10-1978

Califano v. Boles

Lewis F. Powell Jr.

Grant.
(Possibly limited to Qs 1 + 2

The DC invalidated a section of S/Security Act as discriminatory vs illegitimate children.

Petr also objects to the DC having certified a class + issued a injunction covering the class - ordering retroactive payments

Also could Hold initially for Califano v Elliott 77-1511

PRELIMINARY MEMORANDUM

January 19, 1979 Conference
List 1, sheet 1

No. 78-808-ADX

Appeal from WD Texas (Roberts)

3 J/Ct

Califano (HEW Secy)

v.

Boles (claimants of Social Security benefits)

Federal/Civil

Timely

SUMMARY: The DJ held unconstitutional the provision of the Social Security Act which denies Mother's Insurance benefits to women who were never married to a decedent although children of the woman and the decedent are entitled to Children's Insurance benefits.

FACTS: When Norman Boles died in 1971 he was married to Nancy Boles. Two sons were born of that marriage. The sons

I would note, as both questions 1 + 2 are substantial. I am not as sure as Jack that §402(g) is solely a children's benefit statute. Otherwise hold for No. 77-1511.

Paul

and Nancy Boles are receiving benefits under 42 U.S.C. § 402(g) which provides for separate benefits for mothers and children. Before Norman Boles married Nancy Boles he lived with resp Margaret Gonzales. Resp Boles was born while Norman Boles and Margaret Gonzales were living together. Resp Boles is also receiving benefits under § 402(g). Resp Gonzales has been denied benefits because she was never married to Norman Boles. Is she also a Resp

Resps sued petr claiming to represent the class of "all illegitimate children and their mothers who are presently ineligible for Mother's Insurance Benefits solely because 42 U.S.C. § 402(g)(1) restricts such benefits to women who were once married to the fathers of their children."

HOLDING BELOW: The DC certified the national class and held the statute unconstitutional because it violated equal protection by discriminating against illegitimate children. The court enjoined HEW from denying benefits to the class. The court also ordered petr to make retroactive payments to resp and to notify all members of the class that they are no longer ineligible for benefits solely because of the marriage requirement. According to the DJ the decision turned on the characterization of the benefits. Petr claimed that the Mother's Benefits were intended to benefit the mother and that denial of the benefits did not affect the child. Resps argued that the purpose of § 402 was to benefit the child and that paying benefits to the mother would result in benefit to the child. The DJ sided with resp.

In reaching that conclusion the DC relied upon Weinberger v. Wiesenfeld, 420 U.S. 636, 648-49 (1975). The purpose of the payment of benefits to the mother, according to the DC, was to

permit the mother to stay at home with the child.

CONTENTIONS: (1) Petr contends that the DC misinterpreted the purpose of the statutory scheme. According to petr the benefits payable to the mother were designed to compensate for her loss of financial support, not to provide an additional payment to the children. With that intent, the statute's reliance upon marriage as an indicator of economic dependence was reasonable. In addition, petr points out that the total benefits paid as a result of Mr. Boles' death are limited because they are based upon his lifetime earnings. Any money paid to resp Gonzales will necessarily reduce the amount paid to Mrs. Boles and her two children, thereby thwarting the primary purpose of the section -- to permit a surviving parent to forego outside employment and stay home with the children.

Resp argues that the payments are all designed to aid the children, citing Weinberger v. Wiesenfeld, 420 U.S. 636, 645-53 (1975). Resp supports that position by pointing out that a widow with no children receives no benefits; that benefits are terminated once the child is no longer in the woman's custody; and that the benefits are terminated after the child reaches a certain age. Other than benefits that are dependent upon the relationship with a child the woman must wait until she reaches a specified age before she can receive benefits in her own right.

Petr contends that the statute does not discriminate against illegitimates since they receive benefits under some conditions. Moreover, the status of illegitimacy is not suspect and this use is permissible.

Resp replies that the discrimination violates the Fifth

Amendment, citing Lalli v. Lalli, 47 U.S.L.W. 4061.

(2) Petr argues that it was improper to certify a national class and to issue an injunction based upon that class. By granting relief to those who had not filed a claim for benefits the DC violated the restriction of 42 U.S.C. § 405(g). According to petr the DC should have limited relief to the parties before it. Petr refers to its brief in California v. Elliott, No. 77-1511, cert granted, October 2, 1978.

Resp contends that the limited relief granted in this case is permissible under § 405(g). All that the DC ordered was that petr notify persons who had been denied benefits that they were entitled to apply for them. Furthermore, § 405(g) is no bar to this action since jurisdiction was asserted under § 1331, as a claim arising under the Constitution.

(3) Petr contends that the United States had not waived its sovereign immunity and that the award of retroactive benefits was therefore inappropriate. Petr refers to pages 28-31 of its brief in California v. Aznavorian, 47 U.S.L.W. 4037 (December 11, 1978)(Nos. 77-991, 77-5999). There petr contends that 42 U.S.C. § 1383(b) permits retroactive benefits only when there has been an incorrect interpretation of the statute. In such cases, the decision of a court amounts to no more than an order that the administrator conform his conduct to the intent of Congress. Therefore, § 1383 constitutes waiver of sovereign immunity to permit the retroactive payment of benefits that Congress intented the beneficiary to receive initially. By contrast, where Congress' intent is held to be unconstitutional, there can be no waiver of immunity.

Resp contends that this argument is not properly before the

Court because it was not raised below. Furthermore, resp contends that petr waived this defense by failing to plead it as an affirmative defense or to raise it below.

DISCUSSION: The key question in petr's first contention is whether § 402(g) was intended to benefit children or mothers. The DC correctly concluded that the question has been answered by Weinberger v. Wiesenfeld, 420 U.S. 636, 648-53 (1975). There the Court held that the purpose of § 402(g) was to provide children with an opportunity for the personal attention of the surviving parent. The Court examined the legislative history of the section and concluded that had Congress intended to benefit the surviving parent it would not have conditioned the receipt of benefits upon the presence of children. Petr's reliance upon Califano v. Jobst, 434 U.S. 47, 52-53 (1977), is misplaced. There the Court upheld the denial of benefits to a child who married, reasoning that it was rational to conclude that a married child is less likely to be dependent upon the parent for support. It does not follow from that conclusion that a woman who did not marry the father of her child is less likely to be economically dependent upon the father than is a woman who did marry him. Moreover, petr's argument focuses on the wrong relationship: once it is conceded that the statute seeks to benefit children, the economic dependency of the mother is irrelevant. Since the statute does not deprive illegitimate children of Children's Benefits, the rationale of Jobst is of no relevance.

