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Experimental Work-for-Relief Programs Sustained (Aguayo v. Richardson)

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EXPERIMENTAL WORK-FOR-RELIEF PROGRAMS SUSTAINED

Aguayo v. Richardson

In recent years there has been growing public resentment of federal aid given to indigents, resulting in greater emphasis on work-for-relief programs.[1] Aid to Families with Dependent Children (AFDC)[2] is one of the major vehicles through which federal monies are distributed to those unable to support themselves. This program provides federal funds, "[f]or the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives . . . to needy dependent children and the parents or relatives with whom they are living."[3] While state participation in the AFDC program is strictly voluntary,[4] when a state opts to participate the program it devises must meet federal statutory criteria[5] and must be approved by the Secretary of Health, Education and Welfare (HEW). However, pursuant to section 1115 of the Social Security Act,[6] the Secretary may temporarily waive federal requirements for experimental projects which are likely to further the aims of the AFDC program.

In *Aguayo v. Richardson*,[7] the Second Circuit upheld the Secretary's approval of two experimental New York State programs under

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1 Aguayo v. Richardson, 473 F.2d 1090, 1103 (2d Cir.), *cert. denied*, 42 U.S.L.W. 3406 (U.S. Jan. 15, 1974) (No. 72-1416).

2 42 U.S.C. §§ 601-44 (1970).

3 42 U.S.C. § 601 (1970). 42 U.S.C. § 606 (1970) defines a dependent child as one who is "deprived of parental support or care," living in the home of a relative, and either under 18 or under 21 and a full-time student.

4 *See* King v. Smith, 392 U.S. 309, 316 (1968); City of New York v. Richardson, 473 F.2d 923, 926 (2d Cir.), *cert. denied*, 41 U.S.L.W. 3655 (U.S. June 19, 1973) (No. 72-1451); Note, *Federal Judicial Review of State Welfare Practices*, 67 COLUM. L. REV. 84, 85 & nn.10-14 (1967).

5 The Supreme Court has recognized that in the area of welfare administration the 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, 392 U.S. 309, 318-19 (1968). Nevertheless, the states are not given unfettered discretion. *See* Jefferson v. Hackney, 406 U.S. 535 (1972). For example, 42 U.S.C. § 602 (1970) restricts the states by requiring, *inter alia*, that the plan be mandatory throughout the state, *id.* § 602(a)(1); that a fair hearing be held before denial of aid, *id.* § 602(a)(4); that aid be furnished with reasonable promptness to all eligible individuals, *id.* § 602(a)(10); provision of services "to maintain and strengthen family life and to foster child development," *id.* § 602(a)(14); and provision for referral to the Secretary of Labor of those eligible for work program, *id.* § 602(a)(19).

6 42 U.S.C. § 1315 (1970) provides in pertinent part:

> In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of . . . [the AFDC program], in a State or states ——
> (a) the Secretary may waive compliance with any of the requirements of section . . . 602 . . . of this title . . . to the extent and for the period he finds necessary to enable such State or States to carry out such project . . . .

7 473 F.2d 1090 (2d Cir. 1973). Judge Friendly authored the opinion and was joined by Judges Waterman and Hays.

AFDC: Public Service Work Opportunities Project (PSWOP) and Incentives for Independence (IFI). The two programs challenged were part of the ongoing effort by the state and federal governments to return to the work force employable persons receiving assistance. At the federal level, the Work Incentive Program (WIN)[8] was enacted as part of the 1967 amendments to the Social Security Act.[9] In 1971, New York enacted Work Rules[10] which required employable[11] AFDC recipients to obtain job counseling and training, and ultimately return to the work force.[12] PSWOP and IFI were intended to further this aim. Both experimental programs were approved by the Secretary of HEW under section 1115 and were to run for one year.[13]

PSWOP was to operate in 14 of the 64 social services districts in the state.[14] Employable[15] AFDC recipients in the 14 districts were required to register for job training and placement. Registered persons were to be given either available jobs or a special PSWOP job created

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8 42 U.S.C. §§ 630-44 (1970). This program was actually initiated in January of 1968, and there is considerable evidence that it has not been a great success. *See* note 44 *infra*; Note, *The Failure of the Work Incentive (WIN) Program*, 119 U. PA. L. REV. 485 (1971).

