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WELFARE LAW—AID TO DEPENDENT CHILDREN AND THE
SUBSTITUTE PARENT REGULATION—THE STATE LOSES A
SCAPEGOAT, THE “MAN-IN-THE-HOUSE”

Mrs. Sylvester Smith and her five minor children had been recipients of public assistance for several years under the Aid to Families with Dependent Children Program¹ of the State of Alabama. On October 1, 1966, aid to the Smith family was terminated on the basis of ineligibility, pursuant to a so-called “substitute father” regulation.² A case worker had discovered that a Mr. Williams visited Mrs. Smith on weekends and had sexual relations with her. Mr. Williams was not the father of any of the Smith children; he lived with and supported his wife and nine children. Mr. Williams expressed no interest in supporting the Smith family, and was in any event financially incapable of the task. Nevertheless, by reason of his relationship with Mrs. Smith, the Alabama Welfare Department ruled, pursuant to regulation, that Mr. Williams was a “substitute father”; thus the Smith family became ineligible for assistance. Within two and one-half years of its enactment this regulation eliminated 16,000 children from Alabama’s AFDC rolls—a reduction of twenty-two per cent.³

A class action seeking declaratory and injunctive relief was filed in the United States District Court. The complaint alleged that the substitute father regulation was an arbitrary classification which denied assistance to children who were otherwise eligible, in violation of the Social Security Act of 1935⁴ and the equal protection clause of the fourteenth amendment. A three-judge court held that the regulation deprived needy children of equal protection of the law and issued a permanent injunction restraining enforcement of the regulation.⁵ On appeal, the United States Supreme Court unanimously affirmed, solely on the grounds of noncompliance with the Social Security Act, but not on any constitutional grounds. *King v. Smith*, 392 U.S. 309 (1968).

When the *King* case was decided, thirty-one states and the District of Columbia had welfare regulations falling within the general classification of

¹ 42 U.S.C. §§ 601 *et seq.* (Supp. III, 1968); ALA. CODE tit. 49, § 17 (1958) (hereinafter referred to as AFDC).

² ALABAMA PUBLIC ASSISTANCE MANUAL, Pt. I, Ch. II, Subd. V (A) (1964), as quoted in Brief for Appellees at 2, *King v. Smith*, 392 U.S. 309 (1968).

³ *King v. Smith*, 392 U.S. 309, 315 (1968).

⁴ §§401 *et. seq.*; 42 U.S.C. §§ 601 *et. seq.* (Supp. III, 1968).

⁵ *King v. Smith*, 277 F. Supp. 31 (D. Ala. 1967). Federal jurisdiction lies notwithstanding claimant’s failure to exhaust administrative remedies at the state level. A three judge court may be convened to hear a constitutional challenge to a state regulation. 42 U.S.C. 1983 (1964); 28 U.S.C. §§ 1383, 2281 (1964). See *Damico v. California*, 389 U.S. 416 (1967).

"man-in-the-house" rules, including Alabama's substitute father regulation.⁶ That the instant case rendered over one-half of these state regulations obsolete demonstrates its broad impact. It is the purpose of this note to set out the background of the case and explain the bases of the *King* decision, to examine the subsisting causes of "man-in-the-house" rules, and finally, to present the proposition that further litigation will ensue on certain "man-in-the-house" rules not reached by the *King* decision.

