TABLE OF CONTENTS

DOCKET ENTRIES

United States District Court for the District of Maryland

1968

Feb. 28—Complaint, request for a Three-Judge Court and Exhibits A, and B-1 through B-8, inclusive, filed.

Feb. 28—(Issuance of process withheld — see letter on file).

Feb. 28—Points and Authorities in support of Application for a Three-Judge Court, filed.

Feb. 28—Motion of Plaintiff, Linda Williams, and her minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiff, Linda Williams and her minor children, for temporary restraining order and preliminary injunction and Affidavit in support thereof, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, for temporary restraining order and preliminary injunction and affidavits (2) in support thereof, filed.

March 1—Request of Plaintiff to issue summons as to Defendant, Esther Lazarus, filed.

March 1—Summons issued as to Defendant, Esther Lazarus. (Summoned — 4 March 1968).

March 1—Notification and Request of the Court (Thomsen, C. J.) for designation for Three Judge Court, filed.

March 18—Designation of Haynsworth, C. J., Fourth Cir., of Three-Judge District Court, designating Winter, Cir., J., and Thomsen and Harvey, JJ., filed.

March 21—Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

March 21—Motion of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, to Dismiss, and Memorandum in Support thereof, filed.

March 21—Answer of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, filed.

March 25—Amended Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

April 1—Memorandum of Plaintiffs in opposition to Defendants' Motion to Dismiss, filed.

June 7—Memorandum of Plaintiffs in support of Motion for Temporary Restraining Order and Preliminary Injunction, filed.

June 21—Amended Motion of Defendants to Dismiss, and Memorandum in support thereof, filed.

June 24—Hearing on Motion of Defendants to dismiss and to abstain, before the Court, Winter, Circuit J., Thomsen, C. J. and Harvey, J.

June 24—Argued and held sub-curia.

June 25—Stipulation of counsel re Statement of Facts, filed.

June 25—Oral opinion of the Court rendered.

June 26—Order (Winter, Cir. J., Thomsen, C. J., and Harvey, J.) denying Amended motion to dismiss, filed.

July 16—Supplementary Memorandum, Attachment and Amended Affidavits (3) in support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, filed.

Aug. 6—Appearance of Sheldon London, Esquire, as co-counsel for Defendant Esther Lazarus, Director of Public Welfare for the City of Baltimore, filed.

Aug. 6—Reply Memorandum of Defendants, State Board of Public Welfare and Raleigh C. Hobson, State Department of Public Welfare, filed.

Sept. 11—Transcript of Proceedings before the Court (Winter, Circuit, J., Thomsen, C. J., and Harvey, J.) on June 25, 1968, filed.

Dec. 13—Opinion (Winter, Cir. J., Thomsen, C. J., and Harvey, J.), filed.

Dec. 23—Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, filed.

1969

Jan. 2—Answer of Plaintiffs to Defendants' motion to amend findings of fact and Judgment, etc., filed.

Jan. 3—Hearing on Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, and Answer of Plaintiffs, thereto, before (Winter, Cir. J.) (Thomsen, C. J.) and (Harvey, J.).

Jan. 3—Argued-held sub-curia. Briefs to be submitted.

Jan. 10—Memorandum of Plaintiffs in opposition to Defendants' Motion to amend Findings of Fact and Judgment, etc., and Exhibits A through G, filed.

Jan. 13—Stipulation of Counsel, re: Facts, and attachments, filed.

Jan. 20—Motion of Sheldon London to strike his appearance and to enter the appearance of J. Warren Eberhardt, Esquire, as attorney for Mayor and City Council of Baltimore; and Order (Thomsen, C. J.) granting leave as prayed, filed.

Jan. 24—Reply Memorandum of Defendants in support of motion for Re-Argument, etc. and attachments, filed.

Jan. 27—Motion of Defendants to Amend Findings of Fact and Judgment or in the Alternative to take additional testimony, or for a New Trial, or in the Alternative to alter or Amend the Judgment, and Exhibits A, B, C, D, E, F, G, H, I, J, and K, attached thereto, filed. (Filed separately).

Feb. 6—Supplemental Memorandum of Defendants in Support of Motion for Reargument, and Attachments, filed.

Feb. 25—Opinion and Order of Court (Winter, Circuit Court Judge), (Thomsen, Chief Judge United States District Court) and (Harvey, Judge U. S. District Court) granting in part and denying in part the Defendants motion to amend findings of facts and judgment, grant a new trial. Or receive additional evidence and alter or amend judgment, filed.

March 5—Memorandum of Defendants in Support of Proposed Order and Proposed Order attached, filed.

March 11—Memorandum of Plaintiffs in opposition to Defendants proposed order, filed.

March 14—Appearance of J. Michael McWilliams, Esq. co-counsel for defendants (except Esther Lazarus), Order of attorney, filed.

March 18—Order of Court (Winter, Circuit J., Thomsen, C. J. and Harvey, J.) permanently enjoining the Defendants as set forth etc., filed.

March 21—Notice of Appeal of Defendants, to the Supreme Court of the United States, filed. (copies mailed by counsel.)

April 3—Motion of Plaintiff Linda Williams to amend title of action to include additional members of the Maryland State Board of Social Services (formerly Maryland State Board of Public Welfare) as named parties defendant herein: Julian P. King, Lester S. Levy and Howard H. Murphy and to correct all further entries in the case to conform to said amendment, etc. and Order (Winter, J.) Circuit Court, Judge granting leave as prayed, filed.

May 15—Tanscript of Proceedings before the Court (Winter, Cir. J., Thomsen, C. J. and Harvey, J.) on June 24, 1968, June 25, 1968 and January 3, 1969, filed. (filed separately).

United States District Court for the District of Maryland

Civil Action No. 19250

Linda Williams, et al.,

Plaintiffs,

v.

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Defendants.

COMPLAINT

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §§2281, 2284, and 1343(3). This is a suit for injunctive relief authorized by Title 42 U.S.C. §1983 to be commenced by any citizen of the United States or

other person within the jurisdiction thereof to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of those rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Social Security Act, 42 U.S.C. §§601-609. This is also a suit for a declaratory judgment, pursuant to Title 28 U.S.C. §2201 of rights established by the aforementioned constitutional and statutory provisions.

This is a proper case for determination by a three-judge district court under 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of the regulation set forth in the Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII,1. commonly referred to as the "maximum grant" regulation (a copy of which is attached hereto as Exhibit A) by restraining certain officials of the State of Maryland from the enforcement and execution of such state-wide administrative regulation on the ground of its unconstitutionality under the Constitution of the United States and on the ground of its conflict with the aforesaid federal statutes.

II.

This is a proceeding for an injunction enjoining the defendants from continuing to enforce or otherwise apply its "maximum grant" regulation. This is also a proceeding for a declaratory judgment that defendants' "maximum grant" regulation:

(A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and

(B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. §601 et seq.) and the statutes of the State of Maryland. (Article 88A, §§44A, and 49, Ann. Code of Md., 1957 ed.).

III.

This is a class action authorized by Rule 23 (b) (2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children eligible for Aid to Families with Dependent Children (hereinafter referred to as AFDC) and who are or may be subjected to the onerous limitations of the "maximum grant". This class is so numerous as to make joinder of all members impracticable; there are questions of law or fact common to the class; the claims of the plaintiffs are typical of the claims or defenses of the class, and the plaintiffs will protect and represent the interests of the class. The defendants in their administration of the "maximum grant" have acted in a way generally applicable to the class plaintiffs represent.

IV.

The named plaintiffs in this case are:

A. Mrs. Linda Williams, a Negro adult, 33 years of age, and a citizen of the United States and Maryland, residing in the City of Baltimore, who is entitled to receive AFDC from the State of Maryland. She is the sole support of her eight children:

Name	*Age*	*Date of Birth*
Dorothy	16	November 1, 1951
Linda Gayle	14	October 11, 1953
Mildred	11	May 6, 1956
James	10	June 1, 1957
Anthony	9	October 18, 1958
Ronnie	7	October 9, 1960
Angela	5	October 29, 1962
Wanda	4	June 4, 1963

All of these children, live permanently with Mrs. Williams in a place of residence maintained by her as their

home. The father is continuously absent from plaintiff's home. Plaintiff's health is very poor, and she is presently suffering from a serious breast condition that has already required five surgical procedures. In addition, one of her children, Ronnie, has required hospital care and attention and continuing medical supervision, for convulsions from which he has suffered since his early childhood.

B. Junius Gary and Jeanette Gary, his wife, are Negro adults and citizens of the United States and Maryland, residing in the City of Baltimore, who are entitled to receive AFDC from the State of Maryland. Mr. Gary is the sole support of his eight children:

Name	*Age*	*Date of Birth*
Junius	11	February 20, 1957
Catherine	10	January 8, 1958
Anthony	9	November 4, 1958
James	8	September 21, 1959
Lynn Dora	7	November 29, 1960
Pamela	6	November 18, 1961
Mark	5	November 23, 1962
Thelma	4	November 14, 1963

All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, lose consciousness, and is completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The only source of income for Mr. and Mrs. Gary and their children, is the maximum grant of $250 per month which they receive from AFDC.

V.

The named defendants are: Mr. Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare; Mr. Raleigh O. Hobson, Director, State Department of Public Welfare; Mr. Calhoun Bond, Mrs. Ralph O.

Dulany, Dr. W. Richard Ferguson, Mrs. Charles D. Harris, Mrs. Julian P. King, Mr. Lester S. Levy, Mr. Howard H. Murphy and Mr. J. O. Shuger, members of the Maryland State Board of Public Welfare, and Esther Lazarus, Director of Public Welfare for the City of Baltimore.

VI.

At all times hereinafter mentioned, the State of Maryland in order to receive federal funds for the AFDC programs, was required by the provisions of 42 U.S.C. §§601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "state plan" for AFDC consistent with the Constitution of the United States and the provisions of the Federal Social Security Act (42 U.S.C. §§601 et seq.).

VII.

Part II, Rule 200, Section VII 1. of the Maryland Manual of the Department of Public Welfare provides that "(T)he amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:" The maximum grant permitted under AFDC in Baltimore City is $250 per month regardless of the size of the family unit and its actual need. Public assistance standards applicable to the City of Baltimore have been formulated (these schedules are attached hereto as Exhibit B). These schedules provide, *inter alia,* a standard for determining the cost of subsistence needs, shelter, insurance premiums, school supplies, laundry and clothing. The Department of Public Welfare uses these standards in determining the amount of an AFDC grant.

VIII.

Defendants acting under color of authority vested in them by the laws of the State of Maryland in the enforcement, operation and execution of the maximum grant regulation have pursued and are presently pursuing poli-

cies and practices which violate the constitutional rights of plaintiffs and the class they represent and which are contrary to the expressed policy of the Federal Social Security Act as follows:

A. Under the maximum grant regulation a family no matter what its size may receive no more than $250 per month in AFDC benefits. Thus the maximum grant regulation prevents the satisfaction of the needs of all children in a family of seven persons or more, as plaintiffs herein. For example, according to the standards of subsistence (food, clothing, and household supplies) and shelter formulated by the Maryland Department of Public Welfare a family of seven persons should receive $254. per month and a family of eight should receive $280. per month. This does not include the cost of insurance premiums, school supplies, and laundry since the amount would vary with the age of the children; the amount of need would be greater if these items were included. This disparity between the amount that should be received according to the standards of subsistence and shelter and the amount actually received because of the limitation of the maximum grant increases with the size of the family. Children in smaller families of six persons or less are not so affected by the maximum grant *e.g.*, the family of six persons may receive the full amount determined by the Department of Public Welfare to be necessary to satisfy their subsistence and shelter needs since this amount ($229) is less than $250. Plaintiffs and their children and the class they represent are denied rights guaranteed by the equal protection clause of the Fourteenth Amendment since the maximum grant regulation has the effect of treating needy children differently based on an arbitrary standard not related to the purpose of AFDC — the size of their family.

B. The express policy of the Federal Social Security Act (42 U.S.C. §§601 et seq.) is to "strengthen family life." This maximum grant regulation fails to effectuate this policy and indeed it encourages the disruption of families, since (as will hereafter be demonstrated) the needs of a child in a large family can best be satisfied if the child were to leave the family and live with a relative.

C. The maximum grant regulation complained of herein contravenes Maryland's expressed purpose of AFDC, which is to strengthen family life (Article 88A, §44A, Ann. Code of Md., 1957 ed.) since it encourages the disruption of families. Its limitation makes the amount of assistance insufficient to provide each child receiving AFDC with a reasonable subsistence compatible with decency and health as required by Article 88A, §49 of the Annotated Code of Maryland.

IX.

Under the maximum grant provision, plaintiffs are denied an amount of assistance commensurate with the standards of need established by the Maryland Department of Public Welfare. (The schedules are attached hereto as Exhibit B).

A. Mrs. Linda Williams, according to the standards of need formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives.

B. Mr. Junius Gary and his wife, Jeanette, according to the same standards formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive.

Two hundred fifty dollars ($250.00) per month is insufficient to provide plaintiffs with a reasonable subsistance compatible with decency and health and is inadequate to meet their minimum financial needs. After the payment of their rent each month, the Garys have a mere $175 per month to meet all of their needs for food and clothing and heating of their home and this amount is grossly inadequate, often leaving Plaintiffs with no money to purchase food, and putting their children to considerable embarassment and disadvantage in school activity because of their

cast-off clothing and the other effects of poverty, which sometimes causes them to miss school. The family has no money, automobile, or other property of any kind save a few items of old furniture and the inadequate clothing they have been able to purchase. They are in serious debt, particularly in regard to public utilities companies, which has caused their gas and electricity to be shut off on numerous occasions for failure to pay current charges, Their home is heated by gas space heaters, and the cut off of their utilities often leaves them with no heat in their home.

X.

The maximum grant regulation denies to plaintiffs and members of their class equal protection of laws in violation of the Constitution since they are given smaller assistance grants per person than are other recipients under the AFDC program on a basis wholly unrelated to the purpose of the program. The amount a needy child receives varies with the size of its family, so that children in smaller families are in the preferred position of receiving much more per child than children in larger families receiving AFDC.

Unhampered by the maximum grant, in a family of four (one parent and three children), on the basis of subsistence and shelter standards (since the cost of insurance and school supplies varies with the age of the child) the parent and each child receives assistance at the rate of $44.50 per month; in a family of five persons (one parent and four children), $41.50 for the parent and each child; and in a family of six persons (one parent and five children), $38.50 for the parent and each child. Since Mrs. Williams' children are in the position of being members of a large family, each person receives assistance at the rate of $27.78 for the parent and each child, although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $32.16 per person. Each person in Mr. Junius' family receives assistance at the rate of $25.00 per person although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $33.15 person. (The parents in each family receive the identical amount as each child.)

XI.

The maximum grant regulation encourages the disruption and separation of families in the following ways:

A. Mrs. Williams receives $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit, this amounts to $27.78 per person. If, however, she were to place two of her children of 12 years of age or over with relatives, each child so placed would be eligible to receive $79.00 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of her children out of her family, she would still be eligible to receive the maximum grant of $250.00; however, each of the remaining children would receive aid at the rate of $35.71 per child. Thus, she and her eight children would then be receiving over-all benefits of $408.00; $158.00 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

B. Mr. and Mrs. Gary receive $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit this amounts to $25 per person, per month. If, however, they were to place two of their children between the ages of six and twelve with relatives or strangers, each child so placed would be eligible to receive $65 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of their children out of their family, they would still be eligible to receive the maximum grant of $250; however, each of the remaining members of the assistance unit would receive aid at the rate of $31.25 per person. Thus, Mr. and Mrs. Gary and their eight children would then be receiving over-all benefits of $380, $130 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

Because of the operation of the maximum grant regulation, families are rewarded if they break up their families and place their children outside the home with relatives or others, since the amount received per child is increased and the maximum grant may be circumvented. Plaintiffs

and the class they represent have the option of keeping their families together, the goal expressed by the Federal Social Security Act, or placing their children with relatives or strangers in order that their needs be satisfied. Failure by the Maryland Board of Public Welfare to accommodate the actual needs of children of necessity, results in the disruption of family solidarity.

XII.

Under the Maryland AFDC status and the "maximum grant" provisions complained of, enforced, applied and implemented by defendants, plaintiffs are denied a minimal standard of living commensurate with the minimum standard of need established by the State of Maryland Department of Public Welfare for a family of eight children, as prescribed in the standards established by the Department of Public Welfare, which sets said minimum for Linda Williams and her family at $296.15 per month for herself and her eight children, and at $331.50 per month for Junius Gary and his wife and eight children, as more particularly described in the schedules attached hereto as Exhibit B.

