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## Introduction

On March 15, 1991, Karen Lamberton received notice from the Arizona Department of Economic Security (DES) that her Aid to Families with Dependent Children[1] (AFDC) grant had been terminated.[2] Lamberton began receiving AFDC benefits when her husband was fired from his high school teaching job and was sent to prison.[3] Lamberton's aunt gave her, for minimal consideration, a 1985 Toyota Camry when Lamberton's 1973 Datsun became so unreliable that she was forced to sell it.[4] When Lamberton later reapplied for AFDC, DES denied her request because the equity in her automobile was $4375. As her equity in the new car exceeded

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1. 42 U.S.C. § 601 (1988).

> 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, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

*Id.* States must make assistance available to all who qualify under 42 U.S.C. § 606(a) (1988).

2. Complaint at 9, Lamberton v. Sullivan, No. Civ. 91-609 TUC-JMR (D. Ariz., Filed Oct. 24, 1991).

3. *Id.* at 6. Because of the loss of income, Lamberton lost her home to foreclosure and she and her three daughters needed AFDC in order to survive. *Id.*

4. *Id.* At the time, Lamberton was attending a local community college in order to acquire the employment skills needed to get off of AFDC, and her daughters were all enrolled in schools that were not accessible by public transportation. *Id.*

$1500, Lamberton's total assets were greater than those allowed under AFDC's eligibility requirements.[5]

Lamberton is just one example of many AFDC recipients who have lost or been denied benefits because of the automobile equity limit. Approximately eight suits have been filed in federal court on behalf of AFDC recipients, challenging this regulation.[6] Although similarly situated to recipients of Supplemental Security Income[7] ("SSI"), AFDC recipients must act within very different and more restrictive eligibility requirements.[8] This article argues that in order to best achieve the goals of AFDC, the automobile equity limit needs to be raised to an amount which reflects the actual value of a reliable automobile, or ideally, eliminated altogether. Part II describes the administrative and judicial history of AFDC and other Social Security Act programs, and how hostility towards AFDC re-

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5. Coverage and Conditions of Eligibility in Financial Assistance Programs, 45 C.F.R. § 233.20 (a)(3)(i)(B) (1992).

> The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only: . . .
> (2) One automobile, up to $1500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan) . . . .

*Id.* If the recipient has real and personal property valued at less than the above limitation, the difference may be added to the value of the recipients automobile. *Id.*

6. *See, e.g.*, Applehans v. Beye, Civil Action No. 92-N-2495 (D. Colo., case filed Feb. 26, 1993); Brown v. Shalala, Civ. No. C-92-184-L (D.N.H. July 27, 1993); Champion v. Sullivan, Civ. No. 3-92-CV-10127 (S.D. Iowa filed August 18, 1992); Falin v. Sullivan, 776 F. Supp. 1097 (E.D.Va. 1991), *aff'd per curiam*, Falin v. Shalala, 1993 WL 382463 (4th Cir. 1993); Gamboa v. Rubin, Civil No. 92-00367HMF (D. Hawaii); Hazard v. Sullivan, 827 F. Supp. 1348 (M.D. Tenn. 1993); Lamberton v. Sullivan, No. Civ 91-609 TUC-JMR (D. Ariz, Filed Oct. 24, 1991); We Who Care v. Sullivan, 756 F. Supp. 42 (D.Me. 1991).

7. SSI is codified as 42 U.S.C. § 1381 (1988). The purpose of the act is to "establish[ ] a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled . . . . " *Id.* Like AFDC, SSI is a need based program, but it is not state funded. With all of its funding coming from the federal government, it does not have the pressure from the state governments to keep down spending. *See infra* note 154 and accompanying text.

Generally, individuals cannot receive both AFDC and SSI. COMM. ON WAYS AND MEANS, U.S. HOUSE OF REPS., 1993 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, July 7, 1993 at 818 [hereinafter GREEN BOOK]. However, if a recipient or one of their children is disabled, the family unit is eligible for both. *Id.* SSI reduces the payments received by the amount received by the amount of AFDC benefits received. *Id.*

8. 20 C.F.R. § 416.1218(b)(1)(iv) and (b)(2) allows an SSI recipient to have $4500 equity in any automobile. However, if the auto is a necessity (needed to go to doctors appointments), there is no limit on the amount of equity allowed. *Id.* 42 U.S.C. § 602(a)(24)(1988) requires that a member of a family receiving benefits under SSI not be considered as part of the household for determining benefits or eligibility for AFDC purposes.

cipients has lead to inaction concerning the equity limit. Part III illustrates the practical effects of the automobile equity limitation and how it undermines the self-reliance and independence which AFDC should be fostering among its recipients. Part IV discusses the ways in which the AFDC limitation is currently being challenged and analyzes the viability of each of these efforts. Part V examines possible alternatives to court challenges. Finally, Part VI suggests which approach or mix of approaches are most likely to change the eligibility requirement.

## I. AFDC

### A. *How It Works*

AFDC today is a system of "cooperative federalism."[9] This means that the federal government has set up the basic eligibility guidelines, and provides the states with matching funds to support the program. The states may adjust eligibility requirements only where specifically authorized.[10] Among other requirements, a state must have "in effect and operation a job opportunities and basic skills training program . . . [and] require all recipients . . . to participate in the program."[11] In fact, a state may withdraw or deny benefits to a recipient who refuses to take a job offered either through the state unemployment agency or private employers.[12]

### B. *A Brief History of AFDC*

President Theodore Roosevelt initiated the first nationwide policy to aid poor children in a 1909 White House confer-

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9. King v. Smith, 392 U.S. 309, 316 (1968).

10. For instance, the states are authorized to establish need levels for the state, but they must

> take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid . . . .

42 U.S.C. § 602(a)(7)(A)(1988). The equity limit for automobiles was established by the Secretary of Health and Human Services, but states are allowed to set an even lower equity limit if they chose. *See supra* note 5.

11. 42 U.S.C. § 602(a)(19)(A)&(B)(i)(I)(Supp. II 1988). This provision gives several exemptions, including ones for students, disabled persons, remote locations, illness, and small children in the home among others. *See* 42 U.S.C. § 602(a)(19)(A)(i)-(ix) (Supp. II 1988).

12. N.Y. Dept. of Social Services v. Dublin, 413 U.S. 405 (1973).

ence.[13] As part of the policy's establishment,[14] the conferees determined that

> [c]hildren of parents of worthy character[,] suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without the support of the normal breadwinner should, as a rule[,] be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of children.[15]

The state laws which followed this policy were burdened by a requirement that their beneficiaries be deemed worthy.[16] In 1931, eighty-two percent of the recipients were widows, ninety-six percent were white, and three percent African-American.[17] Half of the African-American recipients were in Ohio and Pennsylvania.[18]

During the 1930's, New Deal Social Security legislation established four federally subsidized, state run welfare programs: Aid to Dependent Children ("ADC", now "AFDC"), Old Age Assistance ("OAA"), Aid to the Permanently and Totally Disabled ("APTD") and Aid to the Blind ("AB").[19] The architects of these programs hoped that with the expansion of Social Security, the need for ADC would disappear.[20] Widows, who previously received ADC, would now be eligible for Social Security.[21]

However, beginning in 1960, AFDC began to expand from a widows' program to a program for deserted or never married mothers and began to include more African-American mothers.[22]

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13. Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457, 472 (1987-88).

