation and, in addition, demonstrates that the children covered by the support order "are not then and are not likely thereafter to become public charges." No marriage license may lawfully be issued in Wisconsin to a person covered by the statute, except upon court order; any marriage entered into without compliance with § 245.10 is declared void; and persons acquiring marriage licenses in violation of the section are subject to criminal penalties.

After being denied a marriage license because of his failure to comply with § 245.10, appellee brought this class action under 42 U.S.C. § 1983, challenging the statute as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and seeking declaratory and injunctive relief. The United States District Court for the Eastern District of Wisconsin held the statute unconstitutional under the Equal Protection Clause, and enjoined its enforcement. We noted probable jurisdiction, and we now affirm.

I

Appellee Redhail is a Wisconsin resident who, under the terms of § 245.10, is unable to enter into a lawful marriage in Wisconsin or elsewhere so long as he maintains his Wisconsin residency. The facts, according to the stipulation filed by the parties in the District Court, are as follows. In January, 1972, when appellee was a minor and a high school student, a paternity action was instituted against him in Milwaukee County Court, alleging that he was the father of a baby girl born out of wedlock on July 5, 1971. After he appeared and admitted that he was the child's father, the court entered an order on May 12, 1972, adjudging appellee the father and ordering him to pay \$109 per month as support for the child until she reached 18 years of age. From May, 1972, until August, 1974, appellee was unemployed and indigent, and consequently was unable to make any support payments.

On September 27, 1974, appellee filed an application for a marriage license with appellant Zablocki, the County Clerk of Milwaukee County, and a few days later the application was denied on the sole ground that appellee had not obtained a court order granting him permission to

marry, as required by § 245.10. Although appellee did not petition a state court thereafter, it is stipulated that he would not have been able to satisfy either of the statutory prerequisites for an order granting permission to marry. First, he had not satisfied his support obligations to his illegitimate child, and, as of December, 1974, there was an arrearage in excess of \$3,700. Second, the child had been a public charge since her birth, receiving benefits under the Aid to Families with Dependent Children program. It is stipulated that the child's benefit payments were such that she would have been a public charge even if appellee had been current in his support payments.

On December 24, 1974, appellee filed his complaint in the District Court, on behalf of himself and the class of all Wisconsin residents who had been refused a marriage license pursuant to § 245.10(1) by one of the county clerks in Wisconsin. Zablocki was named as the defendant, individually and as representative of a class consisting of all county clerks in the State. The complaint alleged, among other things, that appellee and the woman he desired to marry were expecting a child in March, 1975, and wished to be lawfully married before that time. The statute was attacked on the grounds that it deprived appellee, and the class he sought to represent, of equal protection and due process rights secured by the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

The three-judge court handed down a unanimous decision on August 31, 1976.

On the merits, the three-judge panel analyzed the challenged statute under the Equal Protection Clause and concluded that "strict scrutiny" was required because the classification created by the statute infringed upon a fundamental right, the right to marry.⁷ The court then proceeded to evaluate the interests advanced by the State to justify the statute, and, finding that the classification was not necessary for the achievement of those interests, the court held the statute invalid and enjoined the county clerks from enforcing it.

Appellant brought this direct appeal, claiming that the three-judge court erred in finding §§ 245.10(1), (4), (5) invalid under the Equal Protection Clause. Appellee defends the lower court's equal protection holding and, in the alternative, urges affirmance of the District Court's judgment on the ground that the statute does not satisfy the requirements of substantive due process. We agree with the District Court that the statute violates the Equal Protection Clause.

II

In evaluating §§ 245.10(1), (4), (5) under the Equal Protection Clause, "we must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected." Since our past decisions make clear that the right to marry is of fundamental importance, and since the classification at issue here

⁷ The court found an additional justification for applying strict scrutiny in the fact that the statute discriminates on the basis of wealth, absolutely denying individuals the opportunity to marry if they lack sufficient financial resources to make the showing required by the statute.

significantly interferes with the exercise of that right, we believe that “critical examination” of the state interests advanced in support of the classification is required.

The leading decision of this Court on the right to marry is *Loving v. Virginia*. In that case, an interracial couple who had been convicted of violating Virginia’s miscegenation laws challenged the statutory scheme on both equal protection and due process grounds. The Court’s opinion could have rested solely on the ground that the statutes discriminated on the basis of race in violation of the Equal Protection Clause. But the Court went on to hold that the laws arbitrarily deprived the couple of a fundamental liberty protected by the Due Process Clause, the freedom to marry. The Court’s language on the latter point bears repeating:

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”

Although *Loving* arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals. Long ago, in *Maynard v. Hill*, the Court characterized marriage as “the most important relation in life,” and as “the foundation of the family and of society, without which there would be neither civilization nor progress.” In *Meyer v. Nebraska*, the Court recognized that the right “to marry, establish a home and bring up children” is a central part of the liberty protected by the Due Process Clause, and in *Skinner v. Oklahoma*, marriage was described as “fundamental to the very existence and survival of the race.”

More recent decisions have established that the right to marry is part of the fundamental “right of privacy” implicit in the Fourteenth Amendment’s Due Process Clause. In *Griswold v. Connecticut*, the Court observed:

“We deal with a right of privacy older than the Bill of Rights – older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.”

Cases subsequent to *Griswold* and *Loving* have routinely categorized the decision to marry as among the personal decisions protected by the right of privacy. For example, last Term, in *Carey v. Population Services International*, we declared:

“While the outer limits of [the right of personal privacy] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government

interference are personal decisions ‘relating to marriage; procreation; contraception; family relationships; and child rearing and education.’”

It is not surprising that the decision to marry has been placed on the same level of importance as decisions relating to procreation, childbirth, childrearing, and family relationships. As the facts of this case illustrate, it would make little sense to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society. The woman whom appellee desired to marry had a fundamental right to seek an abortion of their expected child, or to bring the child into life to suffer the myriad social, if not economic, disabilities that the status of illegitimacy brings. Surely, a decision to marry and raise the child in a traditional family setting must receive equivalent protection.

By reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed. The statutory classification at issue here, however, clearly does interfere directly and substantially with the right to marry.

Under the challenged statute, no Wisconsin resident in the affected class may marry in Wisconsin or elsewhere without a court order, and marriages contracted in violation of the statute are both void and punishable as criminal offenses. Some of those in the affected class, like appellee, will never be able to obtain the necessary court order, because they either lack the financial means to meet their support obligations or cannot prove that their children will not become public charges. These persons are absolutely prevented from getting married. Many others, able in theory to satisfy the statute’s requirements, will be sufficiently burdened by having to do so that they will, in effect be coerced into forgoing their right to marry. And even those who can be persuaded to meet the statute’s requirements suffer a serious intrusion into their freedom of choice in an area in which we have held such freedom to be fundamental.

III

When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. Appellant asserts that two interests are served by the challenged statute: the “permission to marry” proceeding furnishes an opportunity to counsel the applicant as to the necessity of fulfilling his prior support obligations; and the welfare of the “out of custody” children is protected. We may accept for present purposes that these are legitimate and substantial interests, but, since the means selected by the State for achieving these interests unnecessarily impinge on the right to marry, the statute cannot be sustained.

There is evidence that the challenged statute, as originally introduced in the Wisconsin Legislature, was intended merely to establish a mechanism whereby persons with support

obligations to children from prior marriages could be counseled before they entered into new marital relationships and incurred further support obligations. Court permission to marry was to be required, but apparently permission was automatically to be granted after counseling was completed. The statute actually enacted, however, does not expressly require or provide for any counseling whatsoever, nor for any automatic granting of permission to marry by the court, and thus it can hardly be justified as a means for ensuring counseling of the persons within its coverage. Even assuming that counseling does take place – a fact as to which there is no evidence in the record – this interest obviously cannot support the withholding of court permission to marry once counseling is completed.

