COMMENT

Dandridge v. Williams: Equal Protection and Welfare Law

Dandridge v. Williams[1] represents a reversal in the line of recent cases exemplified by King v. Smith[2] and Shapiro v. Thompson,[3] which declared invalid state statutes denying "eligible individuals"[4] the right to receive payments under the Aid to Families with Dependent Children Program (AFDC).[5] In Dandridge, the Supreme Court held that the State of Maryland's maximum grant regulation is a permissible device under AFDC for limiting welfare payments, and that this regulation does not constitute a denial of equal protection under the fourteenth amendment of the Constitution.

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1. 397 U.S. 471 (1970) [hereinafter Dandridge].

2. 392 U.S. 309 (1968) (invalidated Alabama's "substitute father" regulations on statutory grounds).

3. 394 U.S. 618 (1969) (struck down state residency requirements on equal protection grounds).

4. Aid to Families with Dependent Children Act, 42 U.S.C. §§ 601-10 (Supp. V, 1970), amending 42 U.S.C. §§ 601-09 (1964) [hereinafter AFDC]. In providing for aid to families with dependent children, Congress established the following four eligibility requirements for "dependent children:" 1) the child must be needy; 2) he must be "... deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent ..."; 3) he must be living with a parent or other specified relative; 4) he must be either under the age of 18 or he must be aged 18-21 and regularly attending school. 43 U.S.C. § 606(a) (Supp. V, 1970).

5. See note 4 supra. The AFDC Program was established by Congress in 1935 as part of the Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620-48 (1935), as amended 42 U.S.C. §§ 301-1396 (Supp. V, 1970), amending 42 U.S.C. §§ 301-1394 (1964). It was created for the purpose of "... encouraging the care of children in their own homes or in the homes of relatives ... and furnishing financial assistance and rehabilitation and other services ..., to needy dependent children ..." to help maintain and strengthen family life. 42 U.S.C. § 601 (Supp. V, 1970). For a history of welfare grants, see Graham, Public Assistance: The Right to Receive; The Obligation to Repay, 43 N.Y.U. L. Rev. 451, 462-67(1968).

I. Summary of the Case

The specific regulation challenged in Dandridge v. Williams, places a ceiling on the amount of assistance received by any family participating in the Maryland AFDC program.[6] The initiators of the suit were AFDC recipients with large families. Their standard of need exceeded the maximum level of benefits granted under the Maryland AFDC formula.[7] They instituted the action under 42 U.S.C.§ 1983 to enjoin the application of the Maryland maximum grant regulation on the grounds that it is in conflict with the Social Security Act of 1935, and violates the Equal Protection Clause of the fourteenth amendment.[8]

The district court initially ruled that that the regulation is violative of both the federal statute and the Equal Protection Clause of the fourteenth amendment.[9] After reconsideration on motion, the lower court narrowed its holding to the constitutional violation.[10]

Before the Supreme Court, the appellee recipients argued that the effect of the maximum grant regulation is to deny aid to the youngest members of large families.[11] They maintained that such a regulation violates section 602(a)(10) which requires that aid be given to "all eligible individuals."[12] They further argued that the Maryland program violates another fundamental purpose of the program, to strengthen family life,[13] by encouraging the parents of large families to "farm out" their children to relatives thus circumventing the ceiling on benefits.[14] In defense of the

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6. Md. Ann. Code art. 88A, §§ 44A-60 (1969).

7. Families may receive a maximum of $250 per month in certain counties including the City of Baltimore and $240 per month in the other counties of the state. Dandridge at 474 n. 4.

8. Dandridge at 473.

9. 297 F.Supp. 450 (1968).

10. Id. at 459.

11. Brief for Appellee Williams at 48, Dandridge v. Williams, 397 U.S. 471 (1970) [hereinafter Williams Brief].

12. 42 U.S.C. § 602.

