In the

Supreme Court of the United States

GEORGIA TOWNSEND, etc.,

Appellant,

v. No. 70-5021

HAROLD O. SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID, et al.,

Appellees.

- - - - - - - and - - - - - - - - -

LOVERTA ALEXANDER, et al.,

Appellants,

v. No. 70-5032

HAROLD O. SWANK, et al.,

Appellees.

Washington, D. C.
November 8, 1971

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and		
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v.	:	No. 70-5032
HAROLD O. SWANK, et al., Appellees.	:	

Washington, D. C.,

Monday, November 8, 1971.

The above-entitled matters came on for argument at 1:07 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

MICHAEL F. LEFKOW, ESQ., Community Legal Counsel, 116 South Michigan Avenue, Chicago, Illinois 60603, for Appellant Townsend, etc.

M. JAMES SPITZER, JR., ESQ., 595 Madison Avenue, New York, New York, for Appellant Alexander, et al., and
MELVIN B. GOLDBERG, ESQ., Cook County Legal Assistance Foundation, Inc., 19 South LaSalle Street, Chicago, Illinois 60603, for Appellant Alexander, et al.

DONALD J. VEVERKA, ESQ., Special Assistant Attorney General of Illinois, Chicago, Illinois, for Appellee Swank, et al.

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 5021, Townsend against Illinois Department of Public Aid.

Mr. Lefkow, you may proceed whenever you're ready.

ORAL ARGUMENT OF MICHAEL F. LEFKOW, ESQ.,

ON BEHALF OF APPELLANT TOWNSEND, ETC.

MR. LEFKOW: Mr. Chief Justice, and may it please the Court:

The State of Illinois makes payments, under its federally subsidized program of Aid to Families with Dependent Children, to needy dependent children between the ages of 18 to 21 years old attending a vocational or technical training school, but denies paymants to children attending a junior college, a college, or a university.

The issue in this case is whether the discrimination is inconsistent with the requirements and the purposes of the Social Security Act and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Mrs. Georgia Townsend and her daughter Omega were a family within the meaning of the Act, and Omega was a dependent child. But they were cut off and denied any aid under the AFDC program, while they met all the requirements specified by Congress.

Appellants rely on this Court's decision in King vs.

Smith, which invalidated Alabama's scheme of absolute disqualification of eligible children on the fiction that they had a substitute father. There Alabama defined "parent" in a manner inconsistent with the Act and with its purposes. Illinois likewise has defined "dependent children" in a manner inconsistent with the Act and its purposes, by totalling excluding from AFDC benefits children attending a college or a university.

We believe that King clearly prohibits Illinois' absolute disqualification. A reading of King requires an interpretation of the definitional section for Section 406(a), that it is mandatory upon the State of Illinois to provide some aid to all those defined by Congress as dependent children. This requirement on the States was affirmed by this Court in Dandridge vs. Williams: that in order to avoid violating the statute itself, a State must provide some aid to all eligible families and all eligible children.

Now, we submit that in addition to these two cases there are a number of other important reasons why this statute is mandatory.

One is the plain meaning of the statute; another is it's necessary to make it mandatory to avoid frustrating the purposes of the Act; it's necessary for harmonious construction of the federal statutory scheme; it's necessary because of the legislative history; it's necessary to avoid an equal protectio

violation; and it's necessary to prevent Illinois from withdrawing from this part of the AFDC program.

I'll return to the plain meaning of the statute.

The State has asserted that it has discretion whether it wants to adopt the definitional section of 406(a). We submit that the plain wording of the statute grants the States no discretion.

A similar section, Section 407, on its face, grants the States discretion to participate in the unemployed or underemployed program, which was added to the Act in 1961. And this Court has stated in King vs. Smith that that particular section 407 is optional with the State; but there's nothing on the face of the statute in 406(a) to indicate that the State has discretion to pick and choose among the children made eligible by Congress.

We submit that the legal standard for testing a State's compliance is the Act itself.

Next, it's necessary to make it mandatory to avoid frustrating the purposes of the Act. The purpose of the Act, as interpreted by this Court in King, is for the protection of dependent children. That is the paramount goal. And Congress, in 1964, in amending the Social Security Act, stated that the assumption that children are no longer dependent is not valid as applied to children still attending school.

Further, by denying these children --

Q What if they were 25 years old and attending graduate school; would the argument be the same?

MR. LEFKOW: They would not be eligible, Your Honor, because Congress did not make them eligible. Our argument is that --

Q Well, that's my point. Is that a denial of equal protection?

MR. LEFKOW: I don't believe that it would be, Your Honor.

Q Then why -- but it is if you're dealing up to 21; is that it?

MR. LEFKOW: In terms of equal protection, it is, if you distinguish between children attending a vocational and technical school and those attending a college or university, up to age 21.

In measuring -- in determining violation of equal protection, you have to take into consideration the purposes of the Act; and the purpose of this Act is to provide AFDC sustenance benefits up to age 21. So, measured in terms of purpose of the Act, denial to college and university students would be a denial of equal protection; because, we submit, that there is simply no rational basis for what the State has done by saying that "unless it says over the door of the school it's a technical or vocational school, we're not going to grant these children aid", in spite of the fact that much technical and

vocational education is provided in junior colleges, in colleges and universities. In fact, the State of Illinois and the Federal Government fund junior colleges in Illinois to the tune of $6.5 million a year to provide technical and vocational education. And these children are excluded from participating in that because they don't have the money to have the food and the clothing and the shelter they need so that they can attend these schools.

