SUBJECT INDEX

TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 131

EDMUND P. DANDRIDGE, JR. CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, et al.,
Appellants,

vs.

LINDA WILLIAMS, et al.,
Appellees.

Brief of the State of California Amicus Curiae in Support of Appellants

On Appeal From the United States District Court for the District of Maryland

INTEREST OF THE STATE OF CALIFORNIA

On August 28, 1969, in *Kaiser v. Montgomery,* No. 49613 Civil, United States District Court for the Northern District of California, a specially constituted three-judge court, one judge dissenting, preliminarily enjoined enforcement of the maximum aid table in California Welfare & Institutions Code section 11450(a) and all regulations promulgated thereunder. A copy of the court's memorandum opinion and the dissenting opinion are attached hereto as Appendix A. The opinions are not as yet officially reported. Appendix page 4. Footnote 3 sets forth the California statutory maximums. Notice of appeal to this court was filed on September 5, 1969.

Although the California statutes and regulations are not identical in language with those of Maryland, they are similar in purpose.[1] In order to preserve the right of a state legislature to set its own welfare policies in light of its available resources, the State of California enters this case as amicus curiae in support of the argument and position of the State of Maryland.

ARGUMENT

The Additional Fiscal Burden Placed On The Already Over-Burdened Fiscal Resources of the State of California If the Decision Below Is Not Reversed Will Inexorably Lead To A Lower Level of Benefits Available to Welfare Recipients.

California has a state-supervised county-administered public assistance system covering all of the federally aided public assistance programs. For the fiscal year 1969-70 it has been estimated that in California over one and one-half million persons, including over 741,000 children, will be on aid each month with a total expenditure for cash assistance, social services and administration of almost 1.6 billion dollars.[2] County governments participate in the non-federal share of the cost of financing these programs and in addition bear the total cost of the general assistance program which in California is a county responsibility. California and its counties are facing a taxpayer's revolt largely due to soaring costs of the health and welfare programs.

Denial of the power in the state legislature to set the level of benefits it will pay a family to meet the current state set standard of need, will cost the taxpayers a total

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1. California Welfare & Institutions Code section 11450(a) does not impose an absolute ceiling on aid to a family. $6.00 is paid for the tenth child (total aid of $392.00 with one eligible parent or $411.00 if two eligible parents) and $6.00 for each additional child.

2. Statement by John C. Montgomery, Director, California Department of Social Welfare to President's Commission on Income Maintenance Programs, Los Angeles, California, May 24, 1969.

of $40,764,700.00 for the balance of this fiscal year (December 1969 through June 1970). Of this total, the federal share will be $19,380,600.00, the state's share $14,434,300 and the counties' share $6,949,800. See affidavit of John M. McCoy, Chief of the Program Estimates Bureau, California State Department of Social Welfare, attached hereto as Appendix B.

The fiscal import of an adverse decision will not be limited to these substantial amounts. The state set allowance for housing for Aid to Families with Dependent Children recipients was held to be inadequate by a State Court in *Ivy v. Montgomery,* Superior Court State of California, City and County of San Francisco, No. 592705. This case is now on appeal. The trial court directed the state to establish standards which will insure the safe, healthful housing required by California Welfare & Institutions Code section 11452. Payment of such standards was ordered as limited by the maximum participating base subject to the ultimate decision in *Kaiser v. Montgomery.* An increase in the housing allowance above the current average of $63.00 by $30.00 will cost $65,660,100; (state and local share $34,437,800.00) for the balance of the fiscal year if the statutory maximums established by California Welfare & Institutions Code section 11450(a) are held unconstitutional. An increase of $45.00 per month will cost $100,728,300 (state and local share $52,811,800). An increase of $60.00 per month to bring the average housing allowance to $123.00 will cost $136,712,600 (state and local share $71,660,700). See Appendix B.

