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NOTE

ANDERSON v. EDWARDS: CAN TWO LIVE MORE CHEAPLY THAN ONE? THE EFFECT OF COHABITATION ON AFDC GRANTS

I. INTRODUCTION

Prior to the United States Supreme Court's decision in Anderson v. Edwards,1 several federal courts and state courts of last resort were divided as to whether federal law governing the Aid to Families with Dependent Children2 (hereinafter “AFDC”) program prohibited a state from grouping into a single AFDC Assistance Unit3 (hereinafter “AU”) all needy children who live in the same household under the care of one relative.4 Although the Ninth Circuit had previously held oth-
erwise, in Anderson the Supreme Court held that California's non-sibling filing unit rule (hereinafter "California Rule") does not violate federal law.

When their monthly AFDC allowance was reduced, the plaintiffs in Anderson filed a class action lawsuit against the California officials who administered the AFDC program. Pursuant to the California Rule, a reduction in an AFDC monthly allowance occurs when two or more AUs, for which there is only one caretaker, are combined into one. Under the California Rule, the amount of the assistance increases with each additional recipient, but it does not increase proportionally. As the number of persons in the AU increases, the per capita payment to the AU decreases.

Respondents in Anderson argued that the California Rule violated three federal regulations which prohibited states from assuming that a cohabitant's income is available to a needy child absent a case-specific determination that such income is actually or legally available. The Supreme Court held that the California Rule does not violate federal law because those federal regulations apply to a boyfriend or other

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5. Edwards, 12 F.3d at 154; Beaton, 913 F.2d at 701.
6. Cal. Dept. of Social Servs., Manual of Policies & Procedures § 82-824.1.13. [hereinafter MPP § 82-824.1.13]. The California regulation states in relevant part: "[T]wo or more AUs in the same home shall be combined into one AU when: . . . [T]here is only one caretaker relative." Id.
8. The class action suit included all AFDC households with siblings and non-sibling children who are consolidated into a single unit for purposes of calculating AFDC benefits. This action was brought by Verna Edwards, for herself and as guardian ad litem for Vernais Edwards, Pamela Edwards, and Ericka Edwards; Barbara Moore, for herself and as guardian ad litem for Rebiana Robi, Derral Robi, Delisha Jaa, and Rayleisha Taylor; and Vanessa Hamilton, for herself and as guardian ad litem for Johnny Watson, Cleo Thomas, Ricky MacDonald, Jimmy Pashell, and Stanley Hamilton. Petitioners' Brief on the Merits at 1, Anderson (No. 93-1883).
10. Id.
11. Id. at 1294.
12. Id.
adult male in the home who has no legal obligation to the children and whose income should not be assumed to be available to them.\textsuperscript{15} The California Rule does not presume that income from a non-legally responsible person, who lives in the household but is not part of the AFDC AU, is available to the AFDC recipients.\textsuperscript{16} California takes into consideration only the income of the members in the AU, which is authorized by the federal AFDC statute.\textsuperscript{17} Therefore, the Court held that federal law does not prohibit California from grouping into a single AU all needy children living in the same household under the care of one relative.\textsuperscript{18}

This note will first discuss the background of the AFDC program and how it is regulated by the federal and state governments. A discussion of several lower federal and state court decisions which have dealt with the issue presented to the United States Supreme Court in \textit{Anderson v. Edwards} will follow. Next, this note will examine the Court's analysis and holding in \textit{Anderson}. The note concludes with the author's assessment as to why the holding in \textit{Anderson} was correct.

\section*{II. BACKGROUND}
\subsection*{A. THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM}

AFDC\textsuperscript{19} was created to provide cash income support to needy children who are deprived of the support of at least one of their parents.\textsuperscript{20} Congress created the AFDC program in 1935 to:

\begin{quote}
[E]ncourag[e] the care of dependent children in
\end{quote}

\begin{thebibliography}{9}
\bibitem{16} Petitioners' Brief on the Merits at 9, \textit{Anderson} (No. 93-1883).
\bibitem{18} \textit{Anderson}, 115 S. Ct. at 1293.
\bibitem{20} \textit{State AFDC Rules Regarding the Treatment of Cohabitors: 1993; Aid to Families with Dependant Children}, 57 SOC. SEC. BULL., Dec. 2, 1994, at 26 [hereinafter \textit{SOCIAL SECURITY BULLETIN}].
\end{thebibliography}
their own homes or in the homes of relatives by enabling each state to furnish financial assistance . . . as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . . 21

The program is a cooperative federal-state public assistance program. 22 It is financed largely by the federal government, on a matching fund basis, and is administered by the states. 23 States are not required to participate in the program, but states that desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for approval by the Secretary of Health and Human Services (previously known as the Department of Health, Education, and Welfare; hereinafter "HHS"). 24 In order for the state plan to be approved, it must conform with the requirements of Subchapter IV(A) of the Social Security Act, 25 and with the rules and regulations promulgated by HHS. 26 If HHS does not approve the state plan, federal funds will not be made available for its implementation. 27

HHS has issued two separate Action Transmittals which indicate that the states have discretion to decide whether to

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combine all children in the household, sibling or non-sibling, into one AFDC unit.\textsuperscript{28} On January 13, 1986, HHS issued an Action Transmittal which stated that "outside of [the mandatory family filing rule, 42 U.S.C. § 602(a)(38)] it is up to the State to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of the assistance unit as a parent, brother or sister lives in the household and files for assistance."\textsuperscript{29} Another Action Transmittal issued on March 16, 1994\textsuperscript{30} indicated that the states have authority to exercise their discretion to either consolidate non-siblings into the existing AU or allow the non-siblings to be kept in a separate AU.\textsuperscript{31}

B. DEFINING THE ASSISTANCE UNIT

1. Statutory Definition

As part of the Deficit Reduction Act of 1984,\textsuperscript{32} Congress amended the Social Security Act\textsuperscript{33} to require that parents and siblings (as well as grandparents in the case of a minor parent) who live in the same household with an AFDC beneficiary be consolidated into a single AFDC AU.\textsuperscript{34} However, no statute or

\textsuperscript{28} Petitioners' Petition for Writ of Certiorari at 17-18, Anderson (No. 93-1883).

\textsuperscript{29} Id.

\textsuperscript{30} This Action Transmittal was issued after the Ninth Circuit's decision in Edwards, 12 F.3d 154 (9th Cir. 1993).

\textsuperscript{31} Petitioners' Petition for Writ of Certiorari at 17-18, Anderson (93-1883).


\textsuperscript{33} 42 U.S.C.A. § 301 (West 1991).

\textsuperscript{34} Deficit Reduction Act of 1984 § 2640(a), 98 Stat. 1145 (codified as amended at 42 U.S.C. § 602(a)(38) and (39) (1991)). This statute states in relevant part:

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clause (1) and (2) of section 606(a) of this title or in section 607(a), if such parent, brother, or sister is living in the same home as
regulatory provision expressly addresses the question of whether a single relative caretaker receiving AFDC who takes in minor dependent children for whom she is not legally responsible shouldn't be deemed a single AFDC AU?  

AFDC payments vary depending on the size of the AU under the economies of scale principle. Thus, grant amounts increase incrementally for each additional AU member. As a result, it is important to determine who is included in the AU since this determines the amount of the grant. The "family filing unit rule" requires that all cohabiting nuclear family  

the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter).