We would further point out --

Q Mr. Lefkow, --

MR. LEFKOW: Yes?

Q -- is it your position that the difference in receiving aid under AFDC and not receiving it makes the difference between going to school or not?

MR. LEFKOW: Yes, Your Honor, that would be our position.

Because all AFDC does, Your Honor, is provide -- bring a person up to minimal living level, so that they have enough money to subsist on, for food, for clothing, and for shelter. It doesn't provide any additional benefits.

Although I would point out that in this case if the child is in a technical or vocational school, the State of Illinois will pay substantial tuition to these private schools. But -- and this same education is available in the junior college. In effect, the taxpayer is paying twice, by Illinois'

arbitrary distinction between -- by having the over-the-door requirement. In other words --

Q So that it's your position here that Omega would have gone to school had she been able to obtain the AFDC benefits?

MR. LEFKOW: She did go to school, Your Honor, and she's in school today.

Q Well, then, conceding that, is not your lawsuit merely one for the certain amount of money?

MR. LEFKOW: Yes, Your Honor, that's what AFDC eligibility is. It provides money for sustenance benefits. We pointed out in our brief that she and her mother have been forced to live at an intolerable level of existence. Her mother is a very sick woman, suffering from systemic erythematosis. They live on about 15 cents a meal. They have no -- hardly any furniture in the house. They're suffering terribly.

And no child should have to go through that in order to obtain an education. And that's what Congress meant by making sure that the sustenance benefits would be available for them.

I would further like to point out that what Illinois has done is caused a misallocation of federal resources. Congress has determined that federal funds should flow to these children, but Illinois has prohibited that and has unduly limited the welfare rolls in Illinois by approximately a thousand children a year who might want to take advantage of this pro-

vision.

I would further like to point out that the legislative history of the Act shows that Congress has continually expanded eligibility to meet rising educational requirements and opportunity, as they become available in our society. In 1935 the child had to be under age 16; in 1939 Congress amended it to under 16 or under age 18 if the State determines the child is in school. In 1956, Congress lifted the school-age requirement. In '64 they reimposed the school-age requirement; and in '65 they added the college and university so that the child could be attending, in effect, any school. As long as he was attending any type school in pursuit of an education, between 18 and 21, he would be eligible for these benefits.

We would further like to point out that it's necessary for this Court to hold that this section, 406(a), is mandatory because the section itself says "when used in this part", part (a) which is Title IV of the Social Security Act, these definitions are used throughout the whole title of the Act. And Section 402(a)(10), which requires the aid to be furnished with reasonable promptness, combined with section 406(a) clearly mandates that this child should receive some aid.

In King vs. Smith, the Court said: in combination these two sections clearly require that some aid be furnished. In Dandridge vs. Williams, this Court held that a State may allocate among those who are already on the rolls, but it must

provide some aid to all eligible families and all eligible individuals.

I think it's clear from the Court's opinion in Dandridge, in both the majority and the dissent, that the one thing everybody was agreed on is that Congress fixes the federal eligibility requirements. In other words, Congress determines who is dependent, and the States are allowed to determine who is needy.

The States have ample opportunity to protect themselves from adverse fiscal impact under this Court's decision in Rosado, allowing percentage reductions; in Dandridge, allowing the imposition of maximum grants.

So that the State of Illinois need suffer no harm by a reversal of this opinion. And in effect, as I pointed out in my Reply Brief, the fiscal effect on the State of Illinois would be minimal, it would be approximately $500,000 a year and the Federal Government would put up $500,000 a year, making a total of approximately $1 million.

We would also like to point out to the Court that the State's purpose of encouraging employability, which they stated in the court below was the whole purpose of the State statute denying assistance to college and university children, was to encourage employability. But we would submit that that rationale, under this Court's decision in Shapiro, is not permissible or not logical. In Shapiro, the Court said that

encouraging employability was no justification for imposing a one-year residency requirement. That if you're going to impose that type of requirement, you'd have to impose it not just on the new residents moving into the State but all the residents; and we submit the same type of logic applies in this case.

That if you're going to require a child to go to work, just because he's in a college or university, it's only fair, for technical and vocational schools, that same standard to be applied.

However, I want to point out that HEW has clearly prohibited working requirements while children are attending school, between the ages of 18 and 21.

Q Well, your statutory argument would drop out, I suppose, if -- no, it would be the same if Illinois did not give grants to children over 18 who are attending vocational schools?

MR. LEFKOW: That's correct, Your Honor; that it's still mandatory on the State.

Q Yes, it would still be mandatory. But your equal protection argument would not obtain?

MR. LEFKOW: That's correct, Your Honor. That's exactly it.

Q So you think both the Federal Government and the State may fail to give grants to students over 16?

MR. LEFKOW: No, I don't believe that the --

Q Entirely.

