

In the  
**Supreme Court of the United States**

UNITED STATES DEPARTMENT OF  
AGRICULTURE, et al.,

Appellants,

v.

LULA MAE MURRY, et al.,

Appellees.

No. 72-848

Washington, D. C.  
April 23, 1973

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Washington, D. C.

Monday, April 23, 1973.

The above-entitled matter came on for argument at  
2:04 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  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

KEITH A. JONES, Esq., Assistant to the Solicitor  
General, Department of Justice, Washington, D. C.,  
20530; for the Appellants.

RONALD R. POLLACK, Esq., NLSP Center on Social Welfare,  
Policy and Laws, Inc., 25 West 43rd Street, New  
York, New York, 10036; for the Appellees.

C O N T E N T SORAL ARGUMENT OF:PAGE:

Keith A. Jones, Esq.,  
for the Appellants

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In Rebuttal

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Ronald R. Pollack, Esq.,  
for the Appellees.

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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 72-848, United States Department of Agriculture against Murry.

Mr. Jones.

ORAL ARGUMENT OF KEITH A. JONES, ESQ.,

ON BEHALF OF APPELLANTS

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

In this case, like the one which has just been argued, the Government is appealing from a judgment of the District Court in the District of Columbia enjoining enforcement of a provision of the Food Stamp Act on constitutional grounds.

The provision in question is another 1971 amendment to the Act. This one is commonly referred to as the "tax dependent" amendment.

Generally speaking, the amendment provides the household of the young adult who is claimed by his parents as a tax dependent is not eligible to participate in the Food Stamp program if his parents, themselves, do not qualify for food stamp assistance.

I might add, at this point, that in order to take a child as a dependent for tax purposes, the parent must provide over one-half of the child's support.



The eight individual appellees here brought this suit as a class action, alleging that they had been excluded from participation in the food stamp program solely by virtue of the operation of the tax dependent amendment.

Appellees raise no question of statutory interpretation in this case, and they did not contest the applicability of the statute to their individual cases.

They sought declaratory and injunctive relief solely on constitutional grounds.

The three-judge court held the provision unconstitutional.

Without closely analyzing the language of the statute, the court assumed that it necessarily acted to deny food stamps on the basis of invalid taxpayer dependency claims.

The court considered this result to be so grossly unfair, in the court's terms, as to constitute both the denial of due process and of equal protection.

The court, therefore, enjoined further enforcement and implementation of the tax dependent amendment.

As we have discussed at some length in our reply brief, this case presents a threshold question, whether adjudication of appellees' constitutional claims is appropriate at this time.

It now appears that each named appellee, may have been denied food stamps solely as a consequence of errors in the

administrative interpretation of the tax dependent amendment.

We have set forth our analysis of the statutory issues in our reply brief, and I will not discuss them at length here.

Stated very briefly, five of the appellees in this case were denied food stamp assistance on the basis, solely, of invalid taxpayer dependency claims.

Q Mr. Jones, is there an administrative remedy provided for an improper income tax dependency claim?

MR. JONES: No, there isn't, and it has been the administrative interpretation of this Act that it does deny food stamps if the claim of exemption is made, and there is no inquiry into whether it is valid or invalid.

And that has been the administrative interpretation.

As we point out in our reply briefs, the statute certainly may, but it doesn't have to be interpreted in that way.

The other three appellees --

Q That being the case, then, the applicants are helpless, aren't they, in the face of an invalidly asserted dependency claim?

MR. JONES: If the statute is construed as denying food stamps on the basis of an invalid claim, then there is no way for the applicant to establish that their claim is fact, that the taxpayer claim was, in fact, invalid and that they

should receive food stamps.

That is correct.

The statutory language talks merely in terms of "is claimed" and whether that imports a requirement of validity is an open question, I would think, at this time.

Q Well, doesn't that concern you at all?

MR. JONES: Well, it concerns me in the sense that we have pointed out to the Court that this Court has frequently interpreted statutes so as to avoid constitutional questions.

If that were the opinion of the Court that the statute would be invalid, as so construed, -- construed as denying food stamps on the basis of invalid claims -- then it would be appropriate for the Court to interpret it as not denying food stamps in such a case.

And I think such an interpretation would, generally, accord with the statutory language and would not do it violence.

On the other hand, we have argued that even if it is construed as denying food stamps on the basis of invalid claims, the statute is nevertheless constitutional.

We would advance two reasons for this. In the first place, Congress could assume that such invalid claims are going to be comparatively rare.

Now, there are civil and criminal penalties for false filing of tax returns, and surely in almost all cases these will deter false dependency claims.

Furthermore, one of the purposes of the tax dependent amendment was -- the underlying rationale for the tax dependent amendment was -- that through the granting of a tax dependency deduction, Congress is already providing support, is already making, in a sense, a payment toward the support of the tax dependent.

And that payment is made whether or not the claim is invalid.

