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AFDC Eligibility Conditions Unrelated to Need: The Impact of Dublino

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AFDC ELIGIBILITY CONDITIONS UNRELATED TO NEED: THE IMPACT OF DUBLINO

The problem of defining the limits of state discretion in determining standards for eligibility in the Aid to Families with Dependent Children Program (AFDC)[1] has been a source of continuing controversy. The Supreme Court's invalidations of state-imposed eligibility conditions unrelated to need[2] in *King v. Smith*,[3] *Townsend v. Swank*,[4] and *Carleson v. Remillard*[5] have been interpreted as setting up a test for the validity of such conditions.[6] This test requires that no state exclude any class of individuals eligible for assistance under federal standards absent congressional authorization for an exclusion. Except where authorization exists, these decisions seem to eliminate the potential for state variance with federal standards on AFDC eligibility.

A 1973 Supreme Court opinion, *New York State Department of Social Services v. Dublino*,[7] casts doubt on the continuing viability of the *King-Townsend-Carleson* test for the validity of state-imposed eligibility conditions. The broadest implications of the *Dublino* opinion suggest that the test developed in *King* and its progeny has been modified and that states, contrary to the impression left by the earlier cases, may retain greater discretion in determining eligibility for their AFDC programs.

This note considers the development of judicial treatment of state-imposed eligibility conditions unrelated to need in the AFDC program. After a review of the holdings on state-imposed eligibility conditions in the *King, Townsend,* and *Carleson* cases and of the interpretation that has been given to these holdings, this note focuses on the *Dublino* case and its potential alteration of that interpretation. Finally, attention is given to the future impact of *Dublino*.

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1. 42 U.S.C. §§ 601-44 (1970), *as amended,* (Supp. II, 1972).
2. The term "eligibility conditions unrelated to need" refers to eligibility requirements independent of a family's need or income. The distinction between need-related conditions and nonneed-related eligibility is often difficult to make. However, nonneed-related conditions generally result in termination of benefits whereas need-related conditions result in the diminution of the amount of benefits. Comment, *AFDC Eligibility Requirements Unrelated to Need: The Impact of King v. Smith*, 118 U. PA. L. REV. 1219, 1241 (1970) [hereinafter cited as *AFDC Eligibility*].
3. 392 U.S. 309 (1968).
4. 404 U.S. 282 (1971).
5. 406 U.S. 598 (1972).
6. *See* notes 42-44 *infra* & text accompanying.
7. 413 U.S. 405 (1973).

ELIGIBILITY CONDITIONS UNRELATED TO NEED PRIOR TO DUBLINO

The AFDC program is one of the categorical assistance programs[8] established by the Social Security Act.[9] The combination of federal financial participation and state administration has caused the program to be characterized as one of "cooperative federalism."[10] In order to qualify for federal funds, a state must develop a conforming plan subject to approval by the Secretary of the Department of Health, Education, and Welfare (HEW).[11] Since one of the conformity requirements is that states must furnish aid with "reasonable promptness to all eligible individuals,"[12] the question of whether states may vary from the sometimes ambiguous federal eligibility standards is central to the determination of the validity, as well as the delineation of the scope, of any state AFDC program.

Since the inception of the program, there has been a general recognition of a state's right to establish the standard of need and to determine the level of benefits.[13] However, Congress did set out certain federal eligibility standards. Under the Act's definitions, needy children who are living with one or more named relatives, and who have been deprived of parental support or care and who meet specific age or school attendance requirements are eligible for assistance.[14] Disputes have frequently arisen over the degree to which the conformity requirements and the federal eligibility definitions limit a state's right either to adopt more limited

8. There are three other such programs: Old Age Assistance; Aid to the Blind; and Aid to the permanently and Totally Disabled. These programs are codified at 42 U.S.C. §§ 801-05 (Supp. II, 1972).

9. 42 U.S.C. §§ 301-1396 (1970), *as amended*, (Supp. II, 1972) [hereinafter referred to as the Act].

10. Jefferson v. Hackney, 406 U.S. 535, 542 (1972); Dandridge v. Williams, 397 U.S. 471, 478 (1970); King v. Smith, 392 U.S. 309, 316 (1968).

11. 42 U.S.C. § 602 (1970).