With regard to safeguarding the welfare of the “out of custody” children, appellant’s brief does not make clear the connection between the State’s interest and the statute’s requirements. At argument, appellant’s counsel suggested that, since permission to marry cannot be granted unless the applicant shows that he has satisfied his court-determined support obligations to the prior children and that those children will not become public charges, the statute provides incentive for the applicant to make support payments to his children. This “collection device” rationale cannot justify the statute’s broad infringement on the right to marry.

First, with respect to individuals who are unable to meet the statutory requirements, the statute merely prevents the applicant from getting married, without delivering any money at all into the hands of the applicant’s prior children. More importantly, regardless of the applicant’s ability or willingness to meet the statutory requirements, the State already has numerous other means for exacting compliance with support obligations, means that are at least as effective as the instant statute’s, and yet do not impinge upon the right to marry. Under Wisconsin law, whether the children are from a prior marriage or were born out of wedlock, court-determined support obligations may be enforced directly via wage assignments, civil contempt proceedings, and criminal penalties. And, if the State believes that parents of children out of their custody should be responsible for ensuring that those children do not become public charges, this interest can be achieved by adjusting the criteria used for determining the amounts to be paid under their support orders.

There is also some suggestion that § 245.10 protects the ability of marriage applicants to meet support obligations to prior children by preventing the applicants from incurring new support obligations. But the challenged provisions of § 245.10 are grossly underinclusive with respect to this purpose, since they do not limit in any way new financial commitments by the applicant other than those arising out of the contemplated marriage. The statutory classification is substantially overinclusive as well: given the possibility that the new spouse will actually better the applicant’s financial situation, by contributing income from a job or otherwise, the statute in many cases may prevent affected individuals from improving their ability to satisfy their prior support obligations. And, although it is true that the applicant will incur support obligations to any children born during the contemplated marriage, preventing the marriage may only result in the children’s being born out of wedlock, as in fact occurred in appellee’s case. Since the support obligation is the same whether the child is born in or out of wedlock, the net result of preventing the marriage is simply more illegitimate children.

The statutory classification created by §§ 245.10(1), (4), (5) thus cannot be justified by the interests advanced in support of it. The judgment of the District Court is, accordingly,

Affirmed.

MR. CHIEF JUSTICE BURGER, concurring.

I join MR. JUSTICE MARSHALL's opinion for the Court. With all deference, MR. JUSTICE STEVENS' opinion does not persuade me that the analysis in the Court's opinion is in any significant way inconsistent with the Court's unanimous holding in *Califano v. Jobst*. Unlike the intentional and substantial interference with the right to marry effected by the Wisconsin statute at issue here, the Social Security Act provisions challenged in *Jobst* did not constitute an "attempt to interfere with the individual's freedom to make a decision as important as marriage," *Califano v. Jobst*, and, at most, had an indirect impact on that decision. It is with this understanding that I join the Court's opinion today.

MR. JUSTICE STEWART, concurring in the judgment.

I cannot join the opinion of the Court. To hold, as the Court does, that the Wisconsin statute violates the Equal Protection Clause seems to me to misconceive the meaning of that constitutional guarantee. The Equal Protection Clause deals not with substantive rights or freedoms, but with invidiously discriminatory classifications. The paradigm of its violation is, of course, classification by race.

Like almost any law, the Wisconsin statute now before us affects some people and does not affect others. But to say that it thereby creates "classifications" in the equal protection sense strikes me as little short of fantasy. The problem in this case is not one of discriminatory classifications, but of unwarranted encroachment upon a constitutionally protected freedom. I think that the Wisconsin statute is unconstitutional because it exceeds the bounds of permissible state regulation of marriage, and invades the sphere of liberty protected by the Due Process Clause of the Fourteenth Amendment.

I

I do not agree with the Court that there is a "right to marry" in the constitutional sense. That right, or, more accurately, that privilege, is under our federal system peculiarly one to be defined and limited by state law. A State may not only "significantly interfere with decisions to enter into the marital relationship," but may, in many circumstances, absolutely prohibit it. Surely, for example, a State may legitimately say that no one can marry his or her sibling, that no one can marry who is not at least 14 years old, that no one can marry without first passing an examination for venereal disease, or that no one can marry who has a living husband or wife. But, just as surely, in regulating the intimate human relationship of marriage, there is a limit beyond which a State may not constitutionally go.

The Constitution does not specifically mention freedom to marry, but it is settled that the “liberty” protected by the Due Process Clause of the Fourteenth Amendment embraces more than those freedoms expressly enumerated in the Bill of Rights. And the decisions of this Court have made clear that freedom of personal choice in matters of marriage and family life is one of the liberties so protected.

It is evident that the Wisconsin law now before us directly abridges that freedom. The question is whether the state interests that support the abridgment can overcome the substantive protections of the Constitution.

The Wisconsin law makes permission to marry turn on the payment of money in support of one’s children by a previous marriage or liaison. Those who cannot show both that they have kept up with their support obligations and that their children are not and will not become wards of the State are altogether prohibited from marrying.

If Wisconsin had said that no one could marry who had not paid all of the fines assessed against him for traffic violations, I suppose the constitutional invalidity of the law would be apparent. For while the state interest would certainly be legitimate, that interest would be both disproportionate and unrelated to the restriction of liberty imposed by the State. But the invalidity of the law before us is hardly as clear, because its restriction of liberty seems largely to be imposed only on those who have abused the same liberty in the past.

Looked at in one way, the law may be seen as simply a collection device additional to those used by Wisconsin and other States for enforcing parental support obligations. But since it operates by denying permission to marry, it also clearly reflects a legislative judgment that a person should not be permitted to incur new family financial obligations until he has fulfilled those he already has. Insofar as this judgment is paternalistic, rather than punitive, it manifests a concern for the economic wellbeing of a prospective marital household. These interests are legitimate concerns of the State. But it does not follow that they justify the absolute deprivation of the benefits of a legal marriage.

On several occasions, this Court has held that a person’s inability to pay money demanded by the State does not justify the total deprivation of a constitutionally protected liberty. In *Boddie v. Connecticut*, the Court held that the State’s legitimate purposes in collecting filing fees for divorce actions were insufficient under the Due Process Clause to deprive the indigent of access to the courts where that access was necessary to dissolve the marital relationship. In *Tate v. Short* and *Williams v. Illinois*, the Court held that an indigent offender could not have his term of imprisonment increased, and his liberty curtailed, simply by reason of his inability to pay a fine.

The principle of those cases applies here, as well. The Wisconsin law makes no allowance for the truly indigent. The State flatly denies a marriage license to anyone who cannot afford to fulfill his support obligations and keep his children from becoming wards of the State. We may assume that the State has legitimate interests in collecting delinquent support payments and in reducing its welfare load. We may also assume that, as applied to those who can afford to meet the

statute's financial requirements but choose not to do so, the law advances the State's objectives in ways superior to other means available to the State. The fact remains that some people simply cannot afford to meet the statute's financial requirements. To deny these people permission to marry penalizes them for failing to do that which they cannot do. Insofar as it applies to indigents, the state law is an irrational means of achieving these objectives of the State.

As directed against either the indigent or the delinquent parent, the law is substantially more rational if viewed as a means of assuring the financial viability of future marriages. In this context, it reflects a plausible judgment that those who have not fulfilled their financial obligations and have not kept their children off the welfare rolls in the past are likely to encounter similar difficulties in the future. But the State's legitimate concern with the financial soundness of prospective marriages must stop short of telling people they may not marry because they are too poor or because they might persist in their financial irresponsibility. The invasion of constitutionally protected liberty and the chance of erroneous prediction are simply too great. A legislative judgment so alien to our traditions and so offensive to our shared notions of fairness offends the Due Process Clause of the Fourteenth Amendment.