The "maximum grant" provisions herein complained of as enforced, applied and implemented by the defendants, their predecessors in office, agents and employees, bear no reasonable relation to and contravene the purpose and intent of the Federal Social Security Act, Title 42, United States Code, Section 601, which is to furnish assistance to needy dependent children, to maintain and strengthen family life, and to help the parents of such children to attain personal independence and self-support, in that said provisions:

(a) result in a discriminatory lack of uniformity in the amount of assistance available to individual children and parents with similar needs;

(b) penalize children and parents in large families and encourage the break-up of such families into small units;

(c) deny large families a standard of living commensurate with the minimum standard of assistance and standard of need as promulgated by the Maryland State Welfare Department as determined by its own economic calculations.

(d) deny plaintiffs and other large families receiving public assistance even sufficient assistance as will meet minimum nutritional standards and thereby gradually effect a program of starvation.

The "maximum grant" herein complained of, enforced, applied, and implemented by defendants, their predecessors in office, agents and employees, violates and is repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that by imposing an arbitrary restriction on the amount of assistance available to any family regardless of the individual needs of particular children or parents said provisions discriminate against plaintiffs and all others similarly situated, because of the size of their families, in a manner which bears no substantial, reasonable, or fair relation to the purposes and intent of the federal and state AFDC legislation under which said provisions operate, and thereby create arbitrary, irrational, and discriminatory classifications which deprive plaintiffs and members of their class of equal protection of the laws.

Defendants' enforcement, application, and implementation as to plaintiffs of the "maximum grant" provisions herein complained of has caused plaintiffs extreme hardship, suffering, and anxiety, including inadequate food, clothing, and shelter, and will continue to suffer severe and irreparable injury to their health and well-being, and to their family life, as a result of the enforcement, application, and implementation of the "maximum grant" provisions until said provisions are declared unlawful and unconstitutional and their enforcement enjoined by this Court.

XIII.

Finally, the enforcement, application and implementation of the "maximum grant" provisions by the defendants,

has violated and continues to violate the due process clause of the Fourteenth Amendment to the United States Constitution, as applied to the plaintiffs, in that it violates the due process guarantee of marital privacy. All of the children of the plaintiffs, Junius Gary and Jeanette Gary, his wife, and the plaintiff, Linda Williams, were born before application was made for welfare benefits, and no additional children have been born to the plaintiffs since they began receiving an AFDC grant from the defendants; nevertheless, the amount of their grant is less than the adequate assistance for minimal food and shelter needs as computed by the defendants, even though the plaintiffs freely choose a large family before receiving AFDC assistance. Thus the "maximum grant" provision intrudes on the right of marital privacy of the plaintiffs both before and during the period of AFDC assistance by imposing an unconstitutional burden on the exercise of a constitutional right by the plaintiffs, by denying an amount of assistance equal to the actual needs of the families of the plaintiffs.

XIV.

No adequate administrative remedy, or adequate remedy at law, is available.

Wherefore, plaintiffs respectfully request the Court, on behalf of themselves and others similarly situated, to:

1. Convene a three-judge district court to determine this controversy pursuant to Title 28 U.S.C. §§2281 and 2284;

2. Enter a preliminary and permanent injunction:

(a) prohibiting, restraining and enjoining defendants, their successors in office, and all of their agents from enforcing, applying or implementing said maximum grant regulations;

(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and

ordering and requiring defendants to make welfare payments to plaintiffs and members of the class they represent in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare; and

(c) ordering and requiring defendants, their successors in office, all of their agents, to furnish AFDC assistance to Plaintiffs and all others similarly situated without regard to said maximum grant regulations:

3. Enter a declaratory judgment pursuant to Title 28 U.S.C. §2201, declaring that said maximum grant regulations:

(a) contravenes the purpose and intent of the AFDC Program as explained in the Federal Social Security Act (42 U.S.C. §§601 et seq.), and the Maryland Public Legislation (Article 88A, §§44A and 49); and

(b) contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and for such further or alternative relief as this Court may find to be just and equitable.

(Signatures of counsel and certificate of service.)

EXHIBIT A

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

   A. For local departments under any "Plan A" of Shelter Schedule B $250

      For local departments under any "Plan B" of Shelter Schedule B $240.

Except that:

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III - 3, C), the grant may exceed the maximum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

2. *GPA or ADC-E is not Available* — To supplement full-time wages. To meet need due to being disqualified for unemployment insurance. To supplement unemployment insurance; *except* when the individual receiving it is enrolled in an educational and/or training program to learn a skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.

3. *Period Covered and Method of Payment* — The period covered by a grant shall be the calendar month. The amount of the grant is calculated on a monthly basis and is paid by check, unless otherwise specified by local policy. It is paid for current need and may not be paid for a past period excepting as specifically permitted by the State Manual.

EXHIBIT B[1]

Public Assistance Rule 200

SCHEDULE A

STANDARD FOR DETERMINING COST OF SUBSISTENCE NEEDS

Number of persons in assistance unit (include unborn child as an additional person)	I	II	III	IV	V
	MONTHLY COSTS WHEN				
	No heat or utilities included with shelter	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 person living—					
Alone	$ 51.00	$ 49.00	$ 43.00	$ 40.00	$ 38.00
With 1 person	42.00	41.00	38.00	36.00	35.00
With 2 persons	38.00	37.00	35.00	34.00	33.00
With 3 or more persons	36.00	35.00	34.00	33.00	32.00
2 persons living—					
Alone	84.00	82.00	76.00	72.00	70.00
With 1 other person	76.00	74.00	70.00	68.00	66.00
With 2 or more other persons	72.00	70.00	68.00	66.00	64.00
3 persons living—					
Alone	113.00	110.00	105.00	101.00	99.00
With 1 or more other persons	108.00	106.00	101.00	99.00	97.00
4 persons	143.00	140.00	135.00	131.00	128.00
5 persons	164.00	162.00	156.00	152.00	150.00
6 persons	184.00	181.00	176.00	172.00	169.00
7 persons	209.00	205.00	201.00	197.00	193.00
8 persons	235.00	231.00	227.00	222.00	219.00
9 persons	259.00	256.00	251.00	247.00	244.00
10 persons	284.00	281.00	276.00	271.00	268.00
Each additional person over 10 persons	24.50	24.50	24.50	24.50	24.50

Modification of Standard for Cost of Eating in Restaurant

Add $15.00 per individual.

R. #314
11/67

EXHIBIT B[2]

Public Assistance — Rule 200

SCHEDULE AA

STANDARD FOR ROOM AND BOARD ARRANGEMENT FOR A CHILD

Kind of Care	MONTHLY ALLOWANCE*		
	Room & Board	*Clothing*	*Pre-added Totals*
Regular Care			
Infant up to 6	$50.00	$ 9.00	$59.00
6 up to 12	50.00	15.00	65.00
12 and over	60.00	19.00	79.00**
Special Care			
Infant up to 6	$75.00	$ 9.00	$84.00
6 up to 12	75.00	15.00	90.00
12 and over	75.00	19.00	94.00**

Regular Care is that which requires the usual and ordinary supervision in the home.

Special Care is that which requires unusual supervision and attention from a home equipped to give such care.

* No other items allowable in the grant.

** When calculating need for mother of unborn child, add to maximum $24.50: $20.00 additional food allowance; $4.50 towards cost of layette.

R. #314
11/67

II — Rule 200 — Page 28

EXHIBIT B[3]

Public Assistance — Rule 200

SCHEDULE B — PLAN A

STANDARD FOR DETERMINING COST OF SHELTER

Plan A to be used by the following local departments:

Allegany, Anne Arundel, Baltimore City, Baltimore County, Cecil, Montgomery, Prince George's

Number of persons in assistance unit	I	II	III	IV	V
	MONTHLY COSTS WHEN				
	No heat or utilities included with shelter	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 or 2 persons	$ 35.00	$ 37.00	$ 43.00	$ 46.00	$ 48.00
3 persons	35.00	38.00	43.00	47.00	49.00
4 persons	35.00	38.00	43.00	47.00	50.00
5 or 6 persons	45.00	48.00	53.00	57.00	60.00
7 or more persons	45.00	49.00	53.00	57.00	61.00

R. #307
2-66

II — Rule 200 — Page 29

EXHIBIT B[4]

Public Assistance — Rule 200

SCHEDULE B — PLAN B

STANDARD FOR DETERMINING COST OF SHELTER

Plan B to be used by the following local county departments:

Calvert	Frederick	Queen Anne	Wicomico
Caroline	Garrett	St. Mary's	Worcester
Carroll	Harford	Somerset	
Charles	Howard	Talbot	
Dorchester	Kent	Washington	

	I	II	III	IV	V
	MONTHLY COSTS WHEN				
Number of persons in assistance unit	*No heat or utilities included with shelter*	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 or 2 persons	$ 31.00	$ 33.00	$ 39.00	$ 42.00	$ 44.00
3 persons	31.00	34.00	39.00	43.00	45.00
4 persons	31.00	34.00	39.00	43.00	46.00
5 or 6 persons	31.00	34.00	39.00	43.00	46.00
7 or more persons	31.00	35.00	39.00	43.00	47.00

R. #307
2-66

EXHIBIT B[5]

Public Assistance — Rule 200

SCHEDULE E

STANDARD FOR DETERMINING THE COST OF INSURANCE PREMIUMS

Age of Individual	*Insurance "as paid" not to exceed a maximum monthly cost per individual*
Under 18 years	$0.25
18 through 64 years	.65
65 years and over	1.10

SCHEDULE F

STANDARD FOR DETERMINING THE COST OF SCHOOL SUPPLIES

School Grade	*Monthly Cost Per Child in School*
In elementary school (Grades 1 through 6)	$0.50
In junior or senior high school (Grades 7 through 12)	1.00

R. #243
10-59

EXHIBIT B[6]

Public Assistance Rule 200

SCHEDULE G

STANDARD FOR DETERMINING THE COST OF SPECIAL DIETS

Type of Diet	*Monthly Cost*
Plan A High calorie high protein high vitamin Severe sodium restricted Low carbohydrate Gluten free Ketogenic	$19.00
Plan B Moderate sodium restricted Smooth bland Calorie restricted Modified fat Moderate fat high carbohydrate high protein	12.00

SCHEDULE H

STANDARD FOR DETERMINING THE COST OF LAUNDRY

Cost of laundry may *not* be added to Standard for Nursing Home Care

Size of Family	*Monthly Cost*
One or two persons	$2.00
Three or more	4.00

EXHIBIT B[7]

Public Assistance — Rule 200

SCHEDULE J

STANDARD FOR DETERMINING AMOUNT OF RESOURCE IN FOOD

Size Of Family	MONTHLY AMOUNT OF RESOURCE					
		For Specified Food Groups				
	For All Food Items	*Milk, Eggs & Meat*	*Milk & Meat*	*Milk & Eggs*	*Milk Only*	*Eggs Only*
1 person—						
Living alone	$29.00	$10.50	$ 9.00	$ 6.75	$ 5.25	$ 1.50
Living with 1 other person	26.00	9.75	8.35	6.25	4.85	1.40
Living with 2 other persons	25.00	8.25	7.00	5.40	4.15	1.25
Living with 3 or more other persons	24.00	7.50	6.35	4.90	3.75	1.15
2 persons—						
Living alone	52.00	19.50	16.75	12.50	9.75	2.75
Living with 1 other person	50.00	16.50	14.00	10.75	8.25	2.50
Living with 2 or more other persons	48.00	15.00	12.75	9.75	7.50	2.25
3 persons—						
Living alone	75.00	25.00	21.25	16.25	12.50	3.75
Living with 1 or more other persons	72.00	22.50	19.00	14.75	11.25	3.50
4 persons	95.00	30.00	25.50	19.50	15.00	4.50
5 persons	112.00	35.00	29.75	22.75	17.50	5.25
6 persons	127.00	39.50	33.50	25.75	19.75	6.00
7 persons	147.00	44.00	37.25	28.75	22.00	6.75
8 persons	168.00	48.50	41.00	31.75	24.25	7.50
9 persons	188.00	53.00	45.00	34.50	26.50	8.00
10 persons	208.00	57.50	48.75	37.50	28.75	8.75
Each additional person over 10 persons	20.00	4.50	3.75	3.00	2.25	.75

R. #312

EXHIBIT B[8]

Public Assistance Rule 200

SCHEDULE K

STANDARD FOR DETERMINING AMOUNT OF RESOURCES IN CLOTHING

Number of Persons in Assistance Unit	*Monthly Amount of Resource*
One person	$ 4.50
2 persons	9.00
3 persons	14.50
4 persons	20.00
5 persons	24.00
6 persons	28.00
7 persons	31.50
8 persons	35.00
9 persons	38.50
10 persons	42.00
Each additional person over 10 persons	3.50

United States District Court for the District of Maryland

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. Introduction

This is a class action for declaratory and injunctive relief brought by Plaintiffs who are recipients of public assistance under the Maryland Program for Aid to Families with Dependent Children, against public welfare officials of the State of Maryland challenging the constitutionality of the maximum grant provision, Rule 200 VII, 1. of the *Manual of the Department of Public Welfare.* Rule 200 imposes an absolute limit on the amount of AFDC assistance to a family unit regardless of the actual need of the family as computed under schedules issued by the State Board of Public Welfare of the State of Maryland.

This court has jurisdiction to entertain this action since plaintiffs seek to have a state-wide regulation declared unconstitutional and to enjoin its operation on the grounds of its repugnance to the United States Constitution. The Court's attention is also respectfully directed to the cases cited in Plaintiffs' *Points and Authorities In Support of Application For A Three-Judge Court,* and in particular the case of *Smith v. King,* 277 F. Supp. 31 (M.D. Alabama, 1967), probable jurisdiction noted, 390 U.S. 903 (1968), also a suit for injunctive relief against enforcement of a statewide regulation, set forth in the *Alabama Manual for Administration of Public Welfare.*

II. Statement of Facts

Plaintiffs are members of a class composed of needy parents of dependent children and their needy dependent children, residing in the State of Maryland and eligible to receive public assistance under the Maryland Aid to Families with Dependent Children (AFDC) Program. The amount

of this aid is and has been restricted and limited by the application and enforcement of the "maximum grant" provisions hereby complained of, to wit: Rule 200 VII 1., Maryland *Manual of the Department of Public Welfare.*

Plaintiff, Linda Williams, is an adult citizen of the United States and a resident of the City of Baltimore, State of Maryland. She is the mother and sole support of the Plaintiff children: Dorothy, age 16; Linda Gayle, age 14; Mildred, age 12; James, age 10; Anthony, age 9; Ronnie, age 7; Angela, age 5; Wanda, age 4; all of the children named live with her in a place of residence maintained by her as her home. The Plaintiff's husband, Willie Williams, the father of all the named children, is continuously absent from the plaintiff's home, having deserted her after the birth of their last child. Plaintiff has no income, resources, support or maintenance other than the public assistance which she receives in the amount of $250 a month, which is the maximum grant permitted under AFDC in Baltimore City, regardless of the size of the family unit and its actual need.

The plaintiffs, Junius Gary and Jeanette Gary, his wife, are adult citizens of the United States and residents of the City of Baltimore, State of Maryland, and Mr. Gary is the sole support of the Plaintiffs' children: Junius, age 11; Catherine, age 19; Anthony, age 9; James, age 8; Lynn Dora, age 7; Pamela, age 6; Mark, age 4; Thelma, age 4. All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained by them as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, dizzy spells and loss of consciousness. He has been found to be completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The Plaintiffs, Mr. and Mrs. Gary, have no income, resources, support or maintenance other than the $250 a month they receive in public assistance, which is the maximum grant they are entitled to under the Maryland Aid to Families with Dependent Children Program (hereinafter referred to as AFDC program).

