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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

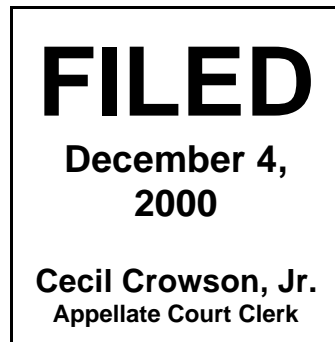
PATRICIA DAVIS, ELLA LARITA)
LILLARD, PATRICIA NORTHCUTT,)
and MARIETTA TURNER, on their)
own behalves and on behalf of all)
persons similarly situated,)
Plaintiffs-Appellees,)
v.)
JOYCE MCCLARAN, Director,)
Child Support Services, Tennessee)
Department of Human Services,)
Defendant-Appellant,)
and)
VICTOR S. JOHNSON, III,)
District Attorney General for)
the 20th Judicial District, and)
THE METROPOLITAN)
GOVERNMENT OF NASHVILLE)
AND DAVIDSON COUNTY,)
Defendants.)

FOR PUBLICATION

Filed: October 30, 1995

DAVIDSON CHANCERY

Hon. Irvin Kilcrease, Chancellor



No. 01S01-9403-CH-00026

For Plaintiffs-Appellees:

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Legal Services of Middle Tennessee, Inc.
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For Defendant:

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OPINION

COURT OF APPEALS AFFIRMED
AS MODIFIED.

DROWOTA, J.

1 This case presents the question of whether individual plaintiffs may bring an
2 action against the Child Support Services Division of the Tennessee Department of
3 Human Services (DHS) pursuant to 42 U.S.C. § 1983 to enforce their rights to child
4 support services allegedly conferred by Title IV-D of the Social Security Act, 42
5 U.S.C. § 651 et seq. The Court of Appeals reversed the trial court's judgment
6 denying the requested relief, holding instead that the plaintiffs were entitled to bring
7 an action under § 1983 to force the State to "substantially comply" with the
8 requirements of Title IV-D. Pursuant to the applicable regulations, a state Title IV-D
9 agency is in "substantial compliance" if it follows specified procedures with regard to
10 certain enumerated criteria in seventy-five (75%) of its child support cases. For the
11 reasons that follow, we modify the Court of Appeals' holding and conclude that these
12 and similarly situated individuals should be allowed to bring a claim under § 1983 for
13 individual relief when the state violates its "direct obligations" under Title IV-D, even
14 if the State is in "substantial compliance" with the requirements of the Act.

15
16 **FACTS AND PROCEDURAL HISTORY**

17
18 The plaintiffs in this action – Patricia Davis, Ella Larita Lillard, Patricia
19 Northcutt and Marietta Turner -- allege that the Tennessee DHS has failed to provide
20 them with child support services as required by Title IV-D.¹ Specifically, Davis, Lillard,
21 and Turner allege that DHS has failed to assist them in enforcing existing child

¹Because DHS had contracted with Victor S. Johnson, III, the District Attorney General for Davidson County, and the Metropolitan Government of Nashville and Davidson County (Metro) to provide the services required by Title IV-D, the original complaint named these parties as defendants. However, during the course of this litigation the contract expired, thus mooting the claims against Johnson and Metro. The parties entered into agreed orders dismissing Johnson and Metro.

1 support obligations owed by the fathers of their respective children. Although it is not
2 entirely clear from the complaint, Northcutt apparently alleges that DHS has failed to
3 assist her in establishing a support obligation for her child. Citing an evaluation of the
4 Title IV-D program performed by a private consulting firm, the plaintiffs allege that
5 these failures are principally due to the fact that the Davidson County Child Support
6 Program is grossly understaffed, as compared to other counties in the state. The
7 plaintiffs seek injunctive relief under § 1983 for the deprivation of their alleged federal
8 statutory rights; they also seek declaratory relief and a writ of mandamus.