13. Id.

14. Williams Brief at 27-28.

maximum grant, the appellant state argued that it is: 1. Not contrary to the 1935 Social Security Act,[15] 2. Recognized by Congress,[16] 3. Sanctioned by the Secretary of Health, Education and Welfare,[17] [hereinafter H.E.W.] and 4. Necessary in view of Maryland's finite resources.[18]

Appellees also argued that the Maryland regulation violated the Equal Protection Clause of the fourteenth amendment of the United States Constitution. They asserted that the state created a suspect classification by differentiating among children because of family size and violated basic fundamental rights of marital privacy and life.[19]

Maryland argued that the statute is free of any invidious discriminatory effect. It justified the regulation through legitimate state interests of encouraging gainful employment, maintaining an equitable balance in economic status between welfare families and those supported by a wage earner, providing incentives for family planning, and allocating available public funds in such a way as to fully meet the needs of the largest possible number of families.[20]

The Court concluded that the maximum grant regulation is sanctioned by the power of the states under AFDC to determine the standard of need and the level of payments to their welfare recipients.[21] It reconciled the regulation with the explicit statutory mandate to provide aid to all eligible individuals and the statutory purpose of strengthening family life.[22] The majority determined the issue of welfare is within the area of economic and social regulation and mandated a rational basis test for ascertaining a possible violation of the Equal Protection Clause. Relying on

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15. Note 5 supra.

16. Id.

17. Dandridge at 482, citing Department of Health, Education and Welfare, State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance 3 (1962).

18. See Dandridge at 479.

19. Williams Brief at 39-47.

20. See Dandridge at 479-80.

21. Dandridge at 478.

22. Id. at 479-81.

two of the rational bases advanced by the state,[23] they held that the Maryland statute does not invidiously discriminate against large families.

In a concurring opinion Justice Black joined by Chief Justice Burger questioned whether individual welfare recipients may bring suits alleging inconsistencies between state plans and the federal statute where the Secretary of Health, Education and Welfare has approved the state plan. Assuming such a suit to be permissible, they agreed with the decision of the majority of the court.[24] Justice Harlan's concurring opinion stated his belief that the only test applicable to equal protection questions, with the exception of racial matters, is a "standard of rationality."[25]

Justice Douglas dissented on statutory grounds without resort to consideration of the equal protection arguments.[26] Justice Marshall, with Justice Brennan concurring, dissented on statutory grounds. In addition, he rejected the approach and conclusion of the majority on the equal protection question.[27]

II. Analysis of the Supreme Court Opinion

A. Statutory Issue

The appellees argued that the Maryland maximum grant regulation constituted a denial of aid to all eligible individuals.[28] This argument was based on the entitlement

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23. Id. at 485-87. The Court relied on Maryland's interest in encouraging AFDC recipients to find gainful employment and in maintaining an income differential between AFDC families and the working poor.

24. Dandridge at 489.

25. Id. at 489.

26. Id. at 490-508.

27. Id. at 508-30. See also text accompanying notes 67-73 infra.

28. Id. at 476.

principle, that all eligible individuals shall receive aid under the Social Security Act, first adopted by the Court in King v. Smith.[29] In that case, the court held invalid a state regulation which reduced the class of federally entitled children. In Dandridge, the Court applied this entitlement principle interpreting the Social Security Act to be consistent with the Maryland administration program. The Court reasoned that the family is the proper unit of aid, and that in practice aid given to the mother is spent on all her children.[30] It held that the class of eligible beneficiaries is not reduced by the state regulation because all children receive aid through their mother. An eligible child receives his "entitlement" even if he is not considered in the determination of the family grant.[31]

Both dissents emphasized that the statute described "eligible individuals" rather than families as the recipients of AFDC payments.[32] In addition, Douglas cited the legislative history of the Social Security Act and the 1947 amendment to support this view.[33] The dissenters concluded that the Maryland regulation impermissibly denied aid to"entitled" younger children of large families.

Underlying this first issue is a question of whether the Social Security Act permits a state to set the level of benefits below the standard of need, which it has established as necessary for subsistence. The Dandridge court held that a state may so limit benefits. The Court reasoned that the statute gives authority to each to determine the extent of its participation in the program. Each state is justified in balancing the demands of its needy citizens against the finite resources available to meet those demands. The Court

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29. 392 U.S. 309 (1968).

30. 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.

Dandridge at 479-80.