Aid to Families with Dependent Children is a federally funded assistance program created by the Social Security Act of 1935.⁷ This program grants public assistance to any "needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with" one of a listed number of relatives.⁸ AFDC programs are operated by the state with matching funds from the federal government. Within the broad limits of the Social Security Act, each state has substantial discretion to administer their AFDC program according to community standards, available resources, the generosity of state legislators, and so on. Thus, each state may determine the level of need for eligibility and establish grants at a level it deems sufficient.⁹

The broad discretion exercised by state administrators is clearly demonstrated by the various "man-in-the-house" rules in force prior to the *King* decision. These provisions were directed at an ineligible, unrelated adult (*i.e.*, a paramour) present in the household of a family under AFDC. For purposes of general analysis these provisions will be considered in terms of effect and in terms of the various interpretations of "presence" of a paramour. In the latter context, state provisions run the gamut of legislative intendment. The Alabama regulation, at one extreme, deemed a man present in the home if he had sexual relations once a week with the mother in her home or elsewhere.¹⁰ At the other extreme, the District of Columbia deemed a man present in the household if he undertook permanent residence and adopted a "father-role" towards the children.¹¹ In terms of their effect, "man-in-the-house" provisions fall into two categories. The first is the substitute parent regulation which

⁶ *Supra* note 2.

⁷ §§ 401 *et. seq.*; 42 U.S.C. §§ 601 *et. seq.* (Supp. III, 1968).

⁸ 42 U.S.C. § 606(a) (Supp. III, 1968).

⁹ This discretion has created substantial disparities in the assistance granted by various states. For example, the average payment per month to a family under AFDC in 1967 was about \$224 in New Jersey, \$221 in New York, \$53 in Alabama, and \$39 in Mississippi. *King v. Smith*, *supra* note 3, at 319.

¹⁰ *See* note 13 *infra*.

¹¹ DISTRICT OF COLUMBIA HANDBOOK OF PUBLIC ASSISTANCE POLICIES AND PROCEDURES, E.L. 4.5 (IV)(CE) (1965); *see also* Appendix table 2 to Brief for Appellee, *King v. Smith*, *supra* note 3; Appendices B & C to brief for NAACP as Amicus Curiae, *King v. Smith*, *supra* note 3.

renders the entire family ineligible for aid. The other category alters the level of need (and hence the level of assistance) by presuming contributions from the man's income.¹²

The Alabama substitute father regulation provides a dramatic example of the operation and effect of "man-in-the-house" provisions. According to the Alabama regulation, an able-bodied man is deemed a substitute parent if he regularly or frequently has sexual relations with an AFDC mother in her home or elsewhere.¹³ The AFDC program specifically provides that only a needy child deprived of parental support is eligible for aid.¹⁴ Therefore any family within the Alabama regulation was ineligible by reason of the presence of two "parents," notwithstanding matters of need or the lack of actual contributions from the substitute parent.

While disclaiming all moral judgments relating to sexual behavior, attorneys for the State of Alabama offered several practical arguments in defense of this regulation. First, the substitute parent represents a resource for support of the family. The regulation induces a man to assume the responsibilities of family life. This results in savings to the welfare department and permits eligible families to receive larger proportions of limited welfare funds.¹⁵

Second, the State has a legitimate interest in promoting stable marital relationships, and conversely, an interest in restraining illicit relationships. Since families whose parents are legally married are ineligible for AFDC regardless of need, it was argued that aid to families with illicit relationships would discriminate against legal relationships. Thus, the substitute parent regulation refuses a monetary advantage to people in an illicit relationship with the dual effect of removing a deterrent to marriage and adding a deterrent to the production of illegitimate children.¹⁶

¹² Brief for Appellee, *supra* note 11.

¹³ ALABAMA PUBLIC ASSISTANCE MANUAL, *supra* note 2, provides: "V. Child ineligible if there is a father or mother substitute.

A. Father substitute: An able-bodied man, married or single, is considered a substitute father of all the children of the applicant/recipient mother living in her home, whether they are his or not, if: (1) he lives in the home with the child's natural or adoptive mother for the purpose of cohabitation; or (2) though not living in the home regularly, he visits frequently for the purpose of cohabiting with the child's natural or adoptive mother; or (3) he does not frequent the home but cohabits with the child's natural or adoptive mother elsewhere. Pregnancy or a baby six months or under is prima facie evidence of a substitute father as indicated above." (Commissioner King testified that regular or frequent visits for cohabitation means at least one visit per week. Appendix to Briefs of Appellee and Appellant, at 84-85, *King v. Smith*, *supra* note 3.)