12. *Id.* § 602(a)(10).

13. *E.g.*, King v. Smith, 392 U.S. 309, 318-19, *citing* H.R. REP. No. 615, 74th Cong., 1st Sess. 12, 24 (1935), *and* S. REP. No. 628, 74th Cong., 1st Sess. 4, 36 (1935).

14. The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and . . . a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

42 U.S.C. § 606(a) (1970). Eligibility not only entitles the family to a monthly cash payment but also to medical assistance and to certain rehabilitative services. *Id.* § 606(b).

definitions of the target category or to impose collateral conditions of eligibility.

In the early history of the AFDC program, improper state-imposed eligibility conditions unrelated to need were subject to negotiation or invalidation upon federal administrative review.[15] If the nonconformity was not corrected after the state had received notification thereof and been given an opportunity for a hearing, the Secretary of HEW could terminate federal funding to the nonconforming state.[16] Reliance upon administrative review proved unsatisfactory because of a variety of factors.[17] One of these was the lack of formal procedures by which an individual could initiate a conformity hearing.[18] Another factor was the development in HEW of a pattern of settling disputes by negotiation rather than conformity hearings and a reticence to apply the only sanction available—the termination of federal funding.[19] In addition, the delay inherent in HEW review[20] and the unavailability of more favorable remedies were central factors in prompting claimants to seek another forum. Through the combination of these factors, more eligibility disputes were brought before the federal courts.[21]

The first AFDC eligibility case to reach the Supreme Court was *King v. Smith.*[22] *King* involved a challenge to the Alabama "substitute father" rule. Under the federal criteria, a needy child deprived of parental support or care by reason of the death, continued absence from the home, or the physical or mental incapacity of a parent is eligible for assistance.[23] Under the Alabama rule, a needy child deprived of

15. For the general history of administrative treatment of improper state eligibility conditions see *AFDC Eligibility, supra* note 2, at 1221-25.

16. 42 U.S.C. § 604(a) (1970).

17. *See generally* W. BELL, AID TO DEPENDENT CHILDREN, 174-98 (1965); Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims*, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 1, 9-10 (1970); Note, *Federal Judicial Review of State Welfare Practices*, 67 COLUM. L. REV. 84, 90-96 (1967) [hereinafter cited as *Judicial Review*].

18. *Judicial Review, supra* note 17, at 91.

19. *See* authorities cited note 17 *supra.*

20. To illustrate the potential for delay, the negotiations between HEW and the state of Alabama concerning the validity of the "substitute father" rule and its predecessors which was challenged in *King* began in 1959 and were still continuing in 1967 when the controversy reached the federal courts. HEW had never approved the rule but had taken no action against the state of Alabama other than to inform the state that the rule did not conform with 42 U.S.C. § 604(b) (1970). King v. Smith, 392 U.S. 309, 326 n.23 (1968).

21. Increased availability of legal services for welfare recipients and the fact that the individual state fair hearings did not establish a binding body of law also contributed to the selection of the judicial forum. *Judicial Review, supra* note 17, at 90-96.

22. 392 U.S. 309 (1968).

23. 42 U.S.C. § 606(a) (1970).

parental support or care by the death or continued absence of his natural father could be denied assistance if his mother cohabited with another man.[24] The state of Alabama argued that it was within the state's power to discourage immorality and illegitimacy through the denial of AFDC assistance.[25] In addition, Alabama maintained that the presence of the "substitute father" meant the child was not deprived of parental support or care.[26] In invalidating the Alabama rule, the Supreme Court held that federal standards did not allow for Alabama's interpretation of the term "parent" as including a "substitute father."[27] Chief Justice Warren, writing for the majority, made an extensive examination of the legislative history and the administrative interpretation of the AFDC program to explain why the policies behind Alabama's exclusions were impermissible.[28] The Chief Justice concluded that although such policies may have justified the exclusions at the time of the inception of the AFDC program, modern amendments to the Act[29] emphasized that such matters as immorality and illegitimacy are to be dealt with through ancillary rehabilitative services rather than through a denial of assistance.[30]

Although *King* did invalidate the Alabama eligibility condition, the decision left unclear exactly under what situations state-imposed eligibility conditions would be invalidated in the future.[31] The confusion appeared to be clarified by the interpretation placed on the *King* decision

24. The Alabama regulation provided that the income of any man who "cohabited" with a needy child's mother was to be included in the child's resources for purposes of determining need. 392 U.S. at 311.

