Outlook for Welfare Litigation in the Federal Courts Hagans v Lavine Edelman v Jordan

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THE OUTLOOK FOR WELFARE LITIGATION IN THE FEDERAL COURTS: HAGANS v. LAVINE & EDELMAN v. JORDAN

The categorical assistance programs, supported by grants-in-aid from the federal government, provide the primary source of public welfare in the United States. Under this system, the states administer funds to various categories of needy individuals through programs defined by the Social Security Act and financed by both federal and state revenues.1 Although states are not required to make categorical assistance available to their indigent citizens, states that choose to exercise this option may obtain federal matching funds only by complying with certain requirements of the Social Security Act.2 Failure of a state plan to contain the necessary elements of a categorical assistance program may result in administrative sanctions, the most drastic of which is the loss of federal matching funds.3 However, these administrative remedies are only available to HEW.4 Welfare recipients are entitled to participate in conformity hearings,5 but have no legal authority to initiate this process. As a result, federal litigation has become the predominant method by which welfare recipients are able to challenge whether state plans conform to federal requirements.6 The availability of federal jurisdiction over welfare claims therefore becomes of obvious importance.7

1 The present federal-state programs that will be most severely affected by the material discussed in this Note are Aid to Families with Dependent Children (AFDC), Emergency Assistance to Needy Families with Children (EANFC), Medicaid, Food Stamps, and Unemployment Compensation. On January 1, 1974, the Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled programs were replaced by a single federal program, Supplemental Security Income (SSI), which changed the jurisdictional complexion of their litigation. Although the Hagans decision, insofar as it applies to the substantiality requirement (see notes 21-29 infra), is applicable to all welfare litigation in the federal courts, the remainder of the issues discussed in this Note arise from conflicts between state assistance programs and the corresponding federal act and may not be the same as those issues raised in SSI litigation. See Note, Federal Jurisdiction Over Federal Welfare Claims, 60 CORNELL L. REV. 800, 800-02 (1975); Note, 1974 Developments in Welfare Law—The Supplemental Security Income Program, 60 CORNELL L. REV. 825 (1975).


4 See, e.g., 42 U.S.C. § 604 (1970). Section 604 provides that the Secretary of HEW may, “after reasonable notice and opportunity for hearing,” terminate federal aid to a state whose plan fails to conform to any requirement of § 602(a).


6 See note 62 and accompanying text infra.

7 See Redlich, The Art of Welfare Advocacy: Available Procedures and Forums, 36 ALBANY L. REV. 57 (1971); Note, Federal Jurisdiction Over Challenges to State Welfare Programs, 72 COLUM.
Two recent Supreme Court decisions should have a profound, albeit contradictory, effect on federal jurisdiction over challenges to these categorical assistance programs. *Hagans v. Lavine*\(^8\) recognizes an expansive definition of the substantiality concept in federal subject matter jurisdiction and may open the federal courts to a wider variety of challenges to state assistance programs. *Edelman v. Jordan*,\(^9\) on the other hand, promises to greatly limit the usefulness of federal adjudication as a means for redressing the grievances of individual welfare claimants.

### I

**Hagans v. Lavine and Section 1343 Jurisdiction**

A. *Section 1343(3)—The Requirement of a Substantial Question*

Under traditional doctrine, an action alleging that a state categorical assistance program has failed to conform to the structure required by the Social Security Act\(^10\) must satisfy the $10,000 jurisdictional amount requirement of section 1331.\(^11\) Under section 1343(3)\(^12\), however, there is federal jurisdiction over certain other claims, such as allegations of constitutional infirmity, regardless of the amount in controversy.\(^13\) Furthermore, since the Supreme Court declared in *Lynch v. Household Finance Corp.*\(^14\) that the "rights, privileges and immunities" that give rise to jurisdiction under section 1343(3) include *all* constitutional rights, there has been no doubt that section 1343(3) grants federal jurisdiction over

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\(^{8}\) 415 U.S. 528 (1974).

\(^{9}\) 415 U.S. 651 (1974).

\(^{10}\) For a discussion of an alternative assertion of federal jurisdiction over these so-called "statutory" claims see notes 32-39 and accompanying text *infra*.

\(^{11}\) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.


\(^{13}\) § 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

*Id.*

\(^{14}\) 405 U.S. 538 (1972).
constitutional challenges to state welfare programs. The majority of claims challenging the conformity of a state plan to federal statutory requirements are therefore asserted pendent to constitutional claims and, under the doctrine of pendent jurisdiction, require no independent source of federal jurisdiction. Where a constitutional claim of sufficient substance to support federal jurisdiction is alleged, a district court may hear the statutory claim of inconsistency between federal and state law without initially determining whether the statutory issue, in its own right, is cognizable in the federal courts.

In this context the sole question confronting a plaintiff's claim of justiciability is whether the alleged constitutional claim is of sufficient substance to give a federal court subject matter jurisdiction. Because most welfare claims allege a denial of equal protection or due process, the restrictive equal protection standard announced in *Dandridge v. Williams* has in recent years had a negative effect on the jurisdictional sufficiency of such constitutional claims. In *Dandridge*, the Court stated that "a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution . . . ."19

Numerous federal courts, in accordance with the apparent mandate of *Dandridge*, subsequently found the constitutional allegations of welfare litigants lacking in sufficient substance to confer

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15 See Note, Colum. L. Rev., supra note 7, at 1408-12.

16 The doctrine of pendent jurisdiction may be invoked whenever (1) there is a claim that has sufficient substance to confer subject matter jurisdiction on the court, and (2) the jurisdiction conferring claim and the pendent claim derive from "a common nucleus of operative fact." United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). See 2 J. Moore, Federal Practice ¶ 18.07 [1.2]-[1.4] (1974).

The exercise of pendent jurisdiction is not mandatory, but is within the discretion of the court in the interests of judicial economy, convenience, and fairness to the litigants. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). Therefore, before jurisdiction can be exercised, the court must consider two questions: (1) whether there is judicial power to adjudicate the pendent claim, and (2) whether the court should exercise that discretionary power.