So that, for example, if food stamps were issued to a dependent, or to an applicant, and then those food stamps were stolen, the Government, presumably, would not be required to reissue stamps on the basis of private theft of that nature.

And, similarly, we would feel that equal protection would not require the Government to step in and take care of dependents who are falsely claimed.

The other three appellees in the case, as we say, were denied food stamps after they had moved out of their parents' households and established their own households.

And, as we have set forth in our reply brief, it is not our understanding that food stamps should be denied in such a situation.

We have discussed the statutory interpretation. We believe that these three appellees apparently were erroneously denied food stamps.

Q The logical end of that argument is that to that



extent the case is moot here.

MR. JONES: That's correct, Mr. Justice White.

Q I haven't -- could the Government take such steps as would make the case moot, or not?

MR. JONES: By issuing --

Q By other than coming here and telling us that somebody made a mistake?

MR. JONES: Well, these applicants are scattered throughout the country.

Q You started to say by issuing food stamps to them now.

MR. JONES: That's right.

Q Well, why don't you do it?

MR. JONES: I suppose if they would come in to apply for food stamps, we could do that, except for one fact, Mr. Justice Brennan.

Q It would sure save us a little time.

MR. JONES: Well, we have not conceded, however, that the statute denies food -- or grants food stamps when the taxpayer dependency claim is invalid. We would not issue food stamps in such a case.

However, as I point out, in order to save the statute, if it were necessary to do so, the Court could construe the statute otherwise.

But, in short, as we point out, these appellees may

well be entitled to relief on purely statutory grounds. In which case, it would not be necessary for this Court to reach the constitutional claims.

Q It is like the argument in the previous case.

MR. JONES: Well, they are related cases which this Court took together.

I turn now from these threshold matters to a discussion of the constitutional issues in this case.

The appellees' principal challenge to the statute is on grounds of equal protection.

The standard of reviewing equal protection cases, or cases involving challenges to welfare classifications, is by now well established.

A welfare classification, such as the one involved here, must be upheld if it furthers any reasonable purpose which may be attributed to the legislature.

As this Court reiterated last month in Ortwein v. Schwab and last term in Richardson v. Belcher and Jefferson v. Hackney, a legislative allocation of welfare benefits may be -- must be -- sustained, if it is shown that the allocation has a reasonable basis.

And we believe that this tax dependent amendment does have such a reasonable basis.

This amendment was added to the Food Stamp Act only after Congress had acquired several years experience with the

administration of the food stamp program.

And during those years, it had become apparent that although the program generally operated in a satisfactory manner, it was subject to some abuses.

And by 1970, many Congressmen feared that unless these abuses could somehow be eliminated, the whole program might be terminated as a result of rising political opposition.

One of the most significant abuses, at least in the minds of many Congressmen, was the attaining and use of food stamps by the college age children of higher income families, and the tax dependent amendment represents the Congressional response to this general problem.

The underlying premises of this amendment are that the food stamp program was not intended to provide welfare assistance to college students and other young adults who are being supported by parents who are financially better off.

And also, that when these parents receive a tax benefit for supporting their children, they have assumed the primary responsibility for making certain that that support is adequate.

In short, through the tax deduction, the Government has already, in essence, paid for the support of these young people. It needn't provide food stamps as well.

So that the effect of the amendment is to restrict the coverage of the food stamp program to low income households

which have no apparent access to substantial parental support, and with respect to which no higher income family is obtaining a tax benefit.

And we submit that Congress had the right to choose to go this far and no further in the provision of food stamp assistance.

Appellees' equal protection argument apparently is based on the general claim that even if this statute was generally effective in eliminating the abuses with which Congress was concerned, it's nevertheless unconstitutional insofar as it denies food stamps to certain needy households.

We concede that some needy households may be denied food stamps, but we don't invest that fact with constitutional significance.

First, I think it is appropriate to point out that the appellees seem to have exaggerated the effect of this amendment.

They have propounded a variety of hypothetical cases, but they have failed to show that the amendment will, in fact, bar assistance to significant numbers of needy households.

To the contrary, Congress could reasonably assume that very few truly poor households contain a young adult who, in fact, is receiving more than half of his support from a parent who is not himself poor.



Congress could determine that parents who receive the tax benefits of a dependency exemption have assumed and are fulfilling their responsibility to support their children.

Secondly, a welfare classification, such as this one, is not unconstitutional simply because it doesn't reach all persons who would benefit from welfare assistance.

As this Court has often noted, a welfare classification need not be made with mathematical precision.

Thus, in this case, if the food stamp program fails to reach all needy households which have no access to parental support, it is not for that reason alone unconstitutional.

Finally, Congress can limit the coverage of a welfare program by the use of non-need eligibility criteria. It needn't restrict itself to the use of need as a sole eligibility criteria.

Given the many necessary fiscal restraints on welfare expenditures, Congress could reasonably determine that if children of higher income parents, when the parents themselves are enjoying tax benefits from supporting their children, are needy, that's primarily the responsibility of the parents, and perhaps also of the children if they are voluntarily unemployed.