Since § 402(g) is intended to benefit children after the death of a parent, the effect of denying benefits to women such as resp is to discriminate against illegitimate children. That

discrimination is unconstitutional under decisions such as Weber v. Aetna Casualty & Surety Company, 406 U.S. 164 (1972).

Petr's second contention is presented in California v. Elliott, No. 77-1511. This case should be held for that one.

Petr's third contention was presented but not decided in California v. Aznavorian, 47 U.S.L.W. 4037, 4039 (December 12, 1978). There appears to be no reason in this case to depart from the established principle that an agent of the sovereign lacks the authority to waive sovereign immunity. See, e.g., United States v. New York Rayon Importing Company, 329 U.S. 654, 660 (1947).

The question therefore becomes whether Congress has waived the Government's immunity by enacting 42 U.S.C. § 1383(b). Petr's argument has some basis, beginning with the premise that waivers of immunity are to be strictly construed. In enacting sections of the Social Security law Congress intended that payments be made to certain beneficiaries. When a court determines that an administrative interpretation conflicts with Congress' intent and enjoins further reliance on that incorrect interpretation it can be said that the court has done nothing other than direct what Congress originally intended. The original intent then becomes the basis for saying that Congress waived the Government's immunity from a retroactive award. In this case, Congress intended that mothers of illegitimate children not receive benefits. The declaration that such an intent is unconstitutional cannot form the basis for inferring that Congress waived immunity. But waiver may be inferred in another way. The prospective effect of a declaration that a statute violates equal protection is to require Congress either

to amend the statute to provide equality of treatment or to repeal the classification altogether. With regard to the past the choice has already been made in favor of making payments; Congress cannot repeal payments already made. Thus, the court's award of retroactive benefits can be said to conform the past conduct to the mandate of the Constitution. So the conclusion would be that the DC's award here does not violate sovereign immunity. Nevertheless, the question is one that the Conference may want to discuss as part of its broader consideration of the legal enforcement of the Social Security Act.

There is a response.

1/9/79 Pratt Opinion in JS

Argued ....., 19... *Assigned* ....., 19... No. 78-808

Submitted ....., 19... *Announced* ....., 19...

CALIFANO, SEC. HEW

vs.

BOLES, NORMAN J.

Also motion to affirm or dismiss.

Noted.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.	✓												
Brennan, J.	✓												
Stewart, J.				✓									
White, J.				✓									
Marshall, J.	✓												
Blackmun, J.	✓												
Powell, J.				✓									
Rehnquist, J.				✓									
Stevens, J.				✓									

BB 4/19/79

BOBTAIL BENCH MEMORANDUM

To: Mr. Justice Powell

Re: No. 78-808, Califano v. Boles

If a wage earner who is fully insured under the Social Security program dies, his children are eligible for Children's Insurance Benefits. These are payable whether the child is legitimate or illegitimate. The wage earner's widow or former spouse (divorced before his death) may also be eligible for benefits, denominated Mother's Insurance Benefits, if she has legitimate or illegitimate children of the wage earner in her care. The question in this case, discussed in Section I of this memorandum, is whether the Equal Protection Clause is violated by this disqualification of women who have not married the wage earner but who do have the children of the wage earner in their care. In Section II, I mention briefly two issues of remedy that are also presented.

I

The claimant-appellee in this action, Gonzales, is the mother of an illegitimate child by Boles, the deceased wage earner. That child collects Children's Insurance Benefits, as do Boles' legitimate children; Boles' widow, who cares for the legitimate children, collects Mother's Insurance Benefits. Gonzales cares for the illegitimate child, and on that basis applied for Mother's Insurance Benefits. Because 42 U.S.C. §402(g) denies benefits to women who have not been married to the wage earner, the appellee's application was refused.

Child collects benefits

Appellee then filed this suit to challenge the constitutionality of §402(g). The DC certified a class "consisting of all illegitimate children and their mothers who are presently ineligible for Mother's Insurance Benefits solely because 42 U.S.C. §402(g)(1) restricts such benefits to women who were once married to the fathers of their children." The appellee sought the following relief, which was granted by the DC: (i) a declaration that §402(g) is unconstitutional insofar as it excludes mothers in the plaintiff class; (ii) an injunction barring the appellants from denying Mother's Insurance Benefits to mothers in the plaintiff class; (iii) payments of benefits to the named plaintiff retroactive to her application for the benefits; and (iv) notice to members of the plaintiff class that the unconstitutional bar to Mother's Benefits had been removed.

The appellee defends the judgment of the court below on the ground that Mother's Benefits are meant for the benefit of the children in the women's care. Eligibility for the benefits thus is conditioned in part on the women having children of the wage earner in her care. And the legislative history of §402(g) shows that the purpose underlying the section is to enable women who choose to do so to stay home and care for their children.

> "Congress was ... concerned in §402(g) with ... the principle that children of covered employees are entitled to the personal attention of the surviving parent if that parent chooses not to work.
>
> "Given the purpose of enabling the surviving parent to remain at home to care for a child, the gender-based distinction of §402(g) is entirely irrational." Weinberger v. Wiesenfeld, 420 U.S. 636, 651 (1975).

The appellees argue that given this congressional judgment that children of the wage earner should have the care of the remaining parent, that care cannot be denied to illegitimate children. Yet, by conditioning eligibility on the marriage of the wage earner and the women caring for the child, §402(g) does discriminate against illegitimates.

The SG defends the statute on the ground that its purpose is to provide support for dependents of the deceased wage earner. It is the relationship of the beneficiary to the wage earner, he urges, that determines the beneficiary's prior dependence on the wage earner, and not the relationship of the beneficiary to another beneficiary. He points out that in the Court's cases, the use of marriage as a criterion of dependency has been upheld against constitutional challenge. E.g., Califano v. Jobst, 434 U.S. 47, 53 (1977) (provision of Social

Security Act that benefits paid to disabled dependent child of a covered wage earner shall terminate when the child marries an individual who is not entitled to benefits under the Act held not to violate the Fifth Amendment because "marriage is an event which normally marks an important change in economic status"); Mathews v. DeCastro, 429 U.S. 181 (1976) (married women with minor children in her care whose husband retires or becomes disabled received benefits, while divorced women otherwise similarly situated do not; held, not to violate the Fifth Amendment because marriage is a fair indicator of economic dependence).