MR. LEFKOW: -- States -- no, I don't believe --

Q Well, let's assume the Federal Government, though, said that the Act did not require or did not even contribute to grants for children over 16.

MR. LEFKOW: All right. What's your question, then, Your Honor?

Q Would there be any denial of equal protection of the law in such a law?

MR. LEFKOW: I don't -- if I understand your question correctly --

Q Well, put it this way: suppose the Federal Government -- suppose Section 406 went up to age 18 but went no farther?

MR. LEFKOW: Yes.

Q And the State went up to 18 and went no farther. Any denial of equal protection?

MR. LEFKOW: Not in terms of this case, Your Honor. In other words, the college and university students, children over age 18, there would not be a denial of equal protection.

Q Even though most of the children over 18 would be in college, and most of them under 18 would be in high school?

MR. LEFKOW: That's right. But, you see, in this case Congress has made a determination.

Q Well, I understand that. I was just trying to find out your equal protection argument.

MR. LEFKOW: I see. My time has expired. Thank you.

Q I'm sorry.

MR. LEFKOW: I would like to reserve two minutes for rebuttal.

ORAL ARGUMENT OF M. JAMES SPITZER, JR., ESQ.,
ON BEHALF OF APPELLANT ALEXANDER, ET AL.

MR. SPITZER: Mr. Chief Justice, and may it please the Court:

I should like to begin with the statutory argument, and I should like to address initially: I submit that in viewing the statutory argument, one has to look at it in the framework of the AFDC program. That Illinois, in excluding college children from the definition of dependent children, but including other forms of post-secondary education, that is post-secondary vocational education, has done something which has the unfortunate effect of perpetuating poverty, which is clearly contrary to the purposes of the Act.

Q Is the vocational education uniformly post-secondary, as you've described it?

MR. SPITZER: Is it uniformly? No, sir. But it is both post-secondary and not post-secondary. They do -- Illinois presently does provide post-secondary vocational training. In those instances where children do not attend college, how-

ever, and I am including here the junior colleges, public community colleges, because both of the named appellants herein did attend public community colleges.

These colleges are the only free schools that I know of in the State of Illinois. The vocational institutes, the technical institutes that are included in the Appendix to the Appellees Brief are all tuition-paying institutions, with tuition payments of up to $3800. I should emphasize here that we do not suggest or intimate that there is a requirement to pay tuition, though in fact Illinois does under some circumstances.

In this case the children involved, the appellants, the named appellants, were attending free schools, supported by State and federal moneys. All that is involved here is their basic subsistence grant. I say all that is involved here, but obviously that grant covers their food, which they need to eat, shelter, clothing, the real essentials of life, and it should not be gainsaid.

We differ slightly with the position of the other appellants in this case on the statutory argument. It is not our position that the definition is mandatory in every instance. We recognize that Congress has, in certain instances, indicated very clearly and unmistakably -- at least in my judgment -- that the program was intended to be optional and the States were to have a choice of either going into it or not

going into it.

An example of that is involved in this case, and that is the extension to the 18-to-21-year-old group, was, in my judgment, clearly optional; that the Senate report stated, under existing law States, at their option, may continue payments to needy children up to age 21 in the Aid to Families with Dependent Children program.

Then it goes on, however: "providing they are regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent."

The committee added an amendment extending this provision, referring to the educational requirement provision, so as to include needy children under 21 who are regularly attending a school, college, or university. In other words, the program, which is optional, is the extension of AFDC to the age 18-to-21-year-old group; but the educational requirement provision is different. And that was instituted, according to the report, which was deleted from the references by the Solicitor General and the appellees in their brief, and is included in our original brief and in our Reply Brief on page 9; that the educational requirement provision and the extension of college students was to bring the educational requirement more nearly in line with the provision of the bill relating to the continuation of a child's benefits under the OASDI system, which is mandatory.

Then it goes on: "The objectives of the provision" -- that is the educational requirement provision in the amendment to include colleges -- "is to assure, as far as possible, that children will not be prevented from going to school or college because they are deprived of parental support."

In the Solicitor General's brief, the Solicitor General states that the Department -- referring to the Department of Health, Education, and Welfare -- believes that the omission of college children from AFDC may have the unfortunate effect of perpetuating poverty; that in viewing this statute, one must view it in terms of its purposes and in terms of its structure. And we submit that under both standards it requires reading this provision as being mandatory.

Q Mr. Spitzer, what's OASDI?

MR. SPITZER: This is the Old Age Survivors benefits, under the Social Security Act also. These are payments where --

Q That's not involved in this case at all?

MR. SPITZER: No, it's not. The reason why I mention that, and it's included in the Committee report and these provisions were done in tandem, that Congress evinced a clear purpose to make the provisions as nearly alike as possible; that the college requirements provision was added to AFDC because it was done in OASDI, and they wanted to make the two as nearly alike as possible. And that's the only reason why I

mention it. No, it is not directly involved in this case now.

As soon as the bill was passed, and completely in line with the Solicitor General's statement it will have the unfortunate effect of perpetuating poverty, and in line with the Senate Report, the Department of Health, Education, and Welfare, in its handbook, interpreted this, and they state that "Within the age limit set by the State" -- this is at page 5 of our brief -- "Within the age limit set by the State, there should be a choice of attending a school, college, or university or taking a course of vocational or technical training for gainful employment."