An in-depth consideration of the above factors is beyond the scope of this Note. For such a discussion, see Note, Colum. L. Rev., supra note 7, at 1413-17. See also Hagans v. Lavine, 415 U.S. 528, 545-50 (1974). In most welfare actions challenging the validity of a state plan, the constitutional and statutory claims will arise from the same factual basis—the reduction, termination, or alteration of a recipient's benefits in accordance with a state statute or regulation.


19 Id. at 485.
subject matter jurisdiction, and accordingly dismissed both the constitutional allegations and the appended statutory claims. The high-water mark of this trend was reached in *Hagans v. Wyman*, where the Second Circuit, citing the *Dandridge* guidelines for evaluating equal protection claims in social welfare cases, held that a substantial constitutional claim was not advanced because the challenged regulation had a rational basis. Since no substantial constitutional claim was presented, the district court was not empowered to consider the statutory claim urged by the plaintiffs. If logically extended, this judicial outlook would result in many challenges to state categorical assistance programs being denied federal adjudication on a preliminary determination that some rational basis for the regulation or statute could be advanced.

Fortunately for welfare litigants, the Supreme Court, in reversing the Second Circuit, eliminated this severe limitation on federal jurisdiction over welfare actions and substituted what appears to be a liberal and expansive expression of the "substantial question" requirement. Asserting that *Dandridge* "evinced no intention to suspend the operation of the Equal Protection Clause in the field of social welfare law," the Court announced that the fundamental question, in determining whether a claim is beyond the jurisdiction of the district court, is whether the issue raised by the pleadings is either frivolous or too insubstantial for consideration. Moreover,

20 For example, in *Money v. Swank*, 432 F.2d 1140 (7th Cir. 1970), the plaintiffs challenged, on due process and equal protection grounds, a state regulation which provided welfare recipients attending vocational school with educational allowances, but denied similar payments to most recipients attending college. In reviewing the district court's finding that no substantial constitutional question was raised, the court of appeals held that *Dandridge* was dispositive of the issue, not because *Dandridge* decided the same issue, but because of the equal protection test it presented. The court viewed the appropriate question, in deciding whether federal jurisdiction existed, to be "whether the classification was so lacking in reasonableness and justification as to be invasive of [the plaintiff's] constitutional rights." *Id.* at 1143; accord, *Aguayo v. Richardson*, 352 F. Supp. 462 (S.D.N.Y. 1972); *Contra, Fordum v. Board of Regents*, 357 F. Supp. 222 (N.D.N.Y. 1973); *Doe v. Gillman*, 347 F. Supp. 483 (N.D. Iowa 1972).


22 471 F.2d at 349.


25 *Id.* at 539.

26 *Id.* at 538-39.
according to the Court, a claim will be insubstantial "only if its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy", and will be frivolous only where the challenged statute or regulation is "so patently rational as to require no meaningful consideration."

Under the Supreme Court's formulation, a federal court will lack jurisdiction only where a constitutional claim is obviously without merit or foreclosed by previous decisions of the Court. Since Hagans, the relatively few cases that have confronted the section 1343(3) jurisdictional issue have consistently recognized the broad assertion of federal jurisdiction over welfare litigation expressed therein.

Although Hagans's liberal jurisdictional formula focuses on the substantiality of plaintiff's constitutional claims, the decision's impact ironically will result in the consideration of "statutory" claims, which previously would not have been the subject of federal adjudication under the Dandridge equal protection analysis.

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27 Id. at 538 (the quoted language originally came from Hannis Distilling Co. v. Baltimore, 216 U.S. 285, 288 (1910)).
28 Id. at 541. The Court approved its earlier explanation of the application of the substantiality doctrine:
"Constitutional insubstantiality . . . has been equated with such concepts as "essentially fictitious"; "wholly insubstantial"; "obviously frivolous"; and "obviously without merit." The limiting words "wholly" and "obviously" have cogent legal significance. . . . [T]hose words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claim frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial . . . .
Id. at 537-38, quoting Goosby v. Osser, 409 U.S. 512, 518 (1973) (citations omitted).
29 For example, in Murrow v. Clifford, 502 F.2d 1066 (3d Cir. 1974), the court, after applying the following test, found jurisdiction over a claim that the denial of AFDC benefits to a pregnant woman violated the equal protection clause of the fourteenth amendment:
To be jurisdictionally insubstantial a claim must be so attenuated and unsubstantial as to be absolutely devoid of merit, or clearly foreclosed by the decisions of the Supreme Court so as to leave no room for the inference that the questions sought to be raised can be the subject of controversy.
Id. at 1068. Accord, Doe v. Rampton, 497 F.2d 1032 (10th Cir. 1974); Doe v. Lukhard, 493 F.2d 54 (4th Cir. 1974).
This view was epitomized by the decision in J.A. and M.M. v. Riti, 337 F. Supp. 1046 (D.N.J. 1974). Whereas some courts had previously refused to accept jurisdiction over a constitutional claim where some rational basis for the challenged statute or regulation was presented, the court in Riti acknowledged that the Hagans test called for the exercise of federal jurisdiction whenever some colorable doubt concerning the validity of a constitutional claim might be entertained by the court. Id.
30 Statutory claims generally present a stronger basis for relief than constitutional allegations. Justice Rehnquist has asserted that despite the earlier admonition of the Court that "the Federal question must not be merely colorable or fraudulently set up for the mere
creased litigation in the federal courts challenging state categorical assistance programs on the basis of the Social Security Act is assured by the Court's directive in *Hagans* that where there is jurisdiction over a constitutional claim the pendent "statutory" claim not only may, but should be, adjudicated before the constitutional issue is reached.3\(^1\)

B. Jurisdiction Over Supremacy Clause Claims

Even under *Hagans* there may be situations in which a litigant will not be able to frame a colorable constitutional claim of sufficient substance. For example, in *Randall v. Goldmark*\(^3\) a federal court held that the alleged due process and equal protection claims lacked the requisite substantiality.\(^3\) Nevertheless, because many welfare claims arguably involve incompatibility between state practices, regulations, or statutes and the federal scheme, plaintiffs' attacks may still be couched in terms of supremacy clause violations.\(^3\)4 Although in recent years the Supreme Court has consis-