I lean, though not strongly, towards the SG's position, on the basis of the following analysis. This case does not involve the payment of benefits to minor children of the wage earner. All ~~such~~ minor children, legitimate and illegitimate alike, are eligible for such benefits. The only basis for challenging the statute is the derivative and de facto (rather than intentional) discrimination against illegitimates that results from the marriage criterion for Mother's Benefits. Those illegitimates who live with a woman who was not married to their father do not get the derivative benefit of having their caretaker receive Mother's Benefits. (On the other hand, illegitimates who do happen to live with a woman who was married to the wage earner qualify that woman for Mother's Benefits, and receive the indirect benefit from such support.)

This case does not involve minor children

An illegitimate child is denied benefits only because (or where) his mother was not dependent on the father

The purpose of the secondary benefits to dependents under the Social Security Act is to replace the support provided by the wage earner. Even if the purpose of the Mother's Benefits is to allow women to stay home and continue to care for children of the wage earner living with them, the marriage requirement represents a defensible estimate of which women were dependent on the wage earner. Only these women are likely to need the replacement of the support previously provided by the wage earner if they are to have the option of staying at home to care for the children. And it is only these women, and not all needy women with children in their care, that are the concern of the Social Security program. Accordingly, the proper way of characterizing the legislative policy underlying §402(g) is that Congress intended to provide benefits for those women who were dependent on the wage earner (as measured by the marriage criterion) so that they could have the option of remaining at home to care for the minor children of the wage earner in their care. An illegitimate child living with his mother is denied the indirect benefit of Mother's Benefits not because he is illegitimate but because his mother was not dependent on his father for support.

The SG is correct in pointing out that this Court's prior cases have approved similar uses of the marriage criterion to measure dependency. In addition to Jobst and DeCastro, mentioned above, I think that Weinberger v. Salfi, 422 U.S. 749 (1975), can be numbered among this group. There the Court sustained the constitutionality of the requirement that a

surviving spouse must have been married to the deceased wage earner for at least nine months to qualify for benefits upon the death of the wage earner. In his extensive opinion for the Court, Justice Rehnquist reaffirmed the general applicability of the rationality test to legislative classifications such as the marriage criterion.

There is a credible argument that the marriage criterion, as used in §202(g), does not meet this rationality test because it is overinclusive and underinclusive. It is overinclusive to the extent that any previous marriage to the wage earner (including ones ended in divorce long before the wage earner's death) will meet the requirement. In many instances in which the wage earner has divorced his spouse before his death, there may be no obligation of continuing support and no support in fact by the wage earner. And it is underinclusive to the extent that some women caring for illegitimate children are in fact supported by the wage earner-fathers of those children.

I take it, however, that to invalidate the statute under the Dandridge v. Williams test, it would have to be shown that the marriage criterion did result in fact in significant over- and underinclusion. There has been no such factual showing in this case, and I do not think that the facts are so apparent as to obviate the need for evidence.

One difference between the prior cases dealing with the marriage exception and the present case is that none of the prior cases involved a claim that the marriage distinction

discriminated indirectly against illegitimates. But the statute's effect on some illegitimate children is indirect and unintended, and does not seem to me to call for any more demanding standard than the rationality test of Dandridge v. Williams, 397 U.S. 471 (1970). This kind of indirect and unintended consequence of an otherwise rational classification does not amount to the invidious discrimination against specially protected groups that runs afoul of the equality principle of the Fifth Amendment.

> "The relation between the equal protection analysis of Dandridge and the Fifth Amendment due process analysis of Flemming v. Nestor and Richardson v. Belcher was described in the latter case in this language:
>
> "A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is 'rationally based and free from invidious discrimination.' Dandridge v. Williiams, 397 U.S. 471, 487." Weinberger v. Salfi, supra, at 770.

The SG makes the foregoing argument in the strongest terms by insisting that under Washington v. Davis, 426 U.S. 229 (1976), only intentional acts of discrimination against illegitimates should be subject to special scrutiny. I think that there is considerable merit in this suggestion. Although the Court has consistently refused to subject classifications based on illegitimacy to "strict scrutiny," it is also true that such classifications have been subject to special examination. Such special scrutiny would seem to be justified only when the classification is expressly in terms of illegitimacy, or expressly intended to discriminate against illegitimates on account of their illegitimacy. Otherwise, any correlation

between an otherwise rational classification and disproportionate effects on illegitimate children is simply coincidental, and not constitutionally objectionable.

II

The SG also raises two points regarding the remedy ordered by the DC. He argues that retroactive benefits for the named plaintiff are barred by sovereign immunity, and that the jurisdictional provision of the Social Security Act under which this suit must be maintained precludes the remedy of notice to all newly eligible women.

The SG contends that §205(g) of the Social Security Act merely gives the DC jurisdiction to hear cases challenging determinations of eligibility for Social Security benefits, and does not constitute in addition a waiver of sovereign immunity from damage claims based on wrongful denial of benefits. He relies on United States v. Testan, 424 U.S. 392 (1976), which reached a similar conclusion about the jurisdictional provision of the Tucker Act.

This argument is a good one, but does not go as far as the SG would like. Another section of the Social Security Act, Section 204(a), directs the payment of retroactive benefits to persons wrongfully denied benefits to which they are entitled under the Act. The SG argues that this section only applies when the denial was based on a misconstruction of the Act rather than a proper construction of a provision later held unconstitutional. This is not an unreasonable reading of the section, which does refer to failures to make payments due "to

any person under this subchapter". But I think that the more reasonable construction of §204(a) is that it authorizes retroactive payment of benefits wrongfully denied on the basis of an unconstitutional condition of eligibility as well as on an incorrect construction of the statute. The statute has been construed in this fashion by Justice Stevens when he was sitting as a circuit judge. Jimenez v. Weinberger, 523 F.2d 689, 704 (7th Cir. 1975), cert. denied, 427 U.S. 912 (1976).

The SG also argues that the class relief granted was improper for several reasons. Section 205(g) of the Social Security Act, the jurisdictional statute for claims arising under the Act, provides in pertinent part as follows:

> "Any individual, after any final decision of the Secretary made after a hearing to which he was a party, ... may obtain review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides or has his principal place of business ...."