45 C.F.R. § 206.10(a)(1)(viii) (1994) states in relevant part:

(a) State plan requirements. A State plan under title . . . IV-A . . . , of that Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement: (viii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and (B) Any blood-related or adoptive brother or sister . . .

Prior to the Deficit Reduction Act of 1984, AFDC applicants living in the same household could choose to exclude from the assistance unit a parent or child who, for example, had significant income or resources that if counted among the family's resources would render the family ineligible for assistance. Bowen v. Gilliard, 483 U.S. 587, 590 (1987).

35. Bray, 25 F.3d at 141. See also, Allen v. Hettleman, 494 F. Supp. 854, 861 (D. Md. 1980) (quoting with approval pre-1984 statement of then Secretary of the United States Department of Health and Human Services: "The composition of an AFDC assistance unit is not defined in federal law.").


37. Id.

38. Beaton v. Thompson, 913 F.2d 701, 702 (9th Cir. 1990).

39. See supra note 3.
members be grouped into a single AFDC “assistance unit,” which is defined by federal law as “the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment.”

2. Practical Meaning of “Family Unit”

Most AFDC families include a caretaker adult, usually the mother of the children, as well as the children. Although AFDC families were relatively easy to identify when the Social Security Act (which included legislation for the AFDC program) was passed in 1935, they are now more difficult to define. Today, the types of families and households within which needy children reside have become more complex. It has become more common to find AFDC recipients living with their parents, with other family members, or to have AFDC mothers married to men who are not the natural parents of the children.

3. California's Non-sibling Filing-Unit Rule

Pursuant to the federal AFDC legislation, California has enacted programs for public aid to families with dependent children. The State Department of Social Services (hereinafter “DHHS”) is the state agency responsible for supervising the administration of the AFDC program. Grants-in-aid are

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41. 45 C.F.R. § 233.90(c)(v) (1994).
42. SOCIAL SECURITY BULLETIN, supra note 20.
43. Id.
44. Id.
45. Id.
46. Id.
49. CAL. WELF. & INST. CODE §§ 10554, 10600 (Deering 1994). The administration of the state AFDC program is divided into the several counties within the state and is designated a county function and responsibility. The management of the program in each of the counties rests upon the boards of supervisors in the respective counties pursuant to the applicable state and federal laws. CAL. WELF. & INST. CODE § 10800 (Deering 1994).
made to the states' county agencies by the federal or state government to secure full compliance with the applicable provisions of state and federal laws. The Welfare and Institutions Code sets forth the powers and duties of DHHS, which include the responsibility of the Director of DHHS to formulate, adopt, amend or repeal regulations and general policies necessary for the administration of public social services. The California Rule is part of the regulations promulgated by DHHS and states that "two or more AUs in the same home shall be combined into one AU when: [t]here is only one caretaker relative." This rule is known as the "non-sibling filing unit" rule and is based on the economies of scale principle, which asserts that individuals living with others usually have reduced per capita costs because many of their expenses are shared. Under the California Rule, when only one caretaker relative heads a household, all children in the household, sibling and non-sibling, are combined into one AFDC unit.

C. BACKGROUND CASES

1. Promulgation and Application of the Substitute Parent Regulation

The issue of whether federal law prohibits a state from grouping all needy children who live under one relative caretaker into a single AFDC AU was first confronted in King v. Smith. In King, the United States Supreme Court found that an Alabama regulation violated 42 U.S.C. § 606(a)

50. Id.
52. MPP § 82-824.1.13, see supra note 6.
53. Id. Twenty-nine states have adopted rules that reduce their welfare budgets by considering such households as one. Aaron Epstein, Top court rules states can cut 'family' welfare; It says all children living together can be counted as one unit, PROVIDENCE J.-BULL., Mar. 23, 1995, at 12A.
54. Termini, 611 F.2d at 370.
55. John Sanchez, Can a State Reduce Federal Welfare Benefits for Children Living Together Because "Two Can Live Cheaper than One?", 4 PREVIEW OF THE UNITED STATES SUPREME COURT CASES 197, Dec. 22, 1994, at 197 [hereinafter Sanchez]. Siblings are children who have at least one common parent. Non-siblings have no parent in common. Id.
because it denied benefits to children who were qualified to participate in the AFDC program. Under the Alabama regulation, the children were denied AFDC benefits because their mother cohabited with an able-bodied man even though he had no obligation under state law to support them. In response to King, the Department of Health, Education and Welfare promulgated the "substitute father" regulation. This regulation prohibits finding a child ineligible for AFDC on the basis that a man, other than the child's parent, is living in the home, without proof that he is actually contributing to the child's support.

The Alabama regulation states in relevant part:

[An "able-bodied man, married or single, is considered a substitute father of all the children of the applicant . . . mother" in three different situations: (1) if "he lives in the home with the child's natural or adoptive mother for the purpose of cohabitation; or (2) if "he visits [the home] frequently for the purpose of cohabiting with the child's natural or adoptive mother"; or (3) if "he does not frequent the home but cohabits with the child's natural or adoptive mother elsewhere."

Id. cited in King, 392 U.S. at 313-14.

58. 42 U.S.C. § 606(a) (1988). This statute states in relevant part: The term 'dependent child' means a needy child (1) who has been deprived of parental support or care by reason of death, continued absence from the home, . . . , or physical or mental incapacity of a parent . . .

59. King, 392 U.S. at 309.

60. Id. at 333.

61. 45 C.F.R. § 233.90(a) (1994) (predecessor to 45 C.F.R. § 203.1). This statute states in relevant part:

(a) A State plan under title IV-A of the Social Security Act shall provide that: (1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or . . . will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State.

Id.

The Supreme Court applied the newly promulgated "substitute father" regulation in *Lewis v. Martin*. In *Lewis*, plaintiffs challenged a California law which required that available income of a stepfather or a "male person assuming the role of spouse" (hereinafter "MARS") be considered in determining the level of need of the AFDC recipient children in the household. The Court held that "[in] the absence of proof of actual contribution, California may not consider the child's 'resources' to include either the income of a nonadopting stepfather who is not legally obligated to support the child, as is a natural parent, or the income of a MARS — whatever the nature of his obligation to support." The Court reasoned that only a person as near as a real or adoptive father would have the consensual relation to the family to make it certain that his income would actually be available for support of the children.

2. State Statutes Invalidated

In *Beaton v. Thompson*, the Ninth Circuit invalidated a Washington AFDC regulation which grouped together all

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197 (D. Cal. 1968).

63. *Id.*

64. The California law provided that payments to a "needy child" who "lives with his mother and a stepfather or an adult male person assuming the role of spouse to the mother although not legally married to her"—known in the vernacular as a MARS—shall be computed after consideration is given to the income of the stepfather or MARS. *Id.*, at 553-54. On September 3, 1969, the Governor of California signed into law a new § 11351.5 of the California Welfare and Institutions Code, which became effective November 10, 1969. It leaves unchanged § 11351 and implementing regulations insofar as they apply to a stepfather, but repeals the old § 11351 insofar as it applied to "an adult male person assuming the role of spouse." *Id.*, at 554 n.2.

65. *Id.*, at 559-60. The California regulations that governed a MARS at the time these suits were brought were Cal. State Dept. of Social Welfare, Public Social Services Manual §§ 42-535 (effective Nov. 1, 1967), 44-133.5 (effective July 1, 1967). As to a stepfather, the pertinent regulations were Cal. Dept. of Social Welfare, Public Social Services Manual §§ 42-531 (effective Nov. 1, 1967), 44-113.242 (effective July 1, 1967). *Id.* n.3.