II

In an opinion of the Court half a century ago, Mr. Justice Holmes described an equal protection claim as "the usual last resort of constitutional arguments." Today, equal protection doctrine has become the Court's chief instrument for invalidating state laws. Yet, in a case like this one, the doctrine is no more than substantive due process by another name.

Although the Court purports to examine the bases for legislative classifications and to compare the treatment of legislatively defined groups, it actually erects substantive limitations on what States may do. Thus, the effect of the Court's decision in this case is not to require Wisconsin to draw its legislative classifications with greater precision or to afford similar treatment to similarly situated persons. Rather, the message of the Court's opinion is that Wisconsin may not use its control over marriage to achieve the objectives of the state statute. Such restrictions on basic governmental power are at the heart of substantive due process.

The Court is understandably reluctant to rely on substantive due process. But to embrace the essence of that doctrine under the guise of equal protection serves no purpose but obfuscation. "[C]ouched in slogans and ringing phrases," the Court's equal protection doctrine shifts the focus of the judicial inquiry away from its proper concerns, which include "the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, the existence of alternative means for effectuating the purpose, and the degree of confidence we may have that the statute reflects the legislative concern for the purpose that would legitimately support the means chosen."

To conceal this appropriate inquiry invites mechanical or thoughtless application of misfocused doctrine. To bring it into the open forces a healthy and responsible recognition of the nature and purpose of the extreme power we wield when, in invalidating a state law in the name of the

Constitution, we invalidate *pro tanto* the process of representative democracy in one of the sovereign States of the Union.

MR JUSTICE POWELL, concurring in the judgment.

The Court apparently would subject all state regulation which “directly and substantially” interferes with the decision to marry in a traditional family setting to “critical examination” or “compelling state interest” analysis. Presumably, “reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.” The Court does not present, however, any principled means for distinguishing between the two types of regulations. Since state regulation in this area typically takes the form of a prerequisite or barrier to marriage or divorce, the degree of “direct” interference with the decision to marry or to divorce is unlikely to provide either guidance for state legislatures or a basis for judicial oversight.

Loving involved a denial of a “fundamental freedom” on a wholly unsupportable basis -- the use of classifications “directly subversive of the principle of equality at the heart of the Fourteenth Amendment. . . .” It does not speak to the level of judicial scrutiny of, or governmental justification for, “supportable” restrictions on the “fundamental freedom” of individuals to marry or divorce.

In my view, analysis must start from the recognition of domestic relations as “an area that has long been regarded as a virtually exclusive province of the States.” State regulation has included bans on incest, bigamy, and homosexuality, as well as various preconditions to marriage, such as blood tests. Likewise, a showing of fault on the part of one of the partners traditionally has been a prerequisite to the dissolution of an unsuccessful union. A “compelling state purpose” inquiry would cast doubt on the network of restrictions that the States have fashioned to govern marriage and divorce.

State power over domestic relations is not without constitutional limits. The Due Process Clause requires a showing of justification “when the government intrudes on choices concerning family living arrangements” in a manner which is contrary to deeply rooted traditions. Due process constraints also limit the extent to which the State may monopolize the process of ordering certain human relationships while excluding the truly indigent from that process. Furthermore, under the Equal Protection Clause, the means chosen by the State in this case must bear “a fair and substantial relation” to the object of the legislation. The Wisconsin measure in this case does not pass muster under either due process or equal protection standards. This statute does more than simply “fail to alleviate the consequences of differences in economic circumstances that exist wholly apart from any state action.” It tells the truly indigent, whether they have met their support obligations or not, that they may not marry so long as their children are public charges or there is a danger that their children might go on public assistance in the future. Because the State has not established a justification for this unprecedented foreclosure of marriage to many of its citizens solely because of their indigency, I concur in the judgment of the Court.

Quite apart from any impact on the truly indigent, the statute appears to “confer upon [the judge] a license for arbitrary procedure.” A serious question of procedural due process is raised by this feature of standardless discretion, particularly in light of the hazards of prediction in this area.

MR. JUSTICE STEVENS, concurring in the judgment.

Because of the tension between some of the language in MR. JUSTICE MARSHALL’s opinion for the Court and the Court’s unanimous holding in *Califano v. Jobst*, a further exposition of the reasons why the Wisconsin statute offends the Equal Protection Clause of the Fourteenth Amendment is necessary.

When a State allocates benefits or burdens, it may have valid reasons for treating married and unmarried persons differently. Classification based on marital status has been an accepted characteristic of tax legislation, Selective Service rules, and Social Security regulations. As cases like *Jobst* demonstrate, such laws may “significantly interfere with decisions to enter into the marital relationship.” That kind of interference, however, is not a sufficient reason for invalidating every law reflecting a legislative judgment that there are relevant differences between married persons as a class and unmarried persons as a class.

A classification based on marital status is fundamentally different from a classification which determines who may lawfully enter into the marriage relationship. The individual’s interest in making the marriage decision independently is sufficiently important to merit special constitutional protection. It is not, however, an interest which is constitutionally immune from evenhanded regulation. Thus, laws prohibiting marriage to a child, a close relative, or a person afflicted with venereal disease, are unchallenged even though they “interfere directly and substantially with the right to marry.” This Wisconsin statute has a different character.

Under this statute, a person’s economic status may determine his eligibility to enter into a lawful marriage. A noncustodial parent whose children are “public charges” may not marry even if he has met his court-ordered obligations. Thus, within the class of parents who have fulfilled their court-ordered obligations, the rich may marry and the poor may not. This type of statutory discrimination is, I believe, totally unprecedented, as well as inconsistent with our tradition of administering justice equally to the rich and to the poor.

The statute appears to reflect a legislative judgment that persons who have demonstrated an inability to support their offspring should not be permitted to marry and thereafter to bring additional children into the world. Even putting to one side the growing number of childless marriages and the burgeoning number of children born out of wedlock, that sort of reasoning cannot justify this deliberate discrimination against the poor.

The statute prevents impoverished parents from marrying even though their intended spouses are economically independent. Presumably, the Wisconsin Legislature assumed (a) that only fathers would be affected by the legislation, and (b) that they would never marry employed women. The first assumption ignores the fact that fathers are sometimes awarded custody, and the second ignores the composition of today’s workforce. To the extent that the statute denies a hard-pressed

parent any opportunity to prove that an intended marriage will ease rather than aggravate his financial straits, it not only rests on unreliable premises, but also defeats its own objectives.

These questionable assumptions also explain why this statutory blunderbuss is wide of the target in another respect. The prohibition on marriage applies to the noncustodial parent but allows the parent who has custody to marry without the State's leave. Yet the danger that new children will further strain an inadequate budget is equally great for custodial and noncustodial parents, unless one assumes (a) that only mothers will ever have custody and (b) that they will never marry unemployed men.

Characteristically, this law fails to regulate the marriages of those parents who are least likely to be able to afford another family, for it applies only to parents under a court order to support their children. The very poorest parents are unlikely to be the objects of support orders. If the State meant to prevent the marriage of those who have demonstrated their inability to provide for children, it overlooked the most obvious targets of legislative concern.

In sum, the public charge provision is either futile or perverse insofar as it applies to childless couples, couples who will have illegitimate children if they are forbidden to marry, couples whose economic status will be improved by marriage, and couples who are so poor that the marriage will have no impact on the welfare status of their children in any event. Even assuming that the right to marry may sometimes be denied on economic grounds, this clumsy and deliberate legislative discrimination between the rich and the poor is irrational in so many ways that it cannot withstand scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

MR. JUSTICE REHNQUIST, dissenting.