The SG argues that when read in conjunction with §205(h), which provides that "[n]o action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 41 [§§1331 et seq.] of Title 28 to recover on any claim arising under this subchapter", §205(g) provides the sole jurisdictional basis for any action raising a claim under the Social Security laws. The SG makes several assertions about §205(g). First, since the section explicitly states "any individual," class relief is not available. Second,

persons who have applied for benefits and been denied them by the Secretary, while here the class was described simply as all women (or mothers) ineligible for benefits by reason of §202(g). Third, the class must be restricted to members residing or having their principal place of business in the same judicial district as the named plaintiff, while here the DC ordered relief for a nationwide class.

These issues were fully aired in Califano v. Elliott, No. 77-1511, argued during March. The opinion in the case has been assigned to Justice Blackmun, and I have spoken with his clerk about the §205(g) question. Bill says that the question was reached and decided in Elliott by a vote of 8-0, but confesses that he cannot tell from Justice Blackmun's notes exactly what resolution was agreed upon by the Conference. He intends to ask Justice Blackmun to take the occasion of the present case to clarify the position of the Conference on the question.

78-808 CALIFANO v. BOLES Appeal from Texas D.C. Argued 4/25/79

Q - whether § 402(g) of Act provides "mother's" benefits only for mothers who were married to the wage earner at time of her death or prior thereto.

SG relies on Salfi and Califano v. Jobst.

The D.C. & Appellee, disagree with SG as to the class affected. They (appellees) argue that the children whose father died are the "class"; & that illegitimate children are discriminated against.

SG argues that the statutory classification is focused on "mothers"; and the benefits are limited to married mothers because most mothers are married & because needy when husband dies.

Resp. view is supported by N.Y. Dept. of Social Welfare (P.C.)

(SG's view distinguishes cases like Trimble where the injured class were illegitimate children - not mothers.)

Marriage is recognized as an element of the general scheme of S/Security Act

Mrs. Shapiro (56)

No children are disadvantaged

Pet'r is denied benefits when father of their child [born out-of-wedlock] died - without having married her.

Purpose of statute is to replace lost support. An unmarried woman is not as likely to lose support as a woman whose husband's died. A divorced wife may receive benefits.

Semmel (Resh)

Even when husband has deserted & provided no support, the wife is entitled to benefits. But a mother similarly situated except there was no marriage, receives no benefits when father died.

Defines the "class" as ~~illegitimate~~ illegimate children

(JPS thinks mother - not child - is person who is descriminated. child is beneficiary indirectly but not in a statutory sense)

Semmel (cont.)

Class relief merely requires HEW to notify all families in which children are receiving benefits.

Relied on brief as to 11th Amend "retroactive" issue.

Miss Shapero (Reply)

Mother's benefit in for her own use & may be used as she wishes". This is not for children. Their benefits must be used for them.

Mother does not, however, become entitled to benefits unless she has living with her one of more children of the deceased husband.

Affirmed 5-3 (9 passed to consider this further)

78-808 Califano v. Boles

Conf/ 4/27/79

The Chief Justice Affirm on Merits. Rev on Retroactivity

May be adverse consequences on "pocket-book" of the family, but this should not control.

DC had no power to make retroactive award of damages. No implied waiver of Sov/Immunity.

(CJ gave no reasons for affirming on merits)

Mr. Justice Brennan Affirm on basic issue

Pass on retroactive issue.

Mr. Justice Stewart Reverse on merits

S/Security Act consider marriage

Mr. Justice White Affirm on merits
Rev. on retroactive
Class action goes with Elliott

Mr. Justice Marshall Affirm on merits
Reversed judg. on retroactivity

Mr. Justice Blackmun Affirm on merits
Also could go along on retroactivity.
Class action goes with class action.

Mr. Justice Powell Reversed

Mr. Justice Rehnquist Reverse
on merits

Mr. Justice Stevens Reverse

Q is whether benefit is for mother. Congress clearly can classify mother according to whether married or not.

The purpose is to replace the loss of support when husband dies.

Even a divorced spouse may be receiving alimony.

SG is right.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1979

Re: 78-808 - Califano v. Boles

MEMORANDUM TO THE CONFERENCE:

At Conference I expressed my view, echoing Brandeis, that it was more important to settle this issue with a uniform standard nationwide than to be "right." I have now concluded that no cases, including Jimenez, either compel or point toward an affirmance. If the case is to be as close as it now appears, I conclude that I will vote to reverse.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

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Regards,

WEB

April 28, 1979

78-808 Califano v. Boles

Dear Chief:

I passed at the Conference yesterday. On the basis of further consideration, I now vote to reverse.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Appellee represent class of illegitimate children and mothers — where the mother never married the wage earner who fathered the child. (4)

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 1 JUN 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-808

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Appellant, v. Norman J. Boles et al. | On Appeal from the United States District Court for the Western District of Texas. (WHR reversed)

Received 6/3-4

Join

Well written opinion

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Since the Depression of the 1930's, the Government has taken increasingly upon itself the task of insulating the economy at large and the individual from the buffeting of economic fortune. The federal old-age, survivors, and disability insurance provisions of the Social Security Act (SSA) are possibly the pre-eminent examples: attempts to obviate, through a program of forced savings, the economic dislocations that may otherwise accompany old age, disability or the death of a breadwinner. As an exercise in governmental administration, the social security system is of unprecedented dimension; in Fiscal Year 1977 nearly 150 million claims were filed.[1]

Given this magnitude, the number of times these SSA claims have reached this Court warrants little surprise.[2] Our

[1] Social Security Administration's Office of Management and Administration, The Year in Review: The Administration of Social Security Programs 1977, at ii (July 1978).