14. Beginning in the 19th century, two distinct classes of poor families developed. Those families who were "poor by misfortune", such as deceased soldiers families, were considered deserving, and treated in state institutions. Those whose poverty could not be explained away were considered undeserving, and therefore left to their own devises rather than being supported by the state and/or charitable institutions. *Id.* at 470-472.

15. WINIFRED BELL, AID TO DEPENDENT CHILDREN 4 (1965) (quoting Proceedings of the Conference on the Care of Dependent Children, S. Doc. No. 721, 60th Cong., 2d Sess. 8 (1909)).

16. Within ten years of the conference, 39 states had enacted legislation allocating funds for poor deserving parents - parents whose "poverty was unaccompanied by the usual vices . . . such as drunkenness, bad moral habits, a poor environment . . . . " Handler, *supra* note 13, at 473.

17. BELL, *supra* note 15, at 9.

18. *Id.*

19. OAA - 42 U.S.C. § 301 et seq.; AB - 42 U.S.C. § 1201 et seq.; ATPD - 42 U.S.C. § 1351 et seq. OAA, AB and APTD were replaced by the Supplemental Security Income Program in 1974. GREEN BOOK, *supra* note 7, at 813. In 1962, Pub. L. 87-543, § 104(a)(3)(B) substituted "aid to families with dependent children" for "aid to dependent children" in the language of the statute.

20. Handler, *supra* note 13, at 479.

21. *Id.*

22. M. KATZ, IN THE SHADOW OF THE POORHOUSE 33 (1986).

Courts also began to eliminate blatant moral evaluations in the eligibility process. For example, the Supreme Court's 1968 decision in *King v. Smith*[23] invalidated the "man-in-the-house" rule, which allowed the state to withdraw benefits if a mother was cohabitating with a man in or outside of the house.[24] The court-forced expansion of the pool of eligible recipients, together with the inclusion of previously excluded groups steadily increased the bureaucracy associated with AFDC.[25] In reaction to the workload, states went about "reasserting quality control," an effort to deny benefits based on procedural problems and to place the burden of proving eligibility on the applicants.[26] The state-run AFDC programs went from trying to exclude the unworthy to excluding whomever possible through procedural means in order to ease the increasing burden on the system.

### C. *AFDC vs. SSI*

The public began to perceive the recipients of AFDC as less worthy than the recipients of other social services, such as OAA and other SSI precursors.[27] This public perception of the elderly as having made their contribution to society sharply contrasts with the public perception that AFDC "acts merely as a cushion to support those too lazy to work."[28] The entitlement system, while less likely to contain the overt hostility exemplified by *King v. Smith*,[29] continued to make determinations of worthiness. For instance, one commentator has described Social Security as "the pension and survivors insurance program for those who have made their employ-

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23. 392 U.S. 309 (1968).

24. Some state and local authorities would conduct 'midnight raids' on welfare homes to determine if there was a man living in the home. Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1259 n.34 (1983).

25. Handler, *supra* note 13, at 481 (quoting S. GALM, WELFARE- AN ADMINISTRATIVE NIGHTMARE, STAFF STUDY PREPARED FOR THE SUBCOMMITTEE ON FISCAL POLICY OF THE JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, STUDIES IN PUBLIC WELFARE, PAPER NO. 5 (Part I) (1972)).

26. *Id.* at 481-483. Reasserting quality control, according to Handler, was the process of using eligibility and other rules to make the application process and receipt of AFDC as exclusionary as possible. *Id.*

27. *Id.* at 480.

> By the early 1970s, the prevailing view was that the elderly had made their contribution to society. The creation and expansion of the Social Security system contributed to the transformation in societal attitudes by incorporating the vast majority of the elderly into the deserving category. In addition, the elderly poor are white, they do not have out-of-wedlock children, and they vote.

*Id.*

28. Law, *supra* note 24, at 1279.

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

ment contribution to society and are now morally excused from work."[30] Even among Social Security recipients benefits are related to earnings, thereby maintaining a difference in allocation between the wealthy and the poor.

SSI, like AFDC, is considered a program of last resort for the low income elderly and the disabled.[31] However, unlike AFDC, the expectations which come with SSI are not as burdensome. While AFDC recipients are expected to become independent, SSI recipients are assumed to be recipients for life.[32] This presumption may have a stigmatizing effect of its own, but it does not force the recipients to repeatedly prove they are worthy of aid.[33] The eligibility requirements concerning automobiles and personal property imply that SSI beneficiaries are permitted and expected to maintain a certain standard of living, while AFDC recipients are supposed to give up all material well being before receiving any aid. Generally, AFDC recipients are young, unemployed single mothers.[34] Also, there is a higher percentage of minority recipients in AFDC than in other entitlement programs.[35] Historically, this country has been ambivalent about helping single mothers,[36] and especially single mothers of color.[37] SSI recipients tend to be whiter, older, not as

30. Handler, *supra* note 13, at 479.

31. GREEN BOOK, *supra* note 7, at 818.

32. Unlike AFDC, the SSI program does not have job training requirements for recipients. This may have to do with the fact that the majority of recipients are either elderly and already eligible for Social Security or permanently disabled. *Id.* at 844, T.16.

33. *See supra* notes 4 & 5.

34. Table 31 of the GREEN BOOK lists the father's relationship to the youngest child (natural, adoptive, step or no father), 91% of the respondents listed no father. GREEN BOOK, *supra* note 7, at 698.

35. In 1991, 38.1% of AFDC recipients were white, 38.8% black and 17.4% Hispanic. *Id.* at 697.

36. In a recent article, conservative commentator George F. Will advocated the ideas of sociologist Charles Murray. George F. Will, *Rebuild embankments against illegitimacy*, STAR TRIB. (MINNEAPOLIS), Nov. 19, 1993, at 29A. Murray would have the government "end all economic support for single mothers. Marriage should be the sole legal institution through which parental rights and responsibilities are defined and exercised." *Id.*

37. Handler, *supra* note 13, at 482. AFDC benefits, which are state determined, range from 13-79% of the poverty rate, with the median being 39%. When AFDC benefits are combined with food stamp benefits the range increases to 44-102%, with the median being 70%. GREEN BOOK, *supra* note 7, at 657-8.