25. *Id.* at 320.

26. *Id.* at 327.

27. *Id.* at 329-30. *See also* Lewis v. Martin, 397 U.S. 552 (1970), where the Court held reasonable an HEW regulation, 45 C.F.R. § 233.90(a) (1973), prohibiting a state from presuming that the income of a stepfather is available to a child unless, under state law, the stepfather has a legal obligation to support the child.

28. 392 U.S. at 325-26.

29. These amendments provided for rehabilitative services which include programs for: the improvement of unsuitable homes, 42 U.S.C. § 602(a)(14) (1970); family planning, *id.* § 602(a)(15), *as amended,* (Supp. II, 1972); and the establishment of the paternity of illegitimate children, *id.* § 602(a)(17).

30. 392 U.S. at 326-27.

31. However, some lower courts had considered the ruling in *King* to be:

> [A]bsent specific indications of Congressional authorizations for the states to exclude a class of dependent children by narrowing a specific federally-imposed eligibility factor, any state eligibility standards which exclude persons eligible for assistance under the federal standards are in conflict with Congressional intent and void under the federal statute.

Stoddard v. Fisher, 330 F. Supp. 566, 571-72 (D. Me. 1971); *accord,* Doe v. Hursh, 328 F. Supp. 1360 (D. Minn. 1970); Woods v. Miller, 318 F. Supp. 510 (W.D. Pa. 1970); Cooper v. Laupheimer, 316 F. Supp. 264 (E.D. Pa. 1970); Doe v. Shapiro, 302 F. Supp. 761 (D. Conn. 1969).

in *Townsend v. Swank*.[32] *Townsend* involved a challenge to an Illinois statute limiting assistance for the eighteen to twenty-one age group to individuals attending high school or vocational school and excluding those in a college or university.[33] Federal criteria state that a needy child between the ages of eighteen and twenty-one regularly attending a school, college, or university, or participating in vocational or technical training is eligible for assistance.[34] The issue was whether states could limit assistance within an age group to only a certain subclass of eligible individuals. Justice Brennan concluded that although the Act's legislative history did show that whenever Congress extended AFDC eligibility to older children, states were given the option of participating in the new age group, there was no indication in that history to suggest Congress intended to give the states "an option to tailor eligibility standards within the age group . . . ."[35] In holding the Illinois statute invalid, Justice Brennan, referring to the earlier decision in *King*, noted:

> *King* v. *Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under the federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause.[36]

The latest Supreme Court affirmation of the *Townsend* interpretation of *King* came in 1972 in *Carleson v. Remillard*.[37] In *Carleson* the issue was whether absence for military service was within the meaning of the term "continued absence from the home" found in the federal definition of eligibility.[38] California's adoption of a regulation[39] excluding absences for military service from the definition of "continued absence" was challenged. The Court's examination of the Act and its legislative history produced no evidence of any congressional intent to limit "continued absence" to situations of divorce or desertion, or of any congressional authorization to exclude children whose parent is absent for military

32. 404 U.S. 282 (1971).
33. ILL. ANN. STAT. ch. 23, § 4-1.1 (Smith-Hurd 1968).
34. 42 U.S.C. § 606(a) (1970).
35. 404 U.S. at 288.
36. *Id.* at 286.
37. 406 U.S. 598 (1972).
38. 42 U.S.C. § 606(a) (1970).
39. Calif. Dep't Soc. Welfare Reg. EAS § 42-350.11. The rule provided that a "continued absence" did not exist when one parent was physically absent from the home on a temporary basis. 406 U.S. at 599 n.1. Examples of such temporary absences cited in the rule included visits, trips in connection with business, and active duty in the military services.

service.[40] In holding the California regulation invalid, Justice Douglas, writing for the majority, quoted with approval the *Townsend* interpretation of *King*.[41]

The test which seemed to evolve through the *King-Townsend-Carleson* trilogy was one of "statutory entitlement;"[42] *i.e.*, that state conditions which denied assistance to individuals eligible under the federal definitions of eligibility were invalid unless the variance from the federal standards was authorized by an expression of congressional intent in either the Act or its legislative history. One federal district court stated that after *King, Townsend,* and *Carleson*:

> (1) The states may not impose more restrictive eligibility conditions for receiving A. F. D. C. than those set out in the Social Security Act;
>
> (2) In order to exclude an applicant who would have been covered under the Social Security Act, the state must rely upon legisiative history or statutory language "clearly evidencing" Congressional intent to allow the exclusion of the applicant;
>
> (3) HEW regulations purporting to make eligibility for certain groups of applicants optional with the states are of no effect in the absence of Congressional intent to allow such exclusions.[43]

Even HEW considered the *Townsend* interpretation of *King* to imply that states could no longer vary eligibility standards from the federal criteria without clear congressional authority.[44]

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40. 406 U.S. at 602.

41. The importance of our holding [in *King*] was stressed in *Townsend* v. *Swank*, 404 U.S. 282, 286:

> "*King* v. *Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under *federal* AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." (Emphasis supplied.)

406 U.S. at 600.

42. The "statutory entitlement" theory was succinctly stated by the district court in *King*:

> Aid to Dependent Children financial assistance is a statutory entitlement under both the laws of Alabama and the Federal Social Security Act, and where the child meets the statutory eligibility requirements he has a right to receive financial benefits under the program.

277 F. Supp. 31, 38 (M.D. Ala. 1967), *aff'd*, 392 U.S. 309 (1968). *See generally* Note, *Social Welfare—An Emerging Doctrine of Statutory Entitlement*, 44 NOTRE DAME LAWYER 603 (1969).

43. Alcala v. Burns, 362 F. Supp. 180, 183 (S.D. Ia. 1973).

44. Although the implications of the *King* reasoning have not been entirely clear until the decision in *Townsend*, it now appears that Section 402(a)(10)

Although certain language in the *King, Townsend,* and *Carleson* opinions does lend support to the "statutory entitlement" theory, the holdings in those cases may be interpreted alternatively as supporting a method of statutory construction which invalidated eligibility conditions when they were inconsistent with the basic purposes of the AFDC program.[46] As noted previously, the eligibility condition invalidated in *King* was found to be inconsistent with the current efforts of the AFDC program to deal with the problems of illegitimacy and immorality through rehabilitation services rather than through the denial of assistance.[47] The eligibility condition invalidated in *Townsend* was found to be inconsistent with the express legislative intent to include "needy children under 21 who are regularly 'attending a school, college, or university.' "[48] The eligibility condition invalidated in *Carleson* might have been found inconsistent with the underlying purpose of assisting families which have no control over their economic situation.[49] Such an interpretation leaves the state the discretion to adopt eligibility conditions which vary from the federal eligibility standards, even without express congressional authorization, so long as they are consistent with the purposes and changing focus of the AFDC program.[50]

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must be interpreted as federalizing State AFDC eligibility standards. Thus, eligibility standards will have to fully implement the Federal matching definitions unless there is clear evidence in the statute or its legislative history that the State has a choice.

HEW, Opinion of the U.S. Supreme Court in *Townsend* v. *Swank* and *Alexander* v. *Swank* decided December 20, 1971, at 2 (undated) (unpublished memorandum written between Dec. 20, 1971 and Jan. 28, 1972, on file with the *Indiana Law Journal*).

45. *See* note 41 *supra* & text accompanying notes 36 & 41 *supra.*

46. For a pre-*Dublino* suggestion that the proper test for additional eligibility conditions should be whether the challenged condition is consistent with the underlying purposes of the AFDC program see Rosen v. Hursh, 464 F.2d 731, 735 (8th Cir. 1972).

HEW standards, embodied in the so-called "Condition X," prohibited state eligibility standards not reasonably related to the purposes of the federal statute. *See generally AFDC Eligibility, supra* note 2, at 1221-25; Comment, *Welfare's "Condition X,"* 76 YALE L.J. 1222 (1967) [hereinafter cited as *"Condition X"*].