[2] *Califano* v. *Jobst*, 434 U. S. 47 (1977); *Califano* v. *Webster*, 430 U. S. 313 (1977); *Califano* v. *Goldfarb*, 430 U. S. 199 (1977); *Matthews* v. *De Castro*, 429 U. S. 181 (1976); *Norton* v. *Mathews*, 427 U. S. 524 (1976); *Mathews* v. *Lucas*, 427 U. S. 495 (1976); *Mathews* v. *Eldridge*, 424 U. S. 319 (1976); *Weinberger* v. *Salfi*, 422 U. S. 749 (1975); *Weinberger* v. *Wiesenfeld*, 420 U. S. 636 (1975); *Jiminez* v. *Weinberger*, 417 U. S. 628 (1974); *Richardson* v. *Wright*, 405 U. S. 208 (1972); *Richardson*

cases evidence a sensitivity to the legislative and administrative problems posed in the design of such a program and in the adjudication of claims on this scale. The problems are generally of two types. The first is categorization.[3] In light of the specific dislocations Congress wishes to alleviate, it is necessary to define categories of beneficiaries. The process of categorization presents the difficulties inherent in any line-drawing exercise where the draftsman confronts a universe of potential beneficiaries with different histories and distinct needs. He strives for a level of generality that is administratively practicable, with full appreciation that the included class has members whose "needs" upon a statutorily defined

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v. *Belcher*, 404 U. S. 78 (1971); *Richardson* v. *Perales*, 402 U. S. 389 (1971); *Flemming* v. *Nestor*, 363 U. S. 603 (1960). This Court has also had numerous cases involving claims arising under federal-state cooperative welfare programs authorized by the SSA. See, *e. g.*, *Graham* v. *Richardson*, 403 U. S. 365 (1971) (Assistance to Persons Permanently and Totally Disabled); *California Dept. of Human Resources Development* v. *Java*, 402 U. S. 121 (1971) (unemployment insurance); *Dandridge* v. *Williams*, 397 U. S. 471 (1970) (Aid to Families With Dependent Children).

[3] The bulk of our cases fall under this heading. *Califano* v. *Jobst*, 434 U. S. 47 (1977) (termination of dependent child's benefits upon his marriage); *Califano* v. *Webster*, 430 U. S. 313 (1977) (gender-based differences in benefit computation); *Califano* v. *Goldfarb*, 430 U. S. 199 (1977) (gender-based differences in defining dependent of deceased wage earner); *Matthews* v. *De Castro*, 429 U. S. 181 (1976) (denial of "wife's insurance benefits" to divorced women under 62 years of age); *Norton* v. *Mathews*, 427 U. S. 524 (1976) (illegitimate children denied presumption of dependency enjoyed by legitimates); *Mathews* v. *Lucas*, 427 U. S. 495 (1976) (same as *Norton*); *Weinberger* v. *Salfi*, 422 U. S. 749 (1975) (duration-of-relationship requirements for receipt of mother's or child's insurance benefits); *Weinberger* v. *Wiesenfeld*, 420 U. S. 636 (1975) (gender-based denial of survivor's benefits to widowers); *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974) (denial of disability insurance benefits to illegitimate children born after onset of wage earner's disability); *Richardson* v. *Belcher*, 404 U. S. 78 (1971) (reduction in social security benefits to reflect state workmen's compensation benefits); *Flemming* v. *Nestor*, 363 U. S. 603 (1960) (termination of insurance benefits to aliens upon their deportation).

occurrence may not be as marked as those of isolated individuals outside the classification. "General rules are essential if a fund of this magnitude is to be administered with a modicum of efficiency, even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano* v. *Jobst*, 434 U. S. 47, 53 (1977). A process of case-by-case adjudication that would provide a "perfect fit" in theory would increase administrative expenses to a degree that benefit levels would probably be reduced, precluding a perfect fit in fact. *Mathews* v. *Lucas*, 427 U. S. 495, 509 (1976); *Weinberger* v. *Salfi*, 422 U. S. 749, 776–777 (1975).

The second type of problem that has been brought to this Court involves the Social Security Administration's procedures for dispute resolution where benefits have been denied, decreased or terminated because the Administration has concluded that the claimant is not entitled to what he has requested or to what he has received in the past.[4] Again the Court has been sensitive to the special difficulties presented by the mass administration of the social security system. After the legislative task of classification is completed, the administrative goal is accuracy and promptness in the actual allocation of benefits pursuant to those classifications. The magnitude of that task is not amenable to the full trappings of the adversary process lest again benefit levels be threatened by the costs of administration. *Mathews* v. *Eldridge*, 424 U. S. 319, 343–349 (1976); *Richardson* v. *Perales*, 402 U. S. 389, 406 (1971). Fairness can best be assured by Congress and the Social Security Administration

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[4] *Mathews* v. *Eldridge*, 424 U. S. 319 (1976) (question whether evidentiary hearing necessary before termination of disability insurance benefits); *Richardson* v. *Wright*, 405 U. S. 208 (1972) (challenge to procedures employed in suspension or termination of disability benefits); *Richardson* v. *Perales*, 402 U. S. 389 (1971) (written reports by physicians who have examined disability insurance claimants are "substantial evidence" supporting denial of benefits).

through sound managerial techniques and quality control designed to achieve an acceptable rate of error.

This case involves a challenge to a categorization. Appellees Norman J. Boles and Margaret Gonzales represent a nationwide class of all illegitimate children and their mothers who are allegedly ineligible for insurance benefits under the Social Security Act because in each case the mother was never married to the wage earner who fathered her child. Section 202 (g)(1) of the Social Security Act, 42 U. S. C. § 402 (g)(1) (1976), only makes "mother's insurance benefits" available to widows and divorced wives.[5] By virtue of this Court's deci-

[5] Section 202 (g)(1) provides:

"(g)(1) The widow and every surviving divorced mother (as defined in section 216 (d)) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother—

"(A) is not married,

"(B) is not entitled to a widow's insurance benefit,

"(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

"(D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died,

"(E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit, and

"(F) in the case of a surviving divorced mother—

"(i) the child referred to in subparagraph (E) is her son, daughter, or legally adopted child, and

"(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

"shall (subject to subsection (s) of this section) be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes

sion in *Weinberger* v. *Wiesenfeld*, 420 U. S. 636 (1975), "mother's insurance benefits" are available to widowers, leaving the title of these benefits a misnomer. There we held that the provision of such benefits only to women violated the Due Process Clause of the Fifth Amendment.

Norman W. Boles died in 1971. He left a widow, Nancy L. Boles, and their two children, who were each promptly awarded child's insurance benefits. Nancy Boles receives mother's insurance benefits. Appellee Gonzales lived with Norman W. Boles for three years before his marriage to Nancy Boles and bore a son by him, Norman J. Boles.[4] Gonzales sought mother's insurance benefits for herself and child's benefits for her son. Her son was granted benefits, but her personal request was denied because she had never been married to the wage earner.

Gonzales exhausted her administrative remedies and then filed this suit in the United States District Court for the Western District of Texas. The District Court certified a class of "all illegitimate children and their mothers who are presently ineligible for Mother's Insurance Benefits solely because 42 U. S. C. § 402 (g)(1) restricts such benefits to

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entitled to a widow's insurance benefit, she remarries, or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced mother, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced mother is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual."