¹⁴ 42 U.S.C. § 602(b) (Supp. III, 1968). AFDC-UP provides for assistance to families in which both parents are present. 42 U.S.C. § 607 (Supp. III, 1968). This is a voluntary program and only twenty-one states participate. Alabama is not a participant.

¹⁵ Brief for Appellant at 45-47, *King v. Smith*, *supra* note 3.

¹⁶ *Id.* at 11, 14-15.

Finally, it was argued that the substitute parent regulation provides detailed procedural safeguards to prevent abuse. A person may request a hearing to challenge the application of the regulation, and a recipient may be reinstated upon providing proof that the relationship had ceased. Termination of aid could be stayed up to sixty days to allow the recipient time to present evidence.¹⁷

In *King*, Chief Justice Warren affirmed the State's interest in discouraging illicit relationships and in efficiently allocating its welfare funds; yet he held that such interests cannot justify disqualification for AFDC benefits.¹⁸ This decision turned on a statutory definition of "parent" which the Chief Justice derived from a number of sources. First, the legislative history of the Social Security Act indicates that the drafters intended ADC assistance for families which were deprived of a "breadwinner."¹⁹ This special category was devised because other forms of assistance, such as unemployment compensation, were not available to fatherless families. In addition, the term "parent" throughout Title IV denotes legal support. For example, one provision requires state officials to report a parent who deserts his family to the appropriate law enforcement officials.²⁰ Finally, official HEW policy supports this latter definition. For example, the Handbook on Public Assistance Administration provides that a stepparent not required by state law to support a child need not be considered the child's parent.²¹ Therefore, the Court held the Alabama substitute father regulation invalid because it defines parent in a manner inconsistent with the Social Security Act.

A second basis of the Court's decision lay in the rehabilitative, in contrast to punitive, thrust of recent welfare legislation. The Chief Justice observed that the morality of behavior of welfare recipients had in the past been relevant in determining eligibility for public aid.²² However, such punitive

¹⁷ *Id.* at 427-29.

¹⁸ *King v. Smith*, *supra* note 3, at 320.

¹⁹ *King v. Smith*, *supra* note 3, at 320 n.17.

²⁰ 42 U.S.C. § 402(a)(11) (Supp. III, 1968).

²¹ *King v. Smith*, *supra* note 3, at 331; HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, Pt. IV, § 3412 (4) (1967) (hereinafter cited as HANDBOOK). This conclusion is not entirely correct. In fact, for years HEW refused to apply a clear, consistent definition of "parent" to state plans. Thus at least two states had substitute parent regulations substantially similar to the Alabama regulation that had been approved by HEW. MICHIGAN MANUAL OF POLICIES AND PROCEDURES, Pt. B, Item 259(2) (1955), as quoted in Appendix to Brief for NAACP as Amicus Curiae, at 27a, *King v. Smith*, *supra* note 3; NEW MEXICO DEPARTMENT OF PUBLIC WELFARE MANUAL 221, 722 (1964), as quoted in Appendix to Brief for NAACP as Amicus Curiae, at 32a, *King v. Smith*, *supra* note 3. For this reason Justice Douglas argued that the case must be decided on constitutional grounds. *King v. Smith*, *supra* note 3, at 334-38 (Douglas, J., concurring opinion).