The term "Condition X" evolved from the agency's thought that its policy was another conformity requirement for state plans in addition to the requirements set out in § 2(a) of the various titles of the Act; hence, "condition 2(a)(x)" or "Condition X." *AFDC Eligibility, supra* note 2, at 1221 n.24, *citing* F. White, Equitable Treatment Under the Public Assistance Titles, Nov. 5, 1963, at 8 n.9. The White paper was prepared by a research assistant at HEW and does not represent official HEW policy. *"Condition X," supra,* at 1222 n.5.

47. *See* text accompanying notes 28-30 *supra.*

48. 404 U.S. at 290, *quoting* S. REP. No. 404, 89th Cong., 1st Sess. 147 (1965).

49. 406 U.S. at 603-04.

50. The early legislative history of the AFDC program did suggest that states may be allowed to adopt a few conditions not explicitly permitted by the Act, and "impose such other eligibility requirements—as to means, moral character, etc.—as it sees fit." H.R. REP. No. 615, 74th Cong., 1st Sess. 24 (1935); S. REP. No. 628, 74th Cong., 1st Sess. 36 (1935). *See also AFDC Eligibility, supra* note 2, at 1230-31.

Early suggestions of a weakening of the "statutory entitlement" theory surfaced in *Jefferson v. Hackney.*[51] In *Jefferson,* Texas' method of computing the ratable reduction factor[52] in determining welfare payments was challenged. The plaintiffs contended that the Texas method was impermissible because it removed from the welfare rolls individuals otherwise eligible for assistance under federal criteria.[53] In upholding the Texas system the Supreme Court acknowledged that states are forbidden from "creating certain exceptions to standards specifically enunciated in the federal Act."[54] However, the Court noted that such a limitation did not enact a "generalized federal criterion to which States must adhere in their computation of standards of need, income, and benefits."[55]

Thus, *Jefferson* left to the states the discretion to reduce their welfare rolls through manipulations of the standard of need. However, the decision in *Carleson* was handed down one week after *Jefferson.* This seemed to reaffirm the vitality of the *Townsend* interpretation of *King* and to suggest that reduction of welfare rolls through the imposition of

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Although *King*'s interpretation of the modern amendments focusing on rehabilitative services implies that states may no longer adopt eligibility conditions related to moral character, it does not necessarily follow that other categories of conditions would also be impermissible.

51. 406 U.S. 535 (1972). *See generally* Note, *What Remains of Federal AFDC Standards After Jefferson v. Hackney?,* 48 IND. L.J. 281 (1972) [hereinafter cited as *AFDC Standards*].

52. Ratable reduction permits the state to pay only a certain percentage of the recipient's need.

> 53. Although [the plaintiffs] are needy and meet the other characteristics of dependency in § 406, and thus eligible under the federal test of § 406, they have been denied AFDC payments by application of a state eligibility test more narrow than § 406.

Supplemental Brief for Appellants at 3, Jefferson v. Hackney, 406 U.S. 535 (1970).

The challenged Texas method permitted the application of the reduction factor prior to the subtraction of the recipient's income from the standard of need. 406 U.S. at 539. For example, consider a family which meets the standards of 42 U.S.C. § 606 (1970) with a need of $200, income of $100, and residing in a state with a 50% ratable reduction factor:

Texas Method		Alternative Method	
$200	(need)	$200	(need)
× 50%	(ratable reduction factor)	− $100	(income)
$100		$100	
− $100	(income)	× 50%	(ratable reduction factor)
0	(benefits)	$ 50	(benefits)

See AFDC Standards, supra note 51, at 286 n.41. Using the alternative method, the family would be eligible for AFDC benefits whereas using the Texas method, the same family would be denied AFDC benefits.

54. 406 U.S. at 545.

55. *Id.*

eligibility conditions unrelated to need remained impermissible.[56]

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES V. DUBLINO

The Supreme Court decision in *New York State Department of Social Services v. Dublino*[57] offers the latest challenge to interpreting the *King-Townsend-Carleson* rule. At issue in *Dublino* was whether the New York Work Rules[58] were in conflict with the Act in general and the Work Incentive Program (WIN) provisions[59] of the AFDC program in particular. The questions raised were whether states could adopt independent work programs for AFDC recipients, and, if so, whether the state work programs could in effect provide additional conditions of eligibility for AFDC recipients. Justice Powell's majority opinion focused on the question of whether the federal WIN program pre-empted[60] the area of work programs under AFDC; *i.e.*, "whether Congress intended WIN to provide the exclusive mechanism for establishing work rules under AFDC."[61] The Court held there was no pre-emption[62] and reversed the three-judge district court's finding that the Work Rules were invalid on this ground.[63] The case was remanded to the district court to consider whether some particular sections of the Work Rules might contravene specific provisions of the Act.[64]