I substantially agree with my Brother POWELL's reasons for rejecting the Court's conclusion that marriage is the sort of "fundamental right" which must invariably trigger the strictest judicial scrutiny. I disagree with his imposition of an "intermediate" standard of review, which leads him to conclude that the statute, though generally valid as an "additional collection mechanism" offends the Constitution by its "failure to make provision for those without the means to comply with child support obligations." For similar reasons, I disagree with my Brother STEWART's conclusion that the statute is invalid for its failure to exempt those persons who "simply cannot afford to meet the statute's financial requirements." I would view this legislative judgment in the light of the traditional presumption of validity. I think that, under the Equal Protection Clause, the statute need pass only the "rational basis test," and that, under the Due Process Clause, it need only be shown that it bears a rational relation to a constitutionally permissible objective. The statute, so viewed, is a permissible exercise of the State's power to regulate family life and to assure the support of minor children, despite its possible imprecision in the extreme cases envisioned in the concurring opinions.

Earlier this Term the traditional standard of review was applied in *Califano v. Jobst*, despite the claim that the statute there in question burdened the exercise of the right to marry. The extreme situation considered there involved a permanently disabled appellee whose benefits under the

Social Security Act had been terminated because of his marriage to an equally disabled woman who was not, however, a beneficiary under the Act. This Court recognized that Congress, in granting the original benefit, could reasonably assume that a disabled adult child remained dependent upon his parents for support. The Court concluded that, upon a beneficiary's marriage, Congress could terminate his benefits, because "there can be no question about the validity of the assumption that a married person is less likely to be dependent on his parents for support than one who is unmarried." Although that assumption had been proved false as applied in that individual case, the statute was nevertheless rational. "The broad legislative classification must be judged by reference to characteristics typical of the affected classes, rather than by focusing on selected, atypical examples."

The analysis applied in *Jobst* is equally applicable here. Here, too, the Wisconsin Legislature has "adopted this rule in the course of constructing a complex social welfare system that necessarily deals with the intimacies of family life." Because of the limited amount of funds available for the support of needy children, the State has an exceptionally strong interest in securing as much support as their parents are able to pay. Nor does the extent of the burden imposed by this statute so differentiate it from that considered in *Jobst* as to warrant a different result. In the case of some applicants, this statute makes the proposed marriage legally impossible for financial reasons; in a similar number of extreme cases, the Social Security Act makes the proposed marriage practically impossible for the same reasons. I cannot conclude that such a difference justifies the application of a heightened standard of review to the statute in question here. In short, I conclude that the statute, despite its imperfections, is sufficiently rational to satisfy the demands of the Fourteenth Amendment.

Two of the opinions concurring in the judgment seem to agree that the statute is sufficiently rational except as applied to the truly indigent. Under this view, the statute could, I suppose, be constitutionally applied to forbid the marriages of those applicants who had willfully failed to contribute so much as was in their means to the support of their dependent children. Even were I to agree that a statute based upon generally valid assumptions could be struck down on the basis of "selected, atypical examples," *Jobst*, at 55, I could not concur in the judgment of the Court, because there has been no showing that this appellee is so truly indigent that the State could not refuse to sanction his marriage.

Under well established rules of standing, a litigant may assert the invalidity of a statute only as applied in his case. "[A] person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in situations not before the Court." *Broadrick v. Oklahoma*, 413 U. S. 601, 413 U. S. 610 (1973). We have made a limited exception to this rule in cases arising under the First Amendment, allowing the invalidation of facially overbroad statutes to guard against a chilling effect on the exercise of constitutionally protected free speech. But no claim based on the First Amendment is or could be made by this appellee.

Appellee's standing to contest the validity of the statute as applied to him must be considered on the basis of the facts as stipulated before the District Court. The State conceded, without

requiring proof, that, “[f]rom May of 1972 until August of 1974, [appellee] was unemployed and indigent and unable to pay any sum for support of his issue.” There is no stipulation in this record that appellee was indigent at the time he was denied a marriage license on September 30, 1974, or that he was indigent at the time he filed his complaint, or that he was indigent at the time the District Court rendered its judgment. All we know of his more recent financial condition is his counsel’s concession at oral argument that appellee had married in Illinois, clearly demonstrating that he knows how to obtain funds for a purpose which he deems sufficiently important. On these inartfully stipulated facts, it cannot be said, even now, that this appellee is incapable of discharging the arrearage as required by the support order and contributing sufficient funds in the future to remove his child from the welfare rolls. Therefore, even under the view taken by the opinions concurring in the judgment, appellee has not shown that this statute is unconstitutional as applied to him.

Because of my conclusion that the statute is valid despite its possible application to the truly indigent, I need not determine whether the named appellee’s failure to establish his indigency should preclude this Court from granting injunctive relief to the indigent members of the class which appellee purports to represent. Our decisions have demonstrated that, where the claim of the named representative has become moot, this Court is not bound to dismiss the action, but may consider a variety of factors in determining whether to proceed. It has never been explicitly determined whether similar considerations apply where the named representative never had a valid claim of his own. In light of my view on the merits, I am content to save this question for another day.

I would reverse the judgment of the District Court.

TURNER V. ROGERS

564 U. S. 431 (2011)

(to accompany Kelly Terry, *The Movement for a Right to Counsel in Civil Cases: Turner v. Rogers (2011)* in **The Poverty Law Canon**, page 256)

JUSTICE BREYER delivered the opinion of the Court.

South Carolina’s Family Court enforces its child support orders by threatening with incarceration for civil contempt those who are (1) subject to a child support order, (2) able to comply with that order, but (3) fail to do so. We must decide whether the Fourteenth Amendment’s Due Process Clause requires the State to provide counsel (at a civil contempt hearing) to an *indigent* person potentially faced with such incarceration. We conclude that where as here the custodial parent (entitled to receive the support) is unrepresented by counsel, the State need not provide counsel to the noncustodial parent (required to provide the support). But we attach an important caveat, namely, that the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order.

I

A

South Carolina family courts enforce their child support orders in part through civil contempt proceedings. Each month the family court clerk reviews outstanding child support orders, identifies those in which the supporting parent has fallen more than five days behind, and sends that parent an order to “show cause” why he should not be held in contempt. The “show cause” order and attached affidavit refer to the relevant child support order, identify the amount of the arrearage, and set a date for a court hearing. At the hearing that parent may demonstrate that he is not in contempt, say, by showing that he is not able to make the required payments. If he fails to make the required showing, the court may hold him in civil contempt. And it may require that he be imprisoned unless and until he purges himself of contempt by making the required child support payments (but not for more than one year regardless).

B

In June 2003 a South Carolina family court entered an order, which (as amended) required petitioner, Michael Turner, to pay \$51.73 per week to respondent, Rebecca Rogers, to help support their child. (Rogers’ father, Larry Price, currently has custody of the child and is also a respondent before this Court.) Over the next three years, Turner repeatedly failed to pay the amount due and was held in contempt on five occasions. The first four times he was sentenced to

90 days' imprisonment, but he ultimately paid the amount due (twice without being jailed, twice after spending two or three days in custody). The fifth time he did not pay but completed a 6-month sentence.

After his release in 2006 Turner remained in arrears. On March 27, 2006, the clerk issued a new "show cause" order. And after an initial postponement due to Turner's failure to appear, Turner's civil contempt hearing took place on January 3, 2008. Turner and Rogers were present, each without representation by counsel.