This article relies heavily on Joel Handler's thesis as an explanation of the prevailing attitude towards AFDC and its recipients. Handler determined that the consensus over welfare, as illustrated in the Family Support Act of 1988, "represents a deep hostility to the female headed household in poverty." Handler, *supra* note 13, at 459.

poor, and have better employment histories than AFDC recipients.[38]

### D. Judicial History of Social Security Act Programs

On at least two occasions the United States Supreme Court has invalidated Social Security Act regulations as violations of the 14th Amendment. In *Department of Agriculture v. Moreno*[39] the Court invalidated a regulation that made households with one member unrelated to any other ineligible for food stamps.[40]

More recently, in *Califano v. Westcott,*[41] the Court invalidated a regulation which allowed only male members of AFDC households to receive AFDC-Unemployed Father ("AFDC-UF") benefits.[42] This regulation presented an ideal situation for an equal protection challenge.[43] The law established a system which gave benefits to one group, based on the fact that they were men, while not giving them to another because they were women.[44] The Court refused to say that giving benefits based on a gender classification was rationally related to the purpose of AFDC-UF.[45]

In *Jefferson v. Hackney*,[46] plaintiffs alleged that by determining AFDC benefits through a lower percentage reduction factor[47]

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38. 39.2% of SSI recipients are men, 48.8 % are white, 24.5% are black. GREEN BOOK, *supra* note 7, at 843. Of the 5,485,788 SSI recipients, approximately 4 million are disabled or blind, and the rest are elderly. *Id.* at 841. Like AFDC, SSI is a need based program, however, even at its lowest, SSI benefits alone have disbersed amounts equal to at least 80% of the poverty rate for couples since 1975. Currently, SSI payments equal 89.5%, and when combined with Social Security and food stamps, it is 101.6% of the poverty rate. *Id.* at 837.

39. 413 U.S. 528 (1973).

40. *Id.* at 543. The regulation was enacted to avoid fraud, but according to Justice Brennan's opinion, the classification actually prevented those most in need from getting help. *Id.* at 538. Justice Douglas, in his concurring opinion, identified the fundamental interest being infringed upon as the right to association. In Douglas' opinion, had the First Amendment not been involved, *Dandridge v. Williams*, 392 U.S. 471 (1970) would have controlled, and the regulation would have been valid. *Id.* at 544; *see infra* notes 53-55 and accompanying text for discussion of *Dandridge*.

41. 443 U.S. 76 (1979).

42. *Id.* at 88-89.

43. The regulation gave unemployment benefits to fathers in AFDC households, but did not give them to mothers. *Id.* at 83. For an in-depth review of equal protection analysis, *see* NOWAK & ROTUNDA, CONSTITUTIONAL LAW, 490 (4th ed. 1991).

44. Califano, the Secretary, alleged that the gender classification was based on the premise that it would "deter real or pretend desertion by the father in order to make his family eligible for AFDC benefits." *Westcott*, 443 U.S. at 83.

45. "It is, rather, part of the 'baggage of sexual stereotypes' that presumes the father has the 'primary responsibility to provide a home and its essentials,' while the mother is the 'center of home and family life'." *Id.* at 89 (citations omitted).

46. 406 U.S. 535 (1972).

47. In a percentage reduction factor system, the state establishes a level of need for entitlement program beneficiaries. That standard is then reduced to a fixed percentage in order to determine the actual grant. *Id.* at 539. If the standard of need

(75%) than used in determining AB (95%), OAA (100%), and APTD (95%), the State of Texas was infringing on the AFDC beneficiaries' equal protection rights.[48] Texas applied the percentage reduction factor in order to keep welfare spending below the ceiling mandated by the state constitution.[49] Plaintiffs argued that the "distinction between the programs [was] not rationally related to the purposes of the Social Security Act" under which all four programs were established.[50]

*Jefferson* plaintiffs also raised an equal protection claim based on the fact that a higher proportion of AFDC recipients were African-American or Hispanic than white.[51] The Court rejected this argument, saying that

> [t]he standard of judicial review is not altered because of appellants' unproven allegations of racial discrimination. [The lower court found] that the 'payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice . . . '[52]

As long as "the judgements are rational, and not invidious" the legislature's attempt to attack the problems of poverty one step at a time were not subject to a strict scrutiny test.[53]

> Applying the traditional standard of review under that amendment, we cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living.[54]

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for a two person AFDC family were $100 per month and the reduction standard was 75%, they would receive $75 per month. At the time of the initial challenge, rather than determining one percentage reduction factor for AFDC and the SSI programs, the State of Texas varied theirs from 50% for AFDC to 100% for OAA. By the time the case was reviewed by the Supreme Court, the AFDC percentage had risen to 75%. *Id.* at 537; *see supra* note 10 and accompanying text.

48. *Jefferson*, 406 U.S. at 537. OAA - 42 U.S.C. § 301 et seq.; AB - 42 U.S.C. § 1201 et seq.; ATPD - 42 U.S.C. § 1351 et seq. As of 1974, these programs were replaced by SSI. GREEN BOOK, *supra* note 7, at 813.

49. *Jefferson*, 406 U.S. at 537.

50. *Id.* at 538.

51. *Id.*

52. *Id.* at 547.

53. *Id.* at 546.

54. Had the court wanted to, it may have been possible to find irrationality in Texas' scheme. The decision shows that AFDC had from 50% to 100% more Black and Chicano recipients than the other three programs. *Jefferson*, 406 U.S. at 546. And, despite having the lowest percentage reduction factor, AFDC did not have the most recipients, OAA had 94,000 more. *Id.* The burdens of the state's constitutional budget limit were disproportionately placed on the minority community as a result of the scheme. Unfortunately, the existence of a more rational scheme — lessening the

The Court refused to question the judgement of the state in allocating its limited resources, even in the face of differential impact on minority groups.[55] The dissenters, on the other hand, based their opinions largely on the statutory requirements of eligibility under 42 U.S.C. § 602.[56] While Justice Marshall relied on this statutory conflict in his dissent, he also stated that the various reviewing courts had erroneously neglected exacting analysis and emphasis upon the the racial makeup of the AFDC recipients.[57]

The decision in *Jefferson* relies heavily on *Dandridge v. Williams*.[58] In *Dandridge*, the Supreme Court refused to make wealth a protected class for equal protection analysis. An AFDC recipient challenged Maryland's maximum grant regulation, which limited a family's benefits once the family went beyond a certain size.[59] The Supreme Court has never established a fundamental interest in a minimum standard of living.[60]

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OAA percentage and raising the AFDC percentage — does not necessarily make the first scheme irrational or unconstitutional. *Id.* at 549.

55. A law containing an otherwise neutral classification, even when even handedly applied "may be challenged as in reality constituting a device designed to impose different burdens on different classes of people. NOWAK & ROTUNDA, *supra* note 43, at 591. However, "[w]hen the governmental action relates only to matters of economics or general social welfare, the law need only rationally relate to a legitimate governmental purpose." *Id.* at 569.

56. *Jefferson v. Hackney*, 406 U.S. 535, 567-68 (1972) (Marshall, J., dissenting). Justice Marshall determined the scheme invalid because it violated 42 U.S.C. § 602(a)(23), which required the states to bring their AFDC benefits in line with the increased cost of living between the time the program was established and 1969. *Id.*

57. *Id.* at 575 (Marshall, J. dissenting).

> The evidence also shows that 87% of the AFDC recipients in Texas are either Negro or Mexican-American. Yet, both the District Court and this Court have little difficulty in concluding that the fact that AFDC is politically unpopular and the fact that AFDC recipients are disfavored by the State and its citizens, have nothing whatsoever to do with the racial makeup of the program. This conclusion is neither so apparent, nor so correct in my view.

*Id.* Justice Marshall did not try to determine whether or not racial discrimination existed. After determining that the Texas scheme was invalid on the basis of the statute, and he only responded to the court's determination of the standard of review for the equal protection claim, and determined that the burden of proof had been wrongly placed on the plaintiffs. *Id.*

58. 397 U.S. 471 (1970).