Section 216 (d)(3), 42 U. S. C. § 416 (d)(3) (1976), states:

"(3) The term 'surviving divorced mother' means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18."

[4] Norman W. Boles had acknowledged his paternity of Norman J. Boles.

women who were once married to the fathers of their children." J. S., at 1a. The District Court found that § 202 (g) (1) of the Social Security Act was unconstitutional. There were three steps in its logic.

First, it read *Weinberger* v. *Wiesenfeld, supra,* as holding that mother's insurance benefits are chiefly for the benefit of the child. It quoted from a passage in that opinion where this Court observed that

> "§ 402 (g), linked as it is directly to responsibility for minor children, was intended to permit women to elect not to work and to devote themselves to the care of children. . . .
>
> "That the purpose behind § 402 (g) is to provide children deprived of one parent with the opportunity for the personal attention of the other could not be more clear in the legislative history." 420 U. S., at 648–649.

On the basis of this language it then concluded that for purposes of equal protection analysis, the pertinent discrimination in this case is not unequal treatment of unwed mothers, but rather discrimination against illegitimate children. In its final step the District Court held that the application of § 202 (g)(1) at issue here is unconstitutional, relying on cases of this Court invalidating on constitutional grounds legislation that discriminated against illegitimates solely because of their status at birth. *E. g., Weber* v. *Aetna Casualty and Surety Co.,* 406 U. S. 164 (1972); *Gomez* v. *Perez,* 409 U. S. 535 (1973); *Jimenez* v. *Weinberger,* 417 U. S. 628 (1974); *Trimble* v. *Gordon,* 430 U. S. 762 (1977).

We noted probable jurisdiction, — U. S. —, and now conclude that the District Court incorrectly analyzed the equal protection issue in this case. We accordingly reverse.

As this Court noted in *Weinberger* v. *Wiesenfeld, supra,* at 643, § 202 (g) "was added to the Social Security Act in 1939 as one of a large number of amendments designed to 'afford more adequate protection to the family as a unit.' H. R.

Rep. No. 728, 76th Cong., 1st Sess., 7 (1939)." The benefits created in 1939 "were intended to provide persons dependent on the wage earner with protection against the economic hardship occasioned by loss of the wage earner's support." *Califano* v. *Jobst*, 434 U. S. 47, 50 (1977); see *Mathews* v. *De Castro*, 429 U. S. 181, 185–186 (1976). Specifically, § 202 (g) "was intended to permit women [and now men] to elect not to work and to devote themselves to care of children." 420 U. S., at 648. The animating concern was the economic dislocation that occurs when the wage earner dies and the surviving parent is left with the choice to stay home and care for the children or to go to work, a hardship often exacerbated by years outside the labor force. "Mother's insurance benefits" were intended to make the choice to stay home easier. But the program was not designed to be, and we think is not now, a general system for the dispensing of child-care subsidies.[7] Instead Congress sought to limit the category of beneficiaries to those who actually suffer economic dislocation upon the death of a wage earner and are likely to be confronted at that juncture with the choice between employment or the assumption of full-time child-care responsibilities.

In this light there is an obvious logic in the exclusion from § 202 (g) of women or men who have never married the wage earner. "Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status." *Califano* v. *Jobst*, 434 U. S. 47, 53 (1977). Congress could reasonably conclude that a woman who has never been married to the wage earner is far less likely to be dependent upon the wage earner at the

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[7] *Califano* v. *Jobst*, 434 U. S. 47, 52 (1977):

"The statute is designed to provide the wage earner and the dependent members of his family with protection against the hardship occasioned by his loss of earnings; it is not simply a welfare program generally benefiting needy persons."

See also *Mathews* v. *De Castro*, 429 U. S. 181, 185–186 (1976).

time of his death. He was never legally required to support her and therefore less likely to have been an important source of income. Thus the possibility of severe economic dislocation upon his death is more remote.

We confronted an analogous classification in *Mathews* v. *De Castro*, 429 U. S. 181 (1976), which involved a challenge to the exclusion of divorced women from "wife's income benefits." In concluding that the classification did not deny equal protection, we observed:

> "Divorce by its nature works a drastic change in the economic and personal relationship between a husband and wife. . . . Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married. The problems that a divorced wife may encounter when her former husband becomes old or disabled may well differ in kind and degree from those that a woman married to a retired or disabled husband must face . . . . She may not feel the pinch of the extra expenses accompanying her former husband's old age or disability. . . . It was not irrational for Congress to recognize this basic fact in deciding to defer monthly payments to divorced wives of retired or disabled wage earners until they reach the age of 62." *Id.*, at 188–189.

Likewise, *Weinberger* v. *Salfi*, 422 U. S. 749 (1975), upheld a nine-month duration of relationship eligibility requirement for the wife and step-children of a deceased wage earner. The stated purpose of the requirement was "to prevent the use of sham marriages to secure Social Security payments." *Id.*, at 767. We found that only relevant constitutional argument was whether "the test [appellees could not] meet [was] not so rationally related to a legitimate legislative objective that it [could] be used to deprive them of benefits available to those who [did] satisfy that test." *Id., at* 772. We recognized

that the statutory requirement would deny benefits in some cases of legitimate, sincere marriage relationships.

> "While it is possible to debate the wisdom of excluding legitimate claimants in order to discourage sham relationships, and of relying on a rule which may not exclude some obviously sham arrangements, we think it clear that Congress could rationally choose to adopt such a course. Large numbers of people are eligible for these programs and are potentially subject to inquiry as to the validity of their relationships to wage earners. . . . Not only does the prophylactic approach thus obviate the necessity for large numbers of individualized determinations, but it also protects large numbers of claimants who satisfy the rule from the uncertainties and delays of administrative inquiry into the circumstances of their marriages." *Id.*, at 781–782.

It is with this background that we must analyze what the District Court in this case perceived to be the flaw in relying on dependence as a rationale for the statutory distinction between married and unmarried persons. The District Court pointed out that in 1972 Congress lifted the requirement that divorced women seeking mother's insurance benefits show that they were in some measure dependent on the wage earner immediately before his death.[8] It seized this fact as refuta-

[8] Originally, nothing similar to mother's insurance benefits for divorced women was provided by the Social Security Act. Then in 1950 these benefits, subject to limitations not relevant here, were made available to a surviving divorced wife, if she had not remarried, had a child in her care entitled to child's insurance benefits, and at the time of the wage earner's death had been receiving at least one-half of her support from him. Act of August 28, 1950, Pub. L. 734, ch. 809, § 101 (a), 64 Stat. 485–486.