68. 913 F.2d 701 (9th Cir. 1990).

69. WASH. ADMIN. CODE §388-24-050(3) (1989). The Washington regulation states in relevant part: "The department shall authorize only one assistance unit
needy children who lived in the same household under the care of a single caretaker relative. The plaintiffs in *Beaton* argued that the act of consolidation required by the regulation was "an illegal scheme of proration and imputed the income of a non-legally responsible person." The State Department of Social and Health Services argued that its regulation did not impute income; it only redefined AU as it was empowered to do by the federal regulations. The Ninth Circuit determined the regulation was invalid, like regulations invalidated in *McCoog v. Hegstrom* and *Gurley v. Wohlgemuth*, because its effect was to presume that the non-legally responsible relative with whom the child lived was contributing to the support of the child without proof of any actual contribution.

In *McCoog v. Hegstrom*, the Ninth Circuit invalidated Oregon's non-needy relative rule which reduced the AFDC grant for all needy eligible siblings and nonsiblings living with a single caretaker relative or relative married couple." *Id.*, cited in *Beaton*, 913 F.2d at 702.

70. *Beaton*, 913 F.2d at 701.
71. *Id.* at 702.
72. *Id.* at 704.
73. *McCoog v. Hegstrom*, 690 F.2d 1280 (9th Cir. 1982).
75. *Beaton*, 913 F.2d at 704. According to the Ninth Circuit, the regulation violated 45 C.F.R. § 233.20(a)(2)(viii), which prohibits a reduction in benefits solely because of the presence in the house of a non-legally responsible adult, and 45 C.F.R. § 233.90(a)(1) and § 233.20(a)(3)(ii)(D), which mandate against presuming a non-legally responsible person is contributing to the needy child's expenses. *Id.* These are the same regulations relied upon by respondent in *Anderson*, Verna Edwards, *Anderson v. Edwards*, 115 S. Ct. 1291, 1296 (1995).
76. OR. ADMIN. R. 461-06-006 (1978). The Oregon rule states in relevant part: Standards for Dependent Children Living with a Non-Needy Relative in a Place of Residence Maintained as Their Home:
(1) Definitions:
(a) Non-Needy relative. A person enumerated in ORS 418.035(1)(c), who is ineligible to receive aid to Dependent Children for his or her needs as a caretaker due to excess income or resources other than any financial need based program.
(b) Nuclear family. A family group residing together that consists of the caretaker relative, his or her spouse, and their children living at home. Not included are other related or unrelated persons in the household.
(2) The food standard shall be based upon the total number of persons including the nuclear family of the non-needy relative and the eligible dependent children.
(3) The shelter standard shall consist of the difference be-
benefits paid to children whose caretaker relatives were not eligible for welfare assistance. According to the court, in implementing the non-needy relative rule the state assumed that the caretaker relative would already have been paying for food and shelter, and that the cost of an additional child in the household would only be incremental. The Ninth Circuit emphasized that although the Oregon regulation presumed that the caretaker would bear the majority of the costs of a household, the state did not attempt to determine whether the caretaker, in fact, was meeting his own shelter needs when he joined with the child to form the AFDC household. The court also invalidated the No Adult standard, which was promulgated after the Department of Human Resources Adult and Family Services Division had repealed the non-needy relative rule. The Ninth Circuit found the No Adult Standard to be:

between: a) the shelter standard for the total number of persons in the nuclear family of the non-needy relative, including the eligible dependent children, and (b) the total number of persons in the nuclear family of the non-needy relative excluding the eligible dependent children.

Id. cited in McCoog, 690 F.2d at 1282 n.3.

77. Id. at 1282.
78. Id. at 1282-1283.
79. Id. at 1285. If the non-legally responsible caretaker is also needy, he or she can be added to the AFDC grant. Id. at 1282. If the caretaker is legally responsible for the child, then his or her income and resources are added when computing the amount of eligibility. Id.
80. McCoog, 690 F.2d at 1283.

The No Adult standard is substantially identical to the non-needy relative rule, differing only as follows: First, the No Adult standard applies to all non-needy relative cases where an adult is living in the household, including those excepted from the [non-needy relative rule]. Id. Second, the No Adult standard causes no reduction in the food component of the AFDC grant. Id. Third, the No Adult standard does not consider either the number of persons in the caretaker relative’s family who are not included in the AFDC grant or tax allowances for welfare recipients in determining the amount of the grant. Id. Finally, as was the case in the non-needy relative rule, under the No Adult standard the children do not receive a pro rata shelter allowance, but only the much smaller incremental shelter grant. However, the method of calculating the increment differs slightly between the two rules.

Id.

81. Id. The plaintiffs filed this action in August 1978, seeking declaratory and injunctive relief against the then proposed non-needy relative rule. The district
In Gurley v. Wohlgemuth, the United States District Court for the Eastern District of Pennsylvania invalidated a Pennsylvania Department of Public Welfare Manual regulation (hereinafter “DPW”) as violative of the “substitute father” federal regulation. Pursuant to the DPW Manual regulation, the plaintiffs in this action (two sisters, one with a minor daughter and the other with two minor daughters) were treated as a single AU of five persons for purposes of determining the amount of their monthly AFDC grant because they lived together. The District Court maintained, however, that the federal regulations require proof of actual contribution to the welfare of the child, and that the fact that two AFDC families decided to live together did not affect the rights of the children under the regulation.

The State argued that the DPW Manual regulation did not violate federal regulations because it did not assume the avail-
ability of income at all, but rather took into account the amount of money required to satisfy the needs of a child living in a household occupied by a larger number of people. According to the state, children living with a larger number of people require a smaller amount of money than children living in a smaller group, due to the economies of scale principle. The District Court rejected this argument, holding that the economies of scale principle had a fundamental fallacy in that it was based upon a conclusive presumption that one AFDC family contributed to the support of another AFDC family. The DPW Manual regulation assumed that resources were pooled, taking advantage of economies of scale, without an actual determination that resources were in fact being pooled.

3. State Statutes Upheld

In a number of recent decisions, federal courts of appeals and state courts of last resort have issued rulings at odds with the decisions in Beaton v. Thompson, McCoog v. Hegstrom and Gurley v. Wohlgemuth.

In Bray v. Dowling, the plaintiffs sought to invalidate a New York administrative policy on the basis that it violated two federal regulations which prohibit states from assuming that a non-legally responsible individual living in a home with an AFDC unit will contribute income to that AFDC unit.

87. Id.
88. Id.
89. Id. at 1347.
92. Beaton v. Thompson, 913 F.2d 701 (9th Cir. 1990); McCoog v. Hegstrom, 690 F.2d 1280 (9th Cir. 1982); Gurley v. Wohlgemuth, 421 F. Supp. 1337 (N.E.D. Pa. 1976).
93. 25 F.3d at 135.
96. Bray, 25 F.3d at 138.
Penny Bray lived with her three minor children and received AFDC assistance as a four-person family unit. Ms. Bray then took custody of two minor dependent nieces and applied to the Monroe County Department of Social Services (hereinafter "Agency") to have the nieces added to her existing AFDC public assistance grant. She was thereafter provided with a six-person public assistance grant. Ms. Bray subsequently requested and received a hearing from the New York State Department of Social Services (hereinafter "NYSDSS") to challenge the Agency's failure to provide a separate two-person assistance grant for her nieces. The NYSDSS concluded that the Agency had acted appropriately in treating Bray's nieces as part of the same AU. Curtistine Robinson, the other plaintiff in the Bray case, initially received public assistance only for herself. She then received custody of her niece and was provided with a two-person AFDC assistance grant. She also requested and received a hearing to review the adequacy of her grant. The NYSDSS determined that Robinson was not eligible to receive a separate grant of assistance.