But it is not necessarily -- it is not constitutionally the responsibility of the Government.

Congress has paid for the support of these children,

in a sense, through the tax reductions. It doesn't have to provide food stamps, as well.

Appellees' claim, in essence, is that the Government should be required to pay twice for their support, once, through the tax deduction, and then a second time through food stamps.

We see no reason -- tax exemption, that's correct.

Q As a practical matter, how, again, does this work? Does every member of an applicant household have to fill out a form and swear to it that he has not been claimed as a dependent by a parent?

MR. JONES: I think the head of the household fills out the form, and the form requests information about whether a parent of any of the 18 and older people in the household is providing support, and, if so, if they are taking the young person as a tax exemption.

If the applicant answers, "We don't know whether they are taking us as an exemption, they are providing support," this is a hypothetical -- then the administration, Food and Nutrition Service or the State agency administering the plan sends to the parent a form which the parent must fill out. And the parent must state whether or not he is providing support and whether or not he is now claiming the child as a tax dependent.

Q You don't mean "now claiming." This is something

that's done once a year. By most people, on or before April 15th.

MR. JONES: Well, that's when they file their tax return.

Q Well, that's when you make the claim, too. That's when you get the exemption.

MR. JONES: Well, that's not the way it has been administered and I think rightly so.

You can make a claim of tax dependency simply by filling out the W-4 form, which asks, "Do you have any dependents?" "Are you taking any dependents?" And, for withholding purposes, therefore, you've made the claim.

Furthermore, I think that when the parent fills out the form that's sent to him from the State agency, that he is, in fact, making a claim there for purposes of the food stamp program.

Q Well, -- but that's not. The statute talks about --

MR. JONES: The statute talks in terms of "is claimed," and we contend that "is claimed" refers to any claim that the taxpayer makes, whether it is on the withholding statement or in the form provided to the food stamp administrator.

So that it is a contemporaneous claim which enables the food stamp program to be administered on a current basis.

The appellees argue to the contrary, that, in fact, it is never done this way, but that is the common method of administration.

Q It is the --

MR. JONES: Common method of administration.

At the time of the application you send out the parents a request which they respond to.

Q And that's only if --

MR. JONES: That's only if the information provided by the applicant suggests the possibility that there is a tax dependent.

Q If he says no, is that accepted?

MR. JONES: Generally, I think it is accepted, although there is some evidence, I think, in the Appendix, that in cases where it looks suspicious they will nevertheless request that the parents' address be provided and the Food Service does make an inquiry in those cases as well.

I would suspect that in the majority of cases an answer of no is accepted.

Q And if he says yes, of course, that is accepted because that makes them ineligible.

MR. JONES: That's right.

Q And, if he says, "I don't know. My father and I haven't been on speaking terms for the last three years," then, and only then, or under such circumstances, the agency



communicates with the parents, does it?

MR. JONES: Well, it is my understanding that even if the applicant responds, "yes," that there is a form sent to the dependent's parents.

I really can't speak on that with certainty.

Q I suppose you could have a case in which the father is separated from the household and is paying \$30 or \$50 a month for the support of the child, and yet not take the deduction.

MR. JONES: That's correct.

Q So that the answer of the mother that, "Yes, he is paying support," that's the basis --

MR. JONES: Well, no, on that basis, they would not be denied food stamps.

Then a further question is asked, "To your knowledge," is the taxpayer taking the child as a dependent.

Q And the mother says, "No," then what happens?

MR. JONES: Well, it depends upon the administrator, I suspect. The administrator could simply accept that answer, or he could make a further inquiry of the father.

Q Because it's got to appear that the father, in fact, is taking the deduction.

MR. JONES: That's correct.

Q Before the food stamps are denied, isn't it?

MR. JONES: That would certainly be my understanding

of how the statute should operate.

Now, one of the appellees claims that she was denied food stamps, even though the taxpayer was -- just couldn't be found, but we are not here to support every single act of the administrators in the separate States.

And I think, in some cases, since this is a new program, there obviously are problems which have to be worked out.

Q Mr. Jones, is there any indication, in this record, as to whether the claims for exemption that were concededly invalid were ever uncovered by a tax auditing processor before or after the suit was brought?

MR. JONES: Nothing in the record suggests that, Mr. Justice Rehnquist.

I would point out that under Section 6103 of the Internal Revenue Code, tax returns could be obtained by the Secretary for spot check purpose. I think that it was represented in the court below that that had not been done as of that time, and I don't know whether it has been put into effect, whether the Department of Agriculture has instituted such a spot check program, but it could be done.

Q So far as this record shows, then, the people who filed erroneous claims of exemption have obtained the benefits of those claims in the tax area, is that right?

MR. JONES: That's correct.

To summarize our position on the question of equal protection, we feel that there is a distinction between tax dependent households and other households.

Tax dependent households have a higher income parent who receives a tax benefit for assuming the responsibility of supporting his child, in the tax dependent household.