I think it is very, very important to recognize here and the educational structure in Illinois is such that vocational training, and one of the chief weapons used in order to obtain vocational training for people are public community colleges. We have submitted as an Appendix to our brief the college catalog for these junior colleges. There are courses such as air conditioning, inhalation therapy; these children are being denied the right to attend these courses.

The entire role of vocational education in a State is being moved into this area.

In terms of the question earlier, if Congress had decided to cut it off at age 16, there clearly is no equal protection violation involved. If they had cut it off at age 18, there would not be. But Congress hasn't done that here.

Congress has identified a group of people whom they considered needy and in need of federal protection. It defined them and called them dependent children, and provided financial aid to them.

Illinois participates in the program, receives huge amounts of federal money, and still attempts to exclude some of those people that Congress wanted to provide benefits to. We submit that this is wrong. We submit that this frustrates the purpose of Congress.

Q You're saying that if the State wants to move into that 18-to-21 category at all, it must support all those children in that age group, --

MR. SPITZER: That is correct.

Q -- if they're going to any kind of a school?

MR. SPITZER: That is --

Q Although they could exclude them wholly?

MR. SPITZER: They could exclude the 18-to-21-year-old group wholly.

Q Yes.

MR. SPITZER: That within the standards established by the Department of HEW, they must take everyone within that group.

Q It's an all-or-none thing.

MR. SPITZER: That is correct. I think that's the only possible reading of the Act.

Indeed, when you look at the legislative history of the Act --

Q It's not only that they must, but also that they have, that Congress has done it?

MR. SPITZER: That's right.

Q There are two issues there, and I --

MR. SPITZER: That's right.

Q -- think that -- I'm not sure at the moment whether you're addressing yourself to the constitutional issue; and that would be that the State must do it. But certainly your statutory argument is that Congress has done it.

MR. SPITZER: That's right. Our statutory argument is that Congress has done it. And our argument in terms of the equal protection clause is that in view of what Congress has done in the AFDC program --

Q The State violates the equal protection clause by discriminating as among 18-to-21-year-old students.

MR. SPITZER: That's correct.

Q Well, I thought you were arguing that the State by supporting only part of the 18-to-21-year-old group in school is going contrary to the Social Security Act.

MR. SPITZER: I'm arguing both positions, Mr. Justice White.

Q Yes. A supremacy argument and the equal protection act.

MR. SPITZER: Correct.

As I read the equal protection clause, and as I read Dandridge, when one views classification made within the State, they must be rational, but they must also be rational within the framework of the program in which the classification is made. This is particularly true in this case where you have a total exclusion of some children from a federally defined class.

We do not have the kind of case, as in Dandridge, where everyone received some benefits. And the Court went out of its way to point that out, it seems to me. Whereas here we do have this total exclusion, there is no doubt that the State has a justifiable interest in protecting its fiscal integrity and in conserving its AFDC resources. We do not challenge that here.

What we do challenge is whether they have chosen the appropriate vehicle for so doing. That is, whether they can do this by excluding children from the class, or whether they must provide at least some benefit to everyone and simply reduce, if they must, the level of benefits.

The Department of Health, Education, and Welfare has taken -- argues that King does not require that the definition of dependent children be read as a federal definition requiring the States to participate wholly. They argue that the term "parent" in King was in some way essential to the purposes of the Act, and that there was a clear congressional intent to

include all those children with an absent parent, and the State could not define "parent" in a way contrary to the Social Security Act, which, in its legislative history, meant legally obligated to support.

And in Lewis vs. Martin, there was a man assuming the role of a spouse, actually living in the house, there was none of the fiction involved in King, of a casual sexual liaison or whatever. Here we actually had a man in the house, living there, and assumed the role of a spouse. But the Court said that children, where a man lives there, cannot be totally excluded from the program.

It seems to me that that requires this Court to say that the definition was mandatory, that it's been held to be mandatory.

In Dandridge the Court suggested that the definition was fixed by federal law. And if it's fixed by federal law, then the State can have absolutely no right whatsoever to exclude some of those needy children from the program.

The doctrine of equitable treatment, which is advanced by the Department of Health, Education, and Welfare to explain King creates a total anomaly. They have devised a standard without -- they have devised a doctrine without standard. The cases which they have taken positions on cannot be squared, in my judgment. King was required; Lewis was required. In Arizona were otherwise eligible children living with relatives,

not having legal custody over the child, and where the child had a sibling living with his natural parents, were excluded from the Act. In these cases, the Department of Health, Education, and Welfare concedes that the States went astray and they have violated the federal definition and have improperly excluded needy children from that definition.

But in the educational requirement, which the Senate Report indicates clearly, in my judgment, it was intended to provide benefits to college children, to make sure that needy children, deprived of a parent, were not denied the right to an education in college, at least where the State goes into the 18-to-21-year-old program. And it emphasizes that by saying, "as far as possible"; that those children can be excluded. That in Carter vs. Stanton, which will be heard next by this Court, they interpreted "continuous absence" as being optional with the State, and that where a parent has deserted or been separated from the house for less than six months the State is free to exclude needy children.