9 *See* U.S. ADVISORY COMM'N REPORT ON INTERGOVERNMENTAL RELATIONS, STATUTORY AND ADMINISTRATIVE CONTROLS ASSOCIATED WITH FEDERAL GRANTS FOR PUBLIC ASSISTANCE 5-7 (1964).

10 The New York Work Rules are found in sections of the New York Social Services Law and N.Y. SOC. SERVS. L. §§ 131, 164, 350 (McKinney Supp. 1972).

11 An AFDC recipient is considered employable under the New York Work Rules unless he falls within one of the following classes:

a) a person who is ill, incapacitated or of advanced age;
b) a person who resides so far from any of the projects under the work incentive programs that he cannot effectively participate under any of such programs;
c) a child or minor attending school full time;
d) a person whose presence in the home is required because of the illness or incapacity of another member of the household;
e) a mother or other relative of a child under the age of six who is caring for the child, provided that such person shall be advised of her option to register if she so desires and shall be informed of the child care services which will be available to her in the event she should decide so to register; or
f) the mother or other female caretaker of a child, if the father or another adult male relative is in the home, is employable, and is in full compliance with all of the registration, training and employment requirements of this section.

N.Y. SOC. SERVS. L. § 350(e) (McKinney Supp. 1972).

12 The New York Work Rules make it mandatory for all persons deemed employable to pick up their assistance checks in person at an office of the Division of Employment of the State Department of Labor. Failure to do so results in loss of assistance. Administrative Letter No. 71 PWD-43; New York State Dep't of Social Serv. v. Dublino, 93 S. Ct. 2507 (1973).

13 The state originally asked that PSWOP run for three years. Approval was given for one year with extension contingent upon evaluation of the first nine months' data. 473 F.2d at 1103 n.21.

14 This encompassed approximately 25% of the state's welfare recipients. *Id.* at 1094.

15 *See* note 11 *supra*. A person declared employable may request a hearing. Refusal to comply pending the hearing coupled with an adverse determination results in an automatic 30-day suspension of benefits even though the individual complies immediately after the determination. *See* 18 N.Y.C.R.R. § 385.7 (1972).

for them. In no case were they allowed to replace regular employees or to earn more than their normal welfare benefits.

The state planned to institute IFI on a more limited basis. It was slated to operate in three counties, one urban, one suburban, and one rural, all of which were co-extensive with PSWOP districts.[16] IFI differed from PSWOP in that participants were allowed to work full-time and receive pay checks greater than their welfare benefits.[17] Failure to participate in this program resulted in a $66 per month reduction of benefits. The IFI program also included a "Work Motivation for Youth"[18] program and counseling for children with truancy problems.

Aguayo involved a suit by three sets of plaintiffs against federal[19] and state[20] defendants. One set consisted of six individuals receiving AFDC funds in the experimental districts. One of the experimental districts, New York City, and its Commissioner of Social Services, Jule Sugarman, comprised the second set. The third set included seven welfare rights organizations. Each of the plaintiffs alleged that the programs were invalid on both statutory and constitutional grounds.

The Second Circuit considered the problems of standing and jurisdiction before reaching the merits of the case.[21] The court allowed both the individual plaintiffs[22] and Commissioner Sugarman[23] to raise

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16 IFI would affect 2.5% of the state's AFDC recipients. 473 F.2d at 1095.

17 The state exempts a portion of IFI salaries in determining whether the participant is also available for supplementary welfare assistance. However, in general, the exemption is not as large as the analogous federal formula would allow. *Id.* at 1096 n.6.

18 This program provided part-time work to children over 16 attending school. *Id.* at 1096.

19 The federal defendants consisted of the Secretary of HEW, the Administrator of Social and Rehabilitation Services, the HEW Regional Commissioner, and HEW itself. *Id.* at 1094.

20 The New York State Commissioner of Social Services and the Department of Social Services were named as state defendants. *Id.*

21 In the district court, 352 F. Supp. 462 (S.D.N.Y. 1972), Judge Bauman denied plaintiffs' motion for a temporary injunction. He found that the welfare organizations lacked standing and both the City and Commissioner Sugarman had standing only to raise statutory claims. Federal jurisdiction over the statutory claims was found under § 10 of the Administrative Procedure Act, 5 U.S.C. § 702 (1970). The court also found the constitutional claims to be insubstantial and the statutory claims without merit.