31. Dandridge at 480.

32. See Id. at 497 (Douglas, J.) and Id. at 511 (Marshall, J.).

33. Id. at 493-502.

concluded that the statutory command of "aid to all eligible individuals" does not mean that full standard of need must be provided.[34] They held that Maryland's maximum grant regulation is a permissible method of balancing the finite resources of a state and the needs of its citizens.[35]

It is appropriate to contrast the Dandridge treatment of the issue of finite resources with the treatment of this issue in King v. Smith and Shapiro v. Thompson.[36] While recognizing the validity of this financial interest, the King court treated it in brief fashion.[37] In Shapiro, the state attempted to justify its one year residency requirement as a means to preserve its fiscal integrity. The Court concluded that the fiscal interest of the state was insufficient to validate a regulation which denied aid to individuals who would otherwise be eligible to receive assistance.[38] On the basis of the Court's approach in both King and Shapiro, it appeared that Maryland's fiscal justification in Dandridge would not constitute a rational basis of state action. However, the Court decided that fiscal pressures were a valid justification for the establishment of maximum grant regulations.[39] This aspect of Dandridge v. Williams is extremely important since it may justify any denial of aid to qualified AFDC recipients.

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34. Id. at 481. The Court stated: "So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated." From a practical perspective, had the states been explicitly required to match standards of need and levels of benefits from the outset, the states would have computed lower standards of need, utilizing the power to adapt their programs to local conditions. However, had the Court in Dandridge found the necessity to match need and benefits, the states may have found themselves unable to lower the standard of need in light of the 1967 amendments to the Social Security Act, supra note 5. These amendments require states to adjust need to reflect changes in the cost of living. Act of January 2, 1968, Pub. L. No.90-248, § 213(b), 81 Stat. 898, amending 42 U.S.C. § 602 (1964) (codified at 42 U.S.C. § 602(a) (23) (Supp. V., 1970)).

35. Dandridge at 483.

36. 392 U.S. 309 (1968); 394 U.S. 618 (1969).

37. 392 U.S. at 334.

38. 394 U.S. at 633.

39. Dandridge at 478-83.

Douglas' dissent recognized that states have great latitude in determining appropriations of AFDC funds. However, he concluded that the power to dispense AFDC funds was more limited. Once a state has determined a standard of need, it may not set a lower level of benefits to be received by individual recipients.[40]

Appellees further argued that the Maryland regulation violated the statutory purpose to help maintain and strengthen family life. They demonstrated that the regulation provided a dollar incentive of 20-30% of the monthly grant to welfare families who "farmed out" their children to be raised by eligible relatives.[41] This incentive was asserted to be contrary to the maintenance of family life. The Court agreed that the disruption of family unity would be impermissible, but interpreted the Social Security Act to permit the Maryland program. It held "family" to denote the "extended" rather than the "immediate" family. It concluded that family bonds while attenuated would not be broken if children lived with any of the enumerated relatives. The Court held that the Maryland regulation does not destroy family unity and is not contrary to the statutory purpose.[42]

The dissenters interpreted "family" to be the"immediate" family. Douglas, quoting from the legislative history, indicated that one purpose of the AFDC provisions is to keep the young children with their mother in their own homes.[43] Marshall noted the strong incentive to place children outside of the immediate family and the congressional intent that wherever possible children should remain with their mother.[44] Using different reasoning both dissenters concluded that the Maryland regulation is contrary to the purpose of the statute.

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40. Id. at 491.

41. Id. at 513.

42. ...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.

Dandridge at 480.

43. Id. at 501.

44. Id. at 514 n. 7.

The Court based its decision on the premise that Maryland's finite resources required the limitation of AFDC grants. It relied on the fact that the Secretary of the Department of Health, Education and Welfare approved state plans which pay less than their determined standard of need.[45] Additionally it noted the reference to maximum grant statutes in H.E.W. literature, and the 1967 amendments to 42 U.S.C. § 602(a) by Congress.[46]

Douglas' dissent demonstrated that neither H.E.W. nor Congress have expressly ruled on the question of maximum grants under § 602(a),(b). Furthermore, it cited legislative history to show that the harsh result of the maximum grant was one of the reasons for the 1968 amendment to AFDC.[47]

There is a further reason to discount the importance of the H.E.W. approval of maximum grant programs. H.E.W. approval could have reflected an administrative determination that the harm of maximum grant regulations was outweighed by the harshness of stopping all federal funding.

B. The Constitutional Issue

Equal protection decisions have recognized that states must classify their citizens for various purposes and treat some differently from others, in order to function.[48] Using the test of reasonable classification the "courts must

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45. Dandridge at 481 n. 13, citing Department of Health, Education and Welfare, Report on Money Payments to Recipients of Special Types of Public Assistance, Table 4 (NCSS Report D-4, 1967); and Hearings on H.R. 5710 Before the House Committee on Ways and Means, 90th Cong., 1st Sess., pt. 1, at 118 (1967).