59. *Id.* at 473. The fundamental interest being harmed was the family's right to procreate. However, the court "proceeded on the tacit and not unreasonable premise that the availability or unavailability of funds adequate to satisfy a prospective child's minimum needs did not materially influence parents' decisions" to procreate. Gary J. Simson, *A Method for Analyzing Discriminatory Effects Under the Equal Protection Clause*, 29 STAN. L. REV. 663, 675 (1977).

60. *Simson*, *supra* note 59, at 675.

The Supreme Court has also validated procedural due process challenges to entitlement program regulations.[61] Procedural due process can be violated when a right to a benefit is taken away without an adequate determination of the need to take away the benefit.[62] In *U.S. Dept. of Agriculture v. Murry*,[63] the plaintiffs were denied food stamp benefits because a member of the household had been claimed as a dependent for tax purposes by someone outside of the household.[64] The Court held that the "irrebuttable presumption" — that a tax deduction taken by a person outside of the home made the household automatically ineligible for benefits — was "not a rational measure" of need.[65]

It is within this framework of bureaucracy, institutional attitudes, and judicial lack of interest that the automobile equity limit[66] was established. The automobile equity regulation was included in the 1981 Omnibus Budget Reconciliation Act ("OBRA"),[67] a measure taken explicitly to reduce the federal budget deficit.[68] Prior to OBRA, an AFDC recipient could have up to $2000 of equity in personal property, and there was no limit on one's equity in a home or car. With the enactment of OBRA, there was a reduction in the amount of equity recipients could have in their personal

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61. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254 (1970); U.S. Dept. of Agric. v. Murry, 413 U.S. 508 (1973).

62. U.S. Dept. of Agric. v. Murry, 413 U.S. 508, 514 (1973).

63. 413 U.S. 508 (1973).

64. *Id.* at 511. There were seven named plaintiffs in the case. Most of them were mothers who lived with older children, but absent fathers were claiming the children as dependents. Because of the fathers' actions, the mothers' households were ineligible for food stamps. There were also several young married couples whose parents were still claiming them as dependents, even though the couples lived apart from their parents and were otherwise eligible for Food Stamps. *Id.* at 509-511. In none of the cases did the tax status of dependent result from any actual financial assistance by the absent parents. *Id.*

The Court made two determinations. First, the fact that a person is claimed as a dependent for tax purposes does not mean that they are not indigent. *Id.* at 514. Second, because food stamp eligibility is determined by household, rather than individually, the household could be denied "even though the remaining members have no relation to the parent who used the tax deduction, even though they are completely destitute, and even though they are one, or 10 or 20 in number." *Id.*

65. *Id.*

66. *See supra* note 5.

67. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §§ 2301-2321, 95 Stat. 357, 843-60 (Amending Social Security Act, 42 U.S.C. § 601-610 (1976)(codified as 42 U.S.C. §§ 601-610, 612, 614, 615, 645 (Supp. V 1981)). The actual purpose of the automobile equity limit is not clear. *See infra* note 120 and accompanying text.

68. For one explanation of the OBRA amendments, see Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879 (3d Cir. 1982). "The primary purpose of the OBRA amendments to the AFDC program is to reduce or eliminate welfare benefits for those considered by Congress to be less needy than those completely without resources . . . . " *Id.* at 879.

property (now $1000) and the Secretary of Health and Human Services (the "Secretary") was instructed to establish a limit for automobiles.[69]

The $1500 limit was established based on a 1979 survey of Food Stamp recipients. According to the Secretary's reading of the survey,[70] 96% of food stamp recipients with automobiles had less than $1500 equity in their cars. As 80% of AFDC recipients were also food stamp recipients,[71] the Secretary determined that the limit was appropriate. No provision was included to increase the limit based on inflation or the average price of cars. The legislation does, however, allow a recipient with less than the allowed amount in one category to apply the difference to the other category.[72]

SSI recipients are also subject to some limits on the value of their automobiles. However, the limits are much more generous. The regulations limit the amount of equity in an automobile to $4500, but also allow complete exemptions to the limitation when it is necessary for employment, medical treatment, or when a modified automobile is necessary to accommodate a handicapped recipient.[73] SSI beneficiaries may further have $2000 in personal property or $3000 if they have an eligible spouse.[74]

## II. Practical Effects of the Limitation

The effects of the automobile equity regulation for AFDC recipients vary from the inconvenience of having an unreliable automobile to the inability to attend school and/or job training; education required for AFDC beneficiaries to continue receiving their grants.[75] For example, in *Lamberton v. Sullivan*,[76] the plain-

69. 42 U.S.C. § 602(a)(7)(B)(i) (Supp. II 1988). The Secretary can determine someone ineligible for AFDC if their assets exceed $1000, not including "so much of the family member's ownership interest in one automobile as does not exceed *such amount as the Secretary may prescribe.*" *Id.* (emphasis added). *See supra* note 5.

70. The Secretary's reading is somewhat questionable. Although HHS claims that the survey showed that 96% of AFDC recipients had autos worth less than $1500, some current challenges have attempted to show that even using this survey was not rational. *See infra* notes 75-82 and accompanying text.

71. Falin v. Sullivan, 776 F.Supp. 1097, 1101 (E.D. Va. 1991); *aff'd per curiam*, Falin v. Shalala, 6 F.3d 207 (4th Cir. 1993).

72. For example, if you have only $500 in personal property assets, you may have $2000 equity value in your automobile.

73. 20 C.F.R. § 416.1218(a).

74. 42 U.S.C. § 1382(a)(3)(1988).

75. 42 U.S.C. § 602(a)(19)(A)(Supp II 1988). *See supra* note 9. In Lamberton's case, she is a student at a local community college, and her three children are in elementary school and day care. Without a car, neither she nor the children are able to get to school. Complaint at 6, Lamberton v. Sullivan, No. Civ. 91-609 TUC-JMR (D. Ariz, Filed Oct. 24, 1991).

76. No. Civ. 91-609 TUC-JMR (D. Ariz., Filed Oct. 24, 1991).

tiff lives in a rural area, where there is little public transportation, and a car is the only way to get around.[77] Another variable is the beneficiary's state of residence. A beneficiary in Minnesota, for example, needs a car that will be reliable during the winter months. On the other hand, for a beneficiary in New York City, an automobile of any value might be an unnecessary asset. The regulation, however, fails to take into account these differences in transportation needs within and among the states. Furthermore, despite the fact that AFDC recipients by definition have children and are required to attend job training, they, unlike SSI recipients, have the excessively restrictive asset limitations and are unable to avoid the limitations when they are overly burdensome. In some states, AFDC beneficiaries can have their grants reduced or denied if their children miss school more than the proscribed number of times.[78] Thus, requiring an AFDC recipient to maintain an unreliable automobile may further jeopardize that recipient's AFDC grant if she relies upon the automobile to transport her children to or from school.

A study conducted for the plaintiffs in *We Who Care v. Sullivan*[79] outlined the flaws in the equity limitation from an economic standpoint.[80] The study first outlines the purposes of AFDC and determines how an accurate automobile equity limit should be determined.[81] The study also takes into account the expense of hav-

77. Complaint, *supra* note 75, at 6-7.

78. "Learnfare" operates in Maryland, Wisconsin, Ohio and in a modified form in Virginia. Seventeen other states introduced similar legislation during the 1992 legislative sessions. Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L. J. 719-20 (1992).