Plaintiffs also argued that the New York policy violated two federal regulations requiring equitable, uniform, and reasonable treatment of AFDC recipients. The New York administrative policy provided that all children living with an adult caretaker relative are considered part of one AU, even if the household contains children for whom the caretaker is not legally responsible under state law.

97. Id. at 137.
98. Id.
99. Id.
100. Bray, 25 F.3d at 137.
101. Id. at 138.
102. Id.
103. Id.
104. Bray, 25 F.3d at 138.
105. Id.
108. Title 18, sections 369.2(a)(1)(ii)(a) and 369.3(a)(3)(i) (1993) of the Official Compilation of Codes, Rules and Regulations of the State of New York. Section 369(a)(1)(ii)(a) states in relevant part:
   When [a] child is living with an eligible relative other than a parent, who is without adequate means of support,
The Second Circuit held that the New York regulation was valid under the federal regulations.\textsuperscript{109} The court declined to follow the holding in \textit{Beaton} on the grounds that \textit{Beaton} did not recognize or discuss the distinction between a single caretaker who is obligated to expend AFDC funds for the benefit of all the minor children in her household, and a non-legally responsible individual who has no corresponding obligation, such as a boyfriend.\textsuperscript{110} The Second Circuit explained that the purpose of the federal regulations was to prevent AFDC applicants from excluding certain family members who must be considered part of the AU,\textsuperscript{111} and not to exclude extended family who reside together in a single AFDC AU.\textsuperscript{112} The court held that it would be anomalous to conclude that Congress, in enacting these regulations as part of an act designed to reduce budget outlays, would prohibit states from employing the cost-saving measure of including members of an extended family who reside together in a single AFDC AU.\textsuperscript{113}

The plaintiffs in \textit{Bray} also claimed that the New York regulation violated federal laws requiring uniform treatment of AFDC recipients.\textsuperscript{114} New York argued that its regulation pro-

\begin{quote}
financial need shall be determined for the family unit in accordance with public assistance standards.
\end{quote}

\textit{Id., cited in Bray, 25 F.3d at 137 n.3.}

Section 369.3(a)(3)(i) states in relevant part:

\begin{quote}
If children of different parentage are living with the same eligible relative, a single grant shall be issued to meet the needs of all children in the household receiving [AFDC].
\end{quote}

\textit{Id., cited in Bray, 25 F.3d at 137 n.3.}

\textsuperscript{109.} \textit{Bray, 25 F.3d at 135.}

\textsuperscript{110.} \textit{Id. at 145.} In addition, the Second Circuit found that the Department of Health and Human Services, as its predecessor the Department of Health, Education and Welfare, has consistently taken the position that states have the option to treat a relative caretaker and minor children in her household for whom she is not legally responsible as a single AFDC assistance unit. \textit{Id. at 142.}

\textsuperscript{111.} AFDC applicants were not including family members who had an income when they applied for AFDC because if they did their allowance would be reduced accordingly. \textit{Id. at 142}

\textsuperscript{112.} \textit{Id.}

\textsuperscript{113.} \textit{Id.}

vided uniformity because it bestowed identical treatment to similarly sized households with one caretaker, receiving AFDC assistance.\textsuperscript{115} The plaintiffs, on the other hand, advocated uniformity that insured a dependent child would receive the same AFDC benefit whether he was taken into a household that already constituted an AFDC AU or whether he was taken into a non-AFDC household.\textsuperscript{116} The Second Circuit held that the New York regulation did provide uniform treatment among AFDC recipients,\textsuperscript{117} and it was not persuaded that plaintiffs' scheme for the equitable treatment of recipients should be substituted for the defendant's.\textsuperscript{118}

In \textit{Wilkes v. Gomez},\textsuperscript{119} the Eighth Circuit held that Minnesota's AU rule,\textsuperscript{120} which consolidates non-sibling AFDC recipient children who reside with a single adult caretaker into a single AU, did not violate the "availability principle" embodied in three federal AFDC regulations.\textsuperscript{121} The availability principle limits a state's power to lower an AFDC recipient's benefits by imputing support from persons who have no obliga-

\textsuperscript{115} Bray 25 F.3d at 139 n.6.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Wilkes, 32 F.3d at 1324.
\textsuperscript{120} MINN. RULE 9500.2440, subp. 2 and subp. 3. Minnesota's AFDC plan has a two-step process to determine the size of an assistance unit:

\begin{quote}
MINN. RULE 9500.2440, subp. 2 states in relevant part:

When an application for assistance is made for a dependent child, that child and all blood related and adoptive minor siblings of that child, including half-siblings, along with the parents of that child who live together, must be considered a single filing unit.
\end{quote}

\textit{Id. cited in Wilkes}, 32 F.3d at 1327 n.3.

\begin{quote}
MINN. RULE 9500.2440, subpart 3 states in relevant part:

Eligible members of a filing unit who are required by federal law to apply for AFDC must be included in a single assistance unit. Members of separate filing units who live together must be included in a single assistance unit when: (A) one caretaker makes application for separate filing units; and (B) two caretakers, who are currently married to each other, make application for separate filing units.
\end{quote}

\textit{Id. cited in Wilkes}, 32 F.3d at 1327.

tion to furnish it. The Eighth Circuit also held that Minnesota’s AU rule did not violate federal regulations that mandate uniform treatment among AFDC recipients.

AFDC recipients urged the Eighth Circuit to follow Beaton and declare the Minnesota rule to be in violation of the availability principle because it assumed that nonlegally obligated individuals would share expenses, but the court declined to do so. The court based its decision on the fact that “Beaton did not recognize or discuss the distinction between a single caretaker who is obligated to expend AFDC funds for the benefit of all the minor children in her household and a non-legally responsible individual who has no corresponding obligation.”

The Wilkeses also argued that the Minnesota regulation unfairly preferred dependent children who lived in a non-AFDC household by giving them a higher per capita allowance, as opposed to children who lived in a household that already receives AFDC. The Eighth Circuit determined that the uniformity sought by the plaintiffs required treatment for children taken into a household with other AFDC recipients to be equal with the treatment given to children taken into a non-AFDC household. Minnesota chose instead to provide uniform AFDC benefits to similarly sized households with one caretaker relative. According to the court, the two forms of uniformity were mutually exclusive, and the court was not persuaded that the federal regulations required Minnesota to choose one over the other.

In MacInnes v. Commissioner of Public Welfare, the Supreme Court of Massachusetts also declined to follow

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122. Wilkes, at 1328.
123. Id. at 1326. 45 C.F.R. § 233.10(a)(1) and 45 C.F.R. § 233.20(a)(1) (1993). See infra note 229 for relevant text of these regulations.
124. Id. at 1330.
125. Id. (citing Bray, 25 F.3d at 145).
126. Wilkes, 32 F.3d at 1330.
127. Id.
128. Id.
129. Id. (citing Bray, 25 F.3d at 146 and Action Transmittal No. ACF-AT-94-6 at 6 (Mar. 16, 1994)).
The court affirmed a grant of partial summary judgment for the State, declaring that the statute and regulation authorizing the combining of non-siblings into one AU did not violate federal law. Massachusetts' statute required the Department of Public Welfare to add non-sibling children who receive AFDC and reside with the same caretaker relative, into one AU, thereby prohibiting such children from receiving an independent AFDC grant.