46. Id. at 482 n. 14; see also note 34 supra. It should be noted that the approval by the Secretary and the references to maximum grant provisions by the Department and Congress constituted the reasons for the withdrawal of the holding on the statutory issue by the District Court, 297 F.Supp. at 460-62.

47. Dandridge at 502-06

48. For a full discussion of the standards of review under the Equal Protection Clause, see Developments in the Law - Equal Protection, 82 Harv. L. Rev. 1065, 1076-1132 (1969) [hereinafter Equal Protection].

reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose."[49] This test has frequently been used to examine a taxation or economic activity where no suspect classifications have been drawn and no fundamental interests have been infringed.[50] The burden of justification is on the challenging party to show that no reasonable basis exists. The "compelling state interest test" is applied when suspect classifications have been drawn or fundamental interests infringed.[51] When the compelling state interest test is used, the Court balances the burden on the discriminated class against the asserted state interests. The state must demonstrate a greater justification under this test than when the reasonable basis test is used. Suspect classifications include discriminations by the state based on race, lineage, and alienage.[52] Fundamental rights include voting,[53] marriage and procreation,[54] rights with respect to criminal procedure,[55]

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49. McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

50. See, e.g., McGowan v. Maryland, 366 U.S. 420, 425-28 (1961); Flemming v. Nestor, 363 U.S. 603, 611-12 (1960); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911); see generally Equal Protection at 1077-87.

51. See, e.g., Sherbert v. Verner, 374 U.S. 398, 406 (1963) (freedom of religion); Bates v. Little Rock, 361 U.S. 516, 524 (1960) (freedom of association); Korematsu v. United States, 323 U.S. 214, 216 (1944) (racial classification); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (right of marriage and procreation). See generally Equal Protection at 1103. See also Shapiro v. Thompson, 394 U.S. 618 (1969), wherein the Court defined the compelling state interest test. It declared that when a state classification infringes on a constitutional right, only "compelling state interests" will justify requirements imposed by the state. Id. at 634, 638.

52. Equal Protection at 1088. The concept of suspect classification derives from Korematsu v. United States, 323 U.S. 214, 216 (1944).

53. Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969); Carrington v. Rash, 380 U.S. 89 (1965).

54. Loving v. Virginia, 388 U.S. 1 (1967) (marriage); Skinner v. Oklahoma, 316 U.S. 535 (1942) (marriage and procreation).

55. See, e.g., Griffin v. Illinois, 351 U.S. 12 (1956).

education,[56] travel,[57] and free association.[58]

Although the Court has never held that a fundamental right to welfare exists, the language used by the Court in Shapiro v. Thompson and Goldberg v. Kelly[59] hinted that such a right might be recognized in the future. In Shapiro, the Court held that residence requirements which denied fundamental human needs deterred and infringed on the right to travel. The invalidation of residence requirements on equal protection grounds, suggests that welfare, defined as the right to food, clothing and shelter, a fundamental interest.[60] In Goldberg, the Court said that welfare benefits are a matter of statutory entitlement for persons qualified to receive them and that their termination involves state action that adjudicates "important rights."[61] The Court in Goldberg v. Kelly recognized by implication welfare as a fundamental right.. While the holdings of these two cases rested on other grounds,[62] it was suggested that such language might be a springboard for finding a fundamental interest in subsistence.

This was premature, for the Court failed to find a suspect classification or fundamental right infringed in Dandridge v. Williams. Appellees alleged that the Maryland regulation violates the Equal Protection Clause by creating two classes of eligible AFDC recipients: small families who receive AFDC payments to cover their state-determined subsistence needs and large families who do not.[63] The Court concluded that maximum grant statutes involve economic and social regulation, and applied the reasonable basis test:

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56. Brown v. Board of Education, 347 U.S. 483 (1954).

57. Shapiro v. Thompson, 394 U.S. 618 (1969).

58. Williams v. Rhodes, 393 U.S. 23 (1968).

59. 397 U.S. 254 (1970).

60. Note, Shapiro v. Thompson: Travel, Welfare and the Constitution, 44 N.Y.U. L. Rev. 989, 1003 (1969).

61. 397 U.S. at 262.

62. Shapiro rested on the right to travel; Goldberg was based on the due process right to an evidentiary hearing before termination of assistance.