The effect of applying the "maximum grant" regulation by the State of Maryland is to reduce the Plaintiffs and their families to a standard of living substantially below that established as a minimum standard of need by the State of Maryland Department of Public Welfare; the minimum standard of need formulated for Mrs. Williams and her eight children by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, is $296.15 per month, $46.15 more than the maximum grant of $250 per month which she actually receives; the standard of need formulated by the Department, including the cost of insurance premiums, school supplies and laundry, for Mr. and Mrs. Gary and their eight children is $331.50 per month, $81.50 per month more than the maximum grant of $250 per month which they actually receive. (The above needs are determined in accordance with the schedules attached to the Bill of Complaint as Exhibit B, representing the schedules for establishing need in the Maryland *Manual of the Department of Public Welfare.*)

III. Argument

Introduction

This court "* * * may, at any time, grant a temporary restraining order to prevent irreparable damage * * *." Title 28 U.S.C. Sec. 2284 (3). As to the standards for the granting of a preliminary injunction, these have been clearly stated in *Embassy Dairy v. Cammalier*, 211 F. 2d 41 (1954). In that case it was stated on page 48:

> "* * * Whether or not a preliminary injunction should issue is ordinarily a matter for the discretion of the District Court to be exercised upon this series of estimates: 'The relative importance of the rights asserted and the acts to be enjoined, the irreparable nature of the injury allegedly flowing from denial of preliminary relief, the probability of the ultimate success or failure of the suit, the balance of damage and convenience generally.' (Quoted from *Communist Party v. McGrath*, 96 F. Supp. 47, 48 (D.C. D.C., 1951)."

A. *Plaintiffs are suffering irreparable injury because of the enforcement by the Defendants of the "maximum grant" regulation in the payment of welfare assistance.*

Where issues raised by attack on the constitutionality of a state statute or regulation discloses that something more than a frivolous or unreasonable attack is being made on the regulation and where continued enforcement will result in greater injury to plaintiffs than to Defendants, should the regulation ultimately be held invalid, enforcement of the regulation should be temporarily enjoined pending determination as to its constitutionality. *Traffic Tel. Workers Federation of N.J. v. Driscoll*, 71 F. Supp. 681 (D.C. N.J. 1947). It is conceded that in any motion for a preliminary injunction, the court must find as a condition of granting the relief requested that irreparable injury will be suffered by the Plaintiff if relief *pendente lite* is not granted. *Virginia Petroleum Jobbers Ass'n v. Fedderal Power Commission*, 259 F. 2d 921 (C.A. D.C. 1958).

The plaintiffs and their minor children are in great, immediate and continuing need of public assistance commensurate with the minimal standards of need as established by the Defendant Department. The Plaintiff parents have no other source of support to provide their families with food, shelter and the other necessities of life. As set forth in greater particularity in their Bill of Complaint, and in their affidavit in support of motion for a temporary restraining order and preliminary injunction, the Plaintiffs are faced with a difficult choice. They must choose between keeping their families intact, an express purpose of the Federal Social Security Act (42 U.S.C. Sec. 601 et seq.) and Article 88A of the Annotated Code of Maryland (1957 ed.) sec. 44A, with inadequate food, clothing and shelter; or separating their families by placing some of their children in institutions or foster homes, since the present provisions enable the needs of a child in a large family to be met if the child is so placed. Each choice means immediate and certain irreparable injury to the families' cohesiveness and unity. The plaintiff parents

wish to keep all of their children at home and to provide them with the basic necessities of life.

B. *Defendants will suffer no substantial damage or inconvenience if assistance is granted to Plaintiffs pendente lite, whereas Plaintiffs and their children will suffer substantial and irreparable harm.*

If the plaintiff parents would receive public assistance payments in the amount determined by the Defendant Department of Public Welfare, to be the minimal standards required for the support of the families of the Plaintiff parents, which is in excess of the maximum grant of $250 per month, the amount that they now receive, the State of Maryland would suffer *de minimis* injury. The plaintiff, Linda Williams, would be eligible to receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives. The plaintiffs, Junius Gary and Jeanette Gary, his wife would receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive. Although the amounts received in excess of the maximum grant by the plaintiffs represents for them their only possibility of retaining their family unit, in terms of the effect it would have upon the Defendant, State Department of Public Welfare, when compared to the more than $89,396,891.43 which was spent in the year ending June 30, 1967, by the Department of Public Welfare, the additional grant to the Plaintiffs of $46.15 per month for the Williams family and $81.50 per month for the Gary family is so inconsiderable as to be *de minimis*. Such a temporary restraining order was granted by this Honorable Court in the case of Mantell v. Dandridge, (Civil Action #18792, Dec. 4, 1967) to prevent irreparable injury to Plaintiffs as a consequence of the State of Maryland's statutory requirement of one year's residency for public assistance. A finding of *de minimis* damage was explicitly made by the three-judge court in a number of the other residency cases in other federal district jurisdictions.

A three-judge court in the District of Columbia stated:

> "* * * Plaintiffs will suffer irreparable loss, injury and damage without comparable loss to the public unless preliminary relief is granted * * *."
>
> *Harrell v. Tobriner,* 279 F. Supp. 22 (D.C. D.C. 1967), compare also the case of *Smith v. Reynolds,* 277 F. Supp. 65 (E.D. Pa. 1967), *Ramos v. Health and Social Services Board,* 276 F. Supp. 474 (E.D. Wisc. 1967) (preliminary injunction granted); *Denny v. Health and Social Services Board* (Civil Action No. 67-C-426, E.D. Wisc., temporary restraining order granted December 22, 1967); *Johnson v. Robinson* (Civil Action No. 67-C-1883, N.C. 111, preliminary injunction granted December 28, 1967); *Porter v. Graham* (Civil Action No. Civ. -2348- Tucson, D. Ariz., preliminary injunction granted January 24, 1968.)

There, as in the present case, the record disclosed on its face that something more than a merely capricious or wholly unreasonable attack was being made on a state regulation, that important rights were at stake, and that denial of relief would result in greater injury to applicants than would be inflicted upon defendants by the granting of relief, and in those courts, temporary or preliminary relief was granted. Compare also *Traffic Tel. Workers v. Driscoll, supra.*

In *Woods v. Wright,* 334 F. 2d 269 (5th Cir., 1964) the Circuit Court of Appeals held that where Negro children were expelled from school without a hearing after being arrested in a civil rights demonstration, the District Court should have issued a temporary restraining order prohibiting the expulsions and ordering the children readmitted to school. In so doing, the court stated:

> "* * * When there is a clear and imminent threat of an irreparable injury amounting to manifest oppression it is the duty of the court to protect against the loss of the asserted right by a temporary restraining order. * * *" 334 F. 2d at 374.

If expulsion of children from school is sufficiently serious harm to require a temporary restraining order, how much more warranted is such an order in this case to protect the minimal subsistence level of life and health of the plaintiffs. As was stated in the case of *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry. Co.*, 154 F. 2d 450, 453 (6th Cir., 1946), *cert. denied*, 329 U.S. 761 (1946):

> "* * * A court of equity will not gamble with human life, *at whatever odds* and for loss of life there is no remedy that in an equitable sense is adequate. * * *"

C. *The Temporary Restraining Order and Preliminary Injunction Should Be Issued Since Plaintiffs Will Likely Prevail On The Merits.*

1. *The Maximum Grant Provision of Rule 200, Section VII 1. in Maryland's Aid to Families with Dependent Children Program violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.*

The guarantee of equal protection of the laws under the Fourteenth Amendment to the United States Constitution has been stated to mean that:

> "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose * * *." *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964).

While the government may classify people for various purposes it may not classify on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), *Carrington v. Rash*, 380 U.S. 89 (1965). In the instant case the classification is subject to even closer scrutiny because it is created by administrative regulation under Rule 200 VII 1., issued by the Maryland State Department of Public Welfare. The same deference to legislative judgment is not due to administrative rule-making and it is clear that an agency may not make rules or regulations which are out of harmony with the act being administered. 1 Am. Jur. 2d *Administrative Law*, Section 132, and cases there cited. The

classification created by Rule 200, VII 1. is unreasonable in light of the purposes of the Aid to Families with Dependent Children (hereinafter referred to as AFDC program). The most accurate guide to those purposes in Maryland is the statutory declaration of purpose in Section 44A of Article 88A of the Annotated Code of Maryland (1957 ed.):

> "* * * It is hereby declared that the primary purpose of aid given under this subtitle is the *strengthening of family life through services and financial aid,* whereby families may be assisted to maximum self-support in homes meeting the requirements of child care established by law in this State * * *." (Emphasis supplied).

This statutory declaration of purpose implicitly refers to the social evil that the AFDC program reaches: the instability of family units that lose the support of one parent. This declaration is reinforced by a similar federal declaration of purpose in the Social Security Act of 1935, 42 U.S.C. §601:

> "* * * *(to encourage) the care of dependent children in their own homes* or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living, to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection * * *." (emphasis supplied).

The AFDC program in Maryland is required by the Social Security Act, 42 U.S.C. §602, to implement these federal policies in order to qualify for federal grants to its AFDC program. Rule 200 VII 1. provides that:

> "1. Amount — the amount of the grant is the resulting amount of need when resources are deducted from

requirements as set forth in this Rule, *subject to a maximum of each grant from each category:*

A. For local departments under any "Plan A" of Shelter Schedule B $250

For local departments under any "Plan B" of Shelter Schedule B $240 . . ." (emphasis supplied).

Rule 200 VII 1. imposes an absolute maximum limit on AFDC assistance regardless of the actual need of the recipient family unit. For example, the Department of Public Welfare of the City of Baltimore computes the costs of subsistence needs of a family of seven persons at $254.00 per month. For a family of eight persons subsistence needs are calculated to be at least $280.00 per month. (See schedule attached to Bill of Complaint as Exhibit B.) The maximum grant permitted in Baltimore City is $250.00 per month. In effect the maximum grant provision of Rule 200 VII 1. limits AFDC assistance to an amount less than actual need in family units of seven persons or more. Obviously, the disparity between actual need and the amount of AFDC assistance increases in larger family units.

Rule 200 VII 1. creates two classes of needy dependent children and their parents. The first class, families of six persons or less, is granted AFDC assistance equal to actual need; the second class, families of seven persons or more, receives an amount of assistance which not only is insufficient to meet actual need but also is unrelated to actual need. The classification created by Rule 200 VII 1. is based solely on the size of the family unit. In the instant case the minimal standard of need for the family unit of the plaintiff, Linda Williams, is $296 per month according to the schedule issued by the Maryland State Board of Public Welfare. The application of the arbitrary maximum grant of $250 denies plaintiff's family the basic necessities of adequate food and shelter.

None of the purposes of the AFDC program is served by the classification created by Rule 200 VII 1. Instead of strengthening family life, large family units are encouraged to separate in order to meet their needs. If plaintiff,

Linda Williams, placed two of her eight children who are 12 years of age or over with eligible relatives, each child so placed would be entitled to receive $79 per month as an assistance unit. In addition, the rest of the old family unit would still qualify for the maximum grant of $250. The family unit would thus be receiving a total amount of AFDC assistance of $408, as a result of the dissolution of the family unit. However, the dissolution of family units prompted by Rule 200 VII 1. defeats the very purpose of the AFDC program.

As an economy measure Rule 200 VII 1. still lacks a constitutionally permissible purpose. This issue was squarely faced in *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957) in which the court held that the Iowa maximum grant provision violated the equal protection clause of the Iowa Constitution. Equal protection under the Iowa Constitution is identical with the federal guarantee. *Dickinson v. Porter*, 240 Iowa 393 at 400, 35 N.W. 2d 66 at 77 (1948). The court stated in the *Collins* case at p. 7 of 81 N.W. 2d:

> "The books are replete with cases dealing with the above constitutional provision both here and elsewhere. The general rule is that if there is any reasonable ground for the classification and it operates equally upon all within the same class, there is uniformity in the constitutional sense . . .
>
> Under the record it appears that the State Board in the administration of the Act and to insure a uniform state-wide program for aid to dependent children (Section 239. 18, Code, 1954) has established a standard schedule of amounts necessary for the minimum of subsistence, which amounts are based upon the needy-per-child basis . . . Under the chapter prior to the amendment each child receives such amount irrespective of the number in the home. Under the chapter as amended each child may receive the minimum amount without regard to the number in the home, up to the point where the sum total reaches $175, at which point additional assistance to that home

terminates. Stating it another way, under the amendment assume that the minimum amount per child is $47 per month. Each child receives the amount provided the total amount paid to any one recipient does not exceed $175. If in excess of this amount, the payment to such recipient is on a *pro-rata* basis per child in the home. However, if the instant children should be distributed among the homes of various relatives named in Section 239.1 (4), and nothing in the chapter seems to prohibit such distribution, each of the involved children would be entitled to the minimum allowance.

The amendment on its face appears to be, and was, we think, intended as an *economy measure*. In effect it is a sub-classification of the original classification, i.e., dependent children, based solely on the number of children in the home, with no consideration as to need, a circumstance completely disconnected with the basic classification and the purpose and reason therefore. See *Keefner v. Porter,* 228 Iowa 844, 293 N.W. 501. We think the amendment is clearly discriminatory between dependent children as defined in Section 239.1 (4) and is purely arbitrary and unreasonable in view of the announced purpose of the act." (emphasis added).

In the welfare residency cases courts have stated repeatedly that the preservation of the public purse does not justify separate treatment of persons similarly situated. *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), probable jurisdiction noted, 36 L.W. 3286 (1968); *Green v. Department of Public Welfare,* 270 F. Supp. 173 (D. Del. 1967); *Harrell v. Tobriner,* 279 F. Supp. 22 (D.C. D.C. 1967). In *Green* the court stated, at p. 177 of 270 F. Supp., that, "The protection of the public purse, no matter how worthy in the abstract, is not a permissible basis for differentiating between persons who otherwise possess the same status in their relationship to the State of Delaware." In other words, the arbitrary selection of a class which bears the burden of state economizing is constitutionally

impermissible. *Rinaldi v. Yeager,* 384 U.S. 305 (1966); *Green v. Department of Public Welfare,* 270 F. Supp. 173 (D. Del. 1967), *Smith v. Reynolds,* 277 F. Supp. 65 (E.D. Pa. 1967). The governmental economizing is even more arbitrary here because, unlike the invalid residency requirement, the maximum grant provision does not even arguably protect against unscrupulous recipients.

Furthermore, in light of our expanding economy, it is fallacious to assume that welfare expenditures are rising. In Research Report Number 2, July, 1967, published by the defendant, State Department of Public Welfare of Maryland, it is stated on p. 6:

> Costs and numbers of recipients of assistance have risen due to the extension of Public Welfare services and benefit levels; it must be noted however that while actual dollar costs have risen, Public Welfare expenditures have decreased as a percentage of both National Personal Income and Gross National Product.

2. *Rule 200 VII 1. violates Section 601 of the Federal Social Security Act which requires that assistance meet basic needs in order to strengthen the family unit.*

The federal policies of the Social Security Act of 1935 are expressed in Section 601 of Title 42 of the United States Code:

> ". . . *to help maintain and strengthen family life* and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection . . ." (emphasis supplied).

The administrative interpretation of basic federal policy which is binding on the states is set forth in regulation 3401, Part IV of the Federal Handbook of Public Assistance Administration:

> "To live in the family to which he belongs is the foundation of a child's security. The public has an inter-

> est and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child."

Section 601 clearly expresses a legislative intent to strengthen family life through AFDC assistance.

The federal statutory policy of Section 601 of the Social Security Act is binding on the states. *Cf. State v. Bandjord,* 92 P. 2d 273, 279 (Mont. 1939). See also, *Pearson v. State Social Welfare Board,* 54 C. 2d 184, 353 P. 2d 33, 35, 39 (1960); *Fenton v. Department of Public Welfare,* 182 N.E. 2d 528, 530 (Mass. 1962). Maryland statutes require that the State Department of Public Welfare comply with all pertinent federal requirements in order to qualify for federal grants to its AFDC program. Section 15, Article 88A of the Annotated Code of Maryland. Moreover, the State of Maryland has adopted the very language of section 601 as its AFDC policy in Section 44A of Article 88A of the Annotated Code of Maryland which states that:

> "It is hereby declared that the primary purpose of aid given under this subtitle is the strengthening of family life through services and financial aid, whereby families may be assisted to maximum self-support in homes meeting the requirements for child care established by law in this state."

Rule 200 VII 1. imposes an arbitrary limit on the amount of AFDC assistance regardless of the actual need of the family unit. It ignores the clear legislative mandate of Section 601 to meet actual need. Furthermore, it encourages the dissolution of family units in violation of the federal and state policy of strengthening family life. The policies of meeting actual need and strengthening family life are interwoven for surely a healthy family environment is possible only if actual needs are met.