There is no standard here, we would submit.

In sum, that when one takes a look at the purposes of this Act, and when one takes a look at the classification that's involved here, whether one looks at it in terms of the definition of dependent children under the supremacy clause, or when one looks at the difference between vocational training, which is post-secondary, and college training, which is post-

secondary, all of which and at the age of 21, neither of which involve tuition payments, we can see no rational difference whatsoever. But what we do find is we find a concerted effort to keep certain poor people from attending free public and publicly supported institutions. We find an intrusion on -- into the family and its right to determine the child's education, which has an effect on the child's entire future. We think that this is tragic and wrong.

We think, as does the Solicitor General, that this tends to perpetuate poverty. We ask that this case be reversed.

Q How many other States, Mr. Spitzer, in addition to Illinois, have done this? Any other States?

MR. SPITZER: Nine other States.

Q Nine other States. And how have -- and the other 40 States have done what, a variety of different things?

MR. SPITZER: There's a wide variety; this is a wide-variety program. Some States do not enter into the 18-to-21-year-old category at all.

Q Not at all.

MR. SPITZER: Some have gone into age limits; some only extend it up to the age of 19, rather than to 18.

Q Would you think that would be proper?

MR. SPITZER: I do not think that that's proper, no, sir.

Q Not under your definition?

MR. SPITZER: That's right. I believe that once they go into the 18-to-21-year-old category, they're in it.

Q Well, I thought your position was that -- your statutory argument was that they had to go in it and go all-out into it.

MR. SPITZER: Well, no, my statutory position is they do not have to go into the 18-to-21-year-old group.

Q But if they do?

MR. SPITZER: They had to go all the way; that is correct. That is my position.

In answer to that question also, however, under the equal protection clause, I have no doubt that cutting off at 19 does satisfy that clause.

Q May I ask, Mr. Spitzer, looking at 602(a)(10), why is it you say they don't have to go in under that statute, for the 18-to-21?

MR. SPITZER: Under the term that 602(a)(10) requires all eligible individuals to be given aid, and dependent children is included, under 606(a)(2)(B) includes the 18-to-21-year-old group. The only reason why I say that they do not have to be included, and I agree that from a plain reading of the statute they should be; when one looks at the Senate Reports, and the House Reports, committee reports, there is a clear legislative intent, it seems to me --

Q It talks about an option.

MR. SPITZER: That's right. It says that there is an option.

Q There is -- oh, I see. An option to go in or not, but --

MR. SPITZER: That's right.

Q -- but does the legislative history support your position, that if they go in at all they must go all-out?

MR. SPITZER: Well, they refer to the 18-to-21-year-old extension as a program. They say that the program is optional. They say that the provision is designed to bring it into line with OASDI, and that the provision -- that is the educational requirement provision -- is to make certain that States who implement such a program for payments will extend it to school or college and that children will not be prevented from going to school or college because they're deprived of parental support.

That is the reason why I take that position. It is one of the only exceptions in the Act that I can find, in which there is any kind of clear legislative intent to make the program optional.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Spitzer.

Mr. Vavarka, you may proceed.

ORAL ARGUMENT OF DONALD J. VEVERKA, ESQ.,

ON BEHALF OF THE APPELLEES

MR. VEVERKA: Mr. Chief Justice, and may it please the Court:

I would like to first point out that, although AFDC benefits were cut off at the time that these children attended a college or university, that they were provided with general assistance funds.

I believe the issue before this Court --

Q That was wholly a State program?

MR. VEVERKA: That's true, Your Honor.

Q The general assistance fund.

MR. VEVERKA: I believe the issue before this Court is whether the equal protection clause or the supremacy clause requires the State to participate fully in the federal AFDC program regardless of their financial condition. I think this is contrary to the congressional intent, which provided that the programs would be implemented, or that financial assistance would be provided as far as practicable under the conditions in each State.

I think it's somewhat important to note that Illinois' involvement in this case is not because it has cut grants; as a matter of fact, Illinois provides 100 percent of need; or not because it's established any strange eligibility requirements, but simply because it adopted a classification which was

originally established by Congress in 1964.

Prior to 1964 the federal definition of a dependent child was a child under 18. In 1964 Congress amended the definition and it defined a dependent child as someone under the age of 18 or someone under the age of 21 who was attending a high school which would lead -- a high school course of study which would lead to a diploma, or a vocational training school which would lead to gainful employment.

Now, at the time that Congress amended its definition of a dependent child, Illinois similarly amended its Public Aid Code to provide essentially the same definition. And in 1965, one year later, Congress again expanded the definition, but unfortunately the financial conditions in the State of Illinois and in nine other States have not allowed it to expand the definition.

The Congress has consistently, since 1940, recognized that a State does not have to expand its benefits every time that Congress expands its definition of a dependent child. For example, in 1940, the age limit was 16, and Congress raised the age limit of a dependent child from 16 to 18, and at that time the House report stated: It is estimated that about 100,000 additional children may obtain the aid by virtue of this change, provided all States amend their laws accordingly.

This is set forth in our brief on page 36.