Other households have no such advantage.

Congress could reasonably discriminate between these households, as it has done in this amendment.

Appellees raise one other constitutional claim, which they phrase in terms of procedural due process. They contend that the amendment amounts to an arbitrary presumption that they are not needy. And they would like to have a hearing to show that they are needy.

But the statutory criteria do not include need, as such. For example, the statute makes no pretense of providing, or attempting to provide, all the needy persons with nutritional assistance.

For example, most households without cooking facilities are denied any assistance under the act, no matter how needy they may be.

Congress was not concerned with need in enacting this amendment. It was concerned with the problem of the double benefit involved with tax dependents.

Therefore, we feel that this purported procedural

due process question is really just a broad claim that Congress may not establish eligibility criteria, based on any considerations other than need alone, that such a claim has nothing to do with due process.

If anything, it would be a substantive due process claim of the Congress this Court has long since rejected.

But insofar as it could be viewed as an equal protection claim, then it is clearly erroneous. Because, as this Court settled in Dandridge v. Williams, the equal protection clause does not prohibit the use of welfare eligibility criteria based on factors other than need.

We ask that the judgment below be reversed.

I'd like to reserve my time for rebuttal.

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

Mr. Pollack.

ORAL ARGUMENT OF RONALD R. POLLACK, ESQ.,

ON BEHALF OF APPELLEES

MR. POLLACK: Your Honor, I would like to concentrate at the outset on the appellant's novel claim, and that is the question that there is no standing by any of the appellees in this case.

Appellees would like to seek to avert a decision on the constitutionality of the statute because they say that the statute was improperly administered rather than the statute itself violates equal protection.



In order to do this, they raise two new interpretations of the statute, interpretations of the statute that differ from the way they interpreted the statute in the District Court, in fact, an interpretation that is different from the way they interpret the Act currently.

They say that a fraudulent tax claim may not necessarily disqualify people in a dependent household.

Well, Your Honor, it is absolutely clear that the statute, itself, disqualifies a household containing a dependent even if that dependent was claimed fraudulently.

If you look at the statute, the statute says very clearly any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal Income Tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter, during the tax period such dependency is claimed and for a period of one year after expiration of such period.

Appellants admit that their reading of the statute is that a fraudulently claimed dependency household is eliminated from the food stamp program.

In fact, that's the way they currently administer the program. If this case was reversed, this is precisely the way the program would continue to operate.

Appellants forget that the Court should give

deference to an administrating agency's interpretation of the statute.

And this is precisely the way the Department of Agriculture interprets the statute. Their regulations eliminate fraudulently claimed dependent households. Their instructions eliminate fraudulently claimed dependent households.

In fact, the Acting Administrator of the Food and Nutrition Service, Mr. Howard Davis, in his affidavit, and you will find that on page 83 of the Appendix, he says there are no factual issues to be presented or challenged other than the issue of whether or not a member of the household has been claimed as a dependent child.

In fact, appellant's argument, in the District Court, was that it is illegal to check into the tax returns. They said that disclosure to the dependent or to the food stamp office as to whether the claim was proper or improper is impermissible under the tax statutes.

You will find that statement in Appendix B to our brief, pages 22-B through 24-B.

However, even if this Court wanted to fictionalize the interpretation of the statute and change the way this agency, the Department of Agriculture, has interpreted this provision from the outset, there would still be five appellees, at the very least, who would still be harmed by the operation

of the statute, appellee Alderete, Appellee Murry, Appellee Valdez, Appellee Broderson, Appellee Schultz.

Appellee Murry, as an example, receives only \$57.50 per month. That's the only income she has. That income is derived from her ex-husband. Her ex-husband cannot provide any additional support because he has remarried. He's got two children. He is supporting them on a small laborer's wages. She receives all her income from this ex-husband and her ex-husband, appropriately, has claimed her as a tax dependent. Consequently, she has standing.

Now, appellant has said that the food stamp benefits she gets, that those food stamp benefits should be included in the determination of whether the household receives more than 50% of its income from the claimant.

Q If I may just interrupt you, excuse me. I thought that this statute only had to do with dependents who were children, not ex-spouses. It says, "claimed as a dependent by a parent or guardian."

Now, an ex-spouse is certainly not a parent and I would suppose not a guardian either.

MR. POLLACK: Yes, however, everyone in the household is denied food stamps.

In other words, as a result of the fact that there is a person over 18 years of age in Mrs. Murry's household who is claimed as a tax dependent.

Q Who is that person?

MR. POLLACK: There is a young child, eighteen years of age -- I think his name is Jordan Murry -- and that child has been claimed --

Q It is not the mother?

MR. POLLACK: That's correct.

Q The mother gets the income from the husband, from her ex-husband.

MR. POLLACK: But everyone in the household is denied food stamps.

Q Because the child is claimed?

MR. POLLACK: That's correct.

Q I see. I misunderstood you.

MR. POLLACK: Now, appellants in this State --

Q You are making no point of the claim of the grand-child in that case as a dependent.