\(^{31}\) United Mine Workers v. Gibbs, 383 U.S. 715 (1966), outlined the wide discretion a district court has over pendent claims. The majority in *Hagans* circumscribed that discretion by characterizing *Gibbs* as oriented to state law claims pendent to federal claims conferring jurisdiction on the District Court. Pendent jurisdiction over state claims was described as a doctrine of discretion not to be routinely exercised without considering the advantages of judicial economy, convenience, and fairness to litigants. *Hagans* v. Lavine, 415 U.S. 528, 545 (1974). The Court in *Hagans* found that *Gibbs* contemplated adjudication of pendent claims when advantages of economy and convenience and no unfairness to litigants were present. And in the field of social welfare law, adjudication rather than dismissal of pendent state claims was warranted by at least two additional considerations: (1) the Court's policy of not deciding federal constitutional questions where a dispositive nonconstitutional ground is available (id. at 546-47); and (2) the considerations favoring state adjudication, such as "comity and the desirability of having a reliable and final determination of the state claim by state courts having more familiarity with the controlling principles and the authority to render a final judgment," are "wholly irrelevant where the pendent claim is federal but is itself beyond the jurisdiction of the District Court for failure to satisfy the amount in controversy." 415 U.S. at 548 (emphasis in original).

\(^{32}\) 495 F.2d 356 (1st Cir. 1974), cert. denied, 419 U.S. 879 (1974).

\(^{33}\) This decision was reached even though the court could point to no Supreme Court decision foreclosing the issue which plaintiffs had raised. Apparently, the court considered the regulation "so patently rational as to require no meaningful consideration." *Hagans* v. Lavine, 415 U.S. 528, 541 (1974). *See Randall v. Goldmark*, 495 F.2d 356, 359 n.5 (1st Cir. 1974).

\(^{34}\) If a state policy is in conflict with the federal statute, there is arguably a denial of "the
tently refused to decide whether this conflict question is itself a constitutional matter over which the federal courts have jurisdiction under section 1343(3),\textsuperscript{35} the Hagans court suggested that the question may ultimately be answered in the affirmative.\textsuperscript{36} The Court noted that a suit to invalidate a state policy which conflicts with a federal statute cannot succeed without resort to the federal Constitution.\textsuperscript{37} It further acknowledged that such a claim, "although denominated 'statutory,' [was] in reality a constitutional claim arising under the Supremacy Clause."\textsuperscript{38}

One can present a compelling argument that section 1343(3) provides a proper jurisdictional basis for a federal court to entertain an independent supremacy clause claim. Accordingly, whenever a welfare litigant is unable to fashion an alternative colorable constitutional issue, the allegation that there is a conflict between state and federal law should be presented in this manner.\textsuperscript{39}

II

RETROACTIVE BENEFITS AND THE ELEVENTH AMENDMENT:
THE \textit{Edelman} DECISION

Once the jurisdictional barrier has been overcome, the potential welfare litigant must still seek an appropriate remedy. One benefit of the Supremacy Clause." Connecticut Union of Welfare Employees v. White, 55 F.R.D. 481, 486 (D. Conn. 1972).

\textsuperscript{35} To date, the Supreme Court has found jurisdiction under § 1343 only in cases that involved a substantial constitutional claim other than the conflict question itself. \textit{See, e.g.}, Hagans v. Lavine, 415 U.S. 528 (1974); Lynch v. Household Fin. Corp., 405 U.S. 538 (1972); Dandridge v. Williams, 397 U.S. 471 (1970). But on at least three occasions the Court has specifically left open the question of § 1343 jurisdiction based solely on grounds of inconsistency with federal statutes. Hagans v. Lavine, 415 U.S. 528, 533 n.5; Rosado v. Wyman, 397 U.S. 397, 405 n.7 (1970); King v. Smith, 392 U.S. 309, 312 n.3 (1968).

\textsuperscript{36} 415 U.S. at 533 n.5.

\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.} at 549. One federal court has recently recognized the conflict between state law and the Social Security Act as a constitutional issue. Stuart v. Canary, 367 F. Supp. 1343 (N.D. Ohio 1973), held that plaintiff's sole claim, that the Ohio policy of denying AFDC benefits to the unborn was inconsistent with § 406(a) of the Social Security Act (42 U.S.C. § 406(a) (1970)) and therefore violated the supremacy clause, gave the federal court jurisdiction under § 1343(3). \textit{Contrariwise}, Rosado v. Wyman, 414 F.2d 170, 177-78 (2d Cir. 1969), \textit{rev'd on other grounds}, 397 U.S. 397 (1970); Prigmore v. Renfro, 356 F. Supp. 427, 430 (N.D. Ala. 1972); Gage v. Commonwealth Edison Co., 356 F. Supp. 80 (N.D. Ill. 1972). Furthermore, the Supreme Court in \textit{Hagans} repeatedly referred to the pendent claim as either the supremacy clause issue or the "so called 'statutory' claim." \textit{See, e.g.}, 415 U.S. at 532.

remedy, which is essential to welfare litigation and to the equitable administration of any welfare system, is the award of retroactive benefits. Federal fair hearing regulations require that plans for state participation in federally-funded programs provide for corrective payments to be made retroactively in cases where a welfare claimant is denied aid because of an incorrect action by the state welfare agency. In 1970, HEW also sought passage of a bill that would have given the agency authority to require retroactive payments to eligible persons who had initially been denied benefits. The bill failed to pass the House of Representatives. However, the Supreme Court, on the theory that retroactive payments constitute an award of an accrued monetary liability which must be satisfied out of the general revenues of the state, has recently held that the eleventh amendment bars a federal court from making an award of such benefits.

For purposes of this Note, retroactive benefits include all payments for which welfare litigants were eligible, but which they did not receive. The optimal result for the welfare litigant is the recovery of all such wrongfully withheld benefits, i.e., a retroactive award of benefits with the issuance of an injunction prohibiting the invalid practices in the future.

The regulations provide:

(a) State plan requirements. A State plan under title I, IV-A, X, XIV, XVI or XIX of the Social Security Act shall provide for a system of hearings under which:

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

In addition, HEW regulations authorize federal matching funds for retroactive assistance payments made pursuant to court order. Id. §§ 205.10(b)(2), (b)(3).