Doubts concerning the continuing vitality of the statutory entitlement test are raised by the Supreme Court's treatment of the district court's opinion. The majority paid little attention to the lower court's interpretation of the *King-Townsend-Carleson* test and to its conclusion that a conflict between the Work Rules and the Act, however trivial, makes the eligibility factor impermissible without express congressional authorization. The lower court expressed its understanding of the *King-Townsend-Carleson* test as:

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56. *AFDC Standards, supra* note 51, at 287.

57. 413 U.S. 405 (1973).

58. Ch. 102 [1971] N.Y. Laws 634, *as amended*, N.Y. Soc. SERV. LAW § 131(4) (McKinney Supp. 1973).

59. 42 U.S.C. §§ 602(a)(19), 630-44 (Supp. I, 1971).

60. As Justice Powell noted, the term "pre-emption" is used here in "a rather special sense" since the Work Rules were adopted as part of the State's participation in a federal program. 413 U.S. 411 n.9. Normally the pre-emption question is whether a federal statute precludes the enactment of independent state legislation dealing with the same area. However, having noted that *Dublino* does not present the classic case of pre-emption, Justice Powell did not hesitate using pre-emption precedents. The majority's use of pre-emption precedents was criticized by the dissent as inapposite. *Id.* at 430 n.9 (Marshall, J., dissenting).

61. *Id.* at 411 n.9.

62. *Id.* at 422.

63. Dublino v. New York State Dep't of Social Serv., 348 F. Supp. 290 (W.D.N.Y. 1972).

64. 413 U.S. at 422-23.

> [A] state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause.[65]

Interpreting the *King-Townsend-Carleson* test to require the invalidation of state eligibility conditions even slightly in conflict with the Act, the court concluded that since there was an unauthorized conflict between the Work Rules and the Act, the eligibility conditions provided by the Work Rules were impermissible.[66] However, Justice Powell's failure to follow the lower court's interpretation of the *King-Townsend-Carleson* test as well as his assertion that only substantial conflicts merit judicial resolution[67] suggests that the mere finding of a conflict between the eligibility condition and the Act will not be sufficient to invalidate an inconsistent eligibility condition.

Furthermore, the Court used the following language to distinguish *Dublino* from the *King-Townsend-Carleson* trilogy:

> In those cases [*King, Townsend, Carleson*] it was clear that state law excluded people from AFDC benefits who the Social Security Act expressly provided would be eligible. The Court found no room either in the Act's language or legislative history to warrant the State's additional eligibility requirements. Here, by contrast, the Act allows for complementary state work incentive programs and procedures incident thereto —even if they become conditions for continued assistance.[68]

Justice Powell's interpretation of the three earlier cases effectively reverses their seeming presumption that state eligibility conditions are invalid unless express congressional authorization is shown. Justice Powell treats the cases as holding that the Act clearly included these recipients, while those cases themselves had seemed to rely on the fact that the recipients had not been expressly excluded.[69] In addition,

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65. 348 F. Supp. at 295, *quoting* Townsend v. Swank, 404 U.S. 282, 286 (1971).
66. 348 F. Supp. at 295.
67. In considering the question of possible conflict between the state and federal work programs, the court below will take into account our prior decisions. Congress "has given the States broad discretion," as to the AFDC program, . . . and "[s]o long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act," the courts may not void them. . . . Conflicts, to merit judicial rather than cooperative federal-state resolution, should be of substance and not merely trivial or insubstantial.

413 U.S. at 423 n.29 (citations omitted).
68. *Id.* at 421-22.
69. *See* note 41 *supra* & text accompanying notes 36 & 41 *supra*. In his *Dublino*

Justice Powell's conclusion that the Act allows for complementary work programs "even if they become conditions for continued assistance"[70] would hardly seem to meet the requirement of clear evidence of congressional intent necessary for the establishment of the validity of eligibility conditions under previous interpretations of *King, Townsend,* and *Carleson.* Justice Powell points to no express congressional authorization but infers that Congress intended to permit complementary work programs from the limited operation of the WIN program.[71] Although the majority opinion in *Dublino* did not overrule the earlier holdings in *King* and its progeny,[72] it could severely limit the potential impact of those decisions.