The hearing was brief. The court clerk said that Turner was \$5,728.76 behind in his payments. The judge asked Turner if there was "anything you want to say." Turner replied,

"Well, when I first got out, I got back on dope. I done meth, smoked pot and everything else, and I paid a little bit here and there. And, when I finally did get to working, I broke my back, back in September. I filed for disability and SSI. And, I didn't get straightened out off the dope until I broke my back and laid up for two months. And, now I'm off the dope and everything. I just hope that you give me a chance. I don't know what else to say. I mean, I know I done wrong, and I should have been paying and helping her, and I'm sorry. I mean, dope had a hold to me."

The judge then said, "[o]kay," and asked Rogers if she had anything to say. After a brief discussion of federal benefits, the judge stated,

"If there's nothing else, this will be the Order of the Court. I find the Defendant in willful contempt. I'm [going to] sentence him to twelve months in the Oconee County Detention Center. He may purge himself of the contempt and avoid the sentence by having a zero balance on or before his release. I've also placed a lien on any SSI or other benefits."

The judge added that Turner would not receive good-time or work credits, but "[i]f you've got a job, I'll make you eligible for work release." When Turner asked why he could not receive good-time or work credits, the judge said, "[b]ecause that's my ruling."

The court made no express finding concerning Turner's ability to pay his arrearage (though Turner's wife had voluntarily submitted a copy of Turner's application for disability benefits. Nor did the judge ask any followup questions or otherwise address the ability-to-pay issue. After the hearing, the judge filled out a prewritten form titled "Order for Contempt of Court," which included the statement:

"Defendant (was) (was not) gainfully employed and/or (had) (did not have) the ability to make these support payments when due."

But the judge left this statement as is without indicating whether Turner was able to make support payments.

C

While serving his 12-month sentence, Turner, with the help of *pro bono* counsel, appealed. He claimed that the Federal Constitution entitled him to counsel at his contempt hearing. The South Carolina Supreme Court decided Turner's appeal after he had completed his sentence. And it rejected his "right to counsel" claim. The court pointed out that civil contempt differs significantly from criminal contempt. The former does not require all the "constitutional safeguards" applicable in criminal proceedings. And the right to government-paid counsel, the Supreme Court held, was one of the "safeguards" not required.

Turner sought certiorari. In light of differences among state courts (and some federal courts) on the applicability of a "right to counsel" in civil contempt proceedings enforcing child support orders, we granted the writ.

III

A

We must decide whether the Due Process Clause grants an indigent defendant, such as Turner, a right to state-appointed counsel at a civil contempt proceeding, which may lead to his incarceration. This Court's precedents provide no definitive answer to that question. This Court has long held that the Sixth Amendment grants an indigent defendant the right to state-appointed counsel in a *criminal* case. *Gideon v. Wainwright* (1963). And we have held that this same rule applies to *criminal contempt* proceedings (other than summary proceedings).

But the Sixth Amendment does not govern civil cases. Civil contempt differs from criminal contempt in that it seeks only to "coerc[e] the defendant to do" what a court had previously ordered him to do. A court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." And once a civil contemnor complies with the underlying order, he is purged of the contempt and is free.

Consequently, the Court has made clear (in a case not involving the right to counsel) that, where civil contempt is at issue, the Fourteenth Amendment's Due Process Clause allows a State to provide fewer procedural protections than in a criminal case.

This Court has decided only a handful of cases that more directly concern a right to counsel in civil matters. And the application of those decisions to the present case is not clear. On the one hand, the Court has held that the Fourteenth Amendment requires the State to pay for representation by counsel in a *civil* "juvenile delinquency" proceeding (which could lead to incarceration). Moreover, in *Vitek v. Jones* (1980), a plurality of four Members of this Court would have held that the Fourteenth Amendment requires representation by counsel in a proceeding to transfer a prison inmate to a state hospital for the mentally ill. Further,

in *Lassiter v. Department of Social Servs. of Durham Cty.*, a case that focused upon civil proceedings leading to loss of parental rights, the Court wrote that the

“pre-eminent generalization that emerges from this Court’s precedents on an indigent’s right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation.”

And the Court then drew from these precedents “the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty.”

On the other hand, the Court has held that a criminal offender facing revocation of probation and imprisonment does *not* ordinarily have a right to counsel at a probation revocation hearing. And, at the same time, *Gault*, *Vitek*, and *Lassiter* are readily distinguishable. The civil juvenile delinquency proceeding at issue in *Gault* was “little different” from, and “comparable in seriousness” to, a criminal prosecution. In *Vitek*, the controlling opinion found *no* right to counsel. And the Court’s statements in *Lassiter* constitute part of its rationale for *denying* a right to counsel in that case. We believe those statements are best read as pointing out that the Court previously had found a right to counsel “*only*” in cases involving incarceration, not that a right to counsel exists in *all* such cases (a position that would have been difficult to reconcile with *Gagnon*).

B

Civil contempt proceedings in child support cases constitute one part of a highly complex system designed to assure a noncustodial parent’s regular payment of funds typically necessary for the support of his children. Often the family receives welfare support from a state-administered federal program, and the State then seeks reimbursement from the noncustodial parent. Other times the custodial parent (often the mother, but sometimes the father, a grandparent, or another person with custody) does not receive government benefits and is entitled to receive the support payments herself.

The Federal Government has created an elaborate procedural mechanism designed to help both the government and custodial parents to secure the payments to which they are entitled. These systems often rely upon wage withholding, expedited procedures for modifying and enforcing child support orders, and automated data processing. But sometimes States will use contempt orders to ensure that the custodial parent receives support payments or the government receives reimbursement. Although some experts have criticized this last-mentioned procedure, and the Federal Government believes that “the routine use of contempt for non-payment of child support is likely to be an ineffective strategy,” the Government also tells us that “coercive enforcement remedies, such as contempt, have a role to play.” South Carolina, which relies heavily on contempt proceedings, agrees that they are an important tool.

We here consider an indigent’s right to paid counsel at such a contempt proceeding. It is a civil proceeding. And we consequently determine the “specific dictates of due process” by examining

the “distinct factors” that this Court has previously found useful in deciding what specific safeguards the Constitution’s Due Process Clause requires in order to make a civil proceeding fundamentally fair. *Mathews v. Eldridge* (1976) (considering fairness of an administrative proceeding). As relevant here those factors include (1) the nature of “the private interest that will be affected,” (2) the comparative “risk” of an “erroneous deprivation” of that interest with and without “additional or substitute procedural safeguards,” and (3) the nature and magnitude of any countervailing interest in not providing “additional or substitute procedural requirement[s].”

The “private interest that will be affected” argues strongly for the right to counsel that Turner advocates. That interest consists of an indigent defendant’s loss of personal liberty through imprisonment. The interest in securing that freedom, the freedom “from bodily restraint,” lies “at the core of the liberty protected by the Due Process Clause.” And we have made clear that its threatened loss through legal proceedings demands “due process protection.”

Given the importance of the interest at stake, it is obviously important to assure accurate decisionmaking in respect to the key “ability to pay” question. Moreover, the fact that ability to comply marks a dividing line between civil and criminal contempt, reinforces the need for accuracy. That is because an incorrect decision (wrongly classifying the contempt proceeding as civil) can increase the risk of wrongful incarceration by depriving the defendant of the procedural protections (including counsel) that the Constitution would demand in a criminal proceeding. And since 70% of child support arrears nationwide are owed by parents with either no reported income or income of \$10,000 per year or less, the issue of ability to pay may arise fairly often.

On the other hand, the Due Process Clause does not always require the provision of counsel in civil proceedings where incarceration is threatened. And in determining whether the Clause requires a right to counsel here, we must take account of opposing interests, as well as consider the probable value of “additional or substitute procedural safeguards.”