U.S. CONST. amend. XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Although the eleventh amendment by its terms does not bar suits against a state by citizens of that state, the Supreme Court has consistently held that an unconsenting state is immune from suits brought in the federal courts by its own citizens as well as by citizens of another state. Parden v. Terminal R.R., 377 U.S. 184 (1964); Great N. Life Ins. Co. v. Read, 322 U.S. 47 (1944); Duhne v. New Jersey, 251 U.S. 311 (1920); Hans v. Louisiana, 134 U.S. 1 (1890). It is also well established that even though a state is not named a party to the action, the suit may nonetheless be barred by the amendment. Edelman v. Jordan, 415 U.S. 651 (1974); Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945).

The Supreme Court has strongly suggested that this eleventh amendment bar is a
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Dan successfully charged that eligibility determinations for the federal-state programs of Aid to the Aged, Blind, and Disabled (AABD) were not made within the federal time limitations, and that initial payments were made later than the date required by federal law. Many applicants, although eligible under federal law, had been denied benefits by Illinois public aid officials who were administering payments pursuant to state regulations, instead of federal law. The district court, finding these regulations invalid insofar as they were inconsistent with the federal regulations, granted the plaintiffs a permanent injunction which required compliance with the federal time limits for processing applications and initiating payments, and ordered retroactive payments to eligible applicants whose applications had not been processed within the appropriate time limitations.

The court of appeals affirmed, and on certiorari the Supreme Court held that, although the eleventh amendment did not prevent federal courts from ordering state officials to cease unconstitutional conduct or conduct in contravention of federal law, limit on the exercise of federal jurisdiction: "The Eleventh Amendment declares a policy and sets forth an explicit limitation on federal judicial power . . . ." Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 467 (1945). "[T]he Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court." Edelman v. Jordan, 415 U.S. 651, 678 (1974).

47 45 C.F.R. § 206.10(a)(3) (1973) provides in pertinent part:
   (a) State plan requirements. A State plan . . . shall provide that:
      . . . 
      (3) A decision shall be made promptly on applications, pursuant to reasonable
      State-established time standards not in excess of:
      (i) 45 days [for aid to aged and blind] . . . , and
      (ii) 60 days [for aid to disabled].

Under this regulation assistance must be granted no later than the date of authorization of payment, which must be within either 45 or 60 days of application. See note 47 supra.

49 The state regulations provided that assistance was to be effective from the first day of the month in which eligibility was determined. Illinois Department of Public Aid, ILLINOIS CATEGORICAL ASSISTANCE MANUAL § 8255.1 (quoted at 415 U.S. 651, 655 n.4 (1974)).
51 472 F.2d 985 (7th Cir. 1973).
52 This principle was established in Ex parte Young, 209 U.S. 123 (1908). In Young, the Attorney General of Minnesota was ordered by injunction to conform the future conduct of his office to the requirements of the fourteenth amendment. The Supreme Court surmounted the eleventh amendment objection with the fiction that when a state official seeks to enforce a state law that conflicts with paramount federal law he is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct." Id. at 160. See Davis, Suing the Government by Falsely Pretending to Sue an Officer, 29 U. CHI. L. REV. 435, 437 (1962).
the federal courts, under the rule that "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment," did lack jurisdiction to order the payment of retroactive benefits.

In reaching this conclusion, the Court distinguished the fiscal consequences to state treasuries which necessarily result from complying with decrees that are by their terms prospective in nature—an ancillary effect which is a permissible and often inevitable consequence of the principle announced in *Ex parte Young*—from those consequences which result from the payment of state funds as compensation for violations of federal law during a period when neither the state nor its officers or agencies had been under any court-imposed obligation to conform to a different standard—a result barred by the Constitution. Although the actual fiscal consequences may not always be clearly divergent, the *Edelman* Court held that while the eleventh amendment prohibited the federal courts from requiring the retroactive payment of state funds as a form of compensation, it did not preclude the federal judiciary from directly enjoining the conduct of state officials.

The Court in *Edelman* also considered whether the State of Illinois had waived the bar of the eleventh amendment, and concluded that a state neither constructively nor actually waived its constitutional immunity from suit merely by participating in a program through which the federal government provided assistance for the operation of a state system of public aid. Such a waiver could be found "only where stated 'by the most express language or by such overwhelming implications from the text [of a federal-state agreement] as [will] leave no room for any other reasonable construction.'"

A. The Ramifications of *Edelman*

The *Edelman* decision creates an inconsistency within the federally-funded welfare programs. While compliance with a fed-

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53 415 U.S. at 663 (citations omitted).

54 The district court injunction in *Edelman* was such a decree. State funds would have to be expended in order to conform the conduct of state officials to the court's decree.


56 415 U.S. at 667-68.

57 The Supreme Court, in finding an eleventh amendment jurisdictional bar to the award of retroactive benefits from general state revenues, recognized that prospective relief against the states would often have a greater fiscal impact on their treasuries than the awards barred by the eleventh amendment. 415 U.S. at 667-68. See Graham v. Richardson, 403 U.S. 365 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970). See also notes 84-96 and accompanying text infra.

58 415 U.S. at 668.

eral regulation, which requires states to make corrective payments retroactively in the event of a successful fair hearing challenge, is a prerequisite to the continued receipt of federal funds, there is no parallel duty, due to voluntary waiver of the eleventh amendment bar or otherwise, for the state to make such retroactive payments after a claimant has been unsuccessful at the fair hearing stage and must resort to federal court in order to assert his claim. This deficiency is even more glaring when it is recognized that a fair hearing decision will probably be based upon a state regulation or administrative practice, the invalidity of which will often be the eventual foundation for the claimant’s right of recovery. This inconsistency results in an anomalous situation which allows compensatory relief to be granted to an individual claimant who has been injured due to a misapplication of appropriate standards, a wrong which usually can be corrected at a fair hearing, but denies such relief to an entire class of claimants who are similarly injured by the uniform application of an invalid state regulation or policy, a practice which ordinarily will not be corrected at the fair hearing level. For retroactive relief these recipients are left to pursue the alternatives available in the state courts, where decisions too often reflect a misplaced concern with the fiscal integrity of the state treasury.