MR. POLLACK: That's correct.

The statute operates only because one of the children was claimed as a tax dependent, not because one of the grandchildren was claimed as a tax dependent.

The appellants would have us believe that because Mrs. Murry has received some food stamps that those food stamp benefits should be included in determining whether the taxpayer who made the claim has given 50% of the income.

However, if you look at the statute, the statute is

very clear on this issue.

Look at Section 2016(c) of Title 7. It says, "The value of the coupon allotment provided to any eligible household which is in excess of the amount charged such households, that such allotment shall not be considered to be income or resources for any purposes under Federal or State laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs."

The only provision that the appellants cite to the contrary is a tax ruling, which they cite at page 3, Note 1.

That ruling, however, has absolutely no application to that case -- to this case. That ruling merely refers to, and I quote, "State benefit payments measured solely by recipient's needs."

These are not State welfare benefits. These are Federal benefits. All of the benefits are subsidized by the Federal Government.

At the very least, Your Honors, there are five appellees who are not harmed because of the wrongful administration of this statute. They are harmed because of the statute itself.

Appellants -- under new statutory interpretation -- is that they say for the provision to operate, you do not have to have been outside the taxpayer claimant's house during part of the tax year.



They say if you were outside of the household during the carryover year, the year after the period for which the tax dependency was claimed, but you were not outside the household during the period for the tax dependency claim, then you should not have been denied food stamps.

However, even if this new statutory interpretation was accepted by the Court, every single one of the appellees in this case would still be harmed by the operation of the statute.

It is clear that this case is not moot. It is a very live controversy.

Turning to the merits of this case, it is clear that this provision was designed to eliminate non-needy households from the food stamp program.

However, the tax dependency provision is not reasonably related to that purpose at all.

As District Judge Hart said -- . He said eliminating the voluntary poor from the program, or those people who have access to nutritional adequacy, that operation really requires the utilization of a surgeon's scalpel.

And what was done with this statute was Congress wound up using a meat cleaver and started eliminating the needy people from the program, not the unneedy from the program.

The statute completely missed in its statutory

objective.

The tax dependency provision is wholly unrelated to an assessment of a household's current need. Although the entire food stamp program operates on the basis of current circumstances, the provision is not at all related to what one's current circumstances actually are.

But the program works on the basis of current circumstances --

Q When did Judge Hart say that?

MR. POLLACK: You will find that, Your Honor, at page 50 of my brief.

It is in the footnote and in the text. There are two different statements that he made.

Q Is that part of the opinion?

MR. POLLACK: No, that's not part of the opinion. That was part of the oral argument in the District Court, and I have provided in Appendix B the transcript of that oral argument, and I quoted therefrom.

This program operates on the basis of current need, it is clear.

Certification periods are very short. Certification periods are essentially three months under this program, and the purpose of that is to make sure that there is an assessment of what the current circumstances of a household are.

If you are eligible on the basis of current income,

or if you have current resources that make you needy, then you are eligible for the food stamp program.

Similarly, even if you refused to qualify under the work requirement previously, if you are now willing to comply with the work requirement, you are eligible for food stamps.

Clearly, the program operates on the basis of current circumstances.

Well, this provision is not at all related to an assessment of an individual's current need. In fact, contrary to what the appellants have indicated, this provision operates on the basis of a tax dependency claim that is made in April or March of the tax year.

In fact, they so indicated -- you will find that in the Appendix at page 81 -- when they gave an example of how the provision operates. And you will also see that's the way -- they claimed the way the provision operates. And that's in our Appendix to the brief, Appendix 17-B.

What happens is you are denied food stamps on the basis of a tax dependency claim that is made in April or March, subsequent to the period of the tax year for which you are making the claim.

Consequently, when the claim is made, the tax year is already over. The period is an entire nullity with regard to the tax year for which the dependency claim is made. You have received food stamps during that year.

In other words, the provision only operates during the subsequent year, the so-called carryover year. And the provision rigidly denies you food stamps during the year after the period for which the dependency claim is made.

In fact, all of the appellees in this case were denied assistance during the carryover year, not the year for which the dependency claim was made, but during the carryover year.

In fact, everyone is essentially affected exclusively during the carryover year. And the tax dependency claim has absolutely no relationship to what is occurring in that carryover year. At best, it has some relationship to what happened during the preceding year for which the tax dependency claim was made.

But, Your Honors, I think what is even more important is that a tax dependency claim has absolutely no correlation to a household's actual availability of income.

And that's because under the tax dependency provision, there is no minimum support that need be provided. You only need to provide over 50% of your income.

In other words, if a household has absolutely no income at all, and a taxpayer gave one dollar to that household, then the taxpayer has a right to make a tax dependency claim for that year.

Despite the fact that that household has only one

dollar of income for that entire year, they are denied food stamps because they were taken as a tax dependent and, in fact, properly so, because they gave over 50% of the income.

If that household has absolutely no access to nutritional adequacy, for non-students, this provision is entirely arbitrary.