79. 756 F. Supp. 42 (D. Me. 1991).

80. PETER S. FISHER, AN ECONOMIC INVESTIGATION INTO THE BASIS FOR AND CONSEQUENCES OF THE H.H.S. RULE ELIMINATING FROM ELIGIBILITY FOR AFDC BENEFITS FAMILIES WHO HAVE OVER $1,500 EQUITY IN A MOTOR VEHICLE, Prepared for Pine Tree Legal Assistance Augusta, Maine, May, 1990 (in Exhibit C, Lamberton v. Sullivan, No. Civ 91-609 TUC-JMR (D. Ariz. filed Oct. 24, 1991)).

81. *Id.* The study determined that the original purpose of AFDC was to aid children by encouraging their adult guardians to attain self sufficiency. Further, this goal has been reaffirmed in the most recent legislation affecting AFDC. The Family Support Act of 1988 (Public Law 100-485) requires the state to establish JOBS programs (Job Opportunities and Basic Skills). JOBS is a mandatory program which gives AFDC beneficiaries employment and educational training. JOBS also requires that the state reimburse participants for their transportation costs. *Id.* at 1-4.

> A limitation on the equity in an automobile, then, should not interfere with the clear purpose of Congress to facilitate participation by AFDC recipients in JOBS programs. Nor would it make sense to force recipients to sell a reliable auto and purchase a less reliable one, thereby increasing the likelihood that the State (and the Federal government through a 50% match) will have to incur greater expense in providing transportation to enable such participation.

*Id.* at 4.

ing an unreliable car, the differences in fuel economy between older and newer cars, and the transaction costs involved in selling a more expensive car and purchasing, insuring and registering one that falls within the limit.[82]

The most striking finding of the study is the effect of inflation over the 11 years between the food stamp survey and 1990. During this time, the Consumer Price Index for all Urban Consumers ("CPI-U") rose from 70.5 to 117.4, "impl[ying] a 66.5% increase in the price of transportation goods and services between 1979 and 1990."[83] An automobile comparable to one meeting the $1500 equity limit in 1979 would cost $2498 in 1990; an automobile costing $1500 in 1990 is equivalent to an equity limit of $901 in 1979.[84] By 1993, because of the effect of inflation on the average price of automobiles, the limitation has lost a rational connection to its purpose.[85] Relying on OBRA as the source of the regulation,[86] one can see why Congress may have intended to place limits on the number of prospective AFDC recipients. However, OBRA certainly does not require the Secretary to promulgate regulations which would gradually exclude the majority of otherwise eligible recipients. If in fact this was Congress' intention, then perhaps courts should require an explicit authorization rather than allow the Secretary do so without any scrutiny.[87]

## III. Efforts to Change the Equity Limit

Currently there are two theories upon which challenges to entitlement regulations are based. The first is a claim that a particular regulation is an "arbitrary and capricious" application of the

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82. *Id.* at 6-7.

> The asset limit clearly forces single parents or recently unemployed parents in such circumstances into making what would otherwise be an irrational and uneconomic decision—to sell a car of known reliability and good condition and attempt to purchase a cheaper one and expose oneself to the risks of greater downtime and repair expenses and higher operating costs.

*Id.* at 6.

83. *Id.* at 12.

84. *Id.* at 12-13. In order to meet the equity limit, a recipient would have to own a "1982-83 or older model domestic car or a 1981-82 or older import, which is to say one must own a car at least seven to nine years old and with about 90,000 miles on it." *Id.* at 17 (quoting N.A.D.A. OFFICIAL USED CAR GUIDE (New England Ed., May 1990)).

85. *See infra* text accompanying notes 111-112.

86. *See supra* note 68 and accompanying text.

87. The Secretary's ability to promulgate rules is limited by the rule's effect on the budget. If the regulation has greater than a certain cost, it must be approved by Congress.

rule promulgating power.[88] Secondly, at least one case claims that application of an entitlement regulation violates equal protection.[89] Unfortunately, neither of these approaches solves the problem completely. While an arbitrary and capricious challenge is currently the most direct and effective form of relief, it is a short-term repair because it only serves to invalidate a specific regulation, and requires repeated challenges as newer limits becomes outdated.[90] Equal Protection challenges, if accepted, would create a standard for eligibility that would rationally reflect current economic conditions. However, they have not been well received by the Supreme Court, as the Court refuses to either establish wealth as a suspect classification or create a fundamental right to a minimum standard of living.[91] Actions alleging a violation of procedural due process, on the other hand, have been more successful. The Supreme Court has held that once a person receives entitlements, the Due Process Clause of the 14th Amendment requires a fair adjudication to take them away.[92]

Another promising way to create change for AFDC beneficiaries is through legislative action.[93] 42 U.S.C. § 602(a)(23) serves as an example of the type of legislation, at the national level, that

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88. 5 U.S.C. § 706 (1988).

> Scope of Review[:] To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—. . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. . . .

*Id.* Congress may explicitly or implicitly delegate to the Secretary of Health and Human Services the authority to establish regulations based on legislation it has passed. *See infra*, notes 95-137 and accompanying text for an explanation of the courts' review of these regulations.

89. Complaint at 38, Lamberton v. Sullivan, No. Civ. 91-609 TUC-JMR (D. Ariz., Filed Oct. 24, 1991).

90. Because of the limited resources and incomes of AFDC recipients, they are unlikely to bring challenges themselves. All of the challenges mentioned in this article have been brought by legal aid attorneys working on behalf of the beneficiaries.

91. The idea of establishing property rights in entitlement benefits has been widely discussed by academics, but has only had limited success in practical applications. *See, e.g.*, Frank I. Michelman, *Foreward: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969); Charles Reich, *The New Property*, 73 YALE L. J. 733 (1964); Gary J. Simson, *A Method for Analyzing Discriminatory Effects under the Equal Protection Clause*, 29 STAN. L. REV. 663 (1977).

92. A fair adjudication does not, however, require an actual court proceeding. An administrative hearing is sufficient. NOWAK & ROTUNDA, *supra* note 38, at 490. *See, eg.*, Goldberg v. Kelley, 397 U.S. 254 (1970); U.S. Dept of Agric. v. Murry, 413 U.S. 508 (1973).