Because the state courts typically are reluctant to award retroactive benefits, and the federal courts are currently unable to compel such payments, there may no longer be an adequate remedy to ensure continued state compliance with federal requirements. "No other remedy can effectively deter States from

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61 45 C.F.R. §§ 201.3, 201.6 (1973).
62 The state courts do not present an effective vehicle for the recovery of welfare benefits that have been wrongfully withheld. In refusing to award such retroactive relief, state courts often cite the funding difficulties that the public agencies face and the absence of arbitrary action on the part of the welfare department. In one case, individual litigants were denied retroactive relief even though no "intolerable financial burden" would have been placed on the public treasury. Begay v. Graham, 18 Ariz. App. 336, 340, 501 P.2d 964, 968 (1972).

63 See note 62 supra.
64 This result was foreshadowed in Jordan v. Weaver, 472 F.2d 985 (7th Cir. 1973), rev’d sub nom. Edelman v. Jordan, 415 U.S. 651 (1974), where the court asserted: [If] the only relief that could be granted under the Eleventh Amendment here were an injunction against the continuation of illegal conduct after the date of the
the strong temptation to cut welfare budgets by circumventing the stringent requirements of federal law." Of course, federal funds may be withheld from a noncomplying state program, but this is a drastic sanction which HEW is reluctant to apply. Since this penalty would only operate prospectively, the intended beneficiaries of the programs would suffer most.

These factors, highlighted by the Edelman decision, will inevitably reinforce the "if in doubt, don't pay" attitude that is presently built into the welfare administrative system. For even if a state agency has erroneously withheld welfare payments, it is now quite likely that actual and potential recipients will never be compensated for their loss.

B. Circumventing the Impact of Edelman

In light of these problems, the federal courts have recently attempted to dispose of welfare litigation in a manner which will avoid the proscription of the Edelman decision, or at least limit its applicability. For instance, as suggested by the Seventh Circuit, a decree, the force of federal law could be seriously blunted. The state welfare officials could withhold benefits in violation of federal law until suit is brought and a court acts, and retain the illegal savings acquired theretofore. The price would be paid by the beneficiaries of a federal program in which the state, not incidentally, agreed to participate and whose regulations it therefore agreed to abide by. An eligible beneficiary who brought suit contemporaneously with the initiation of the welfare officials' illegal practices and eo instanti secured an injunction could obtain all the benefits he was entitled to, but he would forfeit part of those benefits to the unjust enrichment of the state because he did not instantly file a complaint or because federal judicial machinery consumes time.

472 F.2d at 992.


Absent any remedy which may act with retroactive effect, state welfare officials have everything to gain and nothing to lose by failing to comply with the congressional mandate that assistance be paid with reasonable promptness to all eligible individuals. This is not idle speculation without basis in practical experience. In this very case, for example, Illinois officials have knowingly violated since 1968 a federal regulation on the strength of an argument as to its invalidity which even the majority deems unworthy of discussion. Without a retroactive-payment remedy, we are indeed faced with "the spectre of a state, perhaps calculatingly, defying federal law and thereby depriving welfare recipients of the financial assistance Congress thought it was giving them."

Id. at 692, quoting Jordan v. Weaver, 472 F.2d 985, 995 (7th Cir. 1972).

45 C.F.R. § 201.6 (1974).


48 See note 64 supra.
federal court is not without power under the eleventh amendment to issue a preliminary injunction against a state official, because such relief merely enjoins that official's behavior prospectively. Once the preliminary injunction has been issued, further injury to the recipients is prevented. If the preliminary injunction can be obtained immediately after the implementation of regulations or practices that are either unconstitutional or, as is more commonly the case in welfare litigation, contrary to the federal statute or regulations, the inability to recover benefits retroactively would not cause the irreparable harm that ordinarily accompanies a wrongful deprivation of welfare benefits. Accordingly, with the knowledge that a subsequent award of retroactive benefits is unavailable, the federal courts should be more disposed toward issuing preliminary injunctive relief.

Unfortunately, a federal court will enjoin the application of a state regulation or practice only where the petitioners have established that: (1) there is a strong possibility that they will prevail on the merits at the final hearing; (2) absent such relief, they will suffer irreparable injury; and (3) the harm to the state's interest caused by the granting of the injunction is outweighed by the injury which will be sustained by the petitioners if such relief is withheld. Because a termination or reduction in welfare benefits ordinarily will deprive the recipient of essentials such as food,

70 This was the case in Mothers' & Children's Rights Organization v. Sterrett, [1972-1974 Transfer Binder] CCH Pov. L. Rep. ¶ 15,384 (N.D. Ind. 1972), aff'd mem., 409 U.S. 809 (1972), where, in accordance with a preliminary injunction against the termination of categorical assistance benefits without a predetermination hearing, the welfare department was temporarily restrained from failing to issue a recipient's AFDC check for the coming month.

71 This technique is exemplified by the decision in J.A. and M.M. v. Riti, 377 F. Supp. 1046 (D.N.J. 1974), where the court issued a preliminary injunction restraining the enforcement of a state statute and regulation which suspended AFDC payments to individuals convicted of welfare fraud. It was alleged that this practice was inconsistent with the Social Security Act. The AFDC recipient had shown the possibility of irreparable harm and had raised serious questions concerning the validity of the statute and regulation involved, thereby warranting issuance of the preliminary injunction.

72 This tendency should be strengthened by recently enacted HEW regulations that allow a state to recover inappropriately paid welfare benefits, including those paid pursuant to a preliminary injunction which is vacated or those paid pursuant to an unfavorable lower court decision which is eventually reversed. 45 C.F.R. § 233.20(a)(12) (1974). See also Developments in Welfare Law—1973, 59 CORNELL L. REV. 859, 949-50 (1974). This reasoning is equally applicable to the issuance of a stay of a district court order pending appeal.

clothing, housing, and medical care, such action will often result in the irreparable injury required for the implementation of preliminary relief. A deprivation of this kind, especially if imposed on a class of welfare claimants, should also be sufficient to outweigh the harm to the state's fiscal interest caused by the issuance of the injunction. However, in many instances welfare litigants will be unable to show a substantial likelihood of eventual success on the merits, since their claims frequently rest on novel challenges to state practices which depart from federal statutes or regulations.