In 1965 the remarriage bar to mother's insurance benefits was relaxed. A woman's rights as a surviving divorced mother would be restored if her second marriage ended in divorce. Moreover, a showing that she was receiving or entitled to receive "substantial contributions" from the wage earner at the time of his death would suffice in lieu of a showing that she

tion of any characterization of these benefits as an attempt to ease the dislocation of those who had been dependent on the deceased. We think the District Court is demanding a precision not warranted by our cases.

Certainly Congress did not envision such precision. The legislative history surrounding the devolution of support requirements suggests that its effect on mother's insurance benefits was an incidental and relatively minor byproduct of Congress' core concern: older women who were married to wage earners for over 20 years—women who often only knew work as housewives—who were not eligible for surviving divorced wife's insurance benefits because state divorce laws did not permit alimony or because they had accepted a property settlement in lieu of alimony.[9] The Social Security laws

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received at least one-half of her support from the wage earner. Act of July 30, 1965, Pub. L. 89-97, § 308, 79 Stat. 377-379.

Finally in 1972 Congress made the changes discussed by the District Court. Pub. L. 92-603, § 114 (c), 86 Stat. 1348-1349.

[9] Interestingly, younger women receiving mother's benefits are not even mentioned in the committee reports on the 1972 amendment.

"Benefits, under present law, are payable to a divorced wife age 62 or older and a divorced widow age 60 or older if her marriage lasted at least 20 years before the divorce, and to a surviving divorced mother. In order to qualify for any of these benefits a divorced woman is required to show that: (1) she was receiving at least one-half of her support from her former husband; (2) she was receiving substantial contributions from her former husband pursuant to a written agreement; or (3) there was a court order in effect providing for substantial contributions to her support by her former husband.

"In some States the courts are prohibited from providing for alimony, and in these States a divorced woman is precluded from meeting the third support requirement. Even in States which allow alimony, the court may have decided at the time of the divorce that the wife was not in need of financial support. Moreover, a divorced woman's eligibility for social security benefits may depend on the advice she received at the time of her divorce. If a woman accepted a property settlement in lieu of alimony, she could, in effect, have disqualified herself for divorced wife's, divorced widow's, or surviving divorced mother's benefits.

have maintained uniform support requirements for divorced wife's, divorced widow's, and surviving divorced mother's benefits. Obviously administration is thereby simplified. Undoubtedly some younger divorced wives with children of deceased wage earners in their care who could not meet the old support requirements incidentally benefit from Congress' concern that many older women were being victimized once by state divorce laws and again by the Social Security laws.[10] However, when Congress seeks to alleviate hardship and inequity under the Social Security laws, it may quite rightly conceive its task to be analogous to painting a fence, rather than touching up an etching. We have repeatedly stated that there is no constitutional requirement that "a statutory provision filter[] out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute." *Weinberger* v. *Salfi, supra,* at 777; *Matthews* v. *De Castro, supra,* at 189. In sum, we conclude

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"The intent of providing benefits to divorced women is to protect women whose marriages are dissolved when they are far along in years—particularly housewives who have not been able to work and earn social security protection of their own. The committee believes that the support requirements of the law have operated to deprive some divorced women of the protection they should have received and, therefore, recommends that these requirements be eliminated. The requirement that the marriage of a divorced wife or widow must have lasted for at least 20 years before the divorce would not be changed."

S. Rep. No. 1230, 92d Cong., 2d Sess., 142 (1972); see H. R. Rep. No. 231, 92d Cong., 1st Sess., 54–55 (1971). When the 1965 changes were made there was only passing mention of younger women receiving mother's insurance benefits. S. Rep. No. 381, 89th Cong., 1st Sess., 108 (1965).

[10] There are no precise figures as to the extra cost to the insurance fund posed by this expansion of mother's insurance benefits. It can be inferred from the attention this expansion received in the legislative history that its cost was a relatively small part of the $23 million annual increase in benefits estimated for eliminating support requirements across the board. See S. Rep. No. 1230, 92d Cong., 2d Sess., 142 (1972). HEW has estimated that compliance with the District Court's decision in this case will cost $60 million annually.

that the denial of mother's insurance benefits to women who never married the wage earner bears a rational relation to the government's desire to ease economic privation brought on by the wage earner's death.

But the appellees argue that to characterize the problem in this fashion is to miss the point because at root this case involves discrimination against illegitimate children. Quite naturally, those who seek benefits denied them by statute will frame the constitutional issue in a manner most favorable to their claim. The proper classification for purposes of equal protection analysis is not an exact science, but scouting must begin with the statutory classification itself. Only when it is shown that the legislation has a substantial disparate impact on classes defined in a different fashion may analysis continue on the basis of the impact on those classes.

We conclude that the legislation in this case does not have the impact on illegitimates necessary to warrant further inquiry whether § 202 (g) is the product of discriminatory purposes. See *Personnel Administrator of Massachusetts* v. *Feeney*, No. 78–233 (1979). "Mother's insurance benefits" are distinct from "child's insurance benefits." The latter are benefits paid to the minor children of the deceased wage earner [11] and, as noted, Gonzales' son did receive child's insurance benefits. The benefit to a child as a result of the parent or guardian's receipt of mother's insurance benefits is incidental: mother's insurance benefit payments do not vary with the number of children within the recipient's care, they are not available in the foster care context, and they are lost on remarriage or if the surviving parent earns a substantial income—all despite the needs of the child. Thus the focus of

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[11] In *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974), this Court struck down an absolute bar to child's insurance benefits for illegitimate children whose paternity had never been acknowledged or affirmed by evidence of domicile with or support by the wage earner before the onset of the disability.

these benefits is on the economic dilemma of the surviving spouse or former spouse; the child's needs as such are addressed through the separate child's insurance benefits.[12] Nor is it invariably true that whatever derivative benefits are enjoyed by the child whose parent or guardian receives mother's insurance benefits will not be enjoyed by illegitimate children. If the illegitimate child is cared for by the decreased wage earner's wife, she will receive mother's insurance benefits even though she has no natural children of her own and never adopted the child.[13] And many legitimate children live in households that are not headed by individuals eligible for mother's benefits.