Demonstrative of the merits of Maryland's "less benefit" position is *Macias v. Robert H. Finch, John C. Montgomery, Frederick B. Gillette,* United States District Court, Northern District of California No. 50956 Civil, now pending

before a specially constituted three-judge court. Plaintiff Tarin as an unemployed father received Aid to Families with Dependent Children—Unemployed father for his family (wife and 12 children) of $424.00 per month, the statutory maximum. Under the state set cost schedule the Tarin family's needs total $685.00. He is now fully employed as defined by the Social Security Act and regulations of the Secretary of the Department of Health, Education and Welfare. His take home pay is $308.80. Plaintiff *Macias* has a wife and 10 children. Welfare payments, the statutory maximum, amounted to $411.00. The Macias family's needs under the cost schedule total $554.00. He is now fully employed with a take home pay of $390.00. The relief sought by plaintiffs is,

> "Declare that 42 U.S.C. §§ 606(a) and 607 and Cal. Welfare & Institutions Code § 11250 are repugnant to the Fifth and Fourteenth Amendments to the United States Constitution and to Article 1 § 11 of the California Constitution and are therefore void insofar as said sections purport to render ineligible for assistance under the AFDC program any person solely on the ground that said person or a parent or relative of said person is employed fulltime."

If the state determined maximum participating base is held unconstitutional there will be little or no incentive for welfare recipients, particularly those with large families, to seek employment. The root of this problem is the well known fact that a man's wages are not geared to the size of his family, but instead by the value placed on his service through the play of market forces. The AFDC program for the unemployed father is optional with the states. *King v. Smith*, 392 U.S. 309 (1968). California and some 23 other states have elected to provide aid for children in need be-

cause their fathers are unemployed. The impact of removal of maximum grants may very well lead to California eliminating this highly desirable but controversial program in order to conserve available limited fiscal resources.

CONCLUSION

The recognizable inequities in public assistance will not be remedied but exacerbated by this Court's affirmance of the decision below. The executive and legislative branches of the federal government are studying these problems. Judicial interference at this point will serve only to confuse rather than clarify the traditional responsibility of the legislative branch of the government. Surely if the "separation of powers" doctrine has any meaning the state and federal legislatures should be unimpeded in their search for equitable solutions realistically gauged to the fiscal resources available to accomplish this end.

For the foregoing reasons the State of California adopts and joins in the argument of the State of Maryland for the reversal of the lower court.

Respectfully submitted,

THOMAS C. LYNCH
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State of California

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Deputy Attorney
General

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State of California

(Appendices follow)

Appendix A

United States District Court
For the Northern District of California

No. 49613 Civil

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN MONTGOMERY, et al., *Defendants.*

Before Hamlin, Circuit Judge, and
Wollenberg and Zirpoli, District Judges.

MEMORANDUM OPINION

Plaintiffs bring this action on behalf of themselves and all others similarly situated whose monthly payments under California's Aid to Families with Dependent Children (AFDC)[1] are discriminatorily limited by California Welfare and Institutions Code § 11450(a) and pursuant regulations to amounts less than their monetary needs as determined by the Department of Welfare of the State of California, its Director and county administrators. Plaintiffs challenge said statute and pursuant regulations on the grounds that the limitations imposed thereby lack any reasonable basis in light of the purpose of the assistance program and that the statute arbitrarily and capriciously

1. The federal statute entitles the program "Aid and Services to Needy Families with Children." 76 Stat. 185. The California Welfare & Institutions Code refers frequently to "needy children" but does not give the assistance program a name. Throughout this opinion, the program will be referred to as AFDC (Aid to Families with Dependent Children) according to the usage of the parties and defendant's Cost Schedules.

deprives certain AFDC recipients of assistance sufficient to meet their state-determined need but at the same time allows other AFDC recipients to receive assistance adequate to meet their state-determined need.[2]

Plaintiffs assert that the above facts constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

Their argument is essentially the following: The California Department of Social Welfare makes payments to needy children according to the provisions of Welfare & Institutions Code §§ 11202, 11250 and 11452. To determine the amount of need generated by each recipient, the Department compiles for each county a "Cost Schedule for Family Budget Units." This Cost Schedule provides the starting point for determining a particular recipient's need. The Cost Schedule sets forth amounts representing the combined allowance for the following items: Food, clothing, personal needs, recreation, transportation, household operations, education and incidentals, utilities, housing, and intermittent needs. The combined allowance represents that state's estimate of need to cover the above items. The amount allocated by the Cost Schedule to cover each of the above items varies according to the recipient's age, sex, county of residence, and according to whether the relatives with whom the child is living are themselves needy. For example, where the supporting relatives are needy, the state-determined need of an infant child is $97.00 per month, whereas the state-determined need of a teenager is $112.00 for a female and $119.00 for a male. Where the supporting relatives are not needy, the state-determined

2. The defendant admits that a monthly average of 47% of AFDC recipients were denied their state-determined needs to some extent during 1967-68, while 53% had their state-determined needs fully met.

need of an infant child is $46.50, and the state-determined need of a teenager is $61.25 for a female and $67.10 for a male. The recipient's county of residence is considered by the state as a determinative factor in establishing need because the cost of living varies widely from county to county within the state. The Department issues a different Cost Schedule for each county according to that county's particular cost of living.