Administrative rules and regulations must conform to legislative policy. *SEC v. Chenery,* 318 U.S. 80 (1943),

Thomas v. Owens, 4 Maryland 189 (1853). In the ancient and authoritative case of *Thomas v. Owens* the court dealt with a suit to compel payment to a comptroller that the Maryland Constitution and law said he should receive. The court so ordered, noting that legally defined amounts of payment could not be reduced by agencies or officials any more than payments could be withheld. To the offending official the court at p. 225 of 4 Md., stated that, ". . . this fiat of the Supreme Will is not to be nullified by the mere *ipse dixit* of a mere ministerial officer." Nor should the legislative command to aid the individual need of needy dependent children and their parents be nullified by the arbitrary regulation of the State Board of Public Welfare.

A similar question of *ultra vires* administrative action was raised in *Staub v. Department of Public Welfare*, 198 P. 2d 817 (1948). The welfare department fixed a ceiling on the amount of assistance to a needy blind person even though that amount did not meet the recipient's needs as computed by the department itself. The court reviewed pertinent state statutes and regulations which required assistance to meet actual need. The court set aside the administrative action of the welfare department as "arbitrary and capricious" (at p. 825 of 198 P. 2d).

3. *The Maximum Grant Provisions of Rule 200 (VII) (1) Violates the Right of Marital Privacy of AFDC Recipients Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

Even if the Court rules that the maximum grant provision of Rule 200 (VII) 1. does not deny plaintiff the equal protection of the laws and does not violate Section 601, of 42 U.S.C., the maximum grant provision punishes AFDC recipients with large families in violation of their right of marital privacy. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The state cannot require that recipients of public assistance relinquish a cherished constitutional right as a condition of eligibility. *Sherbert v. Verner*, 374 U.S. 398 (1963), *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967). The condition of family size is completely irrele-

vant to the purposes of AFDC assistance. In welfare residency cases courts have invalidated provisions that condition assistance on the relinquishment of the constitutional right of interstate travel. *Thompson v. Shapiro, supra, Green v. Delaware, supra, Harrell v. Tobriner, supra.* In our hierarchy of constitutional values surely the marital right of procreation ranks just as high. And, its relinquishment as a condition to equal AFDC assistance is equally repugnant to the Constitution. The Supreme Court has recognized a penumbral right of marital privacy in *Griswold v. Connecticut, supra.* The right of procreation has traditionally been zealously safeguarded against governmental interference. *Skinner v. Oklahoma,* 316 U.S. 535 (1942), *Griswold v. Connecticut, supra.* The government must show a compelling interest in order to justify the infringement by Rule 200 VII 1. of this fundamental constitutional right. *Bates v. Little Rock,* 361 U.S. 516 (1960), *Sherbert v. Verner,* 374 U.S. 398 (1963). A money benefit cannot be denied a person solely because he exercised a constitutionally protected right. *Speiser v. Randall,* 357 U.S. 513 (1958), *Harman v. Forssenius,* 380 U.S. 528, 540 (1965), *Garrity v. New Jersey,* 385 U.S. 493 (1967), *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), *Sherbert v. Verner, supra.*

Rule 200 (VII) 1. punishes AFDC recipients who exercise their freedom of choosing a large family. A family unit that decides to have a large number of children is denied an amount of assistance equal to its actual needs. This denial penalizes the birth of additional children in family units of six or more persons by withholding adequate food and shelter, even though they may all have been born before the family was ever required to apply for welfare benefits. For example, all of the children of Mr. and Mrs. Gary were born before Mr. Gary was forced by his illness to apply for welfare benefits and they have not had additional children while receiving AFDC assistance. Likewise, Mrs. Williams' children were all born prior to her need for welfare benefits. Nevertheless, they receive less than adequate assistance for minimal food and shelter needs even though they chose a large family be-

fore receiving AFDC assistance. Thus, Rule 200 (VII) 1. intrudes on the right of marital privacy both before and during the period of AFDC assistance. It imposes an unconstitutional burden on the exercise of a constitutional right. *Sherbert v. Verner, supra, Collins v. State Board of Social Welfare,* 248 Iowa 269, 81 N.W. 2d 4 (1957). The right of plaintiffs as married persons, to freedom of choice in procreation and reproduction is firmly established, *Griswold v. Connecticut,* 381 U.S. 479 (1965). A state may not penalize the exercise of a constitutional right by withholding benefits. *Sherbert v. Verner, supra.* See also the case of *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), in which the court held that a state may not punish the exercise of the freedom to travel from state to state by imposing an arbitrary durational residence requirement as a condition of receiving public welfare benefits.

4. *The Maximum Grant Provision of Rule 200 (VII) (1) Violates the Right to Life Guaranteed to the Plaintiffs Under the Fifth and Fourteenth Amendments to the United States Constitution.*

In introducing the Fourteenth Amendment in the United States Senate in 1868 Senator Howard of Michigan, stated:

> "* * * The last two clauses of the first section of the amendment disable a state from depriving * * * any person, whoever he may be, of life, liberty, or property without due process of law, or from denying him the equal protection of the laws of the State. * * * It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty * * * Without this principle of equal justice to all men and equal protection under the shield of the law, there is no republican government and none that is really worth maintaining." William D. Guthrie, *Lectures on the 14th Article of Amendment To The Constitution of the United States,* Little, Brown and Co., 1898, p. 22.

In their often cited dissent Mr. Justice Field and Mr. Justice Strong, in the case of *Munn v. Illinois,* 94 U.S. 113, 142, defined the meaning of the term "life" as used in the 14th Amendment. They stated:

> "* * * by the term 'life', as here used, something more is meant then mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. * * * The deprivation not only of life, but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision."

The maximum grant provision of Rule 200, contained in the *Manual for the Department of Public Welfare* of the State of Maryland strikes at this most basic right of all, the right to life itself. It allows the Department of Public Welfare to determine the minimal subsistence needs of a family, and then to deny any family consisting of more than six units this minimal subsistence that the Department has itself defined to be necessary to life. The State of Maryland has established a system to provide for the necessities of life for the less fortunate members of its society, and then has placed in the balance "* * * all that makes life worth living." Cf *Ng Fung Ho v. White,* 259 U.S. 276, 284 (1922); *MacMullen v. City of Middletown,* 98 N.Y.S. 145, 150 (1906).

The tragic effect of the denial of the minimal subsistence benefit necessary for life was recently recognized in the report of the President's National Advisory Commission on Civil Disorders. In recognizing that the national average grant for welfare recipients was well below the poverty subsistence level of $3,335 for an urban family of four, the commission reported the effect of this inadequacy. It quoted the Advisory Council of Public Welfare, in stating that these inadequacies:

> "* * * are themselves a major source of such social evils as crime and juvenile delinquency, mental illness, illegitimacy, multi-generational dependency, slum en-

> vironments, and the widely deplored climate of unrest, alienation, and discouragement among many groups in the population." *Report of the National Advisory Commission on Civil Disorders*, Bantam Books, 1968, p. 460.

This description is borne out in the instant cases. In her affidavit, the plaintiff, Linda Williams, states that she is constantly in debt because of her inability to meet the bare necessities of life, and that her children are presently without adequate shoes and clothing, and sometimes are required to stay home from school, because they do not have the necessary clothes to wear, especially in the wintertime. Her oldest daughter has just stopped going to school because she does not have the right kind of clothes to wear and is ashamed to go with what she has. Mrs. Williams states in her affidavit that if she could simply afford the necessities of life for her children, she could provide the kind of home life that they need to grow up to be "good people." She is constantly faced with the worry of having to break up her family because of her inability to meet her expenses.

The plaintiffs Junius Gary and his wife, Jeanette Gary, point to the same difficulties in their affidavits, concerning their children and their inability to clothe them properly for school. They also point out that in the wintertime their gas and electricity bill is always behind because of inadequate funds, which causes the gas and electricity to be shut off, leaving them without heat and light in their home. They are not even left with sufficient money to participate in the food stamp program which would allow them to purchase more nutritious food in greater quantity.

The situation that the Williams family and the Gary family are left in certainly violates that constitutional protection to a life of more than "mere animal existence". *Munn v. Illinois, supra,* at page 142. The deprivation here is of everything necessary to the growth and development of life.

Moreover, the administrative classification deprives the plaintiffs of other liberties secured by the due process

clause of the Fourteenth Amendment. Without the bare necessities of life the full exercise of freedom of speech, for example, is curtailed. As a result poor persons have not fully participated in the political processes. Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 147 (1938); *Hobson v. Hansen*, 269 F. Supp. 401, 513 (D.C. D.C. 1967). When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme poverty and a practical inability to escape from the problems which the classification creates, the court gives close scrutiny and requires full justification before permitting such a result. *Harper v. Board of Elections*, 383 U.S. 663 (1966); *Hobson v. Hansen, supra* at 513. The right to life guaranteed by the Fourteenth Amendment recognizes that man is not a mere animal but a political and social creature as well. *Munn v. Illinois, supra.*

The City of Baltimore, in which the maximum grant regulation is most harshly felt, has itself acknowledged the complete inadequacy of the welfare grant. In submitting its application to the Department of Housing and Urban Development, for a grant to plan a comprehensive city demonstration program, the city, in its application, comments on the public welfare program as follows:

> Public welfare has the mission of providing a guarantee against economic poverty and related social deprivation. This guarantee means that public welfare should be available to all who need its protection, *be adequate to their needs consistent with the standards of this society for minimum decent living, and available as a matter of legal right.* (Emphasis supplied.)
>
> Public assistance payments are so low in Baltimore (as elsewhere in the United States) that the public welfare program itself can be termed a major source of poverty. Part III, Page 3 of 1 Planning Grant Application: Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

The application concludes that:

> At this stage in the planning process, it does not appear that there are local laws, regulations or requirements which are glaringly inconsistent with the objectives of the program, *with the exception of public welfare laws,* and regulations which are primarily national and state laws and regulations. (Emphasis supplied.) Part III, Page 1 Planning Grant Application, Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

It is apparent that the inadequate welfare grant which is magnified by the maximum grant regulation under attack here, could well cause the City of Baltimore serious difficulty in obtaining approval of its application for a model cities program, and thus further penalize the poor of the inner city.

CONCLUSION

John Adams, one of the founders of the American Republic once wrote: "The poor man's conscience is clear yet he is ashamed * * * he is not disapproved, censured or reproached; he is only not seen * * * to be wholly overlooked, and to know it, are intolerable."

The poor of our society, created and perpetuated by a welfare system which is characterized by inadequate grants and unrealistic regulations are no longer hidden, however. And as the court stated in the very recent case of *Edwards v. Habib:* opinion of May 17, 1968, (C.A. D.C. No. 20,883):

> As judges, "we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men." *Ho Ak Kow v. Nunam,* C.C.D. Cal. 12 Fed. Cas. 252 (No. 6546) (1879).

This court cannot fail to take judicial notice of the vicious cycle of poverty created in our cities by the illegality and unfairness of our present welfare system. The

maximum grant provision, Rule 200 VII 1, creates an arbitrary classification that penalizes recipient family units of more than six persons. A classification based on family size is totally unrelated to the purpose of the AFDC program. According to the schedules of the defendant, State Department of Public Welfare, the amount of assistance granted to Plaintiff Linda Williams and her family, and plaintiffs Junius and Jeanette Gary and their family, is inadequate to sustain even a minimal standard of life. If this Honorable Court enjoins the operation of Rule 200 VII 1. plaintiffs could provide for the minimal subsistence needs of their families. For all of the foregoing reasons, plaintiffs respectfully request that their motion for a preliminary injunction and a temporary restraining order be granted to the plaintiffs and their children.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

SUPPLEMENTARY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

I. *Legislative History and Administrative Interpretation Regarding the Maximum Grant Regulation.*

At the Court's request, counsel for Plaintiffs have reviewed the legislative history of the Social Security Act of 1935, Title IV, Grants to States for Aid and Services to Needy Families with Children. The Senate and House Reports since the initial enactment of the Act, and testimony that was given concerning the various enactments, as well as the administrative interpretation of the act, have been examined, to determine congressional concern, if any, with a "maximum grant" regulation, such as the one here under attack. The original act and the subsequent amendments to it, while they do not speak directly to the

problem of maximum grant regulations, contain considerable language which support the position that a maximum grant regulation, such as the one here under attack, does defeat the purposes for which the AFDC provisions of the Social Security Act, 42 USC, Sec. 601, et seq. were enacted. The language referred to is contained in the legislation itself, relevant reports from congressional committees connected with the promulgation of such legislation, HEW interpretation of the Social Security Act, and statements of members of Congress which appear in the congressional record. All of the sources support the position that the original congressional intent was clearly to meet the objectives of the AFDC provisions of the Social Security Act, as presently set forth in 42 USC Sec. 601, to "* * * strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *" and to encourage "* * * the care of dependent children in their own homes or in the homes of relatives * * *."

Senate Report No. 628, 74th Congress (May 13, 1935) states: "Through cash grants adjusted to the *needs* of the family it is possible to keep young children with their mother in their own home, thus preventing the necessity of placing children in institutions. This is recognized by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.) The Report goes on to note that because in many States the aid is inadequate to meet the objective of providing for the needs of families, there was a requirement for Federal aid to States.

The initial House version of the Social Security Act reiterated the viewpoint of the Senate committee. It emphasized "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children

in their own homes." House Report No. 615, 74th Congress (1935). (Emphasis supplied.)

Congressional testimony at the time of the consideration of the original Social Security Act adds considerably to the argument that a maximum grant regulation is inconsistent with the legislative intent of the Social Security Act. Senator Harrison of the Senate Committee on Finance, in explaining the House Ways and Means Committee's proposals of Title IV stated during the Senate debate: "* * * the provisions are not for general relief of poor children but are designed *to hold broken families together.*" (Emphasis supplied.) 79 Cong. Rec. 9269 (1935). Senator Wagner of Mississippi, the sponsor of the Social Security legislation, emphasized the need for flexibility in allocating funds, by commenting that: "* * * These grants will be extended primarily upon a matching basis in order to stimulate the States to action, but they will take full account of the special needs of those localities which are genuinely without capacity to help themselves." 79 Cong. Rec. 9286 (1935).

The present objectives of the Social Security Act were reaffirmed by the Act of August 1, 1956, which amended Title IV, by restating the purposes to include encouragement of care of dependent children in their own homes or in the homes of relatives with the same objective of "strengthening family life." August 1, 1956 c. 936 Title II, Section 312 (a), 70 Stat. 848.

Discussing the 1956 Amendments to Title IV of the Social Security Act, Senator Byrd, of the Senate Committee on Finance, stated that: "* * * Services that assist families and individuals to attain the maximum economic and personal independence of which they are capable provided a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency they will decrease the time that assistance is needed." 102 Cong. Rec. 13034 (1956). In the same vein, Senator Magnuson proposed to liberalize the grants to dependent children "* * * to a level commensurate with other social security benefici-

aries * * *" (in order to alleviate) "* * * one of the significant deficiencies in our present social security legislation." 102 Cong. Rec. 13081, (1956). Similar sentiment was voiced by Representative Knox in commenting on the conference report of public assistance titles: "* * * I am gratified to observe that the amendments provided in the conference agreement to these public-assistance titles will insure to * * * our dependent children a liberalized *benefit level that more realistically recognizes the cost of even the barest subsistence today.* It should be recognized that people who are compelled to avail themselves of public assistance are entitled to an adequate benefit *commensurate with the costs of their living requirements in our present-day economy.*" (Emphasis supplied.) 102 Cong. Rec. 14835 (1956).

That an arbitrary maximum grant regulation on the amount of a grant to a family defeats the purposes of the Social Security Act, concerning AFDC, is further highlighted by examining the 1965 Amendment to the Act, subsection (a)(1) public law 89-97, Sec. 122, 401 (c), which increased the share of the average monthly assistance payment from 14/17 of the first $17 of assistance to a recipient, to 5/6 of the first $18 of such payment, thus raising the ceiling for federal participation from $30 to $32 a month *per recipient.* See 42 U.S.C.A. Sec. 603 (1967 Com. Annual Pocket Part) and Annotation thereto, concerning the 1965 amendment.