In order to be declared a tax dependent, a non-student must have income under \$750. If a non-student has income over \$750, you cannot claim them as a tax dependent.

Consequently, if you gave more than \$750, you can declare a non-student as a tax dependent.

And, you can see, if you accumulate the student's income, or the non-student's income, and the amount provided by the taxpayer, it still provides you far short of the standard of need that are established by the appellants in this case.

Take as an example the six-person eligibility standard under the food stamp program. For a six-person household to be eligible for food stamps, you must have an annual income of under \$6,084.

Clearly, a non-student -- there is a very substantial likelihood -- in fact, there is a probability that a non-student who is claimed as a dependent is still needy under the appellant's own standards.

Nevertheless --

Q     Somebody under 19 can be a dependent -- a child under



19 can be a dependent, even though he has an income of more than \$750?

MR. POLLACK: That's correct. If you are over 19 --

Q The Internal Revenue Code makes 19 the critical age. And this law makes 18 the critical age.

MR. POLLACK: That's correct.

Q So between 18 and 19 -- what you are telling us -- it is not --

MR. POLLACK: That's correct. For 18, 19, what I said does not apply. Once you are over 19, it does.

You can never demonstrate, throughout the entire administrative process, that you have absolutely no access to nutritional adequacy.

Take Appellee Lula Mae Murry, as an example. Her five-person household receives as a total \$57.50 per month in income, of which \$25 is paid directly for rent. Then she pays \$18.50 for her utility bill. For all of her other expenses, that includes clothing, medical expenses, school supplies, transportation, household supplies, hygienic items, she has merely 9 cents a person, per day.

Obviously, she cannot purchase a nutritionally adequate diet. She cannot live without receiving some kind of assistance. She needs the food stamp program. Indeed, she had been receiving food stamps before. She had been

receiving \$128 in benefits, and she was paying for that only \$11. That was what permitted her to survive. But, because of the fact that her ex-husband has claimed one of their children as a tax dependent, everyone in the household is denied food stamps.

It is presumed, in essence, that that family has access to adequate income to purchase a nutritionally adequate diet.

Take, as an example, Appellee Schultz. Appellee Schultz has absolutely no income whatsoever. She doesn't have a single penny income. In fact, she had been in a hospital for four months suffering from malnutrition, because all she was living on was wild sweet potatoes and water. And she has been in a hospital and very sick because she did not have access to nutritional adequacy.

Nevertheless, because she was taken as a tax dependent in the previous year, and despite the fact that she receives no assistance during the current year, she is denied food stamps during this current year, so-called carry-over year.

Your Honor, the one year carryover period is also extremely rigid. Even if one can convincingly demonstrate that the taxpayer cannot provide any support whatsoever during this carryover year, one is still denied food stamps, by virtue of the tax dependency claim of the previous year.

Even if one can convincingly demonstrate that one is not going to be taken as a tax dependency claim for this year, one is denied food stamps during the carryover year.

In fact, even if one swore that -- taxpayer swore that a dependency claim is not going to be made in the carry-over year, people are denied food stamps during that carry-over year.

It's a very rigid provision. You are denied food stamps during that carryover year.

Take as an example, Appellee Joe Ben Valdez. His father took him as a tax dependent in the previous year. It is a five-person household that his father is the head of. They have \$450 of income, of which they have \$497 of expenses because they have very substantial debt.

Mr. Valdez has diabetes and an ulcerous condition and he cannot provide any support for the tax dependent household. Nevertheless, appellee's household was denied food stamps. Even though they can convincingly demonstrate that no tax dependency claim will be made this year, even though they can convincingly demonstrate that no support at all is being provided this year, they are denied food stamps.

Q I guess, then, if somebody takes the tax dependency and <sup>they</sup> find out that it is false and he goes to jail, the family would still be penalized?

MR. POLLACK: That's correct.

There's no remedy whatsoever. And what makes that even clearer, Your Honor, if you take a look at our Appendix A, you will note that a child over 18 years of age, by and large, cannot receive -- cannot legally compel support from a taxpayer.

The reason is that in the majority of the States your legal liability to support your child ends at 18 years of age.

So that in the situation that you raise, Mr. Justice Marshall, even, let us say, there is a fraudulent tax claim, the father is in jail, it is clear that he made a fraudulent tax claim, it is clear that the household is denied food stamps solely because of his fault. There is just nothing that can be done to help the tax dependent household.

They are rigidly, and I would say arbitrarily, denied food stamps. They have no access to nutritional adequacy. The father can't support them in jail. He never had any intention to support them in the first place.

Q But granted all that, it does not knock the statute out.

MR. POLLACK: Excuse me?

Q Granting all of that, that's not grounds for knocking the statute out, is it?

MR. POLLACK: No. What I am saying, however, is it is not reasonably related to any purpose.

Q Could the statute be construed by the Court to take out that provision?