Q Well, you wouldn't think that if Congress could

-- or that the State could, say, give support payments to just half of the children under 16? You wouldn't think just in terms of being able to limit the State's investment, that "we'll take every other child and give him support"?

MR. VEVERKA: No; that's true, Your Honor.

Q Well, if Congress says, "Here are matching funds to provide education for students over 18 in vocational schools or colleges" and the State says, "Well, we'll" -- you wouldn't think they could just say, "Half those students in those categories we'll support, and the other half we won't"?

MR. VEVERKA: I think, Your Honor, that if a State adopts a classification established by Congress, that it has the right, and Congress, I think, has expressly recognized the fact that it has the right to take the same steps as are established by Congress. I think that if it adopts the same requirements that Congress adopts, it is acting rationally. And again I think that the test is rationality.

Now, from time to time when Congress has expanded the definition of what is a dependent child -- for example, my recollection is that when they expanded it from 16 to 18 there was a requirement that they be in school. So the point there is that Congress has taken this step, has taken this approach throughout the time that it's expanded the definition, from time to time as it expanded --

Q Well, I understand that. But when they expanded

it to the 18-to-21-year-old category, they said 18-to-21-year-old students who are attending vocational school or college.

MR. VEVERKA: No. At the time that they first made the classification, it was vocational or technical schools.

Q Yes.

MR. VEVERKA: And then a year later it was expanded to include kids going to colleges or universities.

Q So as it now stands, the definition is students in vocational schools or colleges?

MR. VEVERKA: That's true, Your Honor.

Q And that's the congressional category that the Act defines.

MR. VEVERKA: That's true, Your Honor. But, at the same time that they did that, and at all times that they have expanded that definition, they've made it clear that a State can expand it if the financial conditions, or as far as is practical under the laws of the State.

I believe that a State can take that approach as long as there's a rational distinction. And I believe that there is a rational distinction here between the classification which Congress originally set up in 1964 and the classification which they later adopted in 1965.

Now, referring to the time that --

Q I'm still interested in why you draw this line.

MR. VEVERKA: Pardon me?

Q Between the vocational and -- you said a minute ago that you go to high school and you come out with a diploma and you go to vocational school and you come out with a job. What do you mean by that?

MR. VEVERKA: Your Honor, I think that under the history of the Social Security Act, Congress has recognized the fact that not all --

Q Well, No. 1, do you get a diploma out of a vocational high school or not? Or is Illinois different?

MR. VEVERKA: I believe you do get a diploma, Your Honor.

Q Well, why do you draw the difference? You say one you get a diploma, and the other you get a job.

MR. VEVERKA: Well, I draw that distinction because of the fact that normally you speak of a diploma in terms of a formal type education as opposed to vocational or technical type. You do get a diploma of some kind.

Q Well, do you think there's a difference between M.I.T. and Harvard?

MR. VEVERKA: No, I don't believe so, Your Honor.

Q Is it just true that you want these poor people just to be limited to jobs that are trained skills; is that what you want?

MR. VEVERKA: No, Your Honor, --

Q And you want to preclude liberal arts people --

MR. VEVERKA: No, Your Honor.

Q -- from getting money?

MR. VEVERKA: No, Your Honor. I think that it's a recognition. I think that the fact that Congress picked up the category in the first place in 1964, and the way in which they did it, I think that it was a realization that there are some who are not interested in a high school course of action in formal education, as we know it --

Q Well, let me ask this: does a child in vocational school eat less food than a child in a high school? Don't they eat the same food?

MR. VEVERKA: That's true, Your Honor.

Q Don't they wear the same clothes?

MR. VEVERKA: That's true, Your Honor.

Q And don't they have the same needs? Exact same needs.

MR. VEVERKA: That's true, Your Honor. A child in a vocational and technical school and a child in high school, and that's exactly my point.

Q Well, a child in college has the same problem. Why does it change so suddenly?

MR. VEVERKA: Your Honor, it changes because --

Q Is it your theory that a poor child just doesn't need a college education?

MR. VEVERKA: No, that's not true, Your Honor. The

point that I make is that if the State of Illinois had a hundred dollars to give to someone, and it had to take its choice between a child who was, say, 8 years old and a 20-year-old child -- now, it's true that under the definition of what is needy -- and I might point out that someone who is needy may be a 22-year-old or 23-year-old; it may involve --

Q We're not dealing with them.

MR. VEVERKA: -- any particular age.

Q We're dealing with two children that are 18 and a half years old. One of them is in a vocational school and the other is in the first year of college. One of them needs to eat and the other one doesn't.

MR. VEVERKA: That's right, Your Honor.

Q Thank you.

MR. VEVERKA: Your Honor, but the difference is they have the same need, but the State of Illinois has filled them in different ways. The fact is that when somebody graduates from high school and gets a high school diploma and enters a junior college or a college, he then is eligible, as opposed to a child in vocational or technical school, he is then eligible to get tuition-in-grants. A child who is in a technical or vocational school has the same needs, but he is not eligible, because in most cases he does not have a high school diploma. And that's the key to the difference between them.