The purpose of the 1965 amendment was to improve and expand the public assistance program by increasing the federal matching share for cash payments for the needy aged, blind, disabled and families with dependent children. 1965 U.S. Code Cong. and Adm. News, at page 1944. It is of course noted that the method of improving and expanding the assistance to families with dependent children was by increasing the matching funds from $30 to $32 *per recipient,* not by giving an increase to the family as a whole. Such a method of increase makes sense when one finds that the amount of payments is based on the individual's need and on the cost for meeting that need. Thus, for the State arbitrarily to set a maximum grant for

family, without regard to the number of dependent children in the family, patently defeats the very purpose of the 1965 amendment and all the prior provisions of the Social Security Act which compute the amount of payment to the States on the basis of the number of recipients eligible for assistance.

This viewpoint is further reinforced by the 1967 amendment to the Social Security Act, Public Law 90-248, 90th Congress, H.R. 12080. While not specifically passing upon the matter of meeting the full needs of welfare recipients, the amendment does require in Section 402 (a)(23), that 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 * * *". It also requires adjustments of any maximums imposed by a State on the amount of aid paid to families in proportion to the rise in living cost.

Thus for the State arbitrarily to set a maximum grant per family, without regard to the number of dependent children in the family, patently defeats the very purpose of the Social Security Act, which has consistently computed the amount of payment to the State on the number of recipients eligible for assistance, and has amended the Act so as to meet the rise in the cost of living be determining how such rise has effected the needs of *individuals.*

In the testimony that was given, concerning the 1967 amendments to the Act, Wilbur J. Cohen, the present Secretary, Department of Health, Education and Welfare, had an interesting exchange with Senator Ribicoff, a member of the committee on finance, concerning the effect of failure to meet minimal needs which directly results from maximum grant regulations:

> Senator Ribicoff: I know, but you take all that into account in the standards that are being set. What they are receiving is not just a question of the amount they receive from the welfare agencies, you take into account all they receive. What happens to the child or the adult who receives so much less than what you

consider or what is considered a proper standard? How do they live?

Mr. Cohen: They have to live on the lesser amount.

Senator Ribicoff: How do they live?

Mr. Cohen: They have to cut back on their food and clothing and other needs to live on the amount that the state gives them.

Senator Ribicoff: Well, is not a study made or do not you know what happens to these people? I mean just what is happening to them?

Mr. Cohen: Well, I think that the evidence shows — I do not have it immediately before me — that many of these children and these families grow up without adequate food, without adequate medical care, and certainly their whole aspirations for improving in their education status are stunted, and I think that the evidence from the State administrators when you hear them will bear that conclusion out.

Secretary Gardner: It shows up most clearly, I think, in the medical data. You will find a higher incidence of just about every kind of medical disorder and physical handicap in these youngsters — malnutrition and everything else.

Senator Ribicoff: Well, in looking to the cost to society ultimately, the people who are below standard cause a greater drain eventually upon what the society has to pay out in every conceivable way, is that not right?

Senator Gardner: No question about that, Senator.

Hearings before the Committee on Finance, United States Senate 90th Congress, First Session on H.R. 12080, August 22, 1967.

In initially establishing the Act, Congress recognized that in the long run the least expensive and altogether most desirable method of providing for needy families was

cash grants adjusted to individual needs, and such failure, which directly results from a maximum grant regulation, in regard to large families, not only defeats the very purposes of the Act, but also may well result in a greater expense to the State, apart from the tragic cost in human resources to society and to the individuals in question.

An examination of what the Department of Health, Education and Welfare has said in this regard is also illuminating. The policies and standards for the public assistance program as administered by the states are set forth in the Handbook of Public Assistance Administration and related releases (hereinafter referred to as Handbook) issued by the Department. This Handbook describes its functions as follows (Pt. 1, Sec. 4210):

> "* * * The policies and standards are set forth in the form of interpretations of the Social Security Act, requirements for State plans, criteria for the administration of State plans, conditions for Federal financial participation, and recommendations for improving public assistance programs and administration * * * The Handbook constitutes the principal means of informing the States regarding official policies and standards * * *.
>
> * * * * * *
>
> 1. The Federal requirements described in this Handbook are based on the pertinent provisions of the Social Security Act, and *on the intent and purpose of the law as identified in official statements and as derived from the history of the legislation and from other available evidence.*" (emphasis supplied).

Thus, in the Handbook of Public Assistance Administration, Supplement A, Pt. II — A — 3000, it is stated:

> "* * * Sufficient funds should be made available by the State to meet need in full *in accordance with the State standards of need* and to assure that for the established State fiscal period, there will be continuity of operations under the plan throughout the State." (emphasis supplied).

HEW, in another section, Pt. IV, Sec. 42231, of the Handbook goes on to actually define what is meant by the phrase "Strengthening Family Life" which appears in 42 U.S.C. §602:

> 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 conductive 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.

Thus, while Congress has not spoken definitively, concerning its viewpoint of the effect of maximum grants on the purposes of the Social Security Act, statements contained in the Congressional Reports and testimony at Congressional hearing, as well as the administrative interpretation in the Handbook, certainly support the conclusion that accomplishment of the primary purpose of aid under Title IV, the "strengthening of family life through services and financial aid," can only be met adequately by meeting all needs of all individuals in all families, whether they be large or small families. Nowhere in the Social Security Act and its various amendments or in the Handbook, is there any justification for a discrimination between large and small families. The maximum grant regulation here in question defeats the very purposes of the Social Security Act, "to encourage the care of dependent children in their own homes" by establishment of such a regulation.

In the very recent case of *King v. Smith,* No. 949, October term, 1967, 36 L.W. 4703, the Supreme Court opinion includes extensive research on the Social Security Act, insofar as it touched upon the Alabama welfare regulation dealing with the so-called "substitute father."

While the regulation there is not related to the maximum grant regulation here under attack, there was a recognition of the importance of the legislative purposes of the act as further interpreted by the Handbook, which is frequently cited. There, as in this case, the Supreme Court found that "* * * the regulation itself is unrelated to need, because the actual financial situation of the family is irrelevant in determining the existence of a substitute father." 36 L.W. 4706.

The Court went on to state, at 36 L.W. 4709:

> "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. Children who are told, as Alabama has told these appellees, to look for their food to a man who is not in the least obliged to support them are without meaningful protection. Such an interpretation of congressional intent would be most unreasonable, and we decline to adopt it." (Court's emphasis).

The Court concluded that the purpose of the AFDC program was to provide economic security and services to needy children who lost the support of a "breadwinner". Parents of a large family are required to completely ignore children beyond the sixth individual in a family, which is humanly inconceivable, or to spread already inadequate resources thinner. The effect of the maximum grant regulation, as in the *King v. Smith* case, is to arbitrarily leave one class of destitute children entirely without meaningful protection, and is equally unreasonable in view of the purposes of the Act.

II. *Supplemental Argument That the Maximum Grant Provision of Rule 200 VII 1. Violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.*

Plaintiffs contend that there is enough evidence on Congressional intent and administrative interpretation to war-

rant a finding by the Court that Rule 200 VII 1. violates Section 601, 42 U.S.C. the Federal Social Security Act, and is the very antithesis of the purposes of the Act. However, even if the Court should not reach this conclusion, the regulation in question must still fall, as a clear violation of plaintiffs' constitutional rights under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Plaintiffs have already filed an extensive memorandum in support of their argument on this point. By way of further supplementation of that memorandum, plaintiffs maintain that the application of the maximum grant to children of large families is a denial of equal benefits to them. "* * * on a wholly arbitrary standard or on a consideration that offends the dictates of reason." *Schward v. Bd. of Bar Examiners*, 353 U.S. 232, 249 (Frankfurter, J., concurring). The children of the plaintiffs and all children of families belonging to the class here represented are thus denied rights on the basis of a status which they are powerless to influence, i.e., that they are members of a family of more than six persons.

The very recent case of *Anderson, et al. v. Schaefer*, Civil Action No. 10443, (D.C. N.D. Ga. April 4, 1968) is close on the point to the instant case. For the Court's convenience a copy of the opinion and order, findings of fact and conclusions of law are attached hereto. In that case, the state of Georgia promulgated an "employable mother" regulation which discriminated between AFDC recipients in the calculation of their grants on the basis of the sources of their income. Thus, under the regulation a family whose income resulted from employment would in most cases receive less in AFDC supplementary benefits than a person whose income came from other sources.

The Court in *Anderson*, found that the regulation bore "* * * no reasonable relationship to plaintiffs' financial needs, and *therefore to the purposes of the Social Security Act* * * *". (emphasis supplied). We would submit that the regulation here challenged bears even less reasonable a relationship to the plaintiffs' needs, arbitrarily discrmi-

nating against the child or children of a large family. The members of the Gary family receive assistance at the rate of $25.00 per person although according to Maryland's minimal standards of subsistence and shelter they should receive assistance at the rate of $33.15 per person. Likewise, the members of the Williams' family receive assistance at the rate of $27.78 although minimal subsistence standards calculated for them by the defendant call for payments of $35.71 per person. A family of six persons, unhampered by the maximum grant regulation receives assistance at the rate of $38.50 per person, the full amount calculated to be their minimal subsistence needs.

Thus, as in the *Anderson* case, the maximum grant regulation penalizes the plaintiffs on a basis which "bears no reasonable relationship to their financial needs and therefore to the purposes of the Social Security Act." *Anderson v. Schaefer, supra.*

The Court in *Anderson* held that the defendants shall not give any force or effect to the regulation in question. It is respectfully submitted that the court should likewise enjoin any enforcement of the maximum grant regulation herein under attack.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

AMENDED MOTION TO DISMISS

Now come the Defendants Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester B. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General, and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and by

way of an Amended Motion to Dismiss, by leave of this Court, respectfully say:

1. That this Court is without jurisdiction by reason of the Eleventh Amendment to the United States Constitution because the Plaintiffs, residents of the State of Maryland, assert a monetary claim against the State of Maryland to which it has not consented.

2. That the Governor of the State of Maryland and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable party defendants under Rule 19 (a) and (b) of the Federal Rules of Civil Procedure and their joinder will divest this Court of jurisdiction.

3. That this Court should abstain from exercising jurisdiction because on the face of the Complaint there is alleged to be a State statute susceptible of construction by the State courts which would avoid or modify the constitutional question raised.

4. That the Complaint does not raise a substantial constitutional question nor state a claim upon which relief can be granted, because "poor relief" is a State question and there is no constitutional right thereto.

Wherefore, Defendants request that an Order be entered dismissing the Complaint in accordance herewith.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' AMENDED MOTION TO DISMISS

ARGUMENT

I.

Eleventh Amendment

The Plaintiffs do not merely contend that the Maryland Department of Public Welfare's maximum grant regulation

(Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII 1) of $250 is violative of the State and Federal Enabling Acts [Article 88A, Sections 44A and 49, Annotated Code of Maryland (1964 Replacement Volume), and 42 U.S.C., Sections 601, *et seq.*] and the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, but they additionally contend that the Williams family (Plaintiffs herein) is entitled to an additional $46.15 more per month in AFDC benefits from the State (Paragraph IX A of the Complaint) and that the Gary family (Plaintiffs herein) is entitled to an additional $81.50 per month in AFDC benefits from the State (Paragraph IX B of the Complaint).

That the Plaintiffs are really seeking a monetary judgment against the State becomes even clearer from the nature of the specific relief requested. They request a preliminary and permanent injunction:

> "(a) prohibiting, restraining and enjoining defendants . . . from enforcing, applying or implementing said maximum grant regulations".

Obviously, if the State may not apply its $250 maximum grant regulation, the next step becomes obvious:

> "(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and ordering and requiring defendants to make welfare payments to plaintiffs . . . in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare".

In the case of the Williams family this would amount to an affirmative award of $46.15, and in the case of the Gary family this would amount to an affirmative award of $81.50. Not content to rest with (a) and (b), Plaintiffs further clarify the true nature of their monetary claim by requesting this Court to

> (c) order and require "defendants . . . to furnish AFDC assistance to Plaintiffs and others similarly

> situated without regard to said maximum grant regulations".

The essence of the Plaintiffs' claim, then, is that they are entitled to monetary relief against a State by virtue of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.*

The Eleventh Amendment to the United States Constitution provides:

> "The Judicial power to the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

In *Hans v. Louisiana*, 134 U.S. 1 (1890), the Supreme Court construed the Eleventh Amendment to prohibit suits in federal courts against a state for a monetary judgment by one of the state's own citizens unless the state itself consents. This constitutional doctrine has been reaffirmed since *Hans*. *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47, 51-52 (1944).

The present claim for monetary relief may not, by virtue of the Eleventh Amendment, be maintained in this Court since it is one to which the judicial power of the United States shall not extend.

II.

Joinder of Indispensable Parties

The Plaintiffs in this class action are essentially asking that the State provide additional money in the budget of the Maryland State Department of Public Welfare for increased grants under AFDC. That will be the ultimate

---

* More alarmingly, their assertion, when cut to the "bare bones", is that they are entitled to "poor relief" as a matter of "right" by virtue of the same constitutional provision.

effect, if grants beyond the $250 maximum are constitutionally required.*

Under Article III, Section 52(3) of the Maryland Constitution, the Governor is charged with the ultimate responsibility for the preparation of the budget of the State Department of Public Welfare. The Governor may reduce or exclude from his budget an appropriation requested by one of his executive departments. Moreover, the General Assembly may only reduce executive appropriations included in the budget as submitted. However, the General Assembly may appropriate additional moneys by way of a Supplementary Appropriation Bill, provided that a revenue source by way of a tax is established to support the Supplementary Appropriation Bill. Maryland Constitution, Article III, Section 52(8).

Further, the State Department of Public Welfare does not have the authority, within its fiscal year 1968 or 1969 budget, to transfer funds from one program [i.e., Aid to the Blind (AB), Old Age Assistance (OAA), or Aid to the Permanently and Totally Disabled (APTD)] to AFDC, in the absence of a legislative amendment, without obtaining the approval of the Governor. Article 15A, Section 8 of the Maryland Code (1968 Replacement Volume), in pertinent subsections, provides:

> "(a) *What constitutes initial plan of disbursement.*— The items and amounts making up the appropriation in any budget bill, supplementary appropriation bill or bond issue shall represent the initial plan of disbursement and apportionment of the appropriations of which they are part. Each appropriation shall be paid out only in accordance with the schedule therefor, unless such schedule be amended, within the limits of such appropriation, in the following manner: . . ."

* * * * * *

---

* The Department estimates that there are approximately 2,300 grants which would have to be increased if this class action prevails, requiring increased grants for AFDC of $957,600, neither appropriated in the present 1968 fiscal year budget nor appropriated in the 1969 fiscal year budget.

> "(e) *Amended schedules submitted by departments, etc., and approved by Governor; amendments made or approved by Governor to be reported to General Assembly.* — Any department, board, commission, officer or institution may, at any time submit in writing to the Governor an amended schedule for the disbursement and apportionment of the appropriations made to it by him. If the Governor shall approve such amended schedule, he shall transmit the same, with the certificate of approval, to the Comptroller and thereafter, such appropriation shall be paid out in accordance with said amended schedule, subject to the provisions of subsection (f). Any such amended schedule so submitted to the Governor may be withdrawn at any time before the Governor has acted thereon. Any amended schedule approved by the Governor may be again amended at any time in like manner and with like effect. All amendments and schedules made or approved by the Governor shall be reported by him to the next session of the General Assembly."

In order to achieve the fiscal scheme contemplated by the Plaintiffs, namely, increasing the AFDC grants by $957,600, the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable parties.

Rule 19(a) of the Federal Rules of Civil Procedure, in pertinent part, provides:

> "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party if (1) in his absence complete relief cannot be accorded among those already parties . . . If he has not been so joined, the court shall order that he be made a party."

Rule 19(b) of the Federal Rules of Civil Procedure provides:

> "If a person as described in subdivision (a) (1) (2) hereof cannot be made a party, the court shall de-

> termine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

Rule 19(a) is satisfied because, in the absence of the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates being made a party, "complete relief cannot be accorded among those already parties". Rule 19(b) is satisfied because each is a State official charged with statutory responsibilities which would be affected by this action and the relief prayed by the Plaintiffs. These State officials are, therefore, "indispensable" parties within the meaning of Rule 19 (a) and (b).