93. As exemplified by MINN. STAT. § 256.734, Waiver of AFDC barriers to Employment, requesting a waiver from the current equity limit.

would be necessary to keep AFDC benefits and eligibility in line with inflation and the cost of living. Enacted as a one time adjustment, § 602(a)(23) required the states to increase the need basis for AFDC so that it reflected the increased cost of living between the time the basis was set and 1969, the date the statute was enacted by Congress.[94]

### A. *"Arbitrary and Capricious"*

When administrative agencies establish rules at the behest of Congress, the courts are not likely to interfere, unless there is an obvious error in judgement.[95] In *Chevron v. Natural Resources Defense Council,*[96] the Supreme Court laid out the review it will give agency constructions. First, the Court will examine whether Congress has directly spoken on the issue at hand.[97]

> If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.[98]

In the event that the delegation is "implicit rather than explicit . . . a court may not substitute its own construction for a reasonable interpretation made by the administrator of an agency."[99] The court defers to the judgment of an administrative agency whenever the "decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations."[100]

All of the challenges to the automobile equity limit have focused on this area of judicial review.[101] In *Hazard v. Sullivan*,[102] the District Court of Tennessee permanently enjoined the Secretary from applying the limit to Tennessee AFDC recipients.[103] The regulation in question is the result of an explicit delegation of author-

94. *See infra* notes 143-148 and accompanying text.
95. Chevron v. Natural Resources Defense Council, 467 U.S. 837, 843-44 (1984).
96. 467 U.S. 837 (1984).
97. *Id.* at 842.
98. *Id.* at 843-44.
99. *Id.* at 844.
100. *Id.* (quoting United States v. Shimer, 367 U.S. 374,382 (1961)).
101. *See supra* note 6.
102. 827 F. Supp. 1348 (M.D. Tenn. 1993).
103. *Id.* The specific factual background of the case is not explained. Like Kutscher, the plaintiffs were denied AFDC benefits because the automobile they owned exceeded the limit on eligibility. *Id.*

ity from Congress to the Secretary,[104] and therefore is given a great deal of deference by the courts.[105] The District Court, however, did not stop here with its analysis. Even though the Congress explicitly authorized the Secretary to establish the limit, the court still determined that the regulation could be arbitrary and capricious if

> the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[106]

The agency must explain its reasoning in a way that does not appear to be "counsel's post hoc rationalizations . . . ."[107] Although the Court expressed some doubt about the reasonableness of using a 1979 survey in 1982, it did not directly address this point.[108] Instead, it looked at the reasons for using the specific $1500 limit. Given the overlap between AFDC recipients and Food Stamp recipients,[109]

> the Secretary sought to set an asset exclusion amount that would not in itself lead to application denials but would rather keep the 'vast majority' of recipients in the program. The 50 percent reduction in allowable resources, as explicitly established by Congress through OBRA was to effect the reduction in welfare pay-outs; the automobile allowance, by the Secretary's own words, was intended to preserve eligibility, not diminish it.[110]

The Secretary argued that because Congress had failed to explicitly include an adjustment for inflation, the court was barred from reviewing the effects of inflation.[111] This silence on the part of Congress concerning the effects of inflation did not persuade the court, however, especially where the Secretary

> rendered this silence unimportant by promulgating a rationale for the regulation that implied sensitivity to changing financial conditions. Even if the Secretary generally has no affirmative duty to review regulations in the absence of congressional direc-

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104. *See supra* note 69 and accompanying text.

105. *See supra* text accompanying note 95.

106. Hazard v. Sullivan, 827 F. Supp. 1348, 1351 (M.D. Tenn. 1993).

107. *Id.* at 1352 (quoting Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 50 (1983)).

108. *Id.* "The court does not decide this case by determining whether the 1979 Food Stamp survey initially provided a rational basis for the $1,500 limit, even though the advisability of relying on this study in 1982 is debatable. . . ." *Id.*

109. Falin v. Sullivan, 776 F.Supp. 1097, 1098 (E.D. Va. 1991); *aff'd per curiam*, Falin v. Shalala, 1993 WL 382463 (4th Cir. 1993). *See supra* text accompanying note 71.

110. *Hazard*, 827 F. Supp. at 1352.

111. *Id.*

> tion to do so, where a regulation's rationality is dependent on current socioeconomic conditions periodic review is essential to preserve that rationality.[112]

Thus, the Tennessee Federal District Court held that a regulation that is reasonable at the time it is promulgated may be arbitrary and capricious if it no longer rationally relates to the justification given by the promulgating body.[113] Twelve years of inflation was sufficient to destroy the regulations' rationality.[114]

Prior to the decision in Tennessee, the Federal District Court of Maine, in *We Who Care v. Sullivan*,[115] also invalidated the automobile equity regulation. The Maine court, however, did so because the court was unable to " 'make a substantial inquiry' into the factors relied on by HHS in formulating the regulation, and thus it [had] no basis for holding that the Secretary has provided a 'reasoned basis' for its promulgation."[116] Although the Court went through an analysis of the review necessary similar to that of the *Hazard* court, the regulation was never actually reviewed.

The only district court to uphold the regulation has been the Federal District Court for the Eastern District of Virginia. In *Falin v. Sullivan*,[117] this court looked at the reasons for Congressional enactment of OBRA, rather than at the reasons for the Secretary's promulgation of the specific regulation.[118] The *Falin* court reasoned that since OBRA was enacted primarily to cut the federal budget deficit, any cost cutting measure, such as limiting the number of AFDC beneficiaries through tightened eligibility requirements, would be reasonably related to that purpose.[119] This reasoning, however, becomes strained if the regulation, at the time of promulgation, included the vast majority of AFDC recipients or prospective recipients. The Secretary's reasoning, that the limitation was intended to include the majority of the then eligible AFDC pop-

112. *Id.* at 1353. 47 Fed. Reg. 5657 (198X) provides an explanation of the Secretary's motive behind using the 1979 survey. Some commentators were concerned about using $1500 as the limit. The Secretary responded: "In that the federal maximum limit should be set within the range of the vast majority of current recipients" and assuming the reliance on the food stamp survey was accurate "this limit appears reasonable and supportable." *Id.*

113. *Id.* at 1354.

114. *Id.*

115. 756 F. Supp. 42, 47 (D. Me. 1991).

116. *Id.* at 46. The food stamp survey was never a part of the administrative record of the case, and the Secretary "assert[ed] that 'an exhaustive search of the existing administrative record did not discover the cited 1979 food stamp survey. . . .' " *Id.* at 46 n. 6.

117. 776 F. Supp. 1097 (E.D. Va. 1991); *aff'd per curiam*, Falin v. Shalala, 1993 WL 382463 (4th Cir. 1993).

118. *Falin*, 776 F. Supp. at 1100.

119. *Id.* at 1100-02.

ulation, appears to be the most reasonable interpretation of the statute.[120]

### *B. Equal Protection Analysis*

Currently, plaintiffs in *Lamberton v. Sullivan* have moved for summary judgment in the Federal District Court for Arizona.[121] Like *Hazard*, *Falin*, and *We Who Care*, *Lamberton* involves a challenge to a rule as arbitrary and capricious.[122] However, the rule is also being challenged as a violation of the AFDC beneficiaries' equal protection rights.[123] The plaintiff in *Lamberton* alleges that despite the ways in which AFDC and SSI beneficiaries are similarly situated, the Secretary has chosen to give SSI beneficiaries less stringent eligibility requirements under Title 42.[124] The plaintiff cites the automobile equity limitation and the resource limitation as two ways in which it is more difficult for otherwise eligible applicants to qualify for AFDC as opposed to similarly situated applicants for SSI.[125] However, "no rational basis, reasonably related to any relevant statutory objective or policy, exists for the numerous, pronounced disparities in the Secretary's regulation of the automobile ownership interests equally subject, by law, to resource limits determining eligibility for AFDC and for SSI. . . ."[126]

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120. *See supra* note 71.