²² *King v. Smith*, *supra* note 3, at 320-22.

measures are obsolete in view of HEW policy and recent amendments to the Social Security Act. A most dramatic example of an assertion of rehabilitative goals is the Fleming Ruling and the companion legislation that resulted from the Louisiana "suitable home" rule of 1960.²³ The Fleming Ruling and subsequent amendments to the Social Security Act led the Chief Justice to conclude that the protection of children is the paramount goal of AFDC.²⁴ Thus, it is "simply inconceivable . . . that Alabama is free to discourage immorality and illegitimacy by the device of absolute disqualification of needy children."²⁵

The Court's conclusion that the substitute father regulation is contrary to both HEW policy and the Social Security Act of 1935 was succinctly stated: "destitute children who are legally fatherless cannot be flatly denied federally funded assistance on the transparent fiction that they have a substitute parent."²⁶ Given this judicial pronouncement, two questions deserve consideration: first, how and why did "man-in-the-house" rules come about originally; and second, what will become of "man-in-the-house" rules not reached by the *King* decision?

The etiology of "man-in-the-house" rules lies in the moral judgments relating to sexual and social behavior that permeate all levels of welfare administration. The philosophy of public aid for "worthy persons only" is well documented in the history of welfare in this century.²⁷ A classic early example is the widow's pension program. Legislators, administrators, and case workers structured and operated the programs in a manner which ensured that only "morally fit" widows would receive aid. In Michigan, where unwed mothers were legally eligible for assistance, a 1934 study indicated that only twenty-five unwed mothers out of a total case load of 2,000 families were receiving aid.²⁸

Congressmen who drafted the Social Security Act also articulated a crite-

²³ The rule stated that families in an unsuitable home would be ineligible for aid. The birth of an illegitimate child rendered the home unsuitable. Within a few months of its enactment the suitable home rule eliminated 23,000 children from Louisiana's welfare rolls. BELL, *AID TO DEPENDENT CHILDREN*, 137-151 (1965). Then Secretary of HEW Fleming issued a statement declaring that "a state plan . . . may not impose an eligibility condition that would deny assistance with respect to a needy child on the basis that the home conditions in which the child lives are unsuitable. . . ." State Letter No. 452, Bureau of Public Assistance, Social Security Administration, Department of Health, Education and Welfare (1961).

²⁴ *King v. Smith*, *supra* note 3, at 325.

²⁵ *King v. Smith*, *supra* note 3, at 326.

²⁶ *King v. Smith*, *supra* note 3, at 334.

²⁷ See, e.g., BELL, *supra* note 23, 1-75; LEYENDECKER, *PROBLEMS AND POLICY IN PUBLIC ASSISTANCE* 45-57 (1955); Wedemyer & Moore, *The American Welfare System*, 54 CALIF. L. REV. 326, 328-29 (1966).

²⁸ BELL, *supra* note 23, at 9.

tion of "correct" moral behavior.²⁹ The use of "suitable home" policies for twenty-five years demonstrates that state officials clearly recognized moral sanctions implicit in the legislation. Furthermore, HEW policy officially sanctioned "suitable home" policies until 1945, and not until 1961 were such policies vigorously reversed.³⁰ Thus, the criteria of moral behavior have pervaded all levels of welfare administration in the past. Legislation expanding family services³¹ and HEW policies such as the Fleming Ruling³² indicate that the relevance of punitive morality is diminishing. However, the instant case clearly demonstrates that such moral considerations are not yet extinguished.

Although Alabama disclaimed the existence of moral sanctions in the substitute father regulation, their arguments in its defense are pregnant with moral implications. For example, Commissioner King of the Alabama Department of Pensions and Security testified that he did not think the State should be in a position of subsidizing relationships falling within the substitute father regulation.³³ An argument presented to the Court asserted that the Alabama regulation would reduce the AFDC caseload and permit a higher proportion of aid to families that remained eligible.³⁴ The subtle thrust of this argument is the implication that "good" families are more deserving than "bad" families.

In addition to the problem of punitive morality, "man-in-the-house" rules came into existence because of the failure of HEW to effectively enforce conformance with federal standards. The Secretary of HEW is charged by law with the responsibility of reviewing state plans to ensure conformity with federal policy and the constitutional rights of recipients.³⁵ However, objectionable policies have been approved,³⁶ and others, though disapproved, remained in force.³⁷ There are several explanations for this situation. First,

²⁹ H.R. REP. No. 615, 74th Cong., 1st Sess. 36 (1935); S. REP. No. 628, 74th Cong., 1st Sess. 36 (1935).