Since the Plaintiffs' action would be essentially asking for monetary relief against these State officials, an increase in the AFDC grants beyond the present $250 maximum, their joinder could divest this Court of jurisdiction because of the Eleventh Amendment as construed in *Hans v. Louisiana, supra,* and *Great Northern Life Insurance Co. v. Read, supra.*

These additional defendants are, therefore, "indispensable" parties whose joinder would divest this Court of jurisdiction and (1) any judgment rendered in the absence of these parties will be prejudicial to them; (2) in shaping relief, a monetary award to the Plaintiffs against the State will necessarily result; (3) in the absence of the additional defendants, relief will not be adequate because of the fiscal scheme established by State law; and (4) the Maryland courts have jurisdiction to entertain the Plaintiffs'

action. These factors being present, Rule 19(b) authorizes this Court to dismiss the Complaint under these circumstances.

III.

Abstention

The Complaint states:

> "This is a proceeding for injunction enjoining the defendants from continuing to enforce or otherwise apply its 'maximum grant' regulation. This is also a proceeding for a declaratory judgment that defendants' 'maximum grant' regulation:
>
> (A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and
>
> (B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. Sections 601 et seq.) and the statutes of the State of Maryland (Article 88A, Sections 44A and 49, Ann. Code of Md., 1957 ed.)."

On the face of the Complaint the Plaintiffs allege the narrowly limited "special circumstance" which permits this Court to decline to exercise jurisdiction, namely, that the "maximum grant" regulation promulgated by the Maryland State Board of Public Welfare "[i]s contrary . . . to the statutes of the State of Maryland".

In *Harrison v. NAACP*, 360 U.S. 167 (1959), the Supreme Court, in approving the District Court's declension of jurisdiction, held that abstention is properly exercised when a state statute is susceptible to a construction by the state courts that would avoid or modify the constitutional question. This principle has been recently reaffirmed by the Supreme Court in *Zwicker v. Koota*, 36 L.W. 4041, 4043 (1967), although abstention was held to have been improperly applied in that case because it was conceded there that a construction of the state statute would not render unnecessary a decision of the constitutional chal-

lenge. In the present case, however, the Plaintiffs themselves assert that the "maximum grant" is inconsistent with a state statute. If this is true, as the Plaintiffs claim, such a construction would avoid the constitutional question. Regard for the interest and sovereignty of the state and reluctance needlessly to adjudicate constitutional issues are appropriate considerations by a federal District Court in the ultimate determination of whether to exercise jurisdiction, where the *Harrison* "special circumstance" is present. In this connection, it is interesting to note that recently in *King v. Smith*, 36 L.W. 4703 (1968), the Supreme Court struck down Alabama's "substitute father" regulation which denied AFDC benefits on statutory rather than the asserted constitutional grounds.

Moreover, there is every danger that a federal decision on the merits of the constitutional claim will disrupt an entire regulatory scheme, not only in Maryland where appropriations were made for both the fiscal year budgets 1968 and 1969 with the $250 "maximum grant" regulation for AFDC in mind but also by implication in one-third of all states participating in AFDC *categorical assistance* programs under the Social Security Act. One-third of all states fix the maximum amount of grants to families with dependent children.* The Supreme Court has observed without disapproval that:

> "The level of benefits is within the State's discretion, but the Federal Government's contribution is a varying percentage of the total AFDC expenditures within each State [citations omitted]. The benefit levels vary greatly from state to state. For example, in May, 1967, the average payment to a family under AFDC was about $224 in New Jersey, $221 in New York, $39 in Mississippi, $20 in Puerto Rico, and $53 in Alabama [citations omitted]." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

---

* See Sparer, *Social Welfare Law Testing*, 12 Prac. Law 13, 21 (1966). In Georgia the maximum grants in AFDC are $36 for the first child, $27 for each additional child up to and not to exceed $144 per family per month. Ga. Manual of Public Assistance, Part III, Section VII, at G-37 (1966).

The "special circumstances" doctrine of *Harrison* has not been tampered with in *Damico v. California*, 389 U.S. 416 (1967). In *Damico* the question presented was whether a three-judge court properly declined to exercise jurisdiction to hear a Section 1983 claim upon the doctrine of abstention because the plaintiff had failed to exhaust state administrative remedies. No such ground is asserted in the present case.

Finally, the doctrine of abstention is properly raised by a Motion to Dismiss (compare *Government & Civic Employees Organizing Committee, CIO v. Windsor*, 353 U.S. 364; *Shipman v. DuPre*, 339 U.S. 321, with *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368) although it may be the better practice to retain jurisdiction pending adjudication in the state court. See Note, "Federal Question Abstention: Justice Frankfurter's Doctrine in an Activist Era", 80 Harv. L. Rev. 604 (1967).

IV.

"Poor Relief" is a state question and there is no constitutional right to a level of benefits beyond that provided by the states.

Public welfare takes the forms of *general assistance* and *categorical assistance* in the United States. General assistance is financed by local and state governments. Although programs of this sort provided the only public aid available prior to the Depression, the now furnish only a small portion of public welfare funds. Categorical assistance is today the predominant form of public welfare. Under this scheme, state programs which are supported by grants-in-aid from the federal government pursuant to the Social Security Act administer aid to specific categories of needy individuals and families. The federal statute recognizes four major categories: Old Age Assistance (OAA), Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (APTD), and Aid to Families with Dependent Children (AFDC).

State participation is not required by the federal statute. States may choose not to apply for federal assistance or

may join in some, but not all, of the programs. In order to receive federal funds, however, state plans must be submitted for the approval of the Secretary of Health, Education and Welfare. Although the establishment of criteria for need and other factors of eligibility is left largely to the states, the plans must meet certain basic qualifications under the act and must conform to the rules and regulations promulgated by the Secretary.

The state plans themselves are usually devised pursuant to general enabling legislation empowering a state agency to promulgate rules and regulations for administering the federal program. The Maryland AFDC program is legislatively authorized and detailed in Article 88A, Sections 44A, *et seq.*, Annotated Code of Maryland (1964 Replacement Volume).

Maryland, together with every other state, Puerto Rico, the Virgin Islands, the District of Columbia and Guam, participates in the Federal Government's AFDC program, which was established by the Social Security Act of 1935. *King v. Smith*, 36 L.W. 4703 (1968). The category singled out for welfare assistance by AFDC is the "dependent child", who is defined in Section 406 of the Act, 49 Stat. 629 (1935), as amended, 42 U.S.C. Section 606(a), as an age-qualified "needy child . . . 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.

The Maryland State Department of Public Welfare, with respect to AFDC grants, promulgated the following regulation:

> "The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:
>
> A. For local departments under any 'Plan A' of Shelter Schedule B $250. For local departments under any 'Plan B' of Shelter Schedule B $250, except that:

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III-3, C), the grant may exceed the minimum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by existing rule on insufficient funds." Maryland Manual of Department of Public Welfare, Part II, Rule 200, Section VII.

The Department has established schedules by which they determine the actual needs of a particular family under AFDC based upon standards established by the Department. When those standards are applied to the Plaintiffs, the Williams family, the schedules show that they "need" $296.15. When those standards are applied to the Plaintiffs, the Gary family, the schedules show that they "need" $331.50. However, in each case the "maximum grant" regulation, set out above, only authorizes a grant of $250.

The Plaintiffs contend that because of this effect the "maximum grant" regulation is an impermissible statewide regulation under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution and inconsistent with both the State and Federal enabling statutes.

Among other hardships wrought by the "maximum grant" regulation, the Plaintiffs assert that the $250 limitation destroys family unity and establishes an unrealistic standard of living inconsistent with the Department's own notions of what is "needed". Plaintiffs apparently ignore the very practical reason for the limitation, namely, that it is a legitimate way of allocating the State's limited resources available for AFDC assistance.

In another context, with respect to recoveries by AFDC recipients, a federal court has observed:

> ". . . The plain flaw that nonetheless destroys plaintiffs' thesis is that it is brought to the wrong forum. Plaintiffs' complaints might move us to vote for changes if we sat as state legislators. But they do not approach the showing of irrationality or arbitrariness warranting exercise of the limited veto power of the federal judiciary under the Fourteenth Amendment.
>
> "Against plaintiffs' views, as defendants point out, there are arguments of policy which can scarcely be dismissed as frivolous, whether or not we would find them convincing if the judgments of policy were for us. The State is entitled, they note, to consider relative need and available resources in distributing its limited welfare funds." *Snell v. Wayman,* 281 F. Supp. 853, 862 (D.C. S.D., N.Y., 1968).
>
> * * * * * *
>
> "We sketch these countervailing points for the single purpose of indicating what seems plain to us — that we could hold the statutes unconstitutional only if we were invested by the 'convenient vagueness' of the Due Process Clause with a power, long since denied us, to invalidate state laws 'because they may be unwise, improvident, or out of harmony with a particular school of thought'." (Citations omitted.)
>
> "To be sure, cases like those just cited reflect mainly the recognition of our highest Court during the last thirty years or so that it does not sit as final arbiter of state social policies affecting matters of business and industrial regulation. . . ." *Id.*
>
> * * * * * *
>
> "And, it is said, the subject welfare administration, where the primitive needs of desperate people are at stake, is altogether different. There is a difference, certainly, but not a constitutional one — not any that commissions us to tell those the people elect how they

should resolve competing values of the kind here in question.

"It is appropriate from time to time to appreciate the full measure and continued vitality of what Mr. Justice Holmes meant when he said: 'The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics.' Lochner v. State of New York, 198 U.S. 45, 75, 25 S. Ct. 539, 546, 49 L. Ed. 937 (1905) (dissenting). Now that his dissenting thought has won the day, we ought not to trivialize the achievement by viewing it only as the interment of Spencer's social doctrines. The principle applies to the social philosophers that most of us, including judges, find more persuasive than Spencer. If we were free to enforce what we may modestly deem our more enlightened view, we might seriously consider the changes plaintiffs propose. But we have no such power, and it is better in the end for everyone that this is so.

"We were reminded only the other day, though the context was different, of the basic principle: 'The purpose of the Constitution and the Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people.' *Schneider v. Smith,* 309 U.S. 17, 25, 88 S. Ct. 682, 19 L. Ed. 2d 799 (1968). The principle counsels that it is not for federal judges to be 'liberal' or 'conservative' in advancing and ordering measures which undoubtedly relate to basic matters of human decency and welfare. The constricted test in this forum is one of minimal rationality. By that test plaintiffs' due process argument must fail." *Id.* at 863.

* * * * * *

"Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary'. Orient Insurance Co. v. Daggs, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 48 L. Ed. 552 (1869). If the classification has 'some

> reasonable basis', it cannot be held offensive to the Equal Protection Clause 'because it is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). 'The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913)." *Id.* at 865.

The Supreme Court, considering categorical assistance programs under AFDC among the states, has observed:

> ". . . 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." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

The Supreme Court further noted that:

> "HEW's Handbook, in Pt. IV, § 3120, provides that: 'A needy individual . . . [under AFDC] is one who does not have income and resources sufficient to assure economic security, *the standard of which must be defined by each State.* The act recognizes that *the standard so defined depends upon the conditions existing in each State.*' (Emphasis added.) The legislative history of the Act also makes clear that the States have power to determine who is 'needy' for purposes of AFDC. Thus the Reports of the House Ways and Means Committee and Senate Finance Committee make clear that the States are free to impose eligibility requirements as to 'means'. H. R. Rep. No. 615, 74th Cong., 1st Sess., 24 (1935); S. Rep. No. 628, 74th Cong., 1st Sess., 36 (1935). The floor debates corroborate that this was Congress' intent. For example, Representative Vinson explained that 'need is to be determined under the State law.' 79 Cong. Rec. 5471 (1935)." *Id.* at 4706.

For these reasons the constitutional question is insubstantial and does not state a claim for which relief can be granted.

CONCLUSION

For the reasons set out above, together or alternatively, the Complaint should be dismissed.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

ANSWER

Now come Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and for answer to the Complaint filed herein respectfully say:

First Defense

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

Second Defense

Poor relief is a state not a federal question.

Third Defense

1. The Defendants admit the allegations contained in the first and second paragraphs of Section I of the Complaint and in Sections III, IV, V, VII and X thereof.

2. The Defendants deny the allegations contained in Sections II, VI, VIII, IX, XI, XII, XIII and XIV of said Complaint.

Wherefore, having fully answered said Complaint, Defendants pray that the same be dismissed.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully submit to the Court stipulations of fact which are intended to narrow the issues and save time of the Court.

Other than as admitted in the pleadings or as such admissions may be changed from the pleadings, the parties respectfully show to the Court the following agreement as to facts and issues:

1. But for the maximum grant provision of Rule 200, Section VII 1 of the Maryland Manual of the Department of Public Welfare, Part II, the schedules for determining the cost of subsistence needs issued by the Maryland State Department of Public Welfare (attached to the Complaint as Exhibits B^1, B^8) would entitle Plaintiff Linda Williams and her eight (8) children to receive a grant of $311.15 per month and entitle the Gary family to receive $331.50 per month. (Attached hereto in the *Computation of the Amount of the Grant* as Stipulation Exhibits 1 and 2). The maximum grant provision of $250 per month is less than the minimum subsistence needs of Plaintiffs Linda Williams' family and the Gary family when computed according to the above schedules of the Maryland State Department of Public Welfare. The maximum grant provision is less than the minimum subsistence needs of any eligible AFDC family unit consisting of seven persons or more,

since their minimum needs when computed by the same schedules exceed the maximum payment of $250 per month. The larger the eligible family the greater the disparity between the maximum grant and the minimum subsistence needs.

2. Linda Williams, one of the Plaintiff's is the 33 year old mother of eight children, ages 16, 14, 11, 10, 9, 7, 6 and 4 years old. She is now living at 928 East Eager Street, Baltimore, Maryland in a six-room house, containing three bedrooms.

The Plaintiff, Linda Williams is paying $69.00 a month rent, and in addition to this rent, she must also supply her home with coal heat.

The Plaintiff, Linda Williams, has been on welfare (AFDC) ever since her husband, William Williams, left her soon after their youngest child, Wanda, was born, more than three years ago.

Since her husband left, Linda Williams has had no means of support other than the $250.00 which she receives monthly from the Department of Public Welfare. Because there are no relatives to assist her with the care of her children, it is necessary that she stay home with her children at all times to care for them. She is also not able to add to her welfare payments in any way because of a serious breast condition which she has, which has caused her to have about five operations.

After payment of her monthly rent, and the cost for heating her home with coal, she has less than $175 per month to feed and clothe her family, and to provide them with the other necessities of life. She is constantly forced to buy clothes and shoes for her children on credit, and she is already in serious debt. Most of her children need shoes right now, and they sometimes stay home from school, especially in the wintertime, because they do not have the necessary clothes to wear.

She is trying to keep all of her family together with her and to make up for the fact that their father is not at home with them. This is very hard for her to do because

of her continuing lack of money. If Mrs. Williams had enough money to pay for her family's needs, she could provide a better home life for her family.

She has begun buying food stamps which are some help but which still leave her with insufficient money for her other daily needs. Sometimes, she doesn't have enough money to buy the amount of stamps required to participate in the program. Unless she can get some financial help, she will have a difficult time supporting her family.

Junius Gary, is one of the Plaintiffs in this case. He is 38 years old and was married to Jeanette Gary in October, 1952, in Baltimore City. He is the father of eight children, ages 11, 10, 9, 8, 7, 6, 5 and 4 years old. He is now living at 1402 Ashland Avenue, Baltimore, Maryland, in a row house which he and his wife, Jeanette Gary rent for the sum of $75 a month. Besides paying this rent, he must also heat this home, and there is no central heating system. He must heat each room separately with gas space heaters all over the house. This is very expensive and makes his gas and electric bill very high, sometimes as high as $50 a month. He needs a large house to provide room for his eight children.

Mr. Gary has served two years in the United States Army, from 1953 until 1955, and was honorably discharged from the Army. After his active service was completed he began working as a truck driver and chauffeur, the kind of duties he had in the Army, but after an automobile accident, he was not able to keep up this work because of dizzy spells and blacking out spells. Because of this condition, he was not able to do work of any kind, and in about March, 1962, he began receiving AFDC assistance, since he had no other way of supporting his family. At the time he began receiving AFDC assistance, all of his eight children were already born, and since these benefits have begun, Mr. and Mrs. Gary have not had any more children. The Gary family receives the maximum grant of $250 per month from the Welfare Department.

After paying the monthly rent of $75 and the gas and electricity bill, Mr. Gary has less than $150 to feed and clothe his family and to provide them with all the other necessities for the month. All of his children are in school and are constantly in need of clothes and shoes and money for other kinds of supplies. His gas and electricity is sometimes shut off, because he is unable to pay the bill. He is forced to buy clothing and shoes for his children on credit and he is constantly in debt as a result. Most of his children need shoes and clothing now and sometimes they have to stay home from school.