63. Williams Brief at 47.

> 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."[64]

The Court elaborated the "reasonable basis" test and concluded there were sufficient state interests to outweigh whatever discrimination might exist. The Court relied on Maryland's interest in encouraging AFDC recipients to find gainful employment and in maintaining an income differential between AFDC families and the working poor. The Court found no need to apply a compelling interest test because no racial discrimination was alleged by the appellees.[65] Dandridge v. Williams implies that the court is not presently willing to recognize a fundamental interest in welfare.[66]

Marshall in his dissent outlined an alternative to both the reasonable basis and compelling state interest tests. He weighed the asserted state interests against the importance of the governmental benefits which would not be received by the individuals.[67] To determine the balance,

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64. Dandridge at 485.

65. Id. at 485. "It is important to note that there is no contention that the Maryland regulation is infected with a racially discriminatory purpose or effect such as to make it inherently suspect. Cf. McLaughlin v. Florida, 379 U.S. 184."

66. 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.

Id.

67. Dandridge at 520. Marshall explained that essentially the same standards had been applied by the Court in numerous cases. See Id. at 521 n. 15 and cases cited therein.

Marshall considered the character of the classification in question. He would have applied stricter standards in this case, because Dandridge involves a benefit necessary to sustain children's lives. In support, Marshall cited the application of a stricter equal protection standard in three recent cases involving the subsistence of life.[68]

Marshall then examined the asserted state interests in greater detail than had the court. He dismissed the justification of the allocation based on the finite state resources argument citing Shapiro v. Thompson and Goldberg v. Kelly.[69] Marshall attacked the argument that the Maryland statute will provide an employment incentive by noting the low number of employable AFDC recipients, and the availability of rehabilitative programs to deal with the problem.[70] He concluded that the statute is both overinclusive and

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68. Justice Marshall wrote:

> See Sniadach v. Family Finance Corp., 394 U.S.337, 340-342 (1969) (relying on devastating impact of wage garnishment to require prior hearing as a matter of due process); Goldberg v. Kelly, 397 U.S. ___,___ (1970): "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 largesse is 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."

Id. at 522 n.17.

> ...Shapiro v. Thompson, ..., striking down one-year residency requirement for welfare eligibility as violation of equal protection, and noting that the benefits in question are "the very means to subsist - food, shelter, and other necessities of life," ....

Id. n.18. Marshall suggests these cases indicate that whether or not there is a constitutional "right" to subsistence, deprivations of benefits necessary for subsistence should receive closer constitutional scrutiny, under both the Due Process and Equal Protection Clauses, than should deprivations of less essential forms of government largesse. Id.

69. Id. at 524.

70. Id. at 525, 526.

underinclusive with regard to employment opportunities.[71] Marshall found the regulation underinclusive since it encourages not all AFDC recipients to find employment but only those in large families. Simultaneously, it is overinclusive since it applies to AFDC recipients who are completely disabled from working.[72] Marshall disagreed with the weight given by the Court to the argument by Maryland that the balance between the working poor and welfare families must be maintained. He pointed out that in many states the prescribed family maximum "bears no such relation to the minimum wage," and questioned whether the elimination of the maximum would produce incomes out of line with other incomes in Maryland.[73]

The Court did not discuss appellees' argument that the Maryland regulation violated the fundamental right of procreation and marital privacy. However, Marshall noted the resemblance of the classification in Dandridge distinguishing large families from small families to the classification in Levy v. Louisiana[74] distinguishing illegitimate children from legitimate children. In both cases, the regulation in issue punished children for circumstances beyond their control. Marshall would have followed Levy and held a violation of equal protection in Dandridge.[75]

Dandridge indicates the Court will apply the traditional reasonable basis test to non-business areas. On their face the precedents cited in the opinion do not support this

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71. Id. at 527. Underinclusion occurs when a state benefits or burdens some, but not all, persons similarly situated. Rinaldi v. Yeager, 384 U.S. 305, 310 (1966); Equal Protection at 1084-86. Overinclusion occurs when a state burdens not only all persons similarly situated, but all those who are not so situated. Equal Protection at 1066.

72. Dandridge at 527.

73. Id. at 524.

74. 391 U.S. 68 (1968).