Q Well, I have to add another one. They're both

18 and a half, and one of them is in technical school and the other has graduated from high school, but he just barely made it, and he hasn't got any -- he's not capable of any scholarship aid. What happens to him?

MR. VEVERKA: Under the Illinois scheme of providing grants, he does not have to show the superior capacity. The requirement for tuition requires that he be in the upper half of his class, and that he --

Q Well, are the children here getting the tuition?

MR. VEVERKA: Pardon me, Your Honor?

Q Are the named appellants in this case getting tuition?

MR. VEVERKA: Neither one ever applied for a scholarship or a grant.

Q They didn't?

MR. VEVERKA: No, they did not, Your Honor.

Q But they would get one automatically if they did?

MR. VEVERKA: Your Honor, the grants are based solely on --

Q I thought you said they got it automatically.

MR. VEVERKA: If they apply for them, Your Honor.

Q They would automatically get scholarship aid?

MR. VEVERKA: Based on financial needs. Grants are based on solely financial needs.

Q Well, there's no question here they need financing. They meet the requirements. So you say all they have to do, as of right now, is require -- for a grant, is to apply for the scholarship aid, and they'll get it?

MR. VEVERKA: If they're a high school graduate, which they are.

Q But I understand that this school here, they don't require it, they don't pay tuition. It's free.

MR. VEVERKA: That's true, Your Honor.

Q Well, how does that tuition help them? How does a scholarship help them in a school that doesn't have tuition?

MR. VEVERKA: In addition to the scholarships there are also grants. Under the --

Q What grants?

MR. VEVERKA: -- Illinois State Scholarship Commission, this was established in 1957. Now, under that Commission, the Legislature set up a whole series of scholarships, grants, and guaranteed loans, which were designed solely for the financially needy.

Now, a child who --

Q But is that for a course of schooling or a course at home, to eat?

MR. VEVERKA: That is for schooling.

Q Well, I understand they don't need any -- they

don't need to pay for their schooling.

MR. VEVERKA: That's true, Your Honor. But in addition to the scholarship they can also get grants.

Q What's the grant? You mean to pay for clothes?

Q Is that for board and room?

MR. VEVERKA: Your Honor, the statute is silent on that. I attempted to find out. I don't know.

Q That's Mr. Justice Marshall's question.

MR. VEVERKA: Right. I understand that.

But, as a practical matter, if a child is in a technical or vocational school, and he's expected to pay tuition, for example, which may be $850 or $900, as a practical matter he is in approximately the same position as somebody who is attending a college, who is getting a grant to cover expenses at a college,but is not getting the living expenses. We have provided -- the State of Illinois has provided aid in two different areas, but essentially they have equalized the conditions.

The point that I'm attempting to make is that if the State of Illinois had a hundred dollars to give, and it had a choice between an 8-year-old child and a 20-year-old child, now, both of them could fall within the technical definition of what is a needy child, in the sense that they are making less than the standard of need. But the fact remains that if we assume that Illinois has one hundred dollars and it chooses

to give it to the 8-year-old, I don't think it could be said to be arbitrary that it chose to give that hundred dollars to the 8-year-old as opposed to the 20-year-old.

The point being that even among those who are technically classified as needy, there are some who are more in need of help than others. The point is that here those who are in technical or vocational school, although they are technically as needy as somebody who is in a college or university, those children are still less in need of, No. 1, because it's more likely than not, the kid in the technical or vocational school does not have a high school degree; which means that he has no choice. He can't get into a college or university, he can only get into a technical school.

Secondly, he's not in as much need because of the fact that when he gets that high school degree, and when he gets into a college or university, he is then available for these tuitions -- which of course wouldn't apply in the case of a junior college -- and the grants and the guaranteed loans. And especially the grants. So, as a matter of fact, the child who is in a technical or vocational school, educationally, under most States, is at a distinct disadvantage because of the fact that he cannot get the same assistance.

Again, the point is that a child -- that high school degree does mark the difference between a child who is more in need of help than the other child.

Again I'd like to get back to the fact that in 1965, now, when Congress established and expanded the definition, at that time it pointed out -- and this is contained on pages 36 and 37 of our brief -- that under existing law States, at their option, may continue payment. And then the Senatorial committee report went on to say: Federal sharing for this purpose would thus be available to States who implement such a program for payments to children regularly attending a college or university, as well as those attending high school or vocational school.

But Congress has made it clear that the States can, as finances allow, develop the program, as long as there is a rational choice. And again I believe that there is a rational choice.

And Counsel was candid enough to admit that we are talking about not only post-high school education but also the equivalent. At the time that Congress originally established this classification, if you examine the classification that they set up, they spoke in terms of someone who is attending a high school in a course of study which was -- which would lead to a degree, or vocational or technical school which would lead to gainful employment.

I think the point there is that Congress at this time realized the fact that not everyone that the State was concerned with, or not everyone that Congress was concerned about was

somebody who would want to go back to high school and get a degree. I think it was concerned about the kid who drops out of high school and finds that he has no aptitude for work and desires, instead, to go to vocational or technical school. So I think that we're not talking about the same class of kids. I think that the principles that this Court has enunciated on a number of occasions, that a State can attack as much of a problem as its finances allow.