This brief description of the defendant's Cost Schedules points to a crucial fact in this litigation, namely, that state-determined need varies among AFDC recipients according to their particular circumstances. Generally speaking, the state has determined that older children have a higher level of need than younger children, that males of teen age have a higher level of need than females of teen age, that families in which the responsible relatives are needy have a higher level of need than families in which the responsible relatives are not needy, and that recipients living in counties with a high cost of living have a higher level of need than recipients living in counties with a low cost of living.

Plaintiffs in this action make no quarrel with the defendant's Cost Schedule as described above, but assert that the operation of California Welfare & Institutions Code § 11450(a) is without any reasonable basis and denies them equal protection of the laws in violation of the Fourteenth Amendment. The statute places a maximum limitation on the amount of aid that a recipient may receive. Taking into account assistance provided by the United States government, § 11450(a) dictates that aid to AFDC recipients shall not exceed the amounts set forth in the accompanying table.[3]

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3. Participation Base.

The effect of § 11450(a) is to deny to the class represented by plaintiffs assistance adequate to meet their state-determined need, while at the same time granting to all other recipients assistance equal in amount to their state-determined need.

A. Children living with one parent or other relative

Number of Children	Amount
1	$148
2	172
3	221
4	263
5	300
6	330
7	355
8	373
9	386
10	392
11	399
12	405
13	412
14	418
15	424

B. Children living with two eligible parents

Number of Children	Amount
1	$166
2	191
3	239
4	282
5	318
6	349
7	373
8	392
9	404
10	411
11	417
12	424
13	430
14	437
15	443

Plus $6 for each additional child.

The cases presented by the named plaintiffs are illustrative. Plaintiff Ernestine Kaiser is the unemployed mother of two teenagers, male and female, and two children of subteen age. For a family of this composition, the defendant's Cost Schedule establishes a need of $300.00. Section 11450(a), however, permits no more than $263.00 to be given monthly to four needy children living with one needy parent. Consequently, plaintiff is receiving $37.00 less than she needs, according to the state's determination.

Plaintiff Sandra Williams is the mother of a three-year old boy. Her needs consist of the usual items listed for each recipient in the Cost Schedule, and, in addition, the defendant Department of Social Welfare includes such

work expenses as transportation and child care to the extent those expenses are determined to be unmet by plaintiff Williams' salary.[4] In a decision of the Director of the Department, the combination of these needs totalled $212.00 for the month of January 1968. Under § 11450(a), however, the maximum limitation on assistance to a family of one child with a needy parent was $148.00. This amount fell $64.00 short of plaintiff Williams' needs for the month of January 1968, according to the defendant's own determination of need.

Plaintiff Helen Hood is the mother of eleven children. Her problem illustrates the severe discriminatory effect of § 11450(a) on children in large families. All of plaintiff's eleven children are eligible to receive AFDC payments. According to the defendant's Cost Schedule, the monthly need of the children amounts to $532.00. But according to § 11450(a), eleven children living with a needy relative may receive no more than $399.00 per month. Plaintiff therefore receives $133.00 less *per month* than the state considers necessary to provide clothing, food, shelter, and other needed items for her children.

For equal protection purposes, the plight of the plaintiffs is significant because it contrasts with the good fortune of those AFDC recipients whose needs as determined by the state are met because they are less than the maximum aid limitation. In other words, plaintiffs are discriminated against by § 11450(a) because (1) it imposes flat limitations on families of a given size, without taking account of variants such as age, sex, unmet work expenses

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4. This court's acceptance of the state's determination of need for plaintiff Williams indicates no opinion concerning the extent to which the state is required by federal statute or regulation to consider any particular work-related expense, nor concerning the particular method of computation by which such expense should be considered.

and cost of living, and because (2) it drastically decreases the permissible allotment per child as family size increases.[5]

The consequence is that § 11450(a) lacks a reasonable relationship to the need of AFDC recipients because the limitations it imposes take *no account* of age, sex, unmet work expenses and cost of living, and take *no reasonable account* of family size as determinants of need. Recipients whose needs happen to fall below the line drawn by § 11450(a) are fortunate enough to get their state-determined needs met; those whose state-determined needs fall above the line do not have their state-determined needs met. Younger children, females, residents of counties with a low cost of living, and (most patently) members of small families are the fortuitous beneficiaries of this set of circumstances. Older children, males, residents of counties with a high cost of living, and members of large families tend to bear the random burden of having their needs unmet.