³⁰ *Supra* note 23.

³¹ BELL, *supra* note 23, 61-75; LEYENDECKER, *supra* note 27, 82-111.

³² *Supra* note 23.

³³ Appendix to Briefs of Appellee and Appellant at 711, King v. Smith, *supra* note 3.

³⁴ Brief for Appellant at 15, King v. Smith, *supra* note 3.

³⁵ 42 U.S.C. § 602(b) (Supp. III, 1968). HANDBOOK Pt. IV, § 2200(a) states: "The policies and procedures for taking applications and determining eligibility for assistance or other services will be consistent with program objectives; will respect the rights of individuals under the United States Constitution, the Social Security Act, Title IV of the Civil Rights Act of 1964; and all other relevant provisions of Federal and State laws; and will not result in practices that violate the individual's privacy or personal dignity, or harass him, or violate his constitutional rights."

³⁶ A Michigan regulation similar to the Alabama substitute parent provision was approved by HEW in 1963. BELL, *supra* note 23, at 113.

³⁷ HEW officials vigorously objected that the Alabama regulation did not conform to federal policy, yet Commissioner King enacted the regulation and it remained in force until

HEW does not always clearly define its own policies. This is best demonstrated by the *King* case which really developed from the fact that for years HEW had offered no clear definition of "parent." Thus, a number of states adopted varying interpretations, some approved, some disapproved. Second, HEW lacks effective procedures and sanctions to enforce conformity of state plans to federal policy. When the Secretary determines that a state plan is objectionable, a formal conformity hearing must be called in Washington. This is a cumbersome process and only sixteen hearings occurred between 1936 and 1961.³⁸ Furthermore, the only real sanction against a recalcitrant state is the withdrawal of federal funds from the category of assistance containing the offensive regulation. Federal funds constitute the bulk of state welfare grants, so this action would virtually eliminate assistance in a given category. This is indeed a drastic step, which has been applied only once in the history of the Social Security Administration.³⁹

These two factors, punitive morality and inefficient federal supervision, are, to a large extent, responsible for a wealth of arbitrary and discriminatory administrative devices.⁴⁰ The *King* case has voided one of these devices—the substitute parent regulation. However, certain "man-in-the-house" rules not reached by the *King* decision remain in force. Therefore, there is a distinct possibility of future litigation dealing with residual "man-in-the-house" rules. This possibility is diminished to the extent that the developing public consciousness of welfare problems and the concomitant expansion of rehabilitative programs reduce punitive morality considerations, and also to the extent that HEW effectively and consistently ensures conformity to federal policy and the constitutional rights of recipients. However, the situation past and present invites skepticism that further litigation will be avoided.

As discussed above, "man-in-the-house" rules fall into two distinct categories: the substitute parent regulation, which defines a paramour as a "parent," rendering the entire family ineligible for aid; the second category, which does not affect eligibility, but presumes contributions to the family from the man's income, thus lowering the amount of government assistance. The *King* case ruled only that aid may not be denied on the "transparent fiction" that the paramour is a parent.⁴¹ The question that remains unre-

a federal injunction issued about two and one-half years later. *King v. Smith*, *supra* note 3, at 326 n. 23.

³⁸ *BELL*, *supra* note 23, at 223 n. 33.

³⁹ *Hearing on H.R. 10032 Before the House Committee on Ways and Means*, 87th Cong., 1st Sess. 295 (1962).

⁴⁰ *See, e.g.*, *Anderson v. Burson*, No. 10443 (N.D. Ga. 1967) (employable mother regulation); *Northway v. Carter C.A.*, No. 67 C 292 (D. Mo. 1967) (residence requirement); *Williams v. Gandy*, No. G.C. 6728 (N.D. Miss. 1967) (hearings after termination); *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W.2d 4 (1957) (maximum benefits).