MR. POLLACK: If you wanted to create a pure fiction, I suppose you could. However, --

Q Have the statutes never been saved by that process?

MR. POLLACK: Well, Your Honor, what in essence you are doing, is you are saying the provision is so irrational that, therefore, we are going to try and legislate it and make it rational.

The whole equal protection argument that we are making is that --

Q That doesn't answer my question.

My question was: have statutes never been saved by that precise process?

MR. POLLACK: I don't know of an instance, Your Honor, where both parties agree on what the statute says, and the court wound up coming up with a new interpretation of the statute just to save the statute.

Q Take a look at Tilton v. Richardson sometime when you have a free moment, decided last year.

MR. POLLACK: Okay.

Your Honor, even if you read into the provision that a fraudulent tax claim does not deny food stamps, that that isn't a proper administration of the statute, I would still say that the statute is arbitrary. There is no



implication, whatsoever, that because a tax dependency claim was made that the tax dependent's household has access to nutritional adequacy.

As I indicated before, if a household has no income at all. Take Kristi Schultz as an example. She has no income whatsoever. If her parents gave her merely \$1 then they could properly claim Kristi as a tax dependent. And, as a result of merely \$1 per year, she would be denied food stamps.

Even if she can show during the carryover year that she is not going to be claimed as a tax dependent, she is going to be denied food stamps.

Your Honor, it seems to me that this carryover provision, this one year carryover, even when one can show that one will not be taken as a tax dependent during that carryover year, is essentially the same kind of blunderbuss one year ineligibility system that was scored in Shapiro v. Thompson.

Shapiro v. Thompson you also indicated that that provision, the one year durational residence requirement, would have been invalid in the traditional equal protection standard.

Under the traditional equal protection standard, I would submit that this case is stronger than the one in Shapiro, for the reason that in Shapiro the one year ineligibility at least served a purpose. It served the purpose of

detering fraud.

Here, the one year carryover provision serves no purpose whatsoever. The one year carryover provision is rationalized by the appellants with only one reason. They claim that it is the only practical means to determine whether tax dependency claim will be taken for the carryover year. But, in fact, the provision does not operate as such.

By the end of the carryover year, December 31, the income tax for that year has not been filed. They will be filed three months subsequently. So that, even at the end of the carryover year, you cannot determine whether a tax dependency claim will be made in that carryover year.

Q You can in some cases, can't you, Mr. Pollack, where the statement has been filed at the beginning of the year for the deduction purposes? For withholding purposes.

MR. POLLACK: For withholding purposes, that does not require you to take a dependency claim. Quite the contrary.

Q Doesn't require it, but permits it, does it not?

MR. POLLACK: It may be an indication, yes, Your Honor. But, certainly, if you felt that was an indication, why should one rigidly deny food stamps during the carryover year when one has indicated in one's withholding statement that you are not making a tax dependency claim during the carryover year?

And yet, even if you indicate, in your withholding statement, that you are not going to take a tax dependency claim during the carryover year, you are still denied food stamps during that carryover year.

It seems to me you operate one way or another. Either you indicate that their withholding statement is a true indication of a dependency claim or it is not. If it is, then there is no reason to deny food stamps during the carryover year when an indication has clearly been made that you are not going to make a dependency claim during that carryover year.

Q Could the statute be saved there, again, by invalidating of that provision on the carryover year?

MR. POLLACK: Your Honor, if you wish to strip all the arbitrary features of the statute, that would be fine, because then we wouldn't have a harmful statute.

However, the statute is clearly irrational for numerous reasons, not the least of which is that the tax dependency claim assumes no income whatsoever. It doesn't assume any minimum amount at all.

As I have indicated --

Q Generally, a person wouldn't claim a dependency unless he had to file an income tax return, and he wouldn't have to file an income tax return if he didn't have income. Wouldn't that be true?

MR. POLLACK: That's correct.

Q So it does assume -- presuppose -- income on the part of the parent or guardian.

MR. POLLACK: Yes, that's right.

Q Then I misunderstood you, I guess.

MR. POLLACK: No, the parent -- it is assumed that he does have income. It is also assumed that the person has some income because he is not eligible for food stamps if his income may be slightly above the income eligibility criteria, as with Appellee Valdez.

Q Well, is your argument that any Federal statute that you think -- that the Court would find irrational is unconstitutional?

MR. POLLACK: Your Honor, I think the inquiry that --

Q I mean your argument here has just been irrationality.

MR. POLLACK: Well, what I am trying to make clear, I think, is that this statute has no reasonable relationship to any legitimate governmental purpose. There is only one legitimate governmental purpose, that the government is here -- that the government here is hypothesizing, and that is that it eliminates from the program those people who have access to adequate income.

What I am indicating, Your Honor, is that this provision does not have this reasonable relationship to it.

Q So this is a straight due process argument that any

statute that doesn't implement a legitimate aim is --

MR. POLLACK: That is not reasonably related.  
And this provision is not reasonably related.

Q This isn't the Federal brand of equal protection argument that you are talking?