22 The state defendants conceded that one of the individual plaintiffs, Hyacinth Cadogan, was actually eligible for the program. This fact was sufficient to grant her standing. The court also indicated that the remainder of the individual plaintiffs might have standing since "the threat of compulsory enrollment would seem enough, except perhaps when there is no rational basis for fear." 473 F.2d at 1099. However, since Mrs. Cadogan had standing, the court found it unnecessary to decide this point.

23 473 F.2d at 1100. Commissioner Sugarman was deemed to have standing because he faced a "conflict between his oath to support the United States Constitution and his duty under state law to carry out the New York projects." *Id. See* Board of Educ. v. Allen, 392 U.S. 236 (1968); Baker v. Carr, 369 U.S. 186, 204 (1962).

constitutional and statutory claims. The City[24] and the welfare organizations[25] were restricted to their statutory claims. A jurisdictional basis was found for the individual plaintiffs' and Commissioner Sugarman's constitutional claims[26] and New York City's statutory claims.[27] The remaining claims for which standing had been found were allowed to be heard under the doctrine of pendent jurisdiction.[28]

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24 473 F.2d at 1100, *citing* Williams v. Mayor & City Council, 289 U.S. 36, 40 (1933), wherein the Supreme Court held that "a municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution, which it may invoke in opposition to the will of its creator."

The *Aguayo* court considered the question of whether a city might have standing to assert constitutional claims against "federal" defendants as an open issue and declined to pass upon it. 473 F.2d at 1100-01. *Accord,* City of New York v. Richardson, 473 F.2d 923, 929 (2d Cir.), *cert. denied,* 41 U.S.L.W. 3655 (U.S. June 18, 1973) (No. 72-1451).

25 The district court had denied the welfare organizations standing. 352 F. Supp. at 466, *citing* Sierra Club v. Morton, 405 U.S. 727 (1972). However, the Second Circuit noted that the complaint here alleged that members of the organizations would suffer injury since many were potential participants in the programs and that the remaining members would suffer from the overall detrimental effect that the experimental programs might have on the administration of the general welfare program. Accordingly, the court found sufficient interest to grant some of the organizations standing to assert statutory claims "under the general federal question statute, 28 U.S.C. § 1331 . . . ." 473 F.2d at 1099.

Turning to the question of whether the welfare organizations had standing to assert their constitutional claims against the state defendants, the Second Circuit replied in the negative. *Id., citing* Hague v. CIO, 307 U.S. 496 (1939). The court stated that the organizations were not "persons" aggrieved within the meaning of the Civil Rights Act, 42 U.S.C. § 1983. However, the continued validity of *Hague* is questionable in light of civil rights cases which recognized the standing of the NAACP to raise certain constitutional objections. *See, e.g.,* NAACP v. Button, 371 U.S. 415, 428-29 (1963); Louisiana *ex rel.* Ceremillion v. NAACP, 366 U.S. 293, 296 (1961); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 458-60 (1958). The court distinguished these cases on the ground that parties thereto were claiming violation of the constitutional right of association. 473 F.2d at 1099-1100. Moreover, the court believed that the language of the Supreme Court in *Sierra Club* that "an organization whose members are injured may represent those members in a proceeding for judicial review," 405 U.S. at 739, must be limited to suits by organizations against federal officers and not extended to actions against state officials under section 1983. 473 F.2d at 1100.

26 473 F.2d at 1102. *See* 28 U.S.C. § 1343(3) (1970).

27 473 F.2d at 1102. *See* 28 U.S.C. § 1331 (1970). The court felt that the City had satisfied the $10,000 jurisdictional amount because the implementation of the programs would cause a municipal expenditure of over $2.5 million. *See generally* Note, *Federal Judicial Review of State Welfare Practices,* 67 COLUM. L. REV. 84, 111-15 (1967).