⁴¹ *King v. Smith*, *supra* note 3, at 334.

solved by case law is the extent to which states may use "man-in-the-house" rules to presume contributions to the support of needy families.

The policies of three states may serve to demonstrate the variations of such a regulation. A recent revision of Indiana policy states that an "unrelated adult person of the opposite sex . . . shall be responsible for . . . one share of shelter."⁴² This seems to be the most permissive policy imaginable; to require less from a nonrecipient would, in effect, make that person a direct recipient of benefits going to the entire household. Illinois applies a somewhat more restrictive policy. In Illinois, a person standing in *loco parentis* must pay one hundred per cent of the rent.⁴³ Rent payments are excluded from the budget of eligible children unless the man is unable to pay. In New Jersey, on the other hand, the entire income of a man in the household is computed in determining the family's needs.⁴⁴ The child remains eligible for aid, but the amount of the grant is reduced to the extent that the presumption of income reduces need. This income is presumed to be an available resource to the family whether or not it is in fact made available to the family.

The Indiana and Illinois policies may be justified as essentially budgeting arrangements and not conclusive presumptions of contributions. The New Jersey policy, however, is objectionable on two grounds: it is contrary to HEW policy, and it violates the constitutional rights of recipients.

Title IV of the Social Security Act provides that state agencies "shall, in determining need, take into consideration any other income and resources" available to recipients.⁴⁵ It is important to distinguish contributions actually made to a needy family from a presumption of contributions derived from a non-legal relationship. HEW policy permits only the former:

The State plan must provide that only income and resources that are, *in fact*, available to an applicant or recipient for current use on a regular basis will be taken into consideration in determining need and amount of payments.⁴⁶

A recent policy statement is even more explicit: "the presence in the home . . . of a 'man-in-the-house' is not an acceptable basis for finding of ineligibil-

⁴² Letter of A. Kelly, Director, Indiana Department of Public Welfare (Sept. 27, 1968), on file at Assistance Payments Administration, Social and Rehabilitative Service, Department of Health, Education, and Welfare in Chicago, Illinois.

⁴³ ILLINOIS DEPARTMENT OF PUBLIC AID MANUAL, Ch. 1250 (1967); ILLINOIS DEPARTMENT OF PUBLIC AID, OFFICIAL BULLETIN No. 67.37 (1967).

⁴⁴ DIVISION OF PUBLIC WELFARE, NEW JERSEY DEPT. OF INSTITUTIONS AND AGENCIES, CATEGORICAL ASSISTANCE BUDGET MANUAL, § 501.6(e) (1967), as cited in Graham, *Civil Liberties Problems in Welfare Administration*, 43 N.Y.U.L. REV. 836, 905 n.232 (1968).

⁴⁵ § 402(a)(7), 42 U.S.C. § 602(a)(7) (Supp. III, 1968).

⁴⁶ HANDBOOK, *supra* note 21, Pt. IV, § 3131(7) (1967) (emphasis added).

ity or for assuming the availability of income."⁴⁷ Therefore, the New Jersey policy which conclusively presumes the availability of the entire income of a man is contrary to HEW policy and the Social Security Act.

There are a number of constitutional arguments on which New Jersey's type of policy could be challenged in federal courts.⁴⁸ The proposition that public aid is a *right*, the refusal of which is a denial of due process of law, has gained prominence in legal writings.⁴⁹ However, judges generally give this proposition short shrift; there is as yet no constitutional right to receive public aid.⁵⁰

A stronger argument seems to be the proposition that a "man-in-the-house" rule which presumes a contribution before the fact is an arbitrary classification of need which denies a recipient the equal protection of the law. The basic requirement that state regulations affect like people in like circumstances is set out in *Gulf, Colorado and Santa Fe Ry. Co. v. Ellis*:

It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.⁵¹

The New Jersey "man-in-the-house" rule is an arbitrary classification scheme to the extent that a family's needs are presumed to be met by contributions which may, in fact, not occur.