A related problem which may be encountered by a welfare litigant seeking an immediate injunction arises from the doctrine that permits a single district court judge to enjoin the operation of a state statute in conflict with federal law, but requires a three-judge district court to enjoin a state statute or regulation whose constitutionality is in issue. Since the convening of a three-judge court is a cumbersome and time-consuming process, injunctive relief premised solely on constitutional grounds often will not be obtained before the petitioners have suffered significant injury through the loss of unrecoverable benefits. However, this problem will ordinarily be avoided, since challenges to state categorical assistance programs, in addition to alleging constitutional infirmities, generally charge that the programs fail to conform to the structure required by the Social Security Act and its regulations.

In addition to awarding prospective relief at the earliest possible stage of a controversy, some courts have attempted to limit the effect of the eleventh amendment by narrowing the scope of the Supreme Court's holding in Edelman, and by fashioning remedies distinguishable from the one sought therein. For example, in Rodriguez v. Swank, the Seventh Circuit, in the face of an eleventh amendment challenge, affirmed a prospective monetary award against the state by giving Edelman an exceedingly narrow interpretation.

The facts in Rodriguez closely paralleled those in Edelman. In October 1970, the district court ordered the Illinois Department of

78 See Note, COLUM. L. REV., supra note 7.
79 496 F.2d 1110 (7th Cir. 1974), cert. denied, 419 U.S. 885 (1974).
Public Aid to process all applications for assistance under the AFDC program within thirty days from the time of filing. In February 1972, a supplemental order was entered to enforce compliance. Incomplete compliance persisted, and a motion for further remedies was made in October 1972. Rejecting the “presumptive eligibility” remedy, whereby an applicant whose AFDC application has not been processed for thirty days is presumed eligible and is immediately mailed an assistance check, the court ordered that after February 1, 1973, "any AFDC application pending more than thirty days, through no fault of the applicant, and subsequently acted upon favorably, will entitle the applicant to $100, compensatory damages in addition to the regular benefits received." This court-ordered penalty undoubtedly was motivated by frustration; over a two year period the court had unsuccessfully attempted to secure compliance with the federal regulations by the Illinois Department of Public Aid. The court concluded that the state had demonstrated it would not comply with the federal regulations or a court order without the threat of monetary liability.

On appeal, the Seventh Circuit, in light of the Edelman decision, reviewed the validity of this prospective penalty against the state. Relying upon the Supreme Court's finding that the eleventh amendment operated as a bar to an order that “requires payment of state funds . . . as a form of compensation to those whose applications were processed” in violation of federal regulations “at a time when [state officials were] under no court-imposed obligation to conform to a different standard,” the court of appeals reasoned that such an order was not outside the power of the federal courts when the state officials had, in fact, been under a “court-imposed obligation to conform to a different standard.” The fiscal impact of this order was characterized as the “necessary result of attempts to gain compliance with a decree which by its
terms was prospective in nature—a consequence found to be permissible in *Edelman*. This decision enables a federal court to enjoin the activities of state officials and, at the same time, to order the payment of damages by the state should the injunction be violated in the future.

This analysis, although reaching an equitable, practical, and perhaps necessary, result, does not do justice to the Supreme Court's pronouncements in *Edelman*. The permissible ancillary effect on the state treasury that *Edelman* contemplated occurred as the result of expenses necessarily incurred by state officials in shaping their conduct to the court's decrees, not from the satisfaction of a penalty assessed for their violation. The *Rodriguez* court found that the prospective nature of the relief granted, and that officials would have to violate a court-imposed obligation, sufficiently distinguished this relief from *Edelman*'s award so that the eleventh amendment bar was avoided. But this analysis overlooks the true impact of the eleventh amendment, which deprives the federal courts of the authority to direct an expenditure of state funds as compensation to parties injured by state activity. Although the *Edelman* holding is limited to the precept that the eleventh amendment bars an award of retroactive monetary relief against a state unless it has waived its eleventh amendment objec-

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88 Id. at 1113.
89 "The power to order compliance with federal regulations would be meaningless if the injunction were unenforceable." Id. at 1112-13.
90 See notes 52-58 and accompanying text *supra*.
91 [T]he fiscal consequences to state treasuries... were the necessary result of compliance with decrees which by their terms were prospective in nature. State officials, in order to shape their official conduct to the mandate of the Court's decrees, would more likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct. Such an ancillary effect on the state treasury is a permissible and often an inevitable consequence... .
415 U.S. at 667-68.
92 [T]he Eleventh Amendment does not prevent a federal court from directing a state official to bring his conduct into conformity with federal law... .

... [However] any judgment declaring a liability which must be met from the public funds of the state does come within the reach of the Eleventh Amendment; and a court will, absent the state's consent, be deemed without jurisdiction to enter such a judgment.


It is one thing to tell the Commissioner of Social Services that he must comply with the federal standards for the future if the state is to have the benefit of federal funds in the programs he administers. It is quite another thing to order the Commissioner to use state funds to make reparation for the past. The latter would appear to us to fall afoul of the Eleventh Amendment if that basic constitutional provision is to be conceived of as having any present force.

467 F.2d at 236-37 (footnotes omitted).
tion by consenting to the suit,\textsuperscript{93} there is strong language in the opinion indicating that, absent consent, no monetary judgment payable from a state treasury may be awarded by a federal court.\textsuperscript{94} In summarizing its decision, the Court states that "a federal court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief, and may not include a retroactive award which requires the payment of funds from the state treasury."\textsuperscript{95} While this edict does not by its terms encompass a prospective award which requires payment of funds from the state treasury, such as that ordered in \textit{Rodriguez}, the Supreme Court has never permitted the recovery of monetary damages against a state within the context of eleventh amendment litigation.\textsuperscript{96}

The order upheld in \textit{Rodriguez} goes beyond a grant of prospective injunctive relief with its necessary ancillary effect on state treasuries. It operates immediately against the general revenues of the state by requiring a direct payment therefrom as compensation to parties injured by acts previously engaged in by state officials.\textsuperscript{97}

\textsuperscript{93} Edelman v. Jordan, 415 U.S. 651 (1974); \textit{see also} Rochester v. White, 503 F.2d 263 (3d Cir. 1974).