9
10 After the plaintiffs filed their action, the trial court granted the defendants'
11 motion to dismiss for failure to state a claim upon which relief could be granted. The
12 trial court held that "the plaintiffs have no private right of action to enforce any rights
13 allegedly arising under either Title IV-D and /or 42 U.S.C. § 1983." The trial court
14 also concluded that "the plaintiffs have no clear, specific and undeniable rights which
15 this court could enforce by a writ of mandamus or declaratory relief."

16
17 As noted above, the Court of Appeals reversed this judgment, holding that the
18 plaintiffs could utilize § 1983 to force the state to "substantially comply" with the
19 requirements of Title IV-D. The State then filed an application for permission to
20 appeal pursuant to Rule 11, Tenn. R. App. P. We granted that application to
21 consider this important issue, which has caused a split among the jurisdictions that
22 have considered it.²

²A number of jurisdictions, perhaps a slight majority, have held that relief is available under § 1983. See Albiston v. Maine Com'r of Human Services, 7 F.3d 258 (1st Cir. 1993); Howe v. Ellenbecker, 8 F.3d 1258 (8th Cir. 1993); King v. Bradley, 829 F.Supp. 989 (N.D.Ill. 1993); Behunin v. Jefferson County Dept. of Social Services,

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STATUTORY BACKGROUND

Title IV of the Social Security Act is a federal-state cooperative venture that provides assistance to needy families who have been deprived of a parent through death, desertion or disability. 42 U.S.C. § 601-687. Although participation in the direct aid portion of Title IV -- Title IV-A, the Aid to Families with Dependent Children Program -- is not mandatory, states choosing to participate and receive federal funds must, among other things, "provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan." 42 U.S.C. § 602(a)(27). Title IV-D provides a wide variety of child support services to needy families, as 42 U.S.C. § 651, its authorization of appropriations section, indicates:

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

As noted above, a participating state is required to submit a plan to the Secretary of Health and Human Services (HHS) and have that plan approved by the

744 F.Supp. 255 (D. Colo. 1990). Others, however, have denied relief on various grounds. See Wehunt v. Ledbetter, 875 F.2d 1558 (11th Cir. 1989); Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991). For a good discussion of the issue, see Ashish Prasad, "Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act," 60 University of Chicago Law Review 197 (1993).

1 Secretary. The broad requirements for the plan are outlined in 42 U.S.C. § 654, and
2 are further defined in the supporting regulations, found at 45 C.F.R. Part 302. The
3 plan must, at a minimum, provide that it will be in effect in all political subdivisions of
4 the state and that it will be administered by a single state agency (the Title IV-D state
5 agency). 42 U.S.C. § 654(1), (3). The plan must also provide that child support
6 services will be made available to any child for whom an application for assistance
7 is filed. 42 U.S.C. 654(6). The agency must be adequately staffed to ensure the
8 availability of services. 42 U.S.C. § 652(a)(2).

9
10 It is not sufficient, however, for the state merely to have an approved plan; it
11 must also operate the program in compliance with the requirements of Title IV-D.
12 The Secretary is required to conduct audits of the state Title IV-D programs at least
13 once every three years in order to ensure this compliance. 42 U.S.C. § 652(a)(4).
14 If the state is found to be out of compliance, the Secretary is authorized to withhold
15 a certain percentage of federal funds unless the state submits a corrective action
16 plan, in which case the reduction of funding may be suspended. 42 U.S.C. § 603(h).

17
18 In order to avoid the reduction in funding, the state must be in "substantial
19 compliance with the requirements of title IV-D." 42 U.S.C. § 603(h), 604 (a)(2). This
20 term is defined in 45 C.F.R. 305.20:

21
22 In order to have an effective program in substantial compliance with the
23 requirements of title IV-D of the Act, a state must meet the IV-D State
24 plan requirements contained in Part 302 of this chapter as measured
25 as follows: ... For the fiscal year 1988 and future audit periods: (1) The
26 criteria prescribed in paragraphs (a)(1), (b)(1), and (c)(1) must be met.
27 (2) The procedures required by the criteria prescribed in paragraphs
28 (a)(2), (b)(2), and (c)(2) of this section must be used in 75 percent of

1 the cases reviewed for each criterion.