This irrational and arbitrary distinction among AFDC recipients violates the equal protection clause of the Fourteenth Amendment. The guarantee that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws"[6] means that a state may not establish a classification that lacks any reasonable basis in light of the purpose of the program in question.[7] As the Supreme

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5. The statutory increment of $6.00 for each child after the ninth fails by at least $13.00 to meet the state-determined need of such child *for food alone.*

6. U. S. Const. amend. XIV, § 1.

7. "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, 191 (1964); "[A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." Morey v. Doud, 354 U.S. 457, 465 (1957).

Court stated in *Levy v. Louisiana,* 391 U.S. 68, 71 (1968), "a State has broad power when it comes to making classifications . . ., [but] it may not draw a line which constitutes an invidious discrimination against a particular class. . . . Though the test has been variously stated, the end result is whether the line drawn is a rational one."

The defendants have not claimed that the lines drawn by Section 11450(a) are rational. Nowhere has the state set forth a plausible explanation why the needs of one AFDC recipient are fully met while the needs of another recipient are not. If the purpose of the aid limitations is to reduce state expenditures, there are methods by which the state could accomplish that objective without discriminating among AFDC recipients. The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program. Section 11450(a) consequently denies to the burdened class of AFDC recipients equal protection of the laws and is therefore unconstitutional as violative of the Fourteenth Amendment to the Constitution.[8]

The decision which this court hands down today is neither unheralded nor drastic. Other three-judge courts have

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8. The Supreme Court recently disposed of an unconstitutional resource-saving device similar to § 11450(a) with the following language:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases now before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be an independent ground for an invidious classification.

Shapiro v. Thompson, ... U.S. ..... (1969).

reached a similar result. In *Williams v. Dandridge,* 297 F. Supp. 450 (D. Md. 1968), the court considered a Maryland statute setting an absolute aid limitation for all families of $250.00. No additional grant was permitted if the family contained so many children that the total state-determined need exceeded $250.00. The court held the limitation offensive under the equal protection clause. The court found unsupportable the assumption of the statute that the eighth child, for example, is either not needy or must suffer his needs to go unsatisfied. That this eighth child could enjoy full satisfaction of his needs if he moved in with a relative underscored the illogic, and possibly pernicious consequences, of the maximum limitation.

In *Westberry v. Fisher,* 297 F. Supp. 1109 (D. Me. 1969), the court considered a limiting statute which imposed gradually reduced payments for additional children up to an absolute limitation of $250.00 for all recipients in a family. The court pointed out the conflict between the state's need schedule and the limitation statute and reasoned that only by striking down the limitation could the court reach a result reconcilable with the purpose of the AFDC program to fashion assistance according to need. See also *Dews v. Henry,* Civil No. 6417 Phx. (D. Ariz., March 13, 1969).

The fact that the statutes involved in the *Williams, Westberry,* and *Dews* cases imposed an absolute ceiling on aid to a family, whereas § 11450(a) permits a minimum increase of $6 per child in aid paid to a family no matter what the family size, does not justify distinguishing those cases from this one, since the minimal $6 increment does not close the gap between child need as calculated by defendant Montgomery and actual aid for large family children, while children from smaller families may receive sufficient aid to cover their calculated needs.

It is important at this point to clarify sharply the extent of our holding today. We do not make any determination as to what the actual financial needs of any California AFDC child are. This is a task which we leave to the California legislature and agencies which it authorizes to make such determinations, such as defendant Montgomery's Department. Nor do we wish to intimate that if and when such need schedules are calculated, the State must furnish all AFDC children with aid covering the full extent of such calculated need.

We say only that, the state having chosen to make expenditures to promote the welfare of needy children, those expenditures may not be made in such a way as to discriminate irrationally among the recipients. The limitations imposed by § 11450(a) create the forbidden irrational discrimination among recipients and that portion of § 11450(a) is therefore unconstitutional. It is to that statute alone, and the method of disbursement which it commands, that this court has directed its attention.