The district court had avoided the problem of jurisdictional amount by using section 10 of the Administrative Procedure Act, 352 F. Supp. at 466. *See* note 21 *supra.* However, the Second Circuit declined to follow suit, 473 F.2d at 1102, despite conflicting Second Circuit decisions as to whether section 10 is an independent grant of jurisdiction. *Compare* Cappadora v. Celebrezze, 356 F.2d 1, 5-6 (2d Cir. 1966), *with* Wolf v. Selective Serv. Bd., 372 F.2d 817, 826 (2d Cir. 1967). The *Aguayo* panel chose not to resolve this undecided issue, 473 F.2d at 1102, *citing* Mills v. Richardson, 464 F.2d 995, 1001 n.9 (2d Cir. 1972).

28 473 F.2d at 1102. Under the doctrine of pendent jurisdiction, a party is permitted to litigate, in a federal forum, both federal and state claims, arising out of a common nucleus of operative fact provided an independent jurisdictional basis exists for the primary federal claim. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). The Second Circuit has applied this doctrine liberally. *See, e.g.,* Almenares v. Wyman, 453 F.2d 1075

The plaintiffs' constitutional claims against the state defendants were two-fold: unequal protection of the law and denial of due process. The equal protection claims arose from the fact that only a portion of those eligible for AFDC benefits were required to participate in the experimental programs.[29] Applying the rational basis test, the court refused to sustain the plaintiffs' arguments, concluding that "appellants equal protection claims do not reach the level of substantiality."[30] The court went on to explain that a state's purpose "to determine whether and how improvements can be made in the welfare system is as 'legitimate' or 'appropriate' as anything can be."[31] Moreover, Judge Friendly commented that the equal protection clause should not preclude states from beneficial experimentation solely because it chose to do so on a limited scale.[32]

The major thrust of the plaintiffs' due process claims addressed the vagueness of the procedures for determining eligibility and "good cause" for declining a job opportunity. The court found potential due process deprivation without considering these claims. It expressed concern with the constitutionality of the regulation[33] mandating a 30-day suspension of benefits for any New York AFDC recipient who unjustifiably refused job training or placement, even where the recipient,

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(2d Cir. 1971), *cert. denied*, 405 U.S. 944 (1972) (pendent class action allowed without federal jurisdictional amount based on section 1983 action by non-identical class); Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800 (2d Cir. 1971) (combined tort claim against pier owner with admiralty action against shipowner); Astor Honor, Inc. v. Grosset & Dunlap, Inc., 441 F.2d 627 (2d Cir. 1971) (inclusion of defendant not named in federal claim). *See generally Second Circuit Note — Class Action as a Pendent Claim*, 47 ST. JOHN'S L. REV. 348 (1972).

29 *See* notes 14 & 16 *supra*.

30 473 F.2d at 1109. The rational basis test requires that the classification in question merely have a rational relationship to a permissible governmental purpose. *See* McGowan v. Maryland, 366 U.S. 420 (1961). In determining that the rational basis test should be applied, Judge Friendly considered the other possible tests. He rejected the compelling interest test, which requires the state to justify its classification, on the ground that 'fundamental rights' were not at stake. 473 F.2d at 1109, *citing* Dandridge v. Williams, 397 U.S. 471 (1970). *Dandridge* refused to apply strict scrutiny to a Maryland law setting a maximum ceiling on AFDC payments despite recognition that the case involved "the most basic economic needs of impoverished human beings." This case set the traditional standard of judging state welfare laws when it said they must be "rationally based and free from invidious discrimination." *Id.* at 1109.

The *Aguayo* court also took cognizance of what it believed was the development of a third intermediary test by the Supreme Court. 473 F.2d at 1109. The test which appears to be developing is that the "legislative means must substantially further legislative ends." Gunther, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972). Judge Friendly concluded that even if this new test were applicable in *Aguayo*, it had been satisfied. 473 F.2d at 1109.

31 473 F.2d at 1109.

32 *Id.* at 1110.