Mr. Gary wants to keep his family together but he has a very difficult time getting along on the amount of money that he receives from the Department of Public Welfare. He does not have enough money to buy food stamps since he must buy $86 worth of food stamps in order to be a part of the food stamp program, and he does not have this much money left after all his other expenses are paid.

He has tried to earn extra money with other jobs, but he is not able to hold a job because of his physical condition. Unless he can receive some kind of financial help, besides the $250 a month, he will have a difficult time keeping his family together.

Jeanette Gary is the wife of Junius Gary and she has joined with him as a Plaintiff in this case against the Welfare Department. She is 38 years old and has been married to Junius Gary since October, 1952. Her husband has tried to support the family but because of his physical condition he is unable to work. In 1962, the family applied for AFDC assistance since they had no other means of support. Mrs. Gary is in ill health and she has high blood pressure and arthritis in her arms and legs. She is being treated at Johns Hopkins clinic.

(Signatures omitted.)

STIPULATION EXHIBIT NO. 1

Computation of the Amount of the Grant

Linda Williams and eight children

Requirements — monthly	
1. Shelter	$ 45.00
2. Subsistence Need	259.00
3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over)	4.50
4. Insurance	2.65
Total Requirements	$311.15
Resources	0
Requirements Less Resources	$311.15
Amount of Grant	$250.00

(subject to maximum grant of $250.00)

STIPULATION EXHIBIT NO. 2

Computation of the Amount of the Grant

Mr. & Mrs. Gary and eight children

Requirements — Monthly	
1. Shelter	$ 45.00
2. Subsistence	284.00
3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over)	2.50
Total Requirements	$331.50
Resources	0
Requirements Less Resources	$331.50
Amount of Grant	$250.00

(subject to maximum of $250.00)

United States District Court for the District of Maryland

(T. 1)

PROCEEDINGS IN OPEN COURT — 6-24-68

(T. 2) THOMAS SCHMIDT

DIRECT EXAMINATION

By Mr. DeCosta:

Q. Mr. Schmidt, your address, please? A. 704 Scarlet Drive, Towson, Maryland.

Q. And are you employed with the State Department of Public Welfare? A. Yes, sir.

Q. What is your position with the Department? A. Chief, Division of Fiscal and Statistical Management.

Q. How long have you been in that position? A. Two and one-half years.

* * * * * *

(T. 6) By Mr. DeCosta:

Q. How does the Department arrive at, quote, "need," end of quote, for its grants in AFDC? A. [Mr. Schmidt] Well, there are several bases, based on the item of expenditure or the item of need. For instance, in determining the need for food, the Department uses the Department of Agriculture — what's called low-cost food allowance, and we determine a need for food based on that for a family of certain size — various other elements, rent.

When we determine rent, there is a study made, and then we try to determine what the rental cost is for the people on welfare, what they are actually expending for rent.

So there are various ways in which the needs are determined.

(T. 7) Q. All right, and this foundation is used to arrive at your schedules which you apply to each applicant? A.

This foundation is used to arrive at the schedules but there is the point of the schedule that we arrive at, may not be approved through the budgetary process.

Q. I understand. In other words, it is conceivable that your schedule could be in excess of your budgetary ability? A. That's correct.

Q. And that to the extent that there is an excess, you must, because of your appropriation, disregard your higher standards as set by the Department? A. The higher request.

Q. The higher request, yes. All right. A. Yes, sir.

* * * * * *

(T. 8) A. [Mr. Schmidt] We requested that the 250 maximum and 240 maximum of the counties be eliminated.

Q. [Mr. DeCosta] All right. In other words, this was $1,300,000 in excess of your budgetary needs if the maximum were to be applied? A. That is correct.

Q. And was that included in the Governor's budget or not? A. That was disallowed in the Governor's budget.

Q. So that the Governor's budget went to the General Assembly for fiscal year '69 with the disallowance of $1,300,000; is that correct? A. Yes, sir.

Q. Now, within your fiscal year 1968 budget, if there were no 250 maximum, how much money in your present budget, considering your deficit at which you are now running, is available in terms of percentage figures for you to apply to each grant? A. If you are taking AFDC alone as a single budgetary item—

Q. Alone. A. —there is an elimination of a maximum for a (T. 9) year — would mean in effect that we would run a 4.2 million deficit, or approximately 25 per cent of the total general fund appropriation.

Q. And in order to absorb that deficit, how much in terms of percentage figures would you be able to give to each— A. Assuming—

Q. —element? A. Assuming funds weren't available from other sources, this would mean approximately we would have to reduce grant 25 per cent in AFDC across the board.

Q. Now, are you including in this 25 per cent reduction the number of family units that have been cut off and the amounts of monies cut off by reason of $250.00 maximum? A. Yes.

Q. And how many family units would that be? A. Approximately 2300.

* * * * * *

(T. 11) (Mr. DeCosta) Your Honor, I think his 75 per cent includes the $4 million present deficit; and he has not given us the figure yet, excluding the deficit they are running at; is that correct?

(The Witness) [Mr. Schmidt] The 25 per cent figure included the 3.2 million deficit plus the 957 increase in cost, based on the elimination of the maximum.

(Judge Thomsen) The deficit in what you expect (T. 12) to have next year anyway, in AFDC—

(The Witness) That is our present deficit this year.

By Mr. DeCosta:

Q. That is 1968 fiscal deficit? A. Yes, sir.

(Judge Thomsen) The 1968 deficit. Well now, did they give you enough money to eliminate that?

(The Witness) We hope to be able to get approval from the Governor to transfer funds between the various programs in the agency in which we are not experiencing a deficit, to cover this 3.2 million deficits in AFDC.

(Judge Thomsen) You mean for next year, to pay this year?

(The Witness) For this year.

(Judge Thomsen) Then next year what is going to happen?

(The Witness) We are projecting that we are going to be running a deficit in AFDC next year. Our present projection is somewhat above $3 million.

(Judge Winter) But again, for next year do you project that you will have unexpended funds in other aid programs that could conceivably be transferred to meet this deficit?

(T. 13) (The Witness) Next year we are anticipating an overall deficit in the agency.

By Mr. DeCosta:

Q. Now, what is your present surplus, overall surplus available in the agency? A. Combining all programs, we are estimating that we'll have a surplus of $274,000 at the end of this year.

Q. And what is your present surplus without regard to the end of the year? A. Well,—

Q. Quarter of a million dollars? A. Well, I can't estimate what the surplus is today but I make my projections on a yearly basis, an annual basis. I don't break them down by month.

Q. So what is your testimony with regard to the present overall surplus for the fiscal year '68? A. $274,000 approximately.

(Judge Thomsen) But even so, I don't understand it. The total appropriation is $42 million for AFDC. Why would an increase of $957,000, or $1 million, let's say, (it looks like one out of 42) why would it increase it 25 per cent? Why would it mean a reduction of 25 per cent across the board?

(T. 14) (The Witness) Well, that is the second part of the question. We are now talking about state funds, general funds, and out of that 40 — approximately $42 million, the general fund expenditure, the funds the state puts up, is $16,551,000. So in effect, all of these additional expenditures since the State of Maryland is above the federal matching maximum, all additional expenditures are state expenditures.

(Judge Thomsen) You say the state puts up 16 million?

(The Witness) The state puts up 16 million, yes, sir.

(Mr. DeCosta) Out of the 42. The rest comes from the federal government. Peanuts from the local.

(The Witness) Yes, sir.

* * * * * *

(T. 17) A. [Mr. Schmidt] Twenty-two dollars per recipient. They match on the basis of $32.00 state expenditures of which they pick up 22 and anything — and the state picks up the remainder $10.00. Anything above $32.00 average cost per recipient is borne entirely by the state.

Q. [Mr. DeCosta] And your state average cost per recipient is presently what, $37.00 approximately— A. It's running close to $40.00 now.

Q. So that the federal government is at its maximum of $22.00 presently? A. That's correct.

* * * * * *

(T. 18) (Judge Thomsen) Well, if five or six children — let's assume it is six just to give us something other than the father and mother (that is eight people in the house), and you would get and give them 250 and you would be getting from the federal government, if there were six children in the unit, six times twenty-two; is that right?

(The Witness) [Mr. Schmidt] That's correct.

(Judge Thomsen) Now, suppose instead of there being six children in the unit, there were nine children in the unit; that would be three more chilren. Would the family still get $250.00?

(The Witness) Yes, sir.

(Judge Thomsen) Would you get six times 22 or nine times 22 from the federal government at this time?

(The Witness) We would receive a maximum total number of persons in the case, in this case nine children, for nine persons.

(Judge Thomsen) So that you were getting that now even though you have the maximum?

(The Witness) Yes, sir.

(Judge Thomsen) You get more from the federal (T. 19) government if there are nine children in the family than you would get when there are only six children in the family?

(The Witness) Yes, sir.

By Mr. DeCosta:

Q. Is it fair to say that the federal maximum is related to the individual whereas your state maximum is related to total assistance to family unit? A. That's correct.

Q. So that the record is clear on this: I gather your response to Judge Thomsen was that if you divide nine into your state maximum of 250, or ten, that would reduce your per-individual appropriation, wouldn't it? A. That's right. It would tend to reduce the average grant per recipient total case—

* * * * * *

(T. 21) (Judge Winter) All right, under the present progrom and under the present law, is there any difference in the amount of state funds paid to the family of six as compared to the family of nine children?

(The Witness) [Mr. Schmidt] Well, based on our matching, if we determine matching on individual cases, there would be. We would in effect be attaining a greater portion of federal matching for the family of nine than we would of six.

(Judge Winter) Well, I'm asking you now if in fact you are attaining a greater portion of matching in a family of nine children than a family of six?

(The Witness) I would have to say yes.

(Judge Winter) So it is fair to state, is it not, that the effect of the maxima is at least two-fold: First of all it

puts a limit on how much money can go out, and conserves state funds in that regard, does it not?

(The Witness) Yes, sir.

(Judge Winter) And it also has the effect, where the maximum amount is paid to a family of more children than the sum of which would add up to the maximum, of shifting a greater proportion of burden of those welfare payments to federal funds.

(The Witness) Yes, sir.

* * * * * *

CROSS EXAMINATION

* * * * * *

(T. 25) By Mr. Matera:

Q. Now, in making up the schedules in which you determine the amount of money that a family unit would be entitled to, who is eligible for welfare, you do determine (T. 26) the number of individuals in the family? A. [Mr. Schmidt] That is correct.

Q. And from that figure you determine how much each individual in that family is entitled to? A. Yes.

Q. So that in a family which is not affected by the maximum, each one of the individuals in that family would receive a computed amount of money in accordance with those schedules; isn't that correct? A. That's correct.

Q. So that the effect of a maximum then, once the family unit exceeds six individuals, is to reduce the amount per person that that family unit receives from the Department of Welfare? A. Once a crossover from the maximum is established, that is the effect of it.

(Judge Thomsen) Actually the amount has been sliding-scaled down for each additional child; isn't that correct; with one child per family you get more per child than for two, three or four. But it hits you double when you get to the maximum.

* * * * * *

(T. 27) By Mr. Matera:

Q. But in effect, Mr. Schmidt, what happens when the family unit exceeds six individuals is that the Department of welfare computes the amount of money the individuals over and above six should receive and yet cannot compensate those individuals because of the maximum grant regulation; isn't that true? A. [Mr. Schmidt] I believe the case worker does compute the total need and that then the 250 would be the maximum.

Q. So that in a family of more than six units, he does compute the total family need and then if that family need, as it will be, is above $250.00, the payment then that that family receives is $250.00. Isn't that so? (T. 28) A. Assuming that there are no resources available, I think that would be the case.

Q. So, in effect, even though the individual in a family of more than six units would be entitled to a greater amount per person than they actually received, they are cut off by the maximum regulation? A. Yes.

Q. Without the schedule, you would not be able to tell me what a family unit of nine should receive, can you? A. No. No, sir.

Q. But, in effect, each individual in that family would receive less than the Department of Welfare computes to be their minimal need because of their maximum grant regulation, isn't that so? A. That is correct.

* * * * * *

United States District Court for the District of Maryland

(T. 1)

PROCCEDINGS IN OPEN COURT — 6-25-68

* * * * * *

(T. 21) (Circuit Judge Winter) Yes, I think it is fair to state to you that at the conclusion of yesterday's proceedings we went into conference and we found ourselves in agreement on how there should be decided the points

which were advanced by the Defendants' amended motion to dismiss.

We had contemplated since the complaint was made that Mr. Matera wanted at least the summer and could not be prepared to proceed to submission of the case on the merits until the fall, the filing of a written opinion dealing with the various points at issue. It seems to us that in light of the discussion today that several results follow.

The first is that we would unduly delay the proceedings or unduly formalize the proceedings by preparing a formal written opinion at this time and

Secondly, that we would be of help to counsel in preparation of briefs and in determining the scope of the issues which we think are before us if we were to announce, at least in summary fashion, our conclusions resulting from yesterday's argument.

As we understand the argument that was advanced yesterday, the claim was made that the complaint should be dismissed because the relief sought was barred or prevented from being granted by this Court by the Eleventh Amendment to the Constitution; secondly, that we could not (T. 22) proceed to final judgment because of the absence of indispensable parties and that the suit ought to be dismissed at this stage for that reason.

Thirdly, we understood that there was an attack on the composition or the jurisdiction — using jurisdiction in the broad sense — of the Court in that there was not a substantial federal question presented to us by the pleadings and

Lastly, that the Court ought to abstain from deciding the alleged Constitutional questions, as well as the alleged question of repugnance between the Maryland regulation and the Federal Statute until such time as a court of the State of Maryland decided whether the Maryland regulation was in conflict with the Maryland statute.

We find some of these grounds to have some merit; others to have no merit. And we reach the conclusion that the motion to dismiss should be denied.

On the Eleventh Amendment point, we are of the view that the Eleventh Amendment would prohibit the granting of relief claimed in Prayer 2(b) of the Complaint. Prayer 2(b) when viewed in the light of the allegations, which are, of course, admitted to be true for this purpose by the amended motion to dismiss, would amount to the grant of (T. 23) a money judgment of forty-some dollars per month, as I recall, in favor of Mrs. Williams and a greater amount (the precise figure I do not recall) on behalf of the Plaintiffs Gary.

This we think the Eleventh Amendment absolutely prohibits since this aspect of the suit would in effect be a suit between a citizen of a state and the state, where the state has not consented to be sued; and we take judicial knowledge of the fact that Maryland has not consented to be sued.

This does not mean, however, that the suit is to be dismissed, because it is perfectly clear by established law laid down over a number of years that a suit against a state officer in his official capacity, alleging that in his official capacity he is administering or executing or promulgating or carrying into effect an invalid law or an invalid state-wide regulation, is not a suit such as is proscribed by the Eleventh Amendment. And to that extent, it would seem to us that the complaint is not barred and we could proceed to hear it and adjudicate it on the merits.

What I said about the Eleventh Amendment is the key to the contention that there is a lack of indispensable parties here. I think we all agree that if we had jurisdiction and the Eleventh Amendment did not prohibit us from (T. 24) granting the type of relief which is sought in Prayer 2(b), that it would be necessary for us to have one or more of the budgetary and appropriation officials of the state of Maryland as defendants before the Court before the Court could proceed to final judgment.

Since we have concluded that we could not give a money judgment or a form of decree which is tantamount to a money judgment in this case, it follows that because the parties before us, which are the officials of the state of

Maryland, and the only officials of the state of Maryland who have the duty to enforce and to apply the regulation, the validity of which is in question, are named as parties defendant, that all indispensable parties are before the Court; and the absence of an indispensable party is not established. So that on this ground, the Court too could proceed to final adjudication.

At this point, and particularly because the matter is about to be submitted to us, we will not dwell on our views on the substantiality of the Constitutional question except to say that at least so far as the equal-protection clause of the Fourteenth Amendment is concerned, we believe that the plaintiffs' contentions are not frivolous. This is not to say that we accept them or that we may not ultimately reject them but certainly this is not (T. 25) such an insubstantial or frivolous claim of denial of Constitutional rights that we feel in any sense that we would be justified at this point in dismissing the litigation out of hand.