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After defining "substantial compliance," Part 305 goes on to list certain general procedures that the state agency must follow for each criterion. The criteria at issue in this case, "[Establishment of] Support obligations" and "Enforcement of support obligation," are contained under paragraph (a)(2).

10 There is one final set of regulations applicable to state title IV-D programs. Part 303, which is entitled "Standards for Program Operations," prescribes "(a): [t]he minimum organizational and staffing requirements the state IV-D agency must meet in carrying out the IV-D program, and (b): [t]he standards for program operation which the IV-D agency must meet." Part 303 then sets forth detailed guidelines that the state IV-D agency "must" meet "for all cases" for several criteria, including: "establishment of cases and maintenance of case records," 45 C.F.R. § 303.2; "location of absent parents," 45 C.F.R. § 303.3; "establishment of support obligations," 45 C.F.R. § 303.4; "establishment of paternity," 45 C.F.R. § 303.5; and "enforcement of support obligations," 45 C.F.R. § 303.6. These guidelines, which are phrased in mandatory language and apply to all cases, are often much more specific and stringent than the general "procedures" applicable to the same criteria in Part 305.

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THE AVAILABILITY OF SECTION 1983

1 It is now well-settled that § 1983³ is available to redress violations of federal
2 law by persons acting under color of state law. Maine v. Thiboutot, 448 U.S. 1, 100
3 S.Ct. 2502, 65 L.Ed.2d 555 (1980). This availability is, however, subject to two
4 important exceptions: (1) where the federal statute in question does not create an
5 enforceable right, Pennhurst State School and Hospital v. Halderman, 451 U.S. 1,
6 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), Wright v. Roanoke Redevelopment and
7 Housing Authority, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987); or (2) when
8 Congress has foreclosed such enforcement of the statute in the statute itself.
9 Middlesex County Sewerage Authority v. National Sea Clammers Ass'n, 453 U.S.
10 1, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981); Smith v. Robinson, 468 U.S. 992, 104
11 S.Ct. 3457, 82 L.Ed.2d 746 (1984).

12

13 A. THE ENFORCEABLE RIGHT EXCEPTION

14

15 In Wilder v. Virginia Hospital Ass'n, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d
16 455 (1990), the United States Supreme Court synthesized its prior cases and
17 formulated a three-part test for determining when a federal statute creates a right
18 enforceable by § 1983.⁴ The Wilder court stated that

³Section 1983 provides, in pertinent part:

"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, privileges, or immunities, secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

⁴The "enforceable right" exception has been dealt with by the Supreme Court since Wilder in Suter v. Artist M., ___ U.S. ___, 112 S.Ct. 1360, 118 L.Ed.2d 1 (1992), a case in which the Court arguably reduced the scope of an enforceable right to a substantial degree. However, Congress recently has expressly disavowed the

1 Such an inquiry turns on [1] whether the provision in question was
2 intended to benefit the putative plaintiff. [2] If so, the provision creates
3 an enforceable right unless it reflects merely a 'congressional
4 preference' for a certain kind of conduct rather than a binding obligation
5 on the government unit, unless [3] the interest the plaintiff asserts is too
6 'vague and amorphous' such that it is 'beyond the competence of the
7 judiciary to enforce.'
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9 Wilder, 498 U.S. at 509, 110 S.Ct. at 2517 (citations omitted).
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13 We have little difficulty concluding that plaintiffs have enforceable rights to Title
14 IV-D benefits under the Wilder test.⁵ First, while the State cites Wehunt v. Ledbetter,
15 875 F.2d 1558 (11th Cir. 1989) for the proposition that Title IV-D was enacted for the
16 exclusive purpose of reducing the welfare rolls and benefitting the public treasury,
17 and that custodial parents and children are thus not the intended beneficiaries of the
18 legislation, we believe, as do the great majority of other courts that have considered
19 this issue,⁶ that the plain language of the Act and its legislative history
20 overwhelmingly prove otherwise. Initially, although parents receiving AFDC benefits
21 are required to assign any child support benefits to which they are entitled to the
22 state, 42 U.S.C. § 602(a)(26), those parents are nevertheless entitled to receive the
23 first fifty (\$50) dollars of any monthly support payments collected by the state, with
24 no accompanying loss in AFDC eligibility. Also, parents who do not receive AFDC
25 benefits are eligible to receive Title IV-D benefits, and are entitled to the full amount
26 of child support collected by the state. 42 U.S.C. § 657(b)(4). These provisions