The Supreme Court of Massachusetts recognized that there are some federal requirements for the composition of AUs, but held that "[o]utside of . . . [the Federal policy], it is up to the State to establish policy on the number of AUs in the household, e.g., when an individual not related to a member of an AU as a parent, brother or sister lives in the household and files for assistance." The court also concluded that because

131. Id. at 226.
132. Section 58 of Statute 1990, c. 150. The Massachusetts statute states in relevant part:

Notwithstanding the provisions of any general or special law to the contrary, the department of public welfare is hereby authorized and directed to revise its rules and regulations pursuant to law with respect to the optional assistance program that in the event an additional child is added to the household of the recipient, such additional child shall not be considered as a new case but treated only as an additional child as otherwise eligible for assistance under the provisions of chapter eighteen of the General Laws. Said department may waive the provisions of this section if the department determines that application of this section would cause a particular child to become homeless or to endure other undue hardship.

Id., cited in MacInnes, 593 N.E.2d at 224 n.2.
133. MASS. REGS. CODE tit. 106, § 304.305(B) (1990). The Massachusetts regulation states in relevant part:

Whenever an application is made on behalf of a dependent child by a grantee-relative who is not the natural or adoptive parent, except for the dependent child in 106 CMR 304.305(c), this dependent child must be in the same assistance unit as the dependent child in 106 CMR 304.305(A) unless to do so would cause a particular child to become homeless or to endure undue hardship. In this instance the Department may waive this provision.

Id., cited in MacInnes, 593 N.E.2d at 224 n.2.
134. MacInnes, 593 N.E.2d at 227.
135. See supra notes 132 and 133.
42 U.S.C. § 605 imposes on the caretaker an obligation to use all of the AFDC grant for the benefit of everyone in the AU, no assumption was being made about the availability of income to an AFDC recipient from a relative who has no legal obligation to support the AFDC recipient. The caretaker’s obligation was found to be sufficient to satisfy the requirement that the amount of assistance to a dependent child should not include income or resources assumed to be available to him or her which are not actually available under the law.

III. FACTS AND PROCEDURAL HISTORY - ANDERSON v. EDWARDS

A. FACTS

Verna Edwards initially received AFDC assistance only on behalf of her granddaughter. Mrs. Edwards later began caring for her two grandnieces, who were siblings. Pursuant to the federal family filing unit rule, the grandnieces were grouped together in a two-person AU and the granddaughter as a single-person AU. Mrs. Edwards herself did not receive any AFDC assistance. In June 1991, Mrs. Edwards received notice that pursuant to California’s non-sibling filing unit rule, her granddaughter and two grandnieces
would be grouped together into a single three-person AU.\textsuperscript{147}

Between July 1, 1989, and August 31, 1991, California adhered to the following schedule of maximum monthly AFDC payments:

<table>
<thead>
<tr>
<th>Number of persons in AU</th>
<th>Maximum payment</th>
<th>Per capita payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>341</td>
<td>341.00</td>
</tr>
<tr>
<td>2</td>
<td>560</td>
<td>280.00</td>
</tr>
<tr>
<td>3</td>
<td>694</td>
<td>231.33</td>
</tr>
<tr>
<td>4</td>
<td>824</td>
<td>206.00</td>
</tr>
<tr>
<td>5</td>
<td>940</td>
<td>188.00</td>
</tr>
<tr>
<td>6</td>
<td>1,057</td>
<td>176.17</td>
</tr>
<tr>
<td>7</td>
<td>1,160</td>
<td>165.71</td>
</tr>
<tr>
<td>8</td>
<td>1,265</td>
<td>158.13</td>
</tr>
<tr>
<td>9</td>
<td>1,366</td>
<td>151.78</td>
</tr>
<tr>
<td>10 or more</td>
<td>1,468</td>
<td>146.80\textsuperscript{148}</td>
</tr>
</tbody>
</table>

\textsuperscript{147} There is only one caretaker relative." \textit{Id.}
\textsuperscript{148} \textit{Anderson}, 115 S. Ct. at 1295.

\textsuperscript{148} \textit{Anderson}, 115 S. Ct. at 1295. The current payment schedule is as follows:

<table>
<thead>
<tr>
<th>Number of eligible needy persons in the same home</th>
<th>Maximum aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>326</td>
</tr>
<tr>
<td>2</td>
<td>535</td>
</tr>
<tr>
<td>3</td>
<td>663</td>
</tr>
<tr>
<td>4</td>
<td>788</td>
</tr>
<tr>
<td>5</td>
<td>899</td>
</tr>
<tr>
<td>6</td>
<td>1,010</td>
</tr>
<tr>
<td>7</td>
<td>1,109</td>
</tr>
<tr>
<td>8</td>
<td>1,209</td>
</tr>
<tr>
<td>9</td>
<td>1,306</td>
</tr>
<tr>
<td>10 or more</td>
<td>1,403</td>
</tr>
</tbody>
</table>

\textsuperscript{148} CAL. WELF. & INST. CODE ANN. § 11450 (Deering 1994). Section 11450 is supplemented by §§ 11450.01(a), (b), (c) (Deering 1994) and 11450.015(a),(b) (Deering 1994) as follows:

\textsuperscript{148} § 11450.01(a) Notwithstanding any other provision of law, commencing October 1, 1992, the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450 in effect on July 1, 1992, shall be reduced by 4.5 percent.

\textsuperscript{148} (b)(1) The department shall seek the approval from the United States Department of Health and Human Services that is necessary to reduce the maximum aid payments specified in subdivision (a) by an additional amount equal to 1.3 percent of the maximum aid payments specified in
In Mrs. Edwards' case, the granddaughter, as a single-person AU, was eligible to receive a "maximum aid payment" of $341 per month prior to September 1991. The grandnieces' two-person AU was eligible to receive $560 per month prior to September 1991. In total Mrs. Edwards received $901 per month in AFDC assistance on behalf of the three girls. After the California Rule was applied (converting the two units into one), Mrs. Edwards was eligible to receive only $694 per month as indicated by the preceding table. Thus, by applying the California Rule Mrs. Edwards AFDC payment was reduced by $207 per month.

paragraph (1) of subdivision (a) of Section 11450 in effect on July 1, 1992.
(b)(2) The reduction provided by this subdivision shall be made on the first day of the month following 30 days after the date of approval by the United States Department of Health and Human Services.
(c) This section shall remain operative only until July 1, 1996, shall remaining effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

§ 11450.015(a) Notwithstanding any other provision of law, the maximum aid payments in effect on June 30, 1993, in accordance with paragraph (1) of subdivision (a) of Section 11450 as reduced by subdivisions (a) and (b) of Section 11450.01, shall be reduced by 2.7 percent beginning the first of the month following 60 days after the enactment of this section.
(b) Commencing July 1, 1996, the maximum aid payment levels in effect on June 30, 199, shall be increased by the total dollar amount of the decrease made in each payment level during the 1992-93 fiscal year pursuant to Section 11450.01.

Id.