33 *Id.*; 18 N.Y.C.R.R. § 385.7 (1972). *See* note 15 *supra*.

subsequent to an adverse determination, agreed to comply.[34] The plaintiffs viewed the effect of this regulation as a denial of the "fair hearing"[35] required by the Supreme Court's edict in *Goldberg v. Kelly*.[36] The Second Circuit, however, declined to pass upon this issue. At the time *Aguayo* was being considered, the Supreme Court had before it *New York State Department of Social Services v. Dublino*[37] which challenged the New York Work Rules. The three-judge district court in *Dublino*, in holding that the New York Work Rules were pre-empted by federal legislation, had also considered the constitutionality of the regulation in question in *Aguayo*.[38] Accordingly, the *Aguayo* court modified the district court's denial of a temporary injunction and enjoined the state defendants from enforcing the questionable provision with respect to PSWOP and IFI until *Dublino* could be finally decided.[39]

The plaintiffs also raised certain statutory claims. They contended that the Secretary of HEW exceeded his authority under section 1115 of the Social Security Act to allow such experimental programs, that his approval had no rational basis, that his decision was based on insufficient information, and that the approval was inadequate in its failure to expressly waive compliance with certain provisions of the Social Security Act.[40]

The court rejected the first statutory claim that the Secretary had exceeded his authority under section 1115 because the programs did not further the aims of the Act.[41] Judge Friendly explained that section 401 of the Social Security Act[42] indicated Congress' intent to enable recipients to become self-supporting to whatever extent pos-

34 473 F.2d at 1110.

35 *Id.* at 1111.

36 397 U.S. 254 (1970). *Goldberg* held that a state must give a recipient a hearing in accord with due process before terminating benefits.

37 93 S. Ct. 2507 (1973).

38 348 F. Supp. 290, 295 (W.D.N.Y. 1972).

39 473 F.2d at 1112.

In June of 1973, the Supreme Court, in *Dublino*, reversed and remanded to the district court, holding that state instituted work relief programs were not pre-empted by the Social Security Act. 93 S. Ct. 2517. However, the Court made no mention of the 30-day suspension provision. It is unclear at this time what will happen if no decision is made with respect to it on remand.

40 473 F.2d at 1103-08.

41 *Id.* at 1103. The plaintiffs contended that the programs under attack could not be deemed to further the aims of the relevant provisions of the Social Security Act, a necessary prerequisite to the operation of section 1115. *See* note 6 *supra*. They alleged that the purpose of the AFDC program was to provide for needy children and not to force the individuals responsible for these children to work. Dismissing this contention, the court stated that the plaintiffs had taken "too narrow a view of Congress' purpose." 473 F.2d at 1103.

42 42 U.S.C. § 601 (1970).

sible.[43] The WIN program was cited as proof that Congress envisioned some type of work-for-relief program. Moreover, it was the limited application of WIN which had created the need for such programs as PSWOP and IFI.[44]

Similarly, the court dismissed the plaintiffs' claim that the Secretary cannot use section 1115 to waive any of the provisions of section 401 if a curtailment or denial of benefits would result. The court reasoned that section 1115 gives wide discretionary powers to the Secretary and should not be construed narrowly as limiting him to waiver of the statutory requirement for statewide uniformity. The only restriction provided for in the "waiver" section is that the Secretary must "judge the project to be 'likely to assist in promoting the objectives' of the designated parts of the Social Security Act."[45]

Plaintiffs next contended that the Secretary had no rational basis for determining that the programs would further the aims of AFDC. The court found that the Secretary, at the time of the decision, had before him Action Memoranda for each of the programs which stated the objectives of the demonstration projects[46] and that the achievement of at least some of the goals stated would be sufficient reason to allow the experimental programs. Evidence militating against achievement of these goals was also before the Secretary in the form of a letter of criticism of the programs from the Center on Social Welfare Policy and Law.[47] Consequently, the court held that "the materials before

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43 473 F.2d at 1104.

44 New York State asserted that in fiscal year 1971, 17,511 recipients were referred for participation in the WIN program, but the federal government had only 9,600 enrollment slots. Brief for Defendant at 38.17; Dublino v. New York Dep't of Social Servs., 348 F. Supp. 290 (W.D.N.Y. 1972). Of the estimated 150,000 WIN registrants for fiscal year 1973, it was estimated that WIN would provide services to only 90,000, "of whom the majority will not receive full job training and placement assistance." MANPOWER ADMINISTRATION, U.S. DEP'T OF LABOR, CONTRACT 36-2-0001-188, MOD. No. 3, June 20, 1972. *See* Note, *The Failure of the Work Incentive (WIN) Program*, 119 U. PA. L. REV. 485 (1971).