restrictive analysis employed in Suter. See Public L. 103-382, 108 Stat.3518, 4057-58, reprinted in December 1994 U.S.Cong. and Admin. News. Therefore, we will not use the Suter opinion in this case.

⁵The precise scope of these rights is another question. See THE SCOPE OF § 1983 AVAILABILITY, infra.

⁶The courts that have rejected Wehunt include Carelli, Albiston, Howe, and King.

1 suggest that Title IV-D was intended, at least in part, to directly benefit custodial
2 parents and their children. This conclusion is buttressed by the language of § 651,
3 quoted above, and by the legislative history of the Act.⁷ Therefore, we conclude that
4 custodial parents and their children are beneficiaries of the Act, though perhaps not
5 the sole beneficiaries.

6
7 The second prong of the Wilder enforceable rights test – the "binding
8 obligation" prong -- likewise appears relatively straightforward. The Supreme Court
9 has stated that a federal statute will be considered a "binding obligation" of a state,
10 rather than a mere "congressional preference" for action, if the state's receipt of
11 federal funds is unambiguously conditioned upon its compliance with the statute.
12 Pennhurst, 451 U.S. at 19, 101 S.Ct. at 1541. Here, the state is clearly required to

⁷Indeed, the following legislative history quoted by the Wehunt court just as readily supports our conclusion:

The problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents. Of the 11 million recipients who are now receiving Aid to Families with Dependent Children (AFDC), 4 out of every five are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.

The Committee believes that all children have the right to receive support from their fathers. The committee bill ... is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup.

Wehunt, 875 F.2d at 1565, quoting S.Rep. No. 93-1356, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. and Admin. News 8133, 8145-46 (emphasis added).

1 "substantially comply with the requirements of Title IV-D"; and its failure to do so will
2 subject it to a reduction of federal funding. Although the state may retain discretion
3 in some areas of its program not covered by the regulations, we believe that this is
4 a sufficiently binding obligation for purposes of the Wilder test.

5
6 Lastly, the Wilder test requires that the federal rights asserted by the plaintiff
7 be sufficiently determinate so that the judiciary may competently enforce them. In
8 prior Supreme Court cases, such as Wilder and Wright, this determination has turned
9 upon whether the state's discretion in conferring the right was adequately channeled
10 and guided by the statute or its implementing regulations so as to provide some
11 standard by which to gauge the state's performance. Here, the regulations in Part
12 305, and even more so in part 303, which is more specific and stringent still,
13 substantially channel the state's discretion. Therefore, since the standards for
14 gauging the state's performance are ascertainable, the plaintiffs' asserted rights are
15 sufficiently determinate. This conclusion is supported by the fact that the Title IV-D
16 regulations are much more detailed than those at issue in Wilder and Wright.

17

1 B. THE FORECLOSURE EXCEPTION

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3 The second major exception to the availability of § 1983 to enforce a federal
4 right is when Congress has foreclosed the use of § 1983 in the statute itself. This
5 foreclosure may occur in two ways: first, when Congress expressly precludes the use
6 of §1983 in the statute, Wright, 479 U.S. at 423, 107 S.Ct. at ____; or second, when
7 the statute creates a remedial scheme that is "sufficiently comprehensive ... to
8 demonstrate congressional intent to preclude the remedy of suits under § 1983. Sea
9 Clammers Ass'n, 453 U.S. at 20, 101 S.Ct. at ____.