For the reasons expressed above, this court is of the opinion that the conflict between California Welfare & Institutions Code § 11450(a) and the equal protection clause of the Fourteenth Amendment creates a substantial likelihood that the plaintiffs are likely to prevail. This court is also of the opinion that those AFDC recipients whose state-determined needs are not met due to the operation of § 11450(a) form a proper class for the purpose of securing injunctive relief under Fed. R. Civ. Proc. 23(a) and 23(b)(2). Further, this court is properly convened, 28 U.S.C. § 2281, and has jurisdiction of the cause, 28 U.S.C. §§1343 (3) and (4). *King v. Smith,* 392 U.S. 309 (1968).

The foregoing memorandum opinion constitutes this court's findings of fact and conclusion of law according to Fed. R. Civ. Proc. 52(a).

Therefore,

It Is Ordered that defendants Montgomery, Terzian and Born are preliminarily enjoined, pending further order of this court, from enforcing the maximum aid table in California Welfare & Institutions Code § 11450(a) and all regulations promulgated thereunder.

Dated: August 28, 1969.

United States Circuit Judge

/s/ ALBERT C. WOLLENBERG
United States District Judge

ALFONSO J. ZIRPOLI
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 49613 Civil

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN MONTGOMERY, et al., *Defendants.*

Hamlin, Circuit Judge (dissenting):

I respectfully dissent. Plaintiff contends that the California laws relating to the amount of aid to be given families with dependent children are violative of the 14th Amendment of the Constitution, which provides that no state "shall deny to any person within its jurisdiction the equal

protection of the laws." Plaintiff seeks a preliminary injunction enjoining the enforcement of section 11450(a) of the California Welfare and Institutions Code, and the regulations promulgated thereunder.

Section 11450 of the Welfare and Institutions Code of California sets out the maximum amount that shall be paid to families having needy children. This statute does not contain an absolute limitation as to the total amount that shall be paid (as do the statutes considered in the cases cited in the majority opinion). It does provide a plan whereby the amount of aid to the family increases when the number of dependent children in the family increases. It may be that such plan does not provide complete support in many cases, but I do not believe that it lacks a reasonable basis or that it arbitrarily or capriciously deprives anyone of the equal protection of the laws in violation of the United States Constitution.

The issue before us at this time is the application for a preliminary injunction. I feel such an application should be denied at this time.

Appendix B

United States District Court
For the Northern District of California

Civil Action No. 49613

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN C. MONTGOMERY, et al., *Defendants.*

AFFIDAVIT

John M. McCoy being duly sworn deposes and says:

1. I am the Chief of the Program Estimates Bureau of the State Department of Social Welfare, State of California.

2. In my capacity as such, I have estimated that the additional cost of paying full need under the current Standard of Assistance in the program providing Aid to Families with Dependent Children (Burton-Miller Act, Sections 11000 et seq., California Welfare and Institutions Code) for the months of December 1969 through June 1970, in disregard of the limitations of Section 11450(a) of that Code would be $40,764,700.

Cost sharing of this amount would be as follows:

Federal: $19,380,600
State: $14,434,300
County: $ 6,949,800

3. If the allowance for housing were to be increased above the average of $63 allowed in the current Standard of Assistance, the following cost increases would result in addition to those reflected in the foregoing paragraph:

A. A $15 increase to an average of $78: $32,361,500
   Federal: $ 15,385,600
   State: $ 11,458,700
   County: $ 5,517,200
   Total: $ 32,361,500

B. A $30 increase to $93: $65,660,100
   Federal: $ 31,222,300
   State: $ 23,245,400
   County: $ 11,192,400
   Total: $ 65,660,100

C. A $45 increase to $108: $100,728,300
   Federal: $ 47,916,500
   State: $ 35,647,900
   County: $ 17,163,900
   Total: $100,728,300

D. A $60 increase to $123: $136,712,600
   Federal: $ 65,051,900
   State: $ 48,370,800
   County: $ 23,289,900
   Total: $136,712,600

Dated this 27th day of October 1969.

/s/ John M. McCoy
Chief, Program Estimates Bureau
State Department of Social Welfare

Subscribed and sworn to before me
this 27th day of October 1969.

Selma Gammage
Selma Gammage
Notary Public
[Seal]