45 473 F.2d at 1105.

46 *Id.* The Action Memoranda were prepared by the HEW and Judge Friendly interpreted them to provide:

> [The results of PSWOP were expected to be:]
> A. Decreased costs of public assistance.
> B. Increased self-support of self-care of recipients.
> C. Increased initiative of recipients.
> D. Increased self-respect of recipients.
> E. Increased community participation.
> F. Improved public attitude toward public welfare.
> . . . .
> [IFI objectives included:]
> 1. Employment of able-bodied adults.
> 2. Development and use of employability skills in young adults.
> 3. Education and motivation of school-age children.

Id.

47 The letter stated that the objectives could not be achieved and criticized the

the Secretary sufficed for 'a consideration of the relevant factors' by him and that there was no 'clear error of judgment' on his part."[48]

Thirdly, the plaintiffs alleged that the Secretary's action should be set aside because he acted upon inadequate information, pointing to the fact that approval was given before the receipt of requested information concerning the fundamentals of the project.[49] A more serious issue was raised by the contention that the Secretary had failed to consider the capability of state and local agencies to administer the experiments.[50] The court summarily disposed of the former contention as requiring too stringent an analysis for approval. As to the latter, it apparently accepted the defendants' claim that the state had given adequate assurance of performance.[51] Moreover, the court gave the Secretary great latitude to approve such experiments "[o]nly if the materials showed such administrative incapacity as to negate any appreciable possibility of success would the Secretary's approval be arbitrary and capricious."[52]

Plaintiffs, relying on the district court's holding in *Dublino* that WIN was the exclusive manner of compelling training or employment for AFDC recipients, also contended that PSWOP and IFI were invalid under the supremacy clause. The *Aguayo* court viewed the approval of the experimental programs as an implied waiver of section 602(a)(19) and said that requiring an express waiver would be a mere formality. In view of the Supreme Court's recent reversal of *Dublino*,[53] this issue is now moot.

The disposal of the statutory claims in *Aguayo* was facilitated by the standard of review employed by the court. When the focus of a controversy is an administrative decision, such as the Secretary's ap-

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programs because of the difference in payment, their coercive nature, lack of adequate child care standards, vagueness as to the type of jobs, and the improbability that the job experience would prove useful. Alternative methods were suggested for alleviating public antagonism to public assistance. *Id.* at 1105-06.

48 473 F.2d at 1106.

49 The projects were approved on June 1, 1972, contingent upon receipt of additional information relating to the availability of services to be provided, assurances that fair hearing proceedings would be instituted, and that all work-related expenses would be reimbursed. *Id.* at 1097-98.

50 Appellants contended that the local welfare agencies, including those to participate in the experimental projects, were already overwhelmed in attempting to administer the regular AFDC program. Consequently, the burden of administering the additional projects would only cause ineffective administration of both the experimental projects and the regular program. Brief for Appellants at 92-93.

51 473 F.2d at 1107.

52 *Id.*

53 *See* notes 37 & 39 *supra*. *Dublino* overturned decisions in two other circuits. *See* Bueno v. Juras, 349 F. Supp. 91 (D. Ore. 1972); Woolfolk v. Brown, 325 F. Supp. 1162 (E.D. Va. 1971), *aff'd*, 456 F.2d 652 (4th Cir. 1972).

proval of PSWOP and IFI in the present case, the courts must first decide what standard to use in reviewing that decision. While following the guidelines set down by the Supreme Court in *Citizens to Preserve Overton Park v. Volpe*[54] "so far as applicable," Judge Friendly added that a "lower threshold for persuasion" was needed when the program was only an experimental one of short duration. Thus, the Secretary was held to a liberal standard, which allowed him to rely on his own judgment of the situation,[55] since no more specific statutory guidelines were available.[56]