\textsuperscript{94} We do not read \textit{Ex parte Young} or subsequent holdings of this Court to indicate that any form of relief may be awarded against a state officer, no matter how closely it may in practice resemble a money judgment payable out of the state treasury, so long as the relief may be labeled "equitable" in nature.

\textsuperscript{95} 415 U.S. at 666.


Oddly, the Seventh Circuit had considered this a fatal distinction when it originally upheld the award of retroactive benefits which was eventually denied by \textit{Edelman}. In expressing its opinion that an award of damages against the state was barred by the eleventh amendment and so was beyond the jurisdiction of the federal courts, the court stated: [W]e think the remedy afforded here was that of restitution, which "differs greatly from the damages and penalties which may be awarded." Plaintiffs here did not seek relief for consequential damages caused by defendant's failure to disburse their full statutory entitlement. Rather, incident to the injunctive relief prayed for, they asked that exactly measured benefits retained by defendants which would have been paid out but for a violation of federal law be paid over to them.

\textsuperscript{97} 472 F.2d at 993, \textit{quoting} Porter v. Warner Holding Co., 328 U.S. 395, 402 (1946).

The \textit{Rodriguez} court did order relief for consequential damages caused by the defendants' failure to disburse appropriately the plaintiffs' statutory entitlement. Yet the case can only be distinguished on two grounds: (1) in the \textit{Rodriguez} case the state was under a court-imposed obligation which enjoined its conduct, while in \textit{Edelman} the obligation was legislatively imposed; and (2) in \textit{Rodriguez} the state had been forewarned that a penalty would he imposed if the federal injunction was violated:

As the text suggests, these distinctions were given more importance by the Seventh Circuit in \textit{Rodriguez} than was justified by the Supreme Court's opinion in \textit{Edelman}. The conclusion is that the Supreme Court considered any monetary damages award against a state to be barred by the eleventh amendment.
However, without the ability to make an award such as the one granted in *Rodriguez*, the federal courts may be powerless to compel state compliance with the federal welfare scheme. As a result, the possibility of virtually unlimited state administrational abuse of welfare programs may become a reality.\(^9\)

A situation potentially more detrimental to welfare recipients would exist if a state refused to obey a federal injunction ordering the termination of a wrongful withholding of benefits. *Class v. Norton*,\(^9\) decided three days prior to the decision in *Edelman*, indicates the type of relief which may be implemented to curtail such state non-compliance with federal programs while simultaneously maintaining the integrity of the eleventh amendment. *Class* suggests that *Edelman* would be inapplicable to a suit for benefits that were withheld in violation of a federal injunction.\(^10\)

*Class* involved a factual situation similar to both *Rodriguez* and *Edelman*. In June 1972, the district court ordered the Connecticut Commissioner of Welfare to comply with the applicable federal regulations for eligibility determinations and commencement of assistance.\(^10\) Almost two years later there remained substantial and

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\(^9\) The *Rodriguez* case is a prime example of state administrational abuse since the state welfare agency continued to refuse assistance within the federal time limitations for two years after the federal court had ordered it to do so. One possible remedy for such delays would be for federal courts to hold state welfare officials in contempt for violation of a federal injunction. However, the federal courts are reluctant to do this. See, e.g., *Class v. Norton*, 376 F. Supp. 396, 500-01 (D. Conn. 1974). Without the threat of penalty or the ability to award retroactive benefits, "the force of federal law could be seriously blunted. The state welfare officials could withhold benefits in violation of federal law until suit is brought and a court acts, and retain the illegal savings acquired theretofore." Jordan v. Weaver, 472 F.2d 985, 992 (7th Cir. 1973), rev'd sub nom. *Edelman v. Jordan*, 415 U.S. 651 (1974). See also notes 64-65 and accompanying text supra.

Nor is the statutory sanction of terminating federal aid a solution to the problem, for it is a drastic sanction and has rarely been imposed by HEW. See G. COOPER, C. BERGER, P. DODYK, M. PAULSEN, P. SCHRAG & M. SOVERN, CASES AND MATERIALS ON LAW AND POVERTY 343-44 (2d ed. 1973). In fact, HEW has seldom held a conformity hearing. See CENTER ON SOCIAL WELFARE POLICY AND LAW, 3 MATERIALS ON WELFARE LAW 425 (1972).

\(^10\) On June 16, 1972, a memorandum and decision was filed ordering the Connecticut Commissioner of Welfare to comply with applicable federal regulations by determining the eligibility of applicants for welfare assistance under the state AFDC program within 30 days from the date of application for assistance. If no determination of eligibility had been made by the end of the 30-day period, the Commissioner was ordered to presume that the applicant was eligible for assistance and to mail checks accordingly. The Commissioner was further ordered to make assistance effective from a date no later than the date of
Whereas in *Rodriguez* welfare applicants were receiving the appropriate benefits at a date later than required by federal regulations, Connecticut's violation of the federal injunction resulted in both the delayed receipt of benefits and the payment of amounts that were below the standards required by federal law. Moreover, in contrast to *Edelman*, this situation continued for almost two years after a federal court order had enjoined the practices involved. To remedy this situation and to properly implement its prior orders, the district court ordered the examination of all "active" and "inactive" cases involving persons who had applied for AFDC benefits subsequent to the date of filing of the original suit. The court sought to determine whether these recipients and former recipients were eligible for benefits retroactive to the date of application, and directed the payment of such retroactive benefits.

Ostensibly, this award of benefits fell within the ambit of the eleventh amendment. Although granted to enforce a federal injunction, rather than a federal regulation, the relief appeared to be the same type of award against a state which *Edelman* held to be beyond the jurisdiction of the federal courts—a grant of retroactive payments of statutory benefits found to have been wrongfully

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102 Not only were applications neglected for more than 30 days, but in some cases the welfare department had refused to make assistance effective from the date of application. *Class v. Norton*, 376 F. Supp. 496 (D. Conn. 1974). To correct this continued violation of the injunction, petitioners sought citation of the defendant Commissioner of Welfare for contempt and issuance of an injunction preventing the use of federal funds for the state AFDC program. The court, however, refrained from implementing these drastic measures.