75. Dandridge at 523.

change.[76] Marshall's dissent indicated that Dandridge is "wholly without precedent" in this respect.[77] The Court's failure to discuss the appellees' argument of a fundamental right to subsistence indicates that it is not yet willing to recognize a fundamental interest in welfare.[78]

III. Future Arguments Against Restrictions in Welfare Grants

A. The Statutory Arguments

Since Dandridge, welfare recipients have successfully challenged restrictive state regulations using the entitlement principle.[79] In Doe v. Shapiro,[80] a Connecticut

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76. Ferguson v. Skrupa, 372 U.S. 726 (1963) (state regulation of debt adjusting business); McGowan v. Maryland, 366 U.S. 420 (1961) (Sunday closing laws); Flemming v. Nestor, 363 U.S. 603 (1960); Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955) (state regulation of opticians); Goesaert v. Cleary, 335 U.S. 464 (1948) (state regulation of barmaid qualification); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947) (state regulation of pilots); Metropolis Theatre Co. v. Chicago, 228 U.S. 61 (1913) (local regulation of theater owners' license fees); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911) (state regulation of gas and oil industry).

77. Dandridge at 509.

78. ...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." ... That era long ago passed into history.

Id. at 484-85. (citations and footnote omitted).

79. See Lander, AFDC Eligibility Under the Social Security Act: Reaping the Harvest of King v. Smith, 4 Clearinghouse Rev. 180 (1970) (showing statutory entitlement still a viable theory under subprinciples of the case).

80. 302 F.Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488 (1970).

regulation providing for the termination of AFDC to illegitimate children whose mothers refused to disclose the name of their father was held to be invalid on the "ground that it imposes an additional condition of eligibility not required by the Social Security Act."[81] In addition, the court stated that dependent children may not be denied AFDC on a basis unrelated to need,[82] and that eligibility may not be used as a means of furthering unrelated state interests.[83] Damico v. California reaffirmed the principle that AFDC eligibility may not be used as a means of furthering unrelated state interests.[84] A similar Minnesota waiting period provision has been invalidated in an opinion closely following Damico in the case of Doe v. Hursh.[85] In Cooper v. Laupenhaimer, a regulation providing for recovery of overpayment by means of reduction in subsequent payments was held invalid using the reasoning that"an otherwise eligible child is deprived of AFDC funds because of parental misconduct."[86]

Similarly, courts have recognized that a state regulation may not contravene the purpose of the AFDC program to help maintain and strengthen family life, declared by H.E.W.[87]

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81. 302 F.Supp. at 764.

82. Id.

83. Id. at 767.

84. 2 CCH Pov. L. Rep. ¶10,477 (N.D. Cal. Sept. 12, 1969).

85. Civ. No. 4-69-403 (D. Minn. June 30, 1970).

86. Civ. No. 69-2421 (E.D. Pa. Apr. 16, 1970), Memorandum Opinion at 15.

87. Department of Health, Education and Welfare, Handbook of Public Assistance Administration, pt.IV, (1946). The Department defines specifically what is intended by the phrase, "strengthen family life:"

> Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conducive to healthy, physical, emotional, and social growth and development. Families have the right and responsibility to provide for adequate health care, education, and vocational training in accordance with the capacities of their children; and to provide for their participation in community life.

Id. at § 4223.1.

and Congress[88] in two cases, Lampton, Bonin[89] and Jefferson v. Hackney.[90] Although the Court in Dandridge adopted the "extended family" unit, the Court stressed the strong statutory policy of preserving family unity.[91] Future welfare recipients will have to show conclusively that the particular statute promotes dispersion of the family.

The future success of these statutory arguments is limited by the Dandridge decision. While a particular regulation may arguably run counter to certain purposes of AFDC, the courts may validate it if the primary purpose of the regulation is to allocate finite state resources.

B. The Constitutional Arguments

The cases following Dandridge v. Williams have not found violations of equal protection in restrictive welfare legislation.[92] Dandridge viewed the administration of welfare as legally distinguishable from governmental regulation of business.[93] Welfare recipients are unlikely to be successful under the reasonable basis test because most

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88. See Senate Rep. No. 628, 74th Cong., 1st Sess. (1935), which indicated that keeping parents and children together in their own homes, rather than institutionalizing the children of the poor, is the least expensive and most desirable method for meeting the needs of the poor families that has yet been devised.

89. 299 F. Supp. 336 (E.D. La. 1969), vacated, per curiam, 397 U.S. 663 (1970).

90. 304 F.Supp. 1332 (N.D. Tex. 1969), vacated per curiam, 397 U.S. 821 (1970).