Although the Supreme Court has expressed reluctance to apply the equal protection clause to protect economic interests,⁵² this should not be an obstacle to a decision against the New Jersey policy. The Court is "extremely sensitive when it comes to basic civil rights. . . ."⁵³ For example, although there is no absolute right to vote, the Court in *Harper v. Virginia Board of Elections* voided Virginia's poll tax on equal protection grounds.⁵⁴ The poll

⁴⁷ See 45 C.F.R. § 302.1(b) (1968).

⁴⁸ Where an action is brought without exhausting state remedies, a substantial constitutional question is a requisite for federal jurisdiction, *supra* note 5.

⁴⁹ *E.g.*, Harvith, *Federal Equal Protection and Welfare Assistance*, 31 ALBANY L. REV. 210 (1967); Reich, *The New Property*, 73 YALE L. J. 733 (1964).

⁵⁰ *E.g.*, *Smith v. Reynolds*, 277 F. Supp. 65, 67 (E.D. Pa. 1967); *but see* *Snell v. Wyman*, C.A. 67-2676 (S.D. N.Y. 1968) (Kauffmann, J., dissenting opinion).

⁵¹ 165 U.S. 150, 165-66 (1897).

⁵² *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911).

⁵³ *Levy v. Louisiana*, 391 U.S. 68, 71 (1968).

⁵⁴ 383 U.S. 663 (1966).

tax was held to have infringed a "right" that is "fundamental" in nature.⁵⁵ If the "right" to vote is "fundamental" certainly the "right" to receive at least minimal subsistence through public aid should also be "fundamental" and within the purview of the equal protection clause.

The Court's willingness to allow "any" reasonable set of facts to support a classification⁵⁶ should not effectively rebut an equal protection argument against the New Jersey policy. First, the New Jersey policy bears no reasonable relation to the goals of AFDC. In the *King* case, Chief Justice Warren observed that the protection of children is the paramount goal of AFDC.⁵⁷ He concluded:

Children who are told, as Alabama has told these appellees, to look for their food to a man who is not in the least obliged to support them are without meaningful protection. Such an interpretation of congressional intent would be most unreasonable, and we decline to adopt it.⁵⁸

The New Jersey policy is equally unreasonable because it may deny aid to a child by presuming contributions which he in fact does not receive.

Although many men living with AFDC families may in actuality make substantial contributions from their income, this does not provide a reasonable basis for the New Jersey policy. The New Jersey rule states that the income of the man "shall be deemed available."⁵⁹ This indicates that only the relationship is rebuttable; the presumption of contributions from the entire income is conclusive. This is certainly discriminatory against children who may receive no contributions, yet receive less aid than other children in equal need. Thus, the New Jersey policy operates to deprive eligible children of equal protection of the law.

All "man-in-the-house" rules which presume contributions or in other ways discriminate against recipients ought to be abolished; if they are not rescinded there will be a sequel to the *King* case. Increasing activity of legal aid services indicates that objectionable policies will not be tolerated as in the past.⁶⁰ In a broad context, then, the *King* case is but one stage in the development of case law defining—and refining—the rights of welfare recipients.

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⁵⁵ *Id.* at 667.

⁵⁶ *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580, 584 (1935).

⁵⁷ *King v. Smith*, 392 U.S. 309, 325 (1968).

⁵⁸ *Id.*, at 330.

⁵⁹ DIVISION OF PUBLIC WELFARE, NEW JERSEY DEPT. OF INSTITUTIONS & AGENCIES, CATEGORICAL ASSISTANCE BUDGET MANUAL § 501.6(e).

⁶⁰ *Supra* note 39.