149. Anderson, 115 S. Ct. at 1295.
150. Id.
151. Id.
152. MPP § 82-824.1.13, supra note 146.
153. Id.
154. Id.
B. PROCEDURAL HISTORY

Mrs. Edwards, and others similarly situated brought a class action in the District Court for the Eastern District of California. Plaintiffs sought a declaration that the California Rule violated federal law, and an injunction prohibiting defendants from enforcing it. On cross-motions for summary judgment, the District Court, in an unpublished decision, ruled in favor of Mrs. Edwards. The District Court relied on Beaton, which invalidated a Washington AFDC rule similar to the California Rule. In Beaton, the Ninth Circuit held that Washington's rule was invalid because it assumed that the caretaker of AFDC children allocated at least a portion of his or her income to the children, even though the caretaker was not legally responsible for them.

The Acting Director of the California Department of Social Services appealed to the United States Court of Appeals for the Ninth Circuit. In a brief opinion, the Ninth Circuit affirmed. It found the California Rule "virtually identical" to the Washington regulation that Beaton had held to be "incon-

155. The class action suit included all AFDC households with siblings and non-sibling children who are consolidated into a single unit for purposes of calculating AFDC benefits. This action was brought by Verna Edwards, for herself and as guardian ad litem for Vernais Edwards, Pamela Edwards, and Ericka Edwards; Barbara Moore, for herself and as guardian ad litem for Rebiana Robi, Derral Robi, Delisha Jaa, and Rayleisha Taylor; and Vanessa Hamilton, for herself and as guardian ad litem for Johnny Watson, Cleo Thomas, Ricky MacDonald, Jimmy Pasheill, and Stanley Hamilton. Petitioners' Brief on the Merits at 1, Anderson (No. 93-1883).
156. Anderson, 115 S. Ct. at 1295. Just prior to this case was filed in the district court, MPP § 44-205 was in effect. On October 1, 1991, California repealed § 44-205 and adopted § 82-824. Petitioners' Brief on the Merits, at 5 n.2, Anderson (No. 93-1883).
157. D.C. No. CV-91-01473-DFL
158. Sanchez, supra note 55, at 197 [hereinafter Sanchez]. Siblings are children who have at least one common parent. Non-siblings have no parent in common. Id.
159. Beaton v. Thompson, 913 F.2d 701 (9th Cir. 1990).
160. Id.
161. Sanchez, supra note 158, at 198.
162. The Acting Director of the Department of Social Services who appealed was John Healy. Edwards v. Healy, 12 F.3d 154 (9th Cir. 1993).
sistent with federal law and regulation."\textsuperscript{164} Before a three-judge panel, California argued, unsuccessfully, that \textit{Beaton} was erroneously decided and should be overruled.\textsuperscript{165} However, the court stated that even if it did agree with California's argument, the court had no authority to overrule or disregard \textit{Beaton}.\textsuperscript{166} \textit{Beaton} could only be overruled through an \textit{en banc} decision.\textsuperscript{167}

California requested a rehearing before a three-judge panel and also requested that its case be heard \textit{en banc}.\textsuperscript{168} Neither request was granted.\textsuperscript{169} The Director of California Department of Social Services then filed a petition for \textit{certiorari} to the United States Supreme Court. The Supreme Court granted the petition for \textit{certiorari} because a number of federal appellate courts and state courts of last resort had issued rulings at odds with the decision below.\textsuperscript{170} In granting \textit{certiorari}, the Court also considered the fact that the Department of Health and Human Services, which administers the AFDC program on the federal level, issued an Action Transmittal stating that its own AFDC regulations "do not conflict with the State policy option to consolidate AUs in the same household."\textsuperscript{171} The U.S. Supreme Court unanimously reversed the Ninth Circuit's decision.\textsuperscript{172}

IV. THE COURT'S ANALYSIS

Respondents, Verna Edwards and her three relatives, brought this action against the state officials charged with administering California's AFDC program, claiming that California's non-sibling filing unit rule\textsuperscript{173} violated federal

\begin{quote}
\textsuperscript{164} \textit{Id.} (citing \textit{Edwards}, 12 F.3d at 155).
\textsuperscript{165} \textit{Edwards}, 12 F.3d at 155.
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} \textit{Id.}
\textsuperscript{168} Sanchez, \textit{supra} note 158, at 198.
\textsuperscript{169} \textit{Id.}
\textsuperscript{171} \textit{Id.} at 1295.
\textsuperscript{172} \textit{Anderson}, 115 S. Ct. at 1291.
\textsuperscript{173} Cal. Dept. of Social Servs., Manual of Policies & Procedures § 82-824.1.13. [hereinafter MPP § 82-824.1.13]. \textit{Id.}
\end{quote}
law. In bringing this action, respondents relied primarily on three federal regulations in making their claim, 45 C.F.R. §§ 233.20(a)(2)(viii), 233.20(a)(3)(ii)(D) and 233.90(a)(1).

The United States Supreme Court began its analysis of the pertinent federal regulations by indicating "the starting point of the... analysis must be a recognition that... federal law gives each state great latitude in dispensing its available funds." In King v. Smith, the Court held that states have considerable latitude in allocating their AFDC resources, since each state is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.

175. Id. at 1293-94.
45 C.F.R. § 233.20(a)(3)(ii)(D) (1994). This regulation states in relevant part:
[1]In determining need and the amount of the assistance payment... a State shall consider income... and resources available for current use. It further indicates that income and resources are considered available both when actually available and when the applicant or recipient... has the legal ability to make such sum available for support and maintenance.

Id.
45 C.F.R. § 233.20(a)(2)(viii) (1994). This statute states in relevant part:
[The] agency will not assume any contribution from... [a non-legally responsible individual] for the support of the assistance unit...

Id.
45 C.F.R. § 233.90(a)(1) (1994). This statute states in relevant part:
[The inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than [the child's parent, adoptive parent, or stepparent who is married to child's natural parent] is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State.

Id.
178. HEW, Handbook of Public Assistance Administration, in pt. IV § 3120.
179. King, 392 U.S. at 318-319.
A. EFFECT OF THE ARRIVAL OF MRS. EDWARDS' GRANDNIECES TO HER HOUSEHOLD

According to Mrs. Edwards, the reduction in her granddaughter's per capita benefit occurred solely because of the presence of the grandnieces in her household.180 Since the grandnieces are non-legally responsible individuals in relation to the granddaughter, Mrs. Edwards argued that the assumption that the grandnieces would contribute income to the granddaughter, or vice-versa, violated federal law.181 Such federal law prohibits a state from assuming that a non-legally responsible individual will contribute income to an AFDC unit solely because she lives with them.182

Mrs. Edwards explained that her granddaughter's AFDC benefit was reduced from $341 to one-third of $694, or $231.33,183 per month, after the grandnieces moved in.184 This reduction, she argued, occurred solely because of the presence of the grandnieces in the household who were non-legally responsible individuals in relation to the granddaughter.185 Mrs. Edwards noted that since her granddaughter and her two grandnieces owed no legal duty of support to each other, they could not be made to contribute anything for the other's care.186

The Supreme Court maintained that it was not solely the presence of the grandnieces that triggered the reduction in the per capita benefits paid to the granddaughter,187 rather the reduction was caused by the grandnieces' presence in the household plus their application for AFDC assistance through

183. See infra Section III A - Facts for table.
184. Anderson, 115 S. Ct. at 1296 (citing Brief for Respondents at 6, 22).
185. Id.
186. See Sanchez, supra note 161 at 197.
187. Id. It is important to note that it is not the granddaughter who received the AFDC assistance payment, but Mrs. Edwards, as the caretaker, on her behalf. In addition, Mrs. Edwards is under a duty to use the payment in the best interest of the children for whom she cares. See 42 U.S.C. § 605 (1988); CAL. WELF. & INST. CODE ANN. § 11005.5 (West 1991), § 11480 (West 1994).
Mrs. Edwards. The Court explained that had the grandnieces applied through a different caretaker relative living in the household, the California Rule would not have affected the benefits received by the two AUs. The Court based its analysis on the economies of scale principle, indicating that individuals living with others usually have reduced per capita costs because many of their expenses are shared.