In order to make out a disparate impact warranting further scrutiny under the Due Process Clause of the Fifth Amendment, it is necessary to show that the class which is purportedly discriminated against consequently suffers significant deprivation of a benefit or imposition of a substantial

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[12] There is obviously a significant difference between this interpretation of the statutory purpose and that subscribed to by the author of this opinion in his separate concurrence in *Weinberger* v. *Wiesenfeld*, 420 U. S. 636, 655 (1975). To the extent that these interpretations conflict, the author feels he can do no better than quote Mr. Justice Jackson, concurring in *McGrath* v. *Kristensen*, 340 U. S. 162, 177–178 (1950):

"Precedent, however, is not lacking for ways by which a judge may recede from a prior opinion that has proven untenable and perhaps misled others. See Chief Justice Taney, *License Cases*, 5 How. 504, recanting views he had pressed upon the Court as Attorney General of Maryland in *Brown* v. *Maryland*, 12 Wheat. 419. Baron Bramwell extricated himself from a somewhat similar embarassment by saying, 'The matter does not appear to me now as it appears to have appeared to me then.' *Andrews* v. *Styrap*, 26 L. T. R. (N. S.) 704, 706. And Mr. Justice Story, accounting for his contradiction of his own former opinion, quite properly put the matter: 'My own error, however, can furnish no ground for its being adopted by this Court . . . .' *United States* v. *Gooding*, 12 Wheat. 460, 478 . . . . If there are other ways of gracefully and good-naturedly surrendering former views to a better considered position, I invoke them all."

[13] Compare 42 U. S. C. § 402 (g)(1)(E) (1976) with *id.*, § 402 (g)(1)(F)(i).

burden. If the class of beneficiaries were expanded in the fashion pressed by appellees, the beneficiaries, in terms of those who would exercise dominion over the benefits and whose freedom of choice would be enhanced thereby, would be unwed mothers, not illegitimate children. Certainly every governmental benefit has a ripple effect through familial relationships and the economy generally, its propagation determined by the proximity and sensibility of others. Possibly the largest class of incidental beneficiaries are those who are gratified in a nonmaterial way to see a friend or relative receive benefits. Some limits must be imposed for purposes of constitutional analysis, and we conclude that in this case the incidental, and, to a large degree, speculative impact on illegitimates as a class is not sufficient to treat the denial of mother's insurance benefits to unwed mothers as discrimination against illegitimate children.

The Social Security Act and its amendments are the product of hard choices and countervailing pressures. The desire to alleviate hardship wherever it is found is tempered by the concern that the social security system in this country remain a contributory insurance plan and not become a general welfare program. General welfare objectives are addressed through public assistance legislation. In light of the limited resources of the insurance fund, any expansion of the class of beneficiaries invariably poses the prospect of reduced benefits to individual claimants. We need look no further than the facts of this case for an illustration. The benefits available to Norman W. Boles' beneficiaries under the Act are limited by his earnings record. The effect of extending benefits to Gonzales will be to reduce benefits to Nancy Boles and her children by 20%.[14] Thus the end result of extending benefits to Gonzales may be to deprive Nancy Boles of a meaningful choice between full-time employment and staying home with her children, thereby undermining the express legislative pur-

[14] Brief for Appellant, at 29 n. 22.

pose of mother's insurance benefits. We think Congress could rationally choose to concentrate limited funds where the need is likely to be greatest.

Because of our disposition of the Fifth Amendment issue, we need not and do not reach the Government's other arguments: that the District Court improperly certified a nationwide class that included individuals who were not shown to have met the jurisdictional requirements of § 205 (g) of the Social Security Act, 42 U. S. C. § 405 (g), and that sovereign immunity barred that court's award of retroactive monetary relief.

The judgment of the District Court is accordingly,

Reversed.

June 4, 1979

78-808 Califano v. Boles

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1979

Re: 78-808 - Califano v. Boles

Dear Bill:

Please join me.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1979

Re: 78-808 - Califano v. Boles

Dear Bill:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill,

I shall await the dissent.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill:

Working on a dissent.

Sincerely,

T.M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1979

Dear Bill:

Re: 78-808 Califano v. Boles

I join.

Regards,

Mr. Justice Rehnquist
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill:

I am awaiting the dissent, of course. I wonder, however, whether the first full paragraph on page 15, with its reference to a nationwide class, fully comports with the decision in No. 77-1511, Califano v. Yamasaki. Perhaps a footnote reference, or something like it, to Yamasaki is indicated.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1979

Re: No. 78-808 - Califano v. Boles

Dear Harry:

Since in this case the Conference vote (by the narrowest of margins) was to decide against the respondents on the merits of their claim that the category of persons entitled to relief was too narrow under the Fifth Amendment, I think that the first full paragraph on page 15 of the opinion correctly declines to reach the government's other arguments, including the claim that the District Court improperly certified a nationwide class action that included individuals who had not met the jurisdictional requirements of § 205(g). However, I joined you in Califano v. Yamasaki; I am not a wild enthusiast of nation-wide class actions, but thought that the cautionary language which you placed in your opinion about the factors which the District Court should weigh before certifying such a class was enough for me (plus the fact that you already had a Court for your opinion when I joined, as I recall!). I also agree that our opinions should not appear to the public as ships passing in the night, and if all your note of June 19th indicates is the desirability of a simple citation to Yamasaki, at an appropriate place on page 15 of Boles, I have no objection if those who have already joined Boles have none. If you mean to suggest that we ought to pass on the propriety of the District Court's certification of a nation-wide class in Boles, notwithstanding the fact that we rule against the respondents on the merits, I do not agree with you.

Sincerely,

Mr. Justice Blackmun
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1979

Re: No. 78-808, Califano v. Boles

Dear Bill,

I agree with Harry that it would be a good idea to append a footnote reference to the Yamasaki case somewhere in the course of your discussion of the nationwide class action issue.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A B.	L. F. P.	W. H. R.	J. P. S.
							4/30/79	
Join WHR 6/18/79	Join TM 6/20/79	Join WHR 6/4/79	~~Join~~ wait dissent 6/4/79 typed Dropt 6/19/79 Join TM 6/20/79	well dissent 6/4/79 → 1st Dropt 6/22/79 2nd Dropt 6/26/79	Join TM 6/20/79	Join WHR 6/4/79	1st Dropt 6/1/79 2nd Dropt 6/26/79	Join WHR 6/4/79
				78-808 Califano v. Boles				