Doing so, we find three related considerations that, when taken together, argue strongly against the Due Process Clause requiring the State to provide indigents with counsel in every proceeding of the kind before us.

First, the critical question likely at issue in these cases concerns, as we have said, the defendant’s ability to pay. That question is often closely related to the question of the defendant’s indigence. But when the right procedures are in place, indigence can be a question that in many—but not all—cases is sufficiently straightforward to warrant determination *prior* to providing a defendant with counsel, even in a criminal case. Federal law, for example, requires a criminal defendant to provide information showing that he is indigent, and therefore entitled to state-funded counsel, *before* he can receive that assistance.

Second, sometimes, as here, the person opposing the defendant at the hearing is not the government represented by counsel but the custodial parent *unrepresented* by counsel. The custodial parent, perhaps a woman with custody of one or more children, may be relatively poor,

unemployed, and unable to afford counsel. Yet she may have encouraged the court to enforce its order through contempt. She may be able to provide the court with significant information. And the proceeding is ultimately for her benefit.

A requirement that the State provide counsel to the noncustodial parent in these cases could create an asymmetry of representation that would “alter significantly the nature of the proceeding.” Doing so could mean a degree of formality or delay that would unduly slow payment to those immediately in need. And, perhaps more important for present purposes, doing so could make the proceedings *less* fair overall, increasing the risk of a decision that would erroneously deprive a family of the support it is entitled to receive. The needs of such families play an important role in our analysis.

Third, as the Solicitor General points out, there is available a set of “substitute procedural safeguards,” which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty. They can do so, moreover, without incurring some of the drawbacks inherent in recognizing an automatic right to counsel. Those safeguards include (1) notice to the defendant that his “ability to pay” is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (*e.g.*, those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. In presenting these alternatives, the Government draws upon considerable experience in helping to manage statutorily mandated federal-state efforts to enforce child support orders. It does not claim that they are the only possible alternatives, and this Court’s cases suggest, for example, that sometimes assistance other than purely legal assistance (here, say, that of a neutral social worker) can prove constitutionally sufficient. But the Government does claim that these alternatives can assure the “fundamental fairness” of the proceeding even where the State does not pay for counsel for an indigent defendant.

While recognizing the strength of Turner’s arguments, we ultimately believe that the three considerations we have just discussed must carry the day. In our view, a categorical right to counsel in proceedings of the kind before us would carry with it disadvantages (in the form of unfairness and delay) that, in terms of ultimate fairness, would deprive it of significant superiority over the alternatives that we have mentioned. We consequently hold that the Due Process Clause does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to a year). In particular, that Clause does not require the provision of counsel where the opposing parent or other custodian (to whom support funds are owed) is not represented by counsel and the State provides alternative procedural safeguards equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

We do not address civil contempt proceedings where the underlying child support payment is owed to the State, for example, for reimbursement of welfare funds paid to the parent with custody. Those proceedings more closely resemble debt-collection proceedings. The government

is likely to have counsel or some other competent representative. And this kind of proceeding is not before us. Neither do we address what due process requires in an unusually complex case where a defendant “can fairly be represented only by a trained advocate.”

IV

The record indicates that Turner received neither counsel nor the benefit of alternative procedures like those we have described. He did not receive clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding. No one provided him with a form (or the equivalent) designed to elicit information about his financial circumstances. The court did not find that Turner was able to pay his arrearage, but instead left the relevant “finding” section of the contempt order blank. The court nonetheless found Turner in contempt and ordered him incarcerated. Under these circumstances Turner’s incarceration violated the Due Process Clause.

We vacate the judgment of the South Carolina Supreme Court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, and with whom The CHIEF JUSTICE and JUSTICE ALITO join as to Parts I–B and II, dissenting.

The Due Process Clause of the Fourteenth Amendment does not provide a right to appointed counsel for indigent defendants facing incarceration in civil contempt proceedings. Therefore, I would affirm. Although the Court agrees that appointed counsel was not required in this case, it nevertheless vacates the judgment of the South Carolina Supreme Court on a different ground, which the parties have never raised. Solely at the invitation of the United States as *amicus curiae*, the majority decides that Turner’s contempt proceeding violated due process because it did not include “alternative procedural safeguards.” Consistent with this Court’s longstanding practice, I would not reach that question.

I

The only question raised in this case is whether the Due Process Clause of the Fourteenth Amendment creates a right to appointed counsel for all indigent defendants facing incarceration in civil contempt proceedings. It does not.

A

Under an original understanding of the Constitution, there is no basis for concluding that the guarantee of due process secures a right to appointed counsel in civil contempt proceedings. It certainly does not do so to the extent that the Due Process Clause requires “that our Government must proceed according to the ‘law of the land’—that is, according to written constitutional and statutory provisions.” No one contends that South Carolina law entitles Turner to appointed

counsel. Nor does any federal statute or constitutional provision so provide. Although the Sixth Amendment secures a right to “the Assistance of Counsel,” it does not apply here because civil contempt proceedings are not “criminal prosecutions.” Moreover, as originally understood, the Sixth Amendment guaranteed only the “right to employ counsel, or to use volunteered services of counsel”; it did not require the court to appoint counsel in any circumstance.

Appointed counsel is also not required in civil contempt proceedings under a somewhat broader reading of the Due Process Clause, which takes it to approve “[a] process of law, which is not otherwise forbidden, . . . [that] can show the sanction of settled usage.” Despite a long history of courts exercising contempt authority, Turner has not identified any evidence that courts appointed counsel in those proceedings. Indeed, Turner concedes that contempt proceedings without appointed counsel have the blessing of history.

B

Even under the Court’s modern interpretation of the Constitution, the Due Process Clause does not provide a right to appointed counsel for all indigent defendants facing incarceration in civil contempt proceedings. Such a reading would render the Sixth Amendment right to counsel—as it is currently understood—superfluous. Moreover, it appears that even cases applying the Court’s modern interpretation of due process have not understood it to categorically require appointed counsel in circumstances outside those otherwise covered by the Sixth Amendment.

1

Under the Court’s current jurisprudence, the Sixth Amendment entitles indigent defendants to appointed counsel in felony cases and other criminal cases resulting in a sentence of imprisonment. Turner concedes that the Sixth Amendment does not entitle him to appointed counsel. He argues instead that “the right to the assistance of counsel for persons facing incarceration arises not only from the Sixth Amendment, but also from the requirement of fundamental fairness under the Due Process Clause of the Fourteenth Amendment.” In his view, this Court has relied on due process to “rejec[t] formalistic distinctions between criminal and civil proceedings, instead concluding that incarceration or other confinement triggers the right to counsel.”

But if the Due Process Clause created a right to appointed counsel in all proceedings with the potential for detention, then the Sixth Amendment right to appointed counsel would be unnecessary. Under Turner’s theory, every instance in which the Sixth Amendment guarantees a right to appointed counsel is covered also by the Due Process Clause. The Sixth Amendment, however, is the only constitutional provision that even mentions the assistance of counsel; the Due Process Clause says nothing about counsel. Ordinarily, we do not read a general provision to render a specific one superfluous. The fact that one constitutional provision expressly provides a right to appointed counsel in specific circumstances indicates that the Constitution does not also *sub silentio* provide that right far more broadly in another, more general, provision.

Moreover, contrary to Turner’s assertions, the holdings in this Court’s due process decisions regarding the right to counsel are actually quite narrow. The Court has never found in the Due Process Clause a categorical right to appointed counsel outside of criminal prosecutions or proceedings “functionally akin to a criminal trial.” This is consistent with the conclusion that the Due Process Clause does not expand the right to counsel beyond the boundaries set by the Sixth Amendment.