B. NO VIOLATION OF THE AVAILABILITY PRINCIPLE

Respondents also claimed that the California Rule violated the availability principle, which prohibits a state from assuming that income from relatives is contributed to, or is otherwise available to, a needy child without a determination that such income actually is available.

The availability principle is implemented by three federal regulations. The first regulation is 45 C.F.R. § 233.20(a)(3)(ii)(D), which precludes the state from counting as available to an AU resources that are not actually or legally available to one of its members. The second regulation is 45 C.F.R. § 233.20(a)(2)(viii), which provides that states cannot reduce payments based on the presence of a non-legally

188. Anderson, 115 S. Ct. at 1296.
189. MPP § 82-824.1.13.
190. Anderson, 115 S. Ct. at 1296.
191. Id.
192. Id.
193. Id.
194. 45 C.F.R. § 233.20(a)(3)(ii)(D) (1994). This regulation states in relevant part:

[In determining need and the amount of the assistance payment . . . a State shall consider income . . . and resources available for current use. It further indicates that income and resources are considered available both when actually available and when the applicant or recipient . . . has the legal ability to make such sum available for support and maintenance.

Id.
196. 45 C.F.R. § 233.20(a)(2)(viii) (1994). This statute states in relevant part:

[T]he [state] agency will not assume any contribution from . . . [a non-legally responsible individual] for the support of the assistance unit . . .
responsible individual in the household, and the agency will not assume any contribution from such individual for the support of the AU. The final regulation is 45 C.F.R. § 233.90(a)(1), which prohibits the states from finding an otherwise needy child ineligible for AFDC on the assumption that the income of a "substitute parent" or "man-in-the-house" is available to support the child, and arriving at the like conclusion that the child is not deprived of parental support. Respondents claimed that the California Rule violated all three federal regulations because it assumed that income from a non-legally responsible relative contributed to the support of an AFDC child without requiring a factual determination that income was actually available. Respondents provided the Court with the following example to illustrate their argument:

If Mrs. Edwards' granddaughter were to begin receiving $75 per month in outside income, . . . the AU of which she is a part would receive $75 less in monthly AFDC benefits, and the two grandnieces would each accordingly receive $25 less in per capita monthly benefits. Thus the California Rule . . . "assumes," in violation of all three federal regulations, that the granddaughter will contribute $25 per month of her outside income to each grandniece and also that such income will therefore be available to each grandniece — without a case-specific determination that such contribution will in fact occur.

The Supreme Court identified two reasons why the

197. Wilkes, 32 F.3d at 1329-30.
198. 45 C.F.R. § 233.90(a)(1) (1994). This statute states in relevant part: "The inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than [the child's parent, adoptive parent, or stepparent who is married to child's natural parent] is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State.

Id.
199. Petitioners' Brief on the Merits at 35, Anderson (No. 93-1883).
201. Id.
respondents' argument failed.\textsuperscript{202} First, the Court questioned the premise of the argument because respondents assumed that Mrs. Edwards would expend an equal amount of AFDC assistance on each of the three children without taking into consideration whether one of them receives outside income.\textsuperscript{203} This assumption, the Court stated, "fails to reflect reality,"\textsuperscript{204} in that custodial parents routinely use the funds for the support of the entire family.\textsuperscript{205} Furthermore, the Court found the assumption to be inconsistent with the duty imposed on caretakers by federal law.\textsuperscript{206} According to state and federal regulations, a caretaker is under a duty to spend the AFDC allowance in the best interest of the children for whom she or he cares.\textsuperscript{207} The Court concluded that California may rationally assume that a caretaker will observe her duties and take into account any outside income received by one child, when spending the funds on behalf of the whole AU.\textsuperscript{208}

The Supreme Court also indicated that respondents misperceived the operation of the California Rule.\textsuperscript{209} The monthly payment was reduced because the two grandnieces were placed in the same AU as the granddaughter, not because California assumes that outside income was available to the grandnieces.\textsuperscript{210} The Court found that respondents were really attacking the rule\textsuperscript{211} which states that the income of all mem-

\begin{itemize}
\item \textsuperscript{202} Id.
\item \textsuperscript{203} Id.
\item \textsuperscript{204} Id.
\item \textsuperscript{205} Bowen v. Gilliard, 483 U.S. 587, 600 n.14 (1987). "Congress' finding that custodial parents were routinely using the support funds for the entire family thus reflects the reality that such use is typically proper since expenditures for an entire family unit typically benefit each member of the household." \textit{Id.}
\item \textsuperscript{206} Anderson, 115 S. Ct. at 1297. \textit{See} 42 U.S.C. \textsection 605 (1988); \textit{Cal. Welf. \\ \\

\item \textsuperscript{207} Id. The Court explained that under the example provided by the respondents, Mrs. Edwards' two grandnieces will receive $25.00 less only if one assumes that Mrs. Edwards will spend an equal amount of the AFDC assistance on each of the three children. This action, as a result, would violate the caretaker's duty because Mrs. Edwards would not be taking into consideration the fact that her granddaughter is receiving $75.00 from outside income. \textit{See supra} note 201. \textit{Anderson}, 115 S. Ct. at 1297.
\item \textsuperscript{208} Id.
\item \textsuperscript{209} Anderson, 115 S. Ct. at 1297.
\item \textsuperscript{210} Id.
\item \textsuperscript{211} 45 C.F.R. \textsection 206.10(b)(5) (1994). The full text of the statute reads: \textit{Assistance Unit} is the group of individuals whose income, resources and needs are

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bers in the AU must be combined in order to determine the amount of the assistance payment to the AU. As a result, the California Rule was found to be consistent with the AFDC statute itself, which provides that a state agency "shall, in determining need, take into consideration any . . . income and resources of any child or relative claiming [AFDC assistance]." The Court also held that because states have "great latitude" and "broad discretion" in administering their AFDC programs, California can reasonably construe the federal regulations to allow consideration of the income and resources of all the AU members.

The Court then noted, agreeing with the petitioners, that the availability principle addresses a different problem than the one respondents presented. The purpose of the regulations is to prevent a state from including income and resources controlled by persons who are not members of the AU, when determining the amount of assistance to be provided to the AU. The Court stated that the availability regulations were adopted to implement the Supreme Court's decisions in three AFDC cases. In all three cases, the Court found that the state had counted as available to the AU income that was not actually or legally available because it was controlled by persons who were not members of the AU. In determining the

considered as a unit for purposes of determining eligibility and the amount of payment. Id. See also, 42 U.S.C.A. § 602(a)(7)(A) (West Supp. 1995). This statute states in relevant part:

[A State agency] shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid.