Aguayo promises to be of significant consequence in deterring widespread attacks on work-for-relief programs. Recently, in *Jefferson v. Hackney*,[57] the Supreme Court emphasized that where states do not run afoul of the Social Security Act or any of the provisions of the Constitution, they will have considerable discretion in allocating AFDC benefits. Thus, the essential framework within which these programs must be scrutinized is whether they violate any statutory or constitutional proscriptions. The first major frontal attack on work-for-relief programs came in *Dublino*. While the Supreme Court decided that such programs were not pre-empted by the Social Security Act, it left open the question of whether the state legislation involved was valid under the Constitution and the Act. *Aguayo* has gone far in answering this question. As to the constitutional issues, the Second Circuit has decided that experimental work-for-relief programs do not violate the equal protection clause. Admittedly, this aspect of the decision was facilitated by the Supreme Court's holding in *Dandridge v. Williams*[58] that "fundamental rights" are not involved in welfare cases. The Second Circuit's holding on this question, and indeed its treatment of the whole case, indicates an attitude that such programs will be treated favorably.

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54 401 U.S. 402 (1971). In overturning Secretary of Transportation Volpe's decision to build an interstate highway through Overton Park, the court outlined a tripartite test for judicial review of administrative action. The administrator must have acted (1) within his authority; (2) upon relevant factors, but without obvious error; and (3) according to proper procedure. Plaintiffs contended that the Secretary's approval was not made in accordance with these standards.

55 473 F.2d at 1106. It was held permissible for the Secretary to allow his decision to reflect current dissatisfaction with the welfare system and the possibility of future reduction in state aid. *Id.* at 1103.

56 In *Overton Park* there was a specific statutory guideline. 23 U.S.C. § 138 (1970) provides that the Secretary "shall not approve any program or project" that requires the use of any parkland "unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park. . . ."

57 406 U.S. 535, 541 (1972).

58 397 U.S. 471 (1970). *See* note 30 *supra*.

Of perhaps greater significance is the court's treatment of the statutory claims. By broadly construing section 1115, the court has all but precluded future statutory attacks on "experimental programs" since the Secretary unquestionably can waive compliance with many of the federal requirements. When coupled with the narrow scope of judicial review used by the court it is apparent that a considerable barrier has been erected to those wishing to attack such programs.

GEOGRAPHICAL CLASSIFICATIONS OF WELFARE DISTRICTS ATTACKED

City of New York v. Richardson

Pursuant to the system for distribution of funds prescribed by the Social Security Act of 1935,[1] federal funds are made available to the states on a "matching-fund" basis. Those states choosing to participate in a program under the Act must submit a plan to the Secretary of Health, Education, and Welfare (HEW) for approval.[2] New York State's plan, as outlined in its Social Services Law,[3] divides the state into a number of welfare districts on a geographic basis.[4] According to the financing system provided in the statute, each local district is to pay 25 percent of its welfare costs, with an additional 25 percent contributed by the state. The remaining 50 percent is provided by the federal government.[5]

Under New York's Social Services Law, New York City is designated as a local welfare district.[6] Unfortunately for New York City taxpayers, the number of welfare recipients in the City is disproportionately high in relation to its population. The City, therefore, bears a greater welfare burden than do other districts in the State.[7]

In *City of New York v. Richardson*,[8] the City of New York and

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1 42 U.S.C. §§ 301-06, 601-10, 1201-06, 1351-55 (1971).

2 In order for a state plan to be approved, it must comply with the provisions of the Act and the rules and regulations promulgated by HEW. For example, the state plan must be in effect "on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the state." 45 C.F.R. § 205.120(a) (1973).

3 N.Y. SOC. SERV. L. § 1 *et seq.* (McKinney 1966 & Supp. 1972).

4 *See* N.Y. SOC. SERV. L. § 61 (McKinney 1966).

5 *See* N.Y. SOC. SERV. L. § 153 (McKinney 1966).

6 *See* N.Y. SOC. SERV. L. § 61(1) (McKinney 1966).

7 Statistics for 1969 reveal that although the residents of New York City comprise only 45% of the state's population, 74% of the state's public assistance recipients live within the city. It is also noted that while 3.49% of the state's residents outside New York City receive public assistance, within the City, 12.52% of the population receive such aid. *See* City of New York v. Richardson, 473 F.2d 923, 930 (2d Cir. 1973).

8 473 F.2d 923 (2d Cir.), *cert. denied*, 41 U.S.L.W. 3655 (U.S. June 18, 1973) (No. 72-1451).