91. Dandridge at 480.

92. On the same day that Dandridge was decided, the Supreme Court, in Rosado v. Wyman, 397 U.S. 397 (1970), found that the New York welfare statute permitting percentage reductions in benefits had been amended to render the issue of discrimination moot and completely glossed over the legal protection issue. Two weeks after Dandridge, Wyman v. Rothstein, 398 U.S. 275 (1970), a case in which the plaintiff had claimed that the New York welfare statute was violative of the equal protection clause of the fourteenth amendment, was remanded by the Supreme Court in light of Dandridge.

93. Dandridge at 485.

states can allege rational justifications for any restrictive legislation. Since the maximum grant classification was rationally based, it will be important to distinguish the classification in question as arbitrarily impairing fundamental personal liberties, utilizing suspect classification, and as not necessary to the effectuation of any constitutionally permissible state interest.

If a fundamental right to subsistence can be established, the compelling state interest test will have to be used in welfare cases. Although this "right" has not yet been sanctioned by any court, many prominent commentators have espoused the theory that there is a constitutional right or entitlement to welfare.[94] They conclude that society has a constitutional obligation to provide support to those individuals who have insufficient resources to live under minimal conditions of health and safety. Professor Reich argues that the Equal Protection Clause requires that the government may not impose any conditions on the distribution of welfare funds that would be unconstitutional if imposed on non-welfare recipients.[95]

Professor Harvith asserted that the right to assistance is included in the Fifth Amendment Due Process Clause insuring that every American be guaranteed access to the necessities of life.[96] The Court did not adopt these theories

94. See, e.g., Harvith, Equal Protection and Welfare Assistance, 31 Albany L. Rev. 210 (1967); Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 Yale L. J. 1245 (1965). Reich, The New Property, 73 Yale L.J. 732 (1964). Also, cf. French, Unconstitutional Conditions: An Analysis, 50 Geo. L.J. 234 (1961); O'Neill, Unconstitutional Conditions: Welfare Benefits with Strings Attached, 54 Calif. L. Rev. 443 (1966).

95. Reich, supra note 94 at 1256.

96. Harvith, supra note 94. The author suggests coupling the decision in Bolling v. Sharpe, 347 U.S. 497 (1954) (equal protection of the law is guaranteed implicitly in the Fifth Amendment), which condemned racial discrimination in federal programs as violating the Fifth Amendment, with Simkins v. Cone Memorial Hospital, 323 F.2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964). Simkins held that where there is extensive use of public funds in private hospitals as provided for in the Hill-Burton Act, 42 U.S.C. § 291e,f (1958), as modified by Reorganization Plan No. 3, § 3 of 1966, there is sufficient federal action to prohibit racial discrimination. Harvith suggests that racial discrimination outlawed by the equal protection clause is analogous to the discrimination inherent in welfare operations. However, Harvith's analogy seems to indicate that discrimination in welfare is rooted in race. It is weak to premise a fundamental right on the existence of another fundamental right. For this reason, the argument seems unpersuasive.

to develop a right to subsistence either fundamental or otherwise. If recipients can demonstrate that the state regulation restricts an established fundamental right, then such a restriction would be judged by a compelling state interest test.[97]

The Supreme Court in the past has applied the compelling state interest test to suspect classifications. A racially motivated state regulation, or one having a racially discriminatory effect, is the clearest example of a suspect classification. Classifications based on wealth or lack of political power have recently been held to require stricter scrutiny in the manner of a suspect classification.[98]

Finally, the approach of Marshall's dissent may be the strongest argument to demonstrate violation of equal protection. He considers the character of the classification in question and then balances the importance to the individual of the government benefits against the state interests asserted.[99] This test is consistent with past actions of the court. Marshall's test could develop its own life or be incorporated into the compelling state interest test.

The decision of the Supreme Court in Dandridge v. Williams does not mean the end of substantive rights of AFDC recipients. By the use of established constitutional arguments, and the statutory provisions and purposes of the Social Security Act and the adoption of a federal welfare system, the precedental value of Dandridge v. Williams may be limited.

S.J.B.

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97. See text accompanying notes 53-58 supra.

98. See, e.g., Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353 (1963). See also Burns, Childhood Poverty and the Children's Allowance, in Children's Allowances and the Economic Welfare of Children 3 (Burns ed. 1968).

99. Dandridge at 521.

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