Id. 212. Anderson, 115 S. Ct. at 1297.
213. Id. at 1298. See also 42 U.S.C.A. § 602(a)(7)(A) (West Supp. 1995).
217. Id.
218. Id.
220. Anderson, 115 S. Ct. at 1298. King involved a state statute that denied
amount of assistance given to Mrs. Edwards’ granddaughter and grandnieces, California did not take into consideration the income of Mrs. Edwards or of anyone else who was not a member of the AU.\(^{221}\) In sum, the Court held that the California Rule does not violate any of the three federal regulations on which the Ninth Circuit relied.\(^{222}\)

C. RESPONDENTS’ ALTERNATIVE ARGUMENTS

Respondents had two alternative arguments.\(^{223}\) First, respondents maintained that the California Rule was an invalid expansion of 42 U.S.C. § 602(a)(38), the family filing unit rule.\(^{224}\) According to respondents, when Congress decreed that all members of a nuclear family must be grouped together into a single AU, it intended to prevent states from including any additional persons in that AU (as does the California Rule).\(^{225}\) The Court rejected respondents’ contention that Congress pre-empted states from adopting any additional rules expanding the family filing unit rule.\(^{226}\) The Court stated that “[i]f Congress had intended to pre-empt state plans and efforts in such an important dimension of the AFDC program . . . , such intentions would in all likelihood had been expressed in direct and unambiguous language.”\(^{227}\)

Respondent’s other argument was that the California Rule did not provide uniform treatment among AFDC recipients, and thereby violated federal law.\(^{228}\) Respondents pointed to

children AFDC benefits if their mother cohabited with an able-bodied man even though he had not obligation under state law to support them. King, 392 U.S. at 309. Lewis involved a California statute that required that available income of a stepfather, or a male person assuming the role of spouse, be considered in determining the level of AFDC assistance. Lewis, 397 U.S. at 552. Van Lare involved a New York lodger regulation which required a pro-rata reduction in the AFDC allowance a family received, solely because a parent allows a nonlegally responsible person to reside in the home. Van Lare, 421 U.S. at 338.

\(^{221}\) Anderson, 115 S. Ct. at 1298.

\(^{222}\) Id.

\(^{223}\) Id. at 1299.

\(^{224}\) Id.

\(^{225}\) Id.

\(^{226}\) Anderson, 115 S. Ct. at 1299.

\(^{227}\) Id. (citing New York State Dept. of Social Services v. Dublino, 413 U.S. 405, 414 (1973)).

\(^{228}\) Id.
two federal regulations\(^{229}\) which require equitable treatment among AFDC recipients.\(^{230}\) One regulation states that the groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals.\(^{231}\) The other regulation provides that the determination of need and the amount of assistance for all applicants and recipients will be made on an objective and equitable basis.\(^{232}\)

The Supreme Court briefly stated that "[a]ssuming [the asserted federal regulations] provisions even create a 'federal right' that is enforceable under 42 U.S.C. § 1983 [a federal civil rights action statute],\(^{233}\) . . . we find that the California Rule affirmatively fosters equitable treatment among AFDC recipients."\(^{234}\) The Court found that the California Rule fosters eq-


Section 233.10(a)(1) (1994) states in relevant part:
A State plan must: (1) . . . The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups.

\textit{Id.}

Section 233.20(a)(1)(i) (1994) states in relevant part:
A State plan must: (1)(i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis.

\textit{Id.}

\(^{230}\) Anderson, 115 S. Ct. at 1299.

\(^{231}\) 45 C.F.R. § 233.10(a)(1) (1994).


\(^{233}\) 42 U.S.C.A. § 1983 (West 1994). The full text of the statute reads as follows:

\textbf{Civil Action for Deprivation of Rights}

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

\textit{Id.}

\(^{234}\) Anderson, 115 S. Ct. at 1299. The plaintiffs in Wilkes, 32 F.3d at 1324
uitable treatment because it provides for equally sized and equally needy households to receive the same amount of AFDC assistance. \^235 For example, before the California Rule was in effect, a three sister AU would receive $694 per month. \^236 At the same time, Mrs. Edwards was receiving $901 for the three girls. \^237 The $207 difference was due to the fact that in one household all of the children are siblings, while in Mrs. Edwards’ household they were not. \^238 The Court concluded that the California Rule sensibly and equitably eliminates these disparities by providing that equally seized and equally needy households will receive equal AFDC assistance. \^239 Thus, the California Rule does not violate the equitable treatment regulations. \^240

The Supreme Court concluded that the California Rule does not violate federal law and reversed the Ninth Circuit. \^241 The case was remanded for further proceedings consistent with the Court’s opinion. \^242

V. CRITIQUE

Based on conflicting decisions from several federal courts and state courts of last resort, the Supreme Court’s intervention in \textit{Anderson} \^243 was necessary to assure uniform application of the federal regulations governing the administration of the AFDC program. \^244 As found by the United States Supreme Court, the California rule does not violate the “availability and in \textit{Bray}, 25 F.3d at 135 argued that inequitable treatment results because children who are placed in a non-AFDC household will received more assistance than those children who are placed in a household already receiving AFDC. \textit{Id.}

The Eighth and Second Circuit were not persuaded by this argument. The courts stated that both forms of equity are mutually exclusive and they were not persuaded to choose one over the other. \textit{Id.}

\begin{itemize}
  \item \^235. \textit{Anderson}, 115 S. Ct. at 1299.
  \item \^236. \textit{Id.}
  \item \^237. \textit{Id.}
  \item \^238. \textit{Id.}
  \item \^239. \textit{Anderson}, 115 S. Ct. at 1299.
  \item \^240. \textit{Id.}
  \item \^241. \textit{Id.} at 1300.
  \item \^242. \textit{Id.}
  \item \^244. \textit{Id.} at 1295-96. \textit{See also}, Petitioner’s Brief on the Merits at 4-5, \textit{Anderson} (No. 93-1883).\
\end{itemize}
ity principle" found in those federal regulations or any other federal regulations which regulate the states' administration of their AFDC programs. 245

The California Rule groups into a single AFDC AU all needy children who live in the same household under the care of one relative. Although needy children will receive less in per capita benefits under the California Rule, this reduction affects only children who share a household. 246 California is simply recognizing the economies of scale that inhere in such living arrangements. 247 Shared expenses serve to reduce the overall costs of a household, thus allowing for a reduction in benefits. Further, such grouping allows states to grant equal assistance to equally sized needy households, regardless of whether the children in the household are all siblings. 248

VI. CONCLUSION

The case of Anderson v. Edwards asked the Supreme Court to decide the constitutionality of California's non-sibling filing unit rule. The California Rule groups all sibling and non-sibling children living in a household into a single AFDC assistance unit instead of treating these groups of children as two separate units when calculating AFDC benefits. The Supreme Court unanimously held that the California Rule does not violate the constitution, stating that federal laws give great latitude to the states to make rules governing their AFDC

245. Id. at 1294.
246. Id. at 1297 n.5.
247. Id. The economies of scale principle works as follows:
   [I]n relation to housing, two people in the same household need one dwelling, not two. Similarly, heating, a washing machine, a motor car, a television and a telephone can all be shared. Food and clothing cannot be shared at the time of use but in different ways there can be economies of scale: food purchased in bulk often costs less per helping than single helpings; clothing three children does not cost three times as much as clothing one child since many clothes can be passed on.

David Piachaud, The Definition and Measurement of Poverty and Inequality, in CURRENT ISSUES IN THE ECONOMICS OF WELFARE 105, 110 (Nicholas Barr et al. eds., 1993).
programs. In addition, the Court recognized the economies of scale that inhere in these types of living arrangements, and thereby allowed states to cut their welfare costs.  

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250. Id. at 1296, n.5.

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