These variations from previous interpretations of the *King-Townsend-Carleson* trilogy suggest a shift in the method of determining the validity of state-imposed eligibility conditions. *Dublino* may direct subjective consideration of whether the challenged eligibility condition is consistent with the policies and changing focus of the AFDC program as evidenced by modern amendments, in place of the objective search of the Act or its legislative history for clear expressions of congressional authorization. Thus, *Dublino* would be recognition of state discretion in delineating the scope of individual programs even in some cases where there is no express congressional authorization. State eligibility conditions consistent with the basic policies of the AFDC program would be permissible.

THE IMPACT OF DUBLINO

Judicial response to *Dublino* has not been uniform.[73] The confusion

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dissent, Justice Marshall emphasized the importance of a clear statement of legislative intent to permit variation from federal AFDC eligibility requirements.

> In order to lessen the possibility that erroneous beliefs will lead state legislators to single out politically unpopular recipients of assistance for harsh treatment, Congress must clearly authorize States to impose conditions of eligibility different from the federal standards.

413 U.S. at 432.

70. 413 U.S. at 422.

71. *Id.* at 418-21.

72. *Id.* at 423 n.29.

73. In Doe v. Lukhard, 363 F. Supp. 823 (E.D. Va. 1973), the court applied the traditional interpretation of the *King-Townsend-Carleson* test to the issue of whether a state may exclude unborn children from the AFDC program. The court made a search of the Act and its legislative history to determine whether there was clear evidence of congressional authorization for the exclusion of unborn children from the AFDC program. The court noted that the resolution of this issue under the *King-Townsend-Carleson* test was not altered by *Dublino,* stating that in *Dublino* the "[Supreme] Court reaffirmed the trilogy [*King-Townsend-Carleson*] holding that states may not exclude from AFDC benefits those eligible under the Social Security Act . . . ." *Id.* at 827 n.5; *accord,* Green v. Stanton, 364 F. Supp. 123 (N.D. Ind. 1973). A second approach views *Dublino* as establishing new standards for eligibility conditions connected with state work programs:

over how *Dublino* relates to other AFDC eligibility issues stems from the combination of the Court's willingness to reaffirm the holdings of *King, Townsend,* and *Carleson* and its eagerness to place a new interpretation on those holdings. Admittedly, the *King-Townsend-Carleson* cases do support an alternative method of statutory interpretation which would permit greater state discretion in adopting additional conditions of eligibility.[74] But if this is the path chosen by *Dublino,* its failure to establish adequate standards for controlling future use of this greater state discretion is a major weakness.

Justice Powell's inspection of the policies of the AFDC program[75] to support his contention that states may adopt complementary state work programs even if they become additional conditions of eligibility[76] does suggest that a state eligibility condition must be consistent with some purpose of the program. However, Justice Powell satisfies himself with the finding of a single policy and pays little attention to the overall focus of the program. A better approach was used by Chief Justice Warren in *King.*[77] The Chief Justice there recognized that while the Act had many underlying policies, not all of them were intended to be implemented by manipulating conditions of eligibility.[78] Similarly, Justice Marshall in his dissent in *Dublino* appreciated the complexity of AFDC. He saw the WIN program as "designed to accommodate Congress' dual interests in guaranteeing the integrity of the family and maximizing the potential for employment of recipients of public assistance."[79] Likewise the entire AFDC program can be viewed as an attempt to accommodate several antagonistic congressional interests in a single program. It would be a difficult judicial chore to require the

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> [T]he Supreme Court's acknowledgement that the states have some latitude in formulating their own employment rules . . . may indicate that such inconsistencies with the federal law as will justify invalidation must be more substantial than suggested by the district courts in either *Dublino* or the instant case.

Jeffries v. Sugarman, 481 F.2d 414, 417 (2d Cir. 1973). A third approach has been to extend the latitude noted in *Dublino* beyond the scope of work programs. Doe v. Norton, 365 F. Supp. 65 (D. Conn. 1973).