121. Lamberton v. Sullivan, No. Civ 91-609 TUC-JMR (D. Ariz. filed Oct. 24, 1991). The facts of Lamberton are as follows. Plaintiff began receiving AFDC benefits after her husband lost his job and went to prison. She is also a full time student and a mother. When her 1973 Datsun started giving her trouble, she was forced to sell it. However, because of where she lives, Lamberton did not have access to public transportation for either herself or her children. In February 1991, Lamberton's aunt gave her a 1985 Toyota Camry in good condition. In March, during the reapplication process, Lamberton was denied further AFDC benefits because the blue book value of her car was $4375. Had it not been for the value of the car, Lamberton would have received a maximum of $353 per month. *Id.*

122. *Id.* at 2.

123. A violation of Equal Protection requires several things: 1. A Classification must be established which either burdens one group or benefits another. 2. The classification must distinguish persons as dissimilar on an impermissible basis- race, gender, national origin. The impermissible basis need not be obvious on the face of the law. If the application of the law creates a classification, the court can then determine if the classification is permissible. *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 356 (1886). 3. The classification must not rationally relate to a legitimate governmental interest. These factors, however, will not be uniformly applied. A classification can be more or less suspect; the governmental interest may be considered more or less important; and the effects will not always appear harmful enough for the courts to interfere, even if rational is not perfect. NOWAK & ROTUNDA, *supra* note 43 at 570-585.

124. *See supra* notes 5-8 and accompanying text; *see also supra* part II.C.

125. Lamberton, No. Civ 91-609 TUC-JMR, at 31-37.

126. *Id.* at 37.

There are several weaknesses in this otherwise appealing argument. First, while the burden of the AFDC equity limit has been placed largely on women and minorities,[127] the regulation does not explicitly treat the women and minorities dissimilarly from the majority. The disparate impact can be seen either as an effect of the economic plight of the beneficiaries or as a cause of it. Because there is no explicit discrimination, the court will give the regulation a mid-level scrutiny, rather than strict scrutiny.[128] And, lastly, the courts have been very sympathetic towards states and the government allocating limited finances to social programs.

In order to establish that the automobile equity limit violates equal protection, the court must accept: 1) that the limit places an undue burden on women and minorities; 2) that the purpose of the limitation was not solely for the purpose of cutting the budget, but also was meant to ensure that the then eligible AFDC recipients would remain eligible; and 3) because of the time that has passed and the effects as described by Dr. Fisher's study, the regulation no longer (assuming it once did) rationally relates to the legitimate governmental interest.[129]

Unfortunately, the plaintiffs in the equity cases do not have explicit discrimination to rely upon. Their argument is very similar to one rejected by the Supreme Court in *Jefferson v. Hackney*.[130] The majority opinions in *Jefferson* and *Dandridge v. Williams*[131] (which was relied upon heavily by the majority in *Jefferson*) do not help the allegations in *Lamberton*.

### C. *Procedural Due Process*

Thus far, plaintiffs in the automobile equity challenges have failed to challenge the regulation as a violation of procedural due process. The regulation in *U.S. Dept. of Agriculture v. Murry* presumed that because a person is claimed as a dependant on a parent's tax return, he or she is not in need of food stamps.[132] The automobile equity regulation makes a similar "irrebuttable presumption" — that owning an automobile, in which an AFDC recipient has more that $1500 equity, enables that person to attain self reliance without AFDC. Based on Dr. Fisher's study,[133] it should be possible to overcome this presumption. Also relevant is the fact

127. *See supra* notes 34-35 and accompanying text.
128. *See, e.g.*, Dandridge v. Williams, 397 U.S. 471 (1970).
129. *See supra* note 124.
130. 406 U.S. 535 (1972); *see supra* notes 46-57 and accompanying text.
131. 392 U.S. 471 (1970); *see supra* text accompanying notes 58-60.
132. 413 U.S. 508 (1973); *see supra* text accompanying notes 61-65.
133. *See supra* notes 79-85 and accompanying text.

that AFDC recipients may have different needs in different states.[134] If the federal government wants to set an upper limit, it should be determined by those states whose recipients would be more dependent on an automobile. The limit was not intended to be the same throughout the country — it was the upper limit, and states could lower it based on their perceived needs.[135] However, because of the passage of time, the $1500 now serves as both starting and ending point for the states.[136]

However, because an equity limit may occasionally reflect need (if set at an appropriate level), the court might be less willing to invalidate this particular eligibility regulation. Whereas the *Murry* plaintiffs' status as a dependent on an absent parent's tax return could not in itself provide the family with any tangible benefit, an automobile is a liquid asset that could provide much needed cash to an AFDC family.[137] But, the short term benefits of selling an automobile do not aid in the long term purpose of AFDC. If, in fact, it is AFDC's purpose to make parents and guardians self sufficient,[138] it would appear that ownership of an automobile would, in most situations, contribute to this self-sufficiency. A reliable automobile would also enable an AFDC recipient to complete job training or their education faster, and with fewer interruptions. Given these goals of the program and the effects of inflation, the procedure of making a family ineligible for AFDC because of their automobile seems irrational and an inaccurate determination of need.

### *D. The Problems with Court Challenges*

Obviously, the challenges to AFDC rules are always risky.[139] Their outcomes tend to be based on the current political cli-

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134. *See supra* text accompanying notes 127-129.

135. *See supra* note 5.

136. In all of the current challenges, the states have kept the $1500 limit, rather than reducing it as allowed by HHS.

137. AFDC applicants are often recently divorced women who, as a part of a property distribution, have automobiles whose value is inconsistent with their income. *Cf.* FISHER, *supra* note 75, at 132. However, the same woman would not be held ineligible because she had a home in which she had $75,000 in equity. While the desire to keep people in their homes is obvious, the unwillingness to accept the current need for automobiles seems archaic.

138. *See supra* note 1.

139. One commentator stated that

> [T]he equal protection clause has proven to be of limited use in expanding welfare eligibility and of no help in challenging the amount of welfare grants. It is extremely unlikely that any further so-called fundamental interests that would lead to heightened scrutiny review will be unearthed, and it is even more unlikely that the Court will liberalize the basic equal protection doctrine in the foreseeable future. Therefore,

mate,[140] and recently the Supreme Court has not been willing to expand rights which Congress has not explicitly authorized.[141] Although the arbitrary and capricious approach in *Hazard* is likely to get the desired result in some of the cases being litigated, it also is not entirely satisfying. As exemplified by the different results, there is no real guideline for courts to determine when a regulation is arbitrary.[142] The courts have been able to choose the justification for the regulation they prefer, and make an apparently legitimate decision based on it. This approach also forces the welfare beneficiaries and their advocates to litigate whenever a promulgated rule goes out of date.

## IV. Alternatives to Court Challenges

A longer term solution would be one in which Congress forced the Secretary to take into account the economic realities of life, such as inflation and the need for cost of living increases, when determining eligibility requirements for welfare beneficiaries. If these figures were tied to inflation rates, and there was no increase in poverty rates, then the number of eligible applicants should remain stable.[143] If, in fact, the intention is to reduce or increase the overall number of people on AFDC and other programs, then Congress should specifically state this purpose when authorizing the agency to promulgate the rule.