On the abstention point, our views are that abstention is proper in speaking in the abstract in cases which have exceptional circumstances. We do not think that this is the type of case in which we ought to abstain. We reach this conclusion for a number of reasons.

The Plaintiffs' contention, as set forth in their complaint, that the Maryland regulation is repugnant to the Maryland statute is only one of three major contentions advanced, in addition to which jurisdiction of the Court is invoked under the Civil Rights Statute; and we have a very recent expression from the Supreme Court of the United States in King v. Smith, that where a suit is brought under the Civil Rights Statute, and where there appears to be a not insubstantial claim of denial of Federal Constitutional right, that it is proper for a Federal Court to go forward with an adjudication on the merits irrespective of whether a state court, by state construction of state law, at some later date might achieve the same result and make it unnecessary for the Federal Court to act.

(T. 26) In short, on the abstention point, we do not think that there are here the peculiar circumstances which

would cause us to abstain; and I think we note also in passing that even if we were to conclude to abstain, this would not mean that the suit would be dismissed. It would mean simply that the proceedings would be stayed until appropriate litigation could be instituted or brought to a conclusion in a state court which would determine the state issue. But the latter is academic because we concluded in this case that we should not abstain.

It is for those reasons that we will deny the motion to dismiss but, in denying the motion to dismiss, of necessity we are limiting the issue as to the nature of the relief which the plaintiffs are entitled to recover or receive.

Now, I might ask Judge Thomsen and then, in turn, Judge Harvey, if they have any additional or supplementary views that they would like to state on these various points.

(District Judge Thomsen) No, I concur.

(District Judge Harvey) I concur completely.

(Circuit Judge Winter) That being so, Mr. Matera, I think you would appreciate that we want your briefs limited to things that we think are live issues before us.

* * * * * *

United States District Court for the District of Maryland

INITIAL OPINION

WINTER, Circuit Judge:

Before us now[1] on the pleadings, stipulations and testimony are plaintiffs' prayers that we declare invalid and

[1] For the reasons stated in an oral opinion from the bench, we heretofore denied a motion to dismiss, based on various grounds. We also indicated that to the extent that the prayers of the complaint might be construed to require the Governor and General Assembly of Maryland to appropriate additional moneys to make larger payments to plaintiffs, such relief was barred by the Eleventh Amendment.

permanently enjoin the enforcement of the "maximum grant" regulation of the Maryland Department of Public Welfare which, summarized, provides that, irrespective of the need and eligibility, a family receiving benefits under the Aid to Families with Dependent Children Program (AFDC), established by the Social Security Act of 1935, as amended, 42 U.S.C.A. §§601-609, may not receive in excess of $250.00 per month. The declaration sought is that the "maximum grant" regulation is inconsistent with the Social Security Act and that it denies equal protection of the laws. Jurisdiction is properly invoked under Civil Rights Act, 28 U.S.C.A. §1343(3) and (4), and 42 U.S.C.A. §1983, and the case is an appropriate one for a three-judge District Court under 42 U.S.C.A. §2281. *King v. Smith*, 392 U.S. 309 (1968).

Maryland participates in AFDC. 8A Ann. Code of Maryland, Art. 88A, §§44A, *et seq.* By regulations approved by the Secretary of Health, Education and Welfare, Maryland has adopted a schedule setting forth standards of need. The schedule lists the monetary need for family units of one to ten persons, with decreasing additional amounts for each person over the original recipient but with a fixed additional amount for each person over ten persons. Maryland has also adopted a "maximum grant" regulation, Maryland Manual of the Department of Public Welfare, Part II, Rule 200, §VII, 1, which provides that, irrespective of the resulting figure after the resources of a family are deducted from its need as prescribed in the schedule, the maximum grant permitted under AFDC in Baltimore City is $250.00 per month.[2] The maximum grant regulation is applicable only to members of a family unit who live together; it does not apply to an eligible recipient who resides in another household or a child-care institution.

Plaintiffs have sued for themselves and on behalf of the class which they represent. Plaintiff Linda Williams resides with her eight children, who range in age from

[2] In the case of recipients who do not reside in Baltimore City the maximum grant is $240.00 per month. All plaintiffs in the instant case are residents of Baltimore City.

four years to sixteen. Their father is continuously absent from her home and she and one of her children are in poor health. They are totally without financial resources. This condition did not arise until sometime after the birth of her youngest child. Under the standards of need, her family should receive benefits in the amount of $296.15 per month while, in fact, she is granted maximum welfare in the amount of $250.00 per month by reason of the application of the maximum grant regulation.

Plaintiffs Junius Gary and his wife live together with their eight children, who range in age from four years to eleven. Mr. Gary is totally disabled from working for medical reasons, and Mrs. Gary, who is required to remain at home to care for her children, is also in ill health. They are totally without financial resources. This condition did not arise until after the birth of their youngest child and until Mr. Gary became disabled for employment. According to the standards formulated by the Department of Public Welfare they should receive $331.50 per month for themselves and their eight children, but they are limited to a monthly grant of $250.00 by reason of the maximum grant regulation.

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.

From the testimony in the case, it appears that the maximum grant regulation has its genesis and rationale in the fact that the Governor and the General Assembly of Maryland have failed to appropriate sufficient funds for Maryland's share of the cost of AFDC to satisfy the state-determined need of all persons entitled to benefit thereunder.

The purpose of the maximum grant regulation is solely to to conserve state funds, by allocating state funds (less in amount than state-recognized need) among only some of the persons entitled thereto. Because the amount of federal funds to support AFDC is computed on the basis of the need of recipients, rather than the extent to which the State satifies that need, the maximum grant regulation has the incidental effect of increasing the federal government's share of the cost of the total program beyond what would be the amount of that share had the maximum grant regulation not been adopted.

I.

The history, the scope and the basic purposes of the AFDC program, initiated as part of the Social Security Act of 1935, are fully developed in *King v. Smith, supra,* to which reference is made for a fuller treatment. It suffices to state that while State participation in the scheme of cooperative federalism is voluntary on the part of each State, and while each State "is free to set its own standards of need," as well as "to determine the level of benefits by the amount of funds it devotes to the program" (*King v. Smith, supra,* at 318-319), 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. 42 U.S.C.A. §§601-604.[3] The plan, to be valid, must conform to the requirements of the Act and applicable regulations of the Secretary.[4]

Section 402 of the Act, 42 U.S.C.A. §602, sets forth the mandatory requirements of a state plan for aid and serv-

---

[3] This record does not reflect whether Maryland's "maximum grant" regulation has been given such approval. Presumably, because of its newness, it has not. But approval, while of interest, would beg the question of whether it comports with the Act and the Constitution.

[4] Congress has the unquestioned power to fix the terms upon which its allotments to states shall be disbursed. *King v. Smith, supra; Ivanhoe Irrigation District v. McCracken,* 357 U.S. 275 (1958); *Oklahoma v. United States Civil Serv. Com.,* 330 U.S. 127 (1947).

ices to needy families with children. *Inter alia*, the plan must "provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to *all* eligible individuals" (emphasis supplied). The mandate is clear that, within the framework of state-determined standards of need, the State must meet those needs in regard to "all eligible individuals."

Who are "eligible individuals" is supplied by other provisions of the Act. Section 401 of the Act, 42 U.S.C.A. §601, states that the legislative purpose of appropriations under AFDC is:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, *to needy dependent children and the parents or relatives with whom they are living* to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *." (emphasis supplied.)[5]

"Dependent child" is defined in §406, of the Act, as amended, 42 U.S.C.A. §606(a).[6] Where there exists a "de-

[5] As originally enacted, AFDC permitted State disqualification for benefits on the grounds of illegitimacy or state determination that a dependent child did not reside in a "suitable home." As part of legislation outlawing immorality and illegitimacy as disqualifying factors, Congress enacted 42 U.S.C.A. §608 to permit payments to States for benefits to "dependent children" placed in foster homes and child-care institutions. See discussion *King v. Smith*, pp. 322-324.

[6] The full text of § 606(a) follows:

"§ 606. Definition

When used in this subchapter—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the

pendent child," the "aid to families with dependent children," which is the object of the legislation, is defined to include money payments or medical care to the relatives with whom the dependent child is living; and if that relative is a parent, to the spouse of such parent, under certain circumstances. 42 U.S.C.A. §606(b).[7] The amount of such aid, under the circumstances just mentioned, is thus computed by treating the relative, parent or spouse of parent, as the case may be, of the "dependent child" as a part of the family unit.

It will be noted that the definitions contain no limitation on eligibility by reason of the fact that one, who is otherwise a "dependent child," resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act[8] vest in any state the authority to embroider upon the definition of "dependent child," so as to insert conditions and limitations beyond those imposed by Congress. For practical purposes, Maryland's maximum grant regulation means (assuming that the family lacks other financial resources) that in computing the amount of an award, any dependent child in excess of the fourth dependent child living with both parents, or any dependent child in excess of the fifth

---

death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending school, college, or university, its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

[7] 42 U.S.C.A. § 608 modifies this definition, however, to permit a child to be treated as a "dependent" child when he has been placed in a foster home or a child-care institution under the conditions set forth in that section. See also, ft. 5, *supra.*

[8] We discuss, *infra,* defendants' contention that the Social Security Act Amendments of 1967 constitute implied Congressional recognition of the validity of Maryland's maximum grant regulation.

dependent living with one parent, does not count as a "dependent child." In effect, therefore, Maryland's maximum grant regulation would permit Maryland to avoid the mandate of §402 that it provide payments to *"all"* eligible individuals.[9]

Maryland's maximum grant regulation also violates part of the basic philosophy underlying AFDC. As originally enacted, §406 of the Act, 49 Stat. 629, defined a "dependent child" as one under age sixteen, in need, and living with his parents or a certain class of relatives.[10] The designated class of relatives was expanded in 1956 by 70 Stat. 850, 855.[11] And as we have noted, in 1961 the definition of "dependent child" was amended to permit benefits to be granted to needy children in foster homes or in child-care institutions. The 1961 amendment, 75 Stat. 75, also permitted aid to children whose need arose from unemployment of their parents not attributable to physical or mental incapacity. It is clear, nevertheless, that one of the principal purposes of AFDC was to preserve intact the family unit.[12] The inclusion of relatives, other than par-

---

[9] Of course, in the case of a "dependent child" moneys disbursed for him are paid not to him but to a responsible adult, child-care institution, child-placement or child-care agency for his benefit. See, *e.g.*, 42 U.S.C.A. § 608. Other provisions of the Act make clear, however, that a benefit so paid is treated strictly as a benefit for the child and not to the recipient. For example, 42 U.S.C.A. § 602(b) enjoins the Secretary not to approve a State plan which denies aid with respect to any child who has not met certain age or residency requirements; and 42 U.S.C.A. § 605 permits a State to provide counseling and guidance services "[W]henever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child." That the "dependent child" is an "eligible" recipient is manifest.

[10] i.e., grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt.

[11] This amendment added first cousins, nephews and nieces to the qualifying group.

[12] Senate Report No. 628, 74th Congress (1935) states: "Through cash grants adjusted to the *needs* of the family *it is possible to keep young children with their mother in their own home*, thus preventing the necessity of placing children in institutions. This is recognized

ents, and the subsequent expansion of the class of qualifying relatives were to take care of the situations where both parents were dead or continually absent from the home and a relative was acting *in loco parentis*. Provision for aid to children whose parents were unemployed for reasons other than physical or mental incapacity was to respond to need, while provision for aid to children in foster homes or child-care institutions was, again, to meet need under a scheme which recognized that "there are some home environments that are clearly contrary to the best interest of these children." It is interesting to note that Senate Report No. 165, 87th Cong. (1st Sess.), 1961 U. S. Code Cong. and Adm. News, pp. 1716, 1721, in which the quoted statement was made, reaffirmed that "[t]he objective of the aid to dependent children program is to provide cash assistance for needy children in their own homes."[13]

The Maryland maximum grant regulation is in conflict with this legislative purpose, both as expressed in the Act and in its legislative history. As has been shown, 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 per-

---

by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.)

House Report No. 615, 74th Congress (1935) also states: "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children *in their own homes*." (Emphasis supplied.)

[13] It is also worthy of note that 8A Ann. Code of Md., Art. 88A, § 44A states: "It is hereby declared that the primary purpose of aid given under this subtitle *is the strengthening of family life* through services and financial aid, *whereby families may be assisted to maximum self-support in homes meeting the requirements for child care* established by law in this State." Plaintiffs suggest a conflict between the regulation and this statute. Since plaintiffs do not press the point, we do not consider it.

sons included in the class of eligible relatives. If this is done, the pernicious effect of the maximum grant regulation is avoided, but the purpose of keeping them in their own home is defeated.

Defendants contend that the portion of the Social Security Act Amendments of 1967 which amended §403 of the Act, 42 U.S.C.A. §603, by adding a new subsection (d) thereto, is clear Congressional recognition that a State may impose a maximum grant limitation on benefits which it disburses. In general, §403 provides for payments to the State of the federal portion of the cost of AFDC and specifies how that portion is to be computed. The text of the new subsection (d) is set forth in the margin.[14]

We do not think that §403(d) of the Act has the effect which defendants claim. Section 403(d) relates only to a determination of the amount of federal matching funds. It limits federal funds to the number of certain defined individuals who fall within the definition of "dependent children" but it does not purport to affect a State's obligation to *all* of the individuals who fall within that definition if a State participates in AFDC as required by §602. The limitation on federal funds is applicable *only* (a) to dependent children under age 18 (while the definition of "dependent children" contained in §406(a) of the Act includes some children between 18 and 21), and (b) to dependent children deprived of parental support by reason of the continued absence of a parent (while the definition of "dependent child" contained in the Act also includes

[14] "(d) Notwithstanding any other provision of this Act, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date."

need arising from the death or physical or mental incapacity or unemployment of a parent. By contrast, Maryland's maximum grant regulation cuts a broad swath on a non-selective basis.

Much of the legislative history of new subsection (d) is irrelevant, but there is enough history to provide an explanation for its selective operation. House Report No. 544, 90th Con., 1st Sess., p. 110, where subsection (d) had its genesis, states that its purpose would limit federal expenditures in the absent parent subcategory of "dependent children," which is the fastest growing subcategory of need, and "should also give the States an incentive to make effective use of the constructive programs[15] which the bill would establish." The addition of subsection (d) was eliminated by the Senate but reinserted, in modified form, by the Conference Committee. In the Second Session of the 90th Congress, another effort was made in the Senate to eliminate subsection (d), but the attempt was abortive.

The statement of Representative Mills, who was Chairman of the House Ways and Means Committee, where the AFDC freeze provision originated and who was also floor manager of the bill, is significant in explaining the purpose of the bill and *in negating the effect claim for it by defendants*. He said:

> "Finally, Mr. Chairman, the bill would add a provision to present law which would limit Federal financing for the largest AFDC category — where the parent is absent from the home — to the proportion of each State's total child population that is now receiving AFDC in this category. This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this *limitation on*

[15] The 1967 Amendments, P. L. 90-248; 81 Stat. 821, *inter alia*, established a work incentive program for recipients, provided for the employment of qualified recipients in administering the program and provided means for locating parents who desert or abandon dependent children, including the furnishing of last-known addresses by the Internal Revenue Service.

> *Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation* because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a state. . . ." 113 Cong. Rec. H. 10670 (August 17, 1967; unbound) (emphasis supplied).[16]

Because of its selective nature, because it applies only to a determination of the amount of a federal grant and because its legislative history shows that it had a special purpose other than that ascribed to it by defendants, we conclude that subsection (d) is of no aid or comfort to defendants. Thus, the basic purpose of the Act that, when a State participates in AFDC, all dependent children receive benefits thereunder according to need is unsullied, and the Maryland maximum grant regulation is manifestly in conflict. Therefore, Maryland's maximum grant regulation cannot stand.

II.

Our view that the Maryland regulation is invalid is reinforced by our conclusion that the regulation cannot stand under the equal protection clause. It is, therefore, appropriate that we discuss the constitutional issue.

We have searched the record in vain for any state purpose to be served by the maximum grant regulation other than 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 search was important, and the absence of another reason fatal to the defense, because, clearly, dependent children of large families receive different treatment from dependent children of small families. Discrimination of

---

[16] In regard to the last part of Chairman Mills' statement, it should be noted that § 402 of the Act, 42 U.S.C.A. § 602, requires that AFDC be effective in all political subdivisions of a participating State, as well as aid be furnished with reasonable promptness to all eligible individuals.