74. *See* text accompanying notes 45-50 *supra.*

75. 413 U.S. at 418-21.

76. *Id.* at 422.

77. In *King,* Chief Justice Warren emphasized the changing focus of the AFDC program:

> The most recent congressional amendments to the Social Security Act further corroborate that federal public welfare policy now rests on a basis considerably more sophisticated and enlightened than the "worthy-person" concept of earlier times.

392 U.S. at 324-25.

78. *See* text accompanying notes 28-30 *supra.*

79. 413 U.S. at 428.

weighing of conflicting AFDC policies.[80] However, to permit the validation of an eligibility condition only because it is consistent with an underlying policy of the AFDC program, without consideration of the relationship of that policy to the overall focus of the AFDC program, may produce results not intended by Congress.

A recent district court decision illustrates the problems created by following Justice Powell's approach which does not require consideration of the basic objectives of the AFDC program. The court in *Doe v. Norton*[81] was asked to determine the validity of a Connecticut statute permitting incarceration for contempt of a mother of an illegitimate child receiving AFDC benefits if she failed to give welfare officials the name of the putative father of the child.[82] Relying on *Dublino*,[83] the three judge district court held the Connecticut statute valid since it was consistent with an underlying policy of the AFDC program "of determining the paternity of those needy children born out of wedlock"[84] and did not violate any specific provisions of the Act.[85] It is hard to imagine that the incarceration of the mother and the resulting separation of mother and child would be consistent with the underlying policy of maintaining family integrity mentioned in the statement of purpose of the program[86] and reiterated by Justice Marshall in *Dublino*.[87] In validating the Connecticut statute, the court failed to recognize that the policy of determining the paternity of illegitimate needy children could be subordinate to the broader policy of maintaining family integrity.[88]

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80. *Dublino* suggests a partial solution to the problem of balancing the policies of the AFDC program. The courts could retreat from judicial intervention in eligibility disputes in favor of "cooperative federal-state resolution" when the conflict between the state eligibility condition and the Act is minor. *Id.* at 423 n.29.

81. 365 F. Supp. 65 (D. Conn. 1973).

82. CONN. GEN. STAT. ANN. § 52-440b (Supp. 1973). Until recently, there seemed to be little support for state eligibility conditions which required a mother's cooperation in the determination of the paternity of illegitimate children as the result of a series of decisions, some of which were summarily affirmed by the Supreme Court. *E.g.*, Meyers v. Juras, 327 F. Supp. 759 (D. Ore.), *aff'd mem.*, 404 U.S. 803 (1971).

83. 365 F. Supp. at 70-73.

84. *Id.* at 71.

85. *Id.* at 73.

86. 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 . . . .

42 U.S.C. § 601 (1970).

87. 413 U.S. at 427-30.

88. The court completely missed that line of analysis in seeking to determine

As *Doe* illustrates, closer attention should be given to the interplay of the conflicting policies of the AFDC program before rushing to validate a state-imposed eligibility condition merely because it is consistent with a single purpose of the program. If the Supreme Court is no longer willing to accept the full extent of the constraints which previous interpretations of the *King-Townsend-Carleson* trilogy placed on state imposition of eligibility conditions unrelated to need, the Court must at least adopt sufficient standards to prevent helter-skelter validation of additional eligibility conditions.

CONCLUSION

Dublino may result in an increase in the amount of discretion which federal courts will permit states in imposing additional conditions for AFDC eligibility. However, since the AFDC program is the product of the tension created by antagonistic congressional goals, the proper question to be considered in reviewing the greater state discretion should be whether the eligibility condition is consistent with both an underlying policy of the AFDC program and the overall focus of the program.

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whether an additional condition of eligibility had been imposed. The court contended that the incarceration of the mother was not an additional condition of eligibility, stating:

> While the incarceration of a contemptuous mother may not always be in her child's best interest, this does not establish any irreconcible conflict between the two acts.

365 F. Supp. at 73. Even accepting this formulation of the issue in the case the court may have been wrong. It could be argued that the threat of incarceration has the same effect as an additional condition of eligibility in molding the recipient's behavior in order to receive full enjoyment of AFDC benefits.