Section 42 U.S.C. § 602(a)(23) is an example of a legislative attempt to keep entitlements in line with current economic conditions. The section required that states

> provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. . . .[144]

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> the potential for use of equal protection challenges to aid welfare recipients is negligible. . . .

Barbara Sard, *The Role of the Courts in Welfare Reform*, 21 CLEARINGHOUSE REV. 367, 374 (1988).

140. "[T]he Supreme Court has always been reluctant to move far away from the views of the majority. This is particularly true when the implications for requiring increased expenditures are clear." *Id.*

141. *See supra* notes 51-65 and accompanying text.

142. *See supra* notes 102-120 and accompanying text.

143. If poverty rates are increasing, then based on its purpose, expenditures for AFDC should rise accordingly. 42 U.S.C. § 601 (1988).

144. 42 U.S.C. § 602(a)(23)(1988).

This section of Title 42 was used to invalidate at least one system by which AFDC benefits were established. In *Rosado v. Wyman*,[145] New York's system for establishing benefits was held invalid because it "decreased by some $40 million the State's public assistance undertaking."[146]

Because it was limited to use in 1969, this particular statute has outlived its usefulness. However, it does show that Congress has occasionally been willing to fix glaring inequities in the system. Currently, SSI benefits are protected by such a regulation.[147] The regulation requires that individual and couple benefits be adjusted in accordance with the Consumer Price Index.[148] Fixing the benefits for AFDC will not necessarily change the eligibility standards. But, there are a few ways in which to fix the problem with the equity limit.

First, the Secretary can adjust the equity limit to a more reasonable level on her own. Since 1986, the Secretary has received letters questioning the validity of the current automobile equity limit.[149] In all of the responses, the Secretary repeated the agency's position that the amount is reasonable, while also allowing for the possibility for change.[150] When, in 1988, Congress passed the Family Support Act,[151] it failed to adjust the automobile equity limit. Congress did, however, request that the Secretary review the current limit.[152] While all of this leads to the conclusion that the Secretary would have changed the automobile equity regulation, so far the Secretary has vigorously defended the limit in all of the challenges.

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145. 397 U.S. 397 (1970).

146. *Id.* at 407.

147. 20 C.F.R. § 416.405 (1993).

148. The Current regulations state that the Secretary of HHS will increase the unrounded yearly SSI benefit amount by the same percentage by which the title II benefits are being increased based on the Consumer Price Index, or, if greater the percentage they would be increased if the rise in the Consumer Price Index were currently the basis for the title II increase. 20 C.F.R. § 416.405 (1993). *See generally 20 C.F.R.* §§ 404.270-404.277 (explaining how the title II cost-of-living adjustment is computed).

149. Lamberton v. Sullivan, No. Civ 91-609 TUC-JMR (D. Ariz. 1993) (in Plaintiffs' Supplemental Appendix of Supporting Exhibits, Exhibits E, F, G & H). Letters about the limit were written by Sen. George J. Mitchell of Maine, South Carolina Gov. Richard Riley, Sen. Bob Packwood of Oregon, and Jeffrey M. Daly, Administrative Supervisor, Sussex County Welfare Bd, Newton, NJ.

150. *Id.*

151. Pub. L. No. 102-318 (codified as 42 U.S.C. § 666 (Supp. III 1992)).

152. They "direct[ed] the Secretary to review regulations establishing limits on the value of a vehicle and to revise them if he determines revision would be appropriate." H.R. CONF. REP. No. 998, 100th Cong., 2d Sess. at 188-89, reprinted in 1988 U.S. Code Cong. & Admin. News 2776, 2976-77.

This delay is probably due in part to the fact that both the federal and state governments bear the cost of additional AFDC recipients when eligibility requirements are changed.[153] In contrast, the federal government alone bears the cost when a change is made to the SSI program. While the funds ultimately all come from the taxpayers, it may be harder to convince 50 state legislatures of the need to increase spending on an unpopular program.[154] The state of Minnesota has taken its own steps to remedy the problem. The state legislature has authorized the commissioner of human services to

> seek from the United States Department of Health and Human Services a waiver of the existing requirements of the AFDC program . . . in order to eliminate barriers to employment for AFDC recipients.
>
> (b) The commissioner shall seek a waiver to set the maximum equity value of a licensed motor vehicle which can be excluded as a resource . . . at $4,500 because of the need of AFDC recipients for reliable transportation to participate in education, work, and training to become economically self sufficient.[155]

This type of statute eliminates the problems of imposing additional expenses on already strapped state budgets, but can only be implemented on a state-by-state basis.

The most straightforward approach would be for the Secretary to eliminate the automobile equity limit altogether, or change it so that most income eligible people would have no problem because they own a car. When promulgating the $4500 equity limit for SSI recipients, part of the Secretary's reasoning was that "[f]ew automobiles owned by SSI individuals are worth more than $4500, and it is very rare that a first automobile worth more than $4500 does not qualify for exclusion because of how it is used. . . ."[156] AFDC recipients do not have these exclusions.

If the Secretary were to eliminate the limit altogether, she would be recognizing the necessity of a reliable car for most people. Although AFDC has a complete exclusion for homes,[157] it is more likely that an AFDC eligible person will have more than $1500 equity in a car than that s/he will have equity in a home. While the image of an AFDC recipient riding around town in a Cadillac might upset Congress and the Secretary, this scenario seems preferable to

153. *See* Law, *supra* note 24, at 1327.

154. "Reliance upon state and local financing creates inescapable pressures to keep AFDC subsistence grants inadequate. Many states and localities are financially weak." *Id.* at 1326-27.

155. MINN. STAT. § 256.734 (1993) (Waiver of AFDC Barriers to Employment).

156. 50 Fed. Reg. 42686 (1985). *See supra* note 5 for examples of exclusions.

157. 42 U.S.C. § 602 (a)(7)(B)(i)(1988).

burdening each AFDC recipient with an unreliable auto, and thus increasing the time and effort it takes the AFDC recipient to achieve self sufficiency. This time represents extra costs to the system.

Next to the reform of the health care system, the biggest issue Congress will face this term is welfare reform. Welfare reform, for most members of Congress, is no more than a plan to get recipients off of benefit programs as quickly as possible and to cut the costs involved. In such a climate, it is hard to imagine the passage of a bill which could increase the overall numbers of recipients in the short term. Therefore, a law repealing the automobile equity limit is unlikely in the near future.

**Conclusion**

While the current climate is not very encouraging for most AFDC beneficiaries, the arbitrary and capricious challenge to the automobile equity regulation is the most promising vehicle for change to the current limit. However, it would be short sighted to ignore the Fourteenth Amendment Equal Protection challenges to AFDC regulations. Although they are not presently likely to be accepted by the federal judiciary, they do serve an important purpose. By containing some emotional arguments which are hard to find in the arbitrary and capricious argument, Equal Protection arguments add some bite to each challenge. While on their own these arguments may fail, the Equal Protection issues may make the arbitrary and capricious arguments more appealing. Lastly, by keeping the idea of entitlements as a protected property interest alive, plaintiffs increase the possibility that a future court will accept this argument than if we abandon it entirely.