Now, no discussion would be complete without a picture of the situation in Illinois, as it exists now. Because of a substantial increase, a fivefold increase in the AFDC cases, Governor Ogilvie announced there's $108 million over-all deficit in the welfare programs, and specifically $107 million deficit in State funds.

Now, the Governor was faced with either cutting grants, and in the report which he submitted in October of '71 he spoke in terms of one-third cut in the standard of need, as opposed to 100 percent; given 100 percent standard of need that would mean roughly 67 or 70 percent standard of need. In an attempt to alleviate this problem, what he did was he transferred funds from the general assistance funds -- general assistance fund, which is purely a State program -- into your AFDC, he transferred $21 million, and this then met the AFDC budget.

Now, litigation resulted, and as of this time the

Governor has been enjoined from carrying out this program.

But the point is that at this time there is a possibility of cutting the standard of need in AFDC cases. We do not believe that the Constitution requires the State of Illinois to take the money, assuming that this is the condition, we do not believe that the Constitution requires the State of Illinois to take money from the 8-year-old and the 9-year-old and the 10-year-old and give it to a 20-year-old basketball player.

We believe that we have helped those that were most in need under Illinois law, namely those without the high school degree, those who, say in a period of a short time, could become employable where they weren't employable before. We believe that the State of Illinois has acted rationally. We believe that Congress has realized, every time that it's expanded the definition, from 1940 on, they have expressed the opinion that the States were free to either adopt the amendments to expand their programs or not to.

HEW, the administrative body which administers the Act is here before this Court. They've filed an amicus curiae brief. They have taken the position that the States are free to implement the program as its finances allow.

In light of the views that Congress has expressed, the States are free to either expand their programs or not expand their programs, and again, as was pointed out, there are

a substantial number of States which do not comply 100 percent with the federal program, which have not expanded the federal program.

Q How long do these vocational -- is there a fixed period of the vocational training in Illinois under this program?

MR. VEVERKA: It depends on the courses in the Appendix, which I've set forth in my brief. I took the Chicago area vocational schools and I listed the courses and the length of time. In addition to that, I have cited in my brief the report of the -- it was a House Committee on Education, and they found that the -- it was a Republican Task Force on Education, and they found that the average length of a vocational school was approximately four months to a year. Which is another point.

If somebody attends a junior college, we're talking essentially about a two-year program. And again one thing I'd like to mention that the classification which the plaintiff sought to -- which the plaintiffs represent is not the two-year college student but, rather, the four-year college student. This is the classification which they established in their pleadings, and this, I believe, is the issue before this Court.

Both of the plaintiffs indicated a course of study which would have required a period of time far in excess of the

two years.

Omega Minor will finish in about five and a half years, and the other plaintiff indicated that he intended to go on for a period of four years.

So, again, the point is here that in a technical or vocational school, not only is it more likely than not that you have someone who does not have a high school degree and therefore is more in need of help, but you also have a situation where the State can provide AFDC benefits for a period of perhaps four months to a year and be assured that at the end of that time that there is some chance that the recipient will no longer need the help of the State.

But going on to the point again, Congress has said, every time that it's amended the Act, that the States are free to either expand the definition or not expand the definition. HEW has defined, or has made similar statements. They've set forth their views in a regulation which is cited in our brief, and in that regulation they have said that a State is free to -- they have said specifically, in our brief on page 39, that although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis.

And in light of the views expressed by HEW and by Congress, we believe that the plaintiffs are asking for relief which both Congress and HEW has thus far refused to grant.

Now, for this Court to grant this extended coverage would be contrary to the principles that it's enunciated on a number of occasions, that in a statutory construction case its function is not to -- not to implement its own views, but, rather, to carry out the will of Congress. And Congress has manifested its will, that the States are free to do this.

Furthermore, I would point out that Congress can grant the relief which the plaintiffs are seeking by passing the Family Assistance Act.

Now, the difference between this Court granting the relief sought by the plaintiffs and Congress achieving the same result is that under the Family Assistance Plan, if this is done, if aid is extended to those in colleges or universities as well as those in technical or vocational schools, under the Act as it stands now the Federal Government would provide additional funds, other than what it now provides. Of course it now provides funds on a 50/50 basis;under apportion in that Family Assistance Act it would fund 100 percent as opposed to 50 percent.

I believe that this is a realization by Congress that not all of the States can fully implement the Act, and that if Congress wants the uniform system of welfare across the entire nation, that it will have to provide additional benefits.

In conclusion, I would like to say that this Court recognized in Dandridge that promoting employability and saving

funds were legitimate State ends. We submit to the Court that the course of action which they have taken is rationally related to each of these two ends. The State, we believe, has made a reasonable choice. We do not believe that the Constitution requires the State to take money from the 8-year-olds and 9-year-olds and the 10-year-olds, to take part of those benefits and share those benefits with the 20-year-old basketball player. We believe that the other class is more needy.

The State has helped those, and we believe that the State has acted constitutionally.

For these reasons, we ask that the decision of the court below be affirmed.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

You've consumed all your time, I think -- let me see. Yes, your time is all consumed, counsel.

The case is submitted.

[Whereupon, at 2:08 p.m., the case was submitted.]