After countless factors weighed, mores evaluated, and practices surveyed, the Court has not determined that due process principles of fundamental fairness categorically require counsel in any context outside criminal proceedings. Even when the defendant’s liberty is at stake, the Court has not concluded that fundamental fairness requires that counsel always be appointed if the proceeding is not criminal. Indeed, the only circumstance in which the Court has found that due process categorically requires appointed counsel is juvenile delinquency proceedings, which the Court has described as “functionally akin to a criminal trial.”

Despite language in its opinions that suggests it could find otherwise, the Court’s consistent judgment has been that fundamental fairness does not categorically require appointed counsel in any context outside of criminal proceedings. The majority is correct, therefore, that the Court’s precedent does not require appointed counsel in the absence of a deprivation of liberty. But a more complete description of this Court’s cases is that even when liberty is at stake, the Court has required appointed counsel in a category of cases only where it would have found the Sixth Amendment required it—in criminal prosecutions.

III

For the reasons explained in the previous two sections, I would not engage in the majority’s balancing analysis. But there is yet another reason not to undertake the *Mathews v. Eldridge* balancing test here. That test weighs an individual’s interest against that of the Government. It does not account for the interests of the child and custodial parent, who is usually the child’s mother. But their interests are the very reason for the child support obligation and the civil contempt proceedings that enforce it.

When fathers fail in their duty to pay child support, children suffer. Nonpayment or inadequate payment can press children and mothers into poverty.

The interests of children and mothers who depend on child support are notoriously difficult to protect. Less than half of all custodial parents receive the full amount of child support ordered; 24 percent of those owed support receive nothing at all. In South Carolina alone, more than 139,000 noncustodial parents defaulted on their child support obligations during 2008, and at year end parents owed \$1.17 billion in total arrears.

That some fathers subject to a child support agreement report little or no income “does not mean they do not have the ability to pay any child support.” Rather, many “deadbeat dads” “opt to work in the underground economy” to “shield their earnings from child support enforcement efforts.” To avoid attempts to garnish their wages or otherwise enforce the support obligation, “deadbeats” quit their jobs, jump from job to job, become self-employed, work under the table, or engage in illegal activity.⁴⁸

Because of the difficulties in collecting payment through traditional enforcement mechanisms, many States also use civil contempt proceedings to coerce “deadbeats” into paying what they owe. The States that use civil contempt with the threat of detention find it a “highly effective” tool for collecting child support when nothing else works. For example, Virginia, which uses civil contempt as “a last resort,” reports that in 2010 “deadbeats” paid approximately \$13 million “either before a court hearing to avoid a contempt finding or after a court hearing to purge the contempt finding.” Other States confirm that the mere threat of imprisonment is often quite effective because most contemnners “will pay ... rather than go to jail.”

This case illustrates the point. After the family court imposed Turner’s weekly support obligation in June 2003, he made no payments until the court held him in contempt three months later, whereupon he paid over \$1,000 to avoid confinement. Three more times, Turner refused to pay until the family court held him in contempt—then paid in short order.

Although I think that the majority’s analytical framework does not account for the interests that children and mothers have in effective and flexible methods to secure payment, I do not pass on the wisdom of the majority’s preferred procedures. Nor do I address the wisdom of the State’s decision to use certain methods of enforcement. Whether “deadbeat dads” should be threatened with incarceration is a policy judgment for state and federal lawmakers, as is the entire question of government involvement in the area of child support. This and other repercussions of the shift away from the nuclear family are ultimately the business of the policymaking branches.

I would affirm the judgment of the South Carolina Supreme Court because the Due Process Clause does not provide a right to appointed counsel in civil contempt hearings that may lead to incarceration. As that is the only issue properly before the Court, I respectfully dissent.

⁴⁸ In this case, Turner switched between eight different jobs in three years, which made wage withholding difficult. Most recently, Turner sold drugs in 2009 and 2010 but paid not a penny in child support during those years.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT V. RUCKER

535 U.S. 125 (2002)

(to accompany Nestor M. Davidson, *Public Housing as Housing of Last Resort: Department of Housing and Urban Development v. Rucker* (2002), in **The Poverty Law Canon**, page 274)

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

With drug dealers “increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants,” Congress passed the Anti-Drug Abuse Act of 1988. The Act, as later amended, provides that each “public housing agency shall utilize leases which ... provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.” 42 U.S.C. § 1437d(l)(6). Petitioners say that this statute requires lease terms that allow a local public housing authority to evict a tenant when a member of the tenant’s household or a guest engages in drug-related criminal activity, regardless of whether the tenant knew, or had reason to know, of that activity. Respondents say it does not. We agree with petitioners.

Respondents are four public housing tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of respondents’ leases, tracking the language of § 1437d(l)(6), obligates the tenants to “assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in ... [a]ny drug-related criminal activity on or near the premise[s].” Respondents also signed an agreement stating that the tenant “understand[s] that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted.”

In late 1997 and early 1998, OHA instituted eviction proceedings in state court against respondents, alleging violations of this lease provision. The complaint alleged: (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlie Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Rucker’s apartment;⁴⁴ and (3) that on three instances within a 2-month period, respondent Herman Walker’s caregiver and two others were found with cocaine in Walker’s apartment. OHA had issued Walker notices of a lease violation on the first two occasions, before initiating the eviction action after the third violation.

⁴⁴ In February 1998, OHA dismissed the unlawful detainer action against Rucker, after her daughter was incarcerated, and thus no longer posed a threat to other tenants.

United States Department of Housing and Urban Development (HUD) regulations administering § 1437d(1)(6) require lease terms authorizing evictions in these circumstances. The HUD regulations closely track the statutory language,⁴⁵ and provide that “[i]n deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case” The agency made clear that local public housing authorities’ discretion to evict for drug-related activity includes those situations in which “[the] tenant did not know, could not foresee, or could not control behavior by other occupants of the unit.”

After OHA initiated the eviction proceedings in state court, respondents commenced actions against HUD, OHA, and OHA’s director in United States District Court. They challenged HUD’s interpretation of the statute under the Administrative Procedure Act, arguing that 42 U.S.C. § 1437d(1)(6) does not require lease terms authorizing the eviction of so-called “innocent” tenants, and, in the alternative, that if it does, then the statute is unconstitutional.⁴⁶ The District Court issued a preliminary injunction, enjoining OHA from “terminating the leases of tenants pursuant to paragraph 9(m) of the ‘Tenant Lease’ for drug-related criminal activity that does not occur within the tenant’s apartment unit when the tenant did not know of and had no reason to know of, the drug-related criminal activity.”

A panel of the Court of Appeals reversed, holding that § 1437d(1)(6) unambiguously permits the eviction of tenants who violate the lease provision, regardless of whether the tenant was personally aware of the drug activity, and that the statute is constitutional. *See Rucker v. Davis*, 203 F.3d 627 (C.A.9 2000). An en banc panel of the Court of Appeals reversed and affirmed the District Court’s grant of the preliminary injunction. *See Rucker v. Davis*, 237 F.3d 1113 (2001). That court held that HUD’s interpretation permitting the eviction of so-called “innocent” tenants “is inconsistent with Congressional intent and must be rejected” under the first step of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*

We granted certiorari, and now reverse, holding that 42 U.S.C. § 1437d(1)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity.

That this is so seems evident from the plain language of the statute. It provides that “[e]ach public housing agency shall utilize leases which ... provide that ... any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household,

⁴⁵ The regulations require public housing authorities (PHAs) to impose a lease obligation on tenants:

“To assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in:

“(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA’s public housing premises by other residents or employees of the PHA, or

“(B) Any drug-related criminal activity on or near such premises.

“Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.” 24 CFR § 966.4(f)(12)(i) (2001).