10
11 The State concedes that Title IV-D does not expressly preclude resort to §
12 1983. However, it argues that the Secretary's authority to audit the state Title IV-D
13 programs, coupled with its ability to withhold federal funding if the programs are
14 discovered to be out of compliance, demonstrates that Congress intended that the
15 Secretary, not the state or federal judiciaries, possess remedial authority over Title
16 IV-D. The State relies heavily upon Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991)
17 to support this argument.

18
19 In Carelli the Sixth Circuit considered a § 1983 challenge to Ohio's Title IV-D
20 program brought by custodial mothers. In its analysis of the "implicit foreclosure"
21 issue, the Court first described in detail the Secretary's audit authority over the state
22 programs. It then emphasized that the State of Ohio had been audited and found to
23 be out of compliance; that it had submitted a corrective action plan; that a follow-up
24 audit had revealed that the program was still not in compliance and that a reduction
25 in funding had been assessed by the Secretary; and that a second corrective action

1 plan was then underway. The Court then concluded that the Secretary's audit
2 authority was sufficiently comprehensive to preclude reliance upon § 1983. It
3 explained its conclusion as follows:

4
5 Reduced to its simplest terms, plaintiffs seek a 'hurry-up' order from the
6 federal court. Plaintiffs make no attack on the applicable regulations,
7 and the Secretary is not even a party to this litigation. They allege no
8 acts of non-compliance beyond those already unearthed in the
9 Secretary's audit ... Plaintiffs do not allege that Ohio cannot or will not
10 get its program in compliance ...

11
12 Since the plaintiffs seek no monetary relief, there would be no
13 particularized individual relief forthcoming if this lawsuit were to go
14 forward. What we envision happening would be an order coming from
15 the court directing the State of Ohio to increase staff size, do a better
16 job of establishing priorities, and setting time limits for performing
17 required tasks as well as responding to calls for service. In short, the
18 court's order would address all the shortcomings the secretary has
19 already ordered corrected.

20
21 We concede that, for the short term, a court order might be more
22 effective. After all, the Secretary just imposes a monetary penalty on
23 the state treasury; the court could send recalcitrant state officials to jail!
24 We are not convinced, however, that Congress intended the federal
25 judiciary to occupy the same ground at the same time and in the same
26 manner as the secretary, notwithstanding that the Secretary's
27 corrective action might take longer. We are not suggesting that time is
28 irrelevant. We note, however, that none of these plaintiffs is limited to
29 waiting for the Secretary to act. This is not like a case where the
30 government promises a monthly stipend and then does not deliver. In
31 such a case, an intended beneficiary either gets his stipend from the
32 government as promised or not at all. Here, each member of the class
33 has other legal remedies for securing enforcement of court orders,
34 establishing parenthood, or obtaining whatever relief is sought.
35 Although Title IV-D was adopted, at least in part, to make sure that
36 responsible parties were held to their obligations, there was no intent
37 to supplant or preempt any private remedy available that would
38 accomplish the same end.

39
40 Carelli, 923 F.2d at 1216.

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43 We begin our analysis with a recognition of the historic importance of § 1983
44 as a means of redressing violations of federal rights by state actors, and thus we, like

1 the Supreme Court, "do not lightly conclude that Congress intended to preclude
2 reliance on § 1983 as a remedy." Smith, 468 U.S. at 1012, 104 S.Ct. at 3468. First,
3 we acknowledge that the concerns voiced by the Carelli court have some validity in
4 a practical sense: confusion and uncertainty could result if the Secretary was
5 attempting to remedy the Title IV-D program at the same time as the state or federal
6 judiciary. Of course, these concerns do not strictly apply to the matter before us, as
7 the record does not reveal that the Secretary has taken any action to remedy the
8 staffing and performance problems that allegedly plague the Davidson County Child
9 Support Office. Therefore, this case does not present the sort of immediate practical
10 problems as did Carelli, and that case's persuasiveness is thereby diminished.

11
12 However, we also disagree with the Carelli court for a more fundamental
13 reason. The Supreme Court has only twice held that Congress has implicitly
14 precluded reliance on § 1983 by enacting comprehensive