MR. POLLACK: Your Honor, yes, except it falls under the Due Process Clause of the Fifth Amendment.

Q I understand that. I said a Federal brand. Who are the two classes then?

MR. POLLACK: Well, one class of individuals here is a group of people living in a household where no one has been claimed as a tax dependent.

Q Right.

MR. POLLACK: The other one is where there is someone who has been claimed as a tax dependent where that dependent is over 18 years of age.

And the one group is disqualified, the other group is not disqualified.

Q Can you imagine any situation in which the application of that rule would be justified? As applied in a particular case that you can imagine?

MR. POLLACK: It would have to be purely by coincidence, Your Honor.

Q I just asked you if you could imagine one.

MR. POLLACK: If, by coincidence, someone did have



adequate income, access to adequate income, then if I could imagine --

Q Well, what if Congress thought that that situation happened often?

MR. POLLACK: Well, that --

Q Would you strike it down and just say that this provision is invalid, because many cases the person doesn't have access to adequate income?

MR. POLLACK: Your Honor, I'm not saying that the purpose is impermissible. I am saying the purpose is fine. I am just saying that this provision is not reasonably related to that purpose.

Q Well, you said that in some instances it would be perfectly related if there --

MR. POLLACK: Right. If we said, as an example, that all people who are left-handed should be denied food stamps because Congress, for some reason thought that left-handed people have access to adequate nutrition, I could imagine some circumstances where a household containing a left-handed person --

Q And Congress decided to use this, that left-handed people so often had access to adequate income that we are going to say just left-handed people aren't qualified under the food stamp program.

And you would say that would be unconstitutional.

MR. POLLACK: That's correct.

Q What if Congress had had a report here in which they said their studies and searches indicated that a very large number of people for whom a deduction was taken actually receive an average of \$1,000 a year support from the person taking the deduction for them? Would the statute then serve a valid purpose?

MR. POLLACK: Well, Your Honor, even under your hypothetical, the tax dependent is still needy under the appellant's standards.

Q Well, does it serve a valid purpose if that's the finding of Congress?

What is the deduction now, \$750?

MR. POLLACK: \$750.

Q For every \$750, their study showed in some way that \$1,000 was actually given by way of support by the person claiming the deduction, and representing more than half of the income?

MR. POLLACK: Your Honor, it would seem to me that since the entire basis of this provision assumes that those people who have been taken as a tax dependent have access to adequate income, it would seem to me we would at least have to make some reasonable search to determine whether, in fact, that's true.

Q In each case?

MR. POLLACK: Not in each case, but I think it is so clear as to how this provision operates. The provision clearly operates even if no support is provided, even if \$1 is provided.

You just take a look at the appellees themselves, and I think you can show that there is a very substantial likelihood, even more than a substantial likelihood, that persons who have been taken as a tax dependent have no access to nutritional adequacy, while those people who have not been taken as a tax dependent, let's say children of a millionaire parent, are still allowed to participate in the food stamp program.

In short, I believe that this provision violates equal protection.

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

Mr. Jones, do you have anything further?

REBUTTAL ARGUMENT OF KEITH A. JONES, ESQ.,

ON BEHALF OF APPELLANTS

MR. JONES: Yes, I do, Mr. Chief Justice.

The appellees have focused on the need of the applicant household, and it is understandable why they would do that. Those are their clients.

Congress, however, is concerned about the cost of the welfare program.

As I have pointed out, Congress has already made a

payment in order to provide for the support of tax dependent households. It has made it through the tax system, as a tax deduction.

Q      Exemption.

MR. JONES: Exemption. Yes, Mr. Justice Stewart.

Therefore, those households are different from households for which no tax exemption is provided.

Congress was concerned about the problem of double benefit.

Appellees pay no attention to this problem and insist that the statute has no rational basis because some needy people are eliminated.

But the rational basis is the problem of double benefit which Congress, understandably, wanted to limit or eliminate.

Furthermore, I would point out that appellees, in their briefs and here have simply and flatly misstated the application of the program.

A tax dependent's household is denied food stamps during the year of the tax dependency claim, and not just for the following year. There is a carryover provision. Congress believed that the filing of the tax return would certainly be corroborative evidence that could be used in furthering the purposes of this provision.

They could presume that parental support, under most

circumstances, would be continued. But the primary denial of benefits is during the year of the dependency claim.

Q How do they catch up with that fellow?

MR. JONES: How do they catch up with that fellow?

Which --

Q If a claim is made in a later year?

MR. JONES: If, for example, the parent says, during the year in which the applicant first comes to the administration, that no, I am not claiming my son as a dependent and then he files a tax return in the following year claiming the son as a dependent, then it is unlikely, quite frankly, that he will be caught unless there is a spot check or a thorough check of the returns of such parents.

Enforcement system, obviously, would not be perfect, but there would be a mechanism which would be checking through the tax returns.

If there are no further questions --

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 2:59 o'clock, p.m., the case in the above-entitled matter was submitted.)