103 Those who had not received assistance effective from a date no later than the date of application, as required by the original order, were eligible for such relief. *Class v. White*, [1972-1974 Transfer Binder] CCH Pov. L. Rep. ¶ 16,514 (D. Conn. 1972).

104 *Class v. Norton*, 376 F. Supp. 496 (D. Conn. 1974). This retroactive award of benefits can be divided into two categories: (1) payments for violations of the federal regulations which occurred subsequent to the filing of the suit, but prior to the issuance of the original injunction; and (2) the award of benefits which were withheld subsequent to the injunctions issued on June 16, and June 22, 1972, and which were in violation of those injunctions. The first category was clearly within the proscription of *Edelman* and the district court indicated as much in denying a later motion for relief from judgment. *Id.* at 506 n.1. It was an award of retroactive benefits which were wrongfully withheld. The fund from which the award was to be satisfied would inevitably have been the general revenues of the state. The second category of benefits, however, was not discussed in *Edelman* and will be the subject of the following textual discussion. See notes 105-08 and accompanying text infra.
withheld. 105 However, if this argument were to prevail, the federal courts would be unable to enforce effectively state conformity with the federal welfare scheme, because absent the availability of viable sanctions, state welfare departments could profit from violating court injunctions and wrongfully withholding benefits. The Court in Edelman recognized this problem and indicated that it would have reached the opposite result had the suit been brought to enforce compliance with a previously issued federal injunction. 106

Under the terms of the eleventh amendment, 107 there is no basis for distinguishing between situations in which the state is under an obligation imposed by a federal statute or regulation, and one imposed by a federal court. Nevertheless, because the Court in Ex parte Young 108 held that the eleventh amendment was not a bar to injunctive relief against a state official, some vehicle for enforcement of those injunctions must be made available to the federal courts. To protect the integrity of the federal courts, without negating the effect of the eleventh amendment, 109 the only practical solution is to allow a federal court to grant such monetary awards for the sole purpose of enforcing its injunctions.

Other tactics may be employed, when suing in the federal courts, to avoid the effect of the eleventh amendment. First, welfare litigants may sue state officials in their individual capacity rather than in their official capacity. 110 Thus, any amounts found to be due would be paid from the personal resources of the officials and not from the general revenues of the state. However, in addition to being an impractical solution in a class action, where the liability may be extremely large, this procedure will be unavailable in most situations because state officers are protected by the doctrine of official immunity. This doctrine shields state officials

105 "[A] suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." 415 U.S. at 663.
106 Id. at 668. This would be exemplified by a situation in which the state had been under a court imposed obligation to conform to a standard which was not being upheld, and the award contemplated was limited to those benefits to which the recipients were entitled under the applicable welfare statute.
107 See note 44 supra.
109 Although the relief in Norton was granted prior to the Supreme Court's decision in Edelman, the defendant later moved for relief from judgment on the ground that Edelman required a contrary result. Although the court rested its denial of the motion on other grounds, its consideration of Edelman's effect on the relief granted was consistent with this analysis. Class v. Norton, 376 F. Supp. 503, 506 (1974).
110 Whereas state officials sued in their official capacity are immune from monetary judgment under the eleventh amendment, state officials sued in their individual capacity are not. Carey v. White, 375 F. Supp. 1327, 1329 (D. Del. 1974).
from liability, despite a violation of constitutional rights, if their acts were within the range of permissible discretion or within the scope of their duties, and were committed in good faith.\footnote{111}

Another approach, implied by the Supreme Court in \textit{Edelman}, calls for a suit against the county or other subdivision of the state administering the welfare program.\footnote{112} In noting that for eleventh amendment purposes a county does not occupy the same position as a state,\footnote{113} the Court indicated that an award of retroactive benefits could be made in such a suit. Although such a suit would not have as broad an effect on welfare programs as a suit against the state, it would be better directed towards obtaining the appropriate relief for the litigants involved and could be brought together with a suit against the state for an injunction in order to achieve the desired statewide effect.\footnote{114}

\textbf{Conclusion}

Although it is feared that by its liberal expression of the "substantial question" requirement the \textit{Hagans} decision will open the floodgates of the federal courts to welfare litigation, the \textit{Edelman} decision, by eliminating the power of the federal courts to grant the essential remedy of retroactive benefits, makes it clear that this will only be of benefit to those who desire statewide reform of the categorical assistance programs. Other individuals and groups of claimants who merely seek compensation for desperately needed benefits that have been wrongfully withheld are left to either the beneficence of the less-than-friendly state courts or the make-shift measures currently being initiated by the federal courts.

The present situation can only be remedied by an amendment to the Social Security Act providing for an express waiver of the


\footnote{112} This approach is only available in those states which have subdivisions that actually administer the welfare programs.

\footnote{113} 415 U.S. at 667 n.12.

\footnote{114} Another suggestion which has been advanced calls for the federal court to remand the case to the fair hearing level where the federal regulations require the retroactive payment of benefits wrongfully withheld. 45 C.F.R. § 205.10(a)(18) (1974). \textit{See} note 41 and accompanying text \textit{supra}. A limitation on this method is that there must have been a fair hearing prior to the federal litigation. As exhaustion of state administrative remedies prior to adjudication is not generally required by the federal courts in welfare litigation, the practice until now has been to bypass the fair hearing entirely in many instances and institute an action directly in a federal court. \textit{See generally} Note, \textit{CORNELL L. REV.}, \textit{supra} note 7, at 807-09.
immunity afforded to the states by the eleventh amendment. Conceivably, such legislation may be stimulated by future attempts of state welfare officials to abuse the protection granted by the Edelman decision.

Arthur J. Fried
Upon the occasion of his retirement from the faculty of the Cornell Law School, the Board of Editors of the Cornell Law Review and the authors of the articles contained herein respectfully dedicate this issue to Rudolf B. Schlesinger—teacher, scholar, and friend.