⁴⁶ Respondents Rucker and Walker also raised Americans with Disabilities Act claims that are not before this Court. And all of the respondents raised state-law claims against OHA that are not before this Court.

or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.” 42 U.S.C. § 1437d(l)(6). The en banc Court of Appeals thought the statute did not address “the level of personal knowledge or fault that is required for eviction.” Yet Congress’ decision not to impose any qualification in the statute, combined with its use of the term “any” to modify “drug-related criminal activity,” precludes any knowledge requirement. As we have explained, “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales* (1997). Thus, *any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

The en banc Court of Appeals also thought it possible that “under the tenant’s control” modifies not just “other person,” but also “member of the tenant’s household” and “guest.” The court ultimately adopted this reading, concluding that the statute prohibits eviction where the tenant, “for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest.” But this interpretation runs counter to basic rules of grammar. The disjunctive “or” means that the qualification applies only to “other person.” Indeed, the view that “under the tenant’s control” modifies everything coming before it in the sentence would result in the nonsensical reading that the statute applies to “a public housing tenant ... under the tenant’s control.” HUD offers a convincing explanation for the grammatical imperative that “under the tenant’s control” modifies only “other person”: “by ‘control,’ the statute means control in the sense that the tenant has permitted access to the premises.” Implicit in the terms “household member” or “guest” is that access to the premises has been granted by the tenant. Thus, the plain language of § 1437d(l)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant’s knowledge of the drug-related criminal activity.

Comparing § 1437d(l)(6) to a related statutory provision reinforces the unambiguous text. The civil forfeiture statute that makes all leasehold interests subject to forfeiture when used to commit drug-related criminal activities expressly exempts tenants who had no knowledge of the activity: “[N]o property shall be forfeited under this paragraph ... by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.” 21 U.S.C. § 881(a)(7). Because this forfeiture provision was amended in the same Anti-Drug Abuse Act of 1988 that created 42 U.S.C. § 1437d(l)(6), the en banc Court of Appeals thought Congress “meant them to be read consistently” so that the knowledge requirement should be read into the eviction provision. But the two sections deal with distinctly different matters. The “innocent owner” defense for drug forfeiture cases was already in existence prior to 1988 as part of 21 U.S.C. § 881(a)(7). All that Congress did in the 1988 Act was to add leasehold interests to the property interests that might be forfeited under the drug statute. And if such a forfeiture action were to be brought against a leasehold interest, it would be subject to the pre-existing “innocent owner” defense. But 42 U.S.C. § 1437(d)(l)(6), with which we deal here, is a quite different measure. It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an “innocent owner defense,” while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an “innocent owner” defense. It did not provide one in § 1437d(l)(6).

The en banc Court of Appeals next resorted to legislative history. The Court of Appeals correctly recognized that reference to legislative history is inappropriate when the text of the statute is unambiguous. Given that the en banc Court of Appeals' finding of textual ambiguity is wrong, there is no need to consult legislative history.⁴⁷

Nor was the en banc Court of Appeals correct in concluding that this plain reading of the statute leads to absurd results.⁴⁸ The statute does not require the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime," 42 U.S.C. § 11901(2), "the seriousness of the offending action," and "the extent to which the leaseholder has ... taken all reasonable steps to prevent or mitigate the offending action." It is not "absurd" that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity. Such "no-fault" eviction is a common "incident of tenant responsibility under normal landlord-tenant law and practice." 56 Fed. Reg., at 51567. Strict liability maximizes deterrence and eases enforcement difficulties.

And, of course, there is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions: Regardless of knowledge, a tenant who "cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project." 56 Fed. Reg., at 51567. With drugs leading to "murders, muggings, and other forms of violence against tenants," and to the "deterioration of the physical environment that requires substantial government expenditures," 42 U.S.C. § 11901(4), it was reasonable for Congress to permit no-fault evictions in order to "provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs," § 11901(1).

⁴⁷ Even if it were appropriate to look at legislative history, it would not help respondents. The en banc Court of Appeals relied on two passages from a 1990 Senate Report on a proposed amendment to the eviction provision. 237 F.3d, at 1123 (citing S.Rep. No. 101-316 (1990)). But this Report was commenting on language from a Senate version of the 1990 amendment, which was never enacted. The language in the Senate version, which would have imposed a different standard of cause for eviction for drug-related crimes than the unqualified language of § 1437d(1)(6), was rejected at Conference. See H.R. Conf. Rep. No. 101-943, p. 418 (1990). And, as the dissent from the en banc decision below explained, the passages may plausibly be read as a mere suggestion about how local public housing authorities should exercise the "wide discretion to evict tenants connected with drug-related criminal behavior" that the lease provision affords them.

Respondents also cite language from a House Report commenting on the Civil Asset Forfeiture Reform Act of 2000, codified at 18 U.S.C. § 983. Brief for Respondents 15-16. For the reasons discussed *supra*, at 1234, legislative history concerning forfeiture provisions is not probative on the interpretation of § 1437d(1)(6).

A 1996 amendment to § 1437d(1)(6), enacted five years after HUD issued its interpretation of the statute, supports our holding. The 1996 amendment expanded the reach of § 1437d(1)(6), changing the language of the lease provision from applying to activity taking place "on or near" the public housing premises, to activity occurring "on or off" the public housing premises. See Housing Opportunity Program Extension Act of 1996. But Congress, "presumed to be aware" of HUD's interpretation rejecting a knowledge requirement, made no other change to the statute.

⁴⁸ For the reasons discussed above, no-fault eviction, which is specifically authorized under § 1437d(1)(6), does not violate § 1437d(1)(2), which prohibits public housing authorities from including "unreasonable terms and conditions [in their leases]." In addition, the general statutory provision in the latter section cannot trump the clear language of the more specific § 1437d(1)(6).

In another effort to avoid the plain meaning of the statute, the en banc Court of Appeals invoked the canon of constitutional avoidance. But that canon “has no application in the absence of statutory ambiguity.” “Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, § 1, of the Constitution.” There are, moreover, no “serious constitutional doubts” about Congress’ affording local public housing authorities the discretion to conduct no-fault evictions for drug-related crime.

The en banc Court of Appeals held that HUD’s interpretation “raise[s] serious questions under the Due Process Clause of the Fourteenth Amendment,” because it permits “tenants to be deprived of their property interest without any relationship to individual wrongdoing.” 237 F.3d, at 1124–1125. But both of these cases deal with the acts of government as sovereign. In *Scales*, the United States criminally charged the defendant with knowing membership in an organization that advocated the overthrow of the United States Government. In *Danaher*, an Arkansas statute forbade discrimination among customers of a telephone company. The situation in the present cases is entirely different. The government is not attempting to criminally punish or civilly regulate respondents as members of the general populace. It is instead acting as a landlord of property that it owns, invoking a clause in a lease to which respondents have agreed and which Congress has expressly required. *Scales* and *Danaher* cast no constitutional doubt on such actions.

The Court of Appeals sought to bolster its discussion of constitutional doubt by pointing to the fact that respondents have a property interest in their leasehold interest, citing *Greene v. Lindsey*, (1982). This is undoubtedly true, and *Greene* held that an effort to deprive a tenant of such a right without proper notice violated the Due Process Clause of the Fourteenth Amendment. But, in the present cases, such deprivation will occur in the state court where OHA brought the unlawful detainer action against respondents. There is no indication that notice has not been given by OHA in the past, or that it will not be given in the future. Any individual factual disputes about whether the lease provision was actually violated can, of course, be resolved in these proceedings.

We hold that “Congress has directly spoken to the precise question at issue.” *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* Section 1437d(1)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

Accordingly, the judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice BREYER took no part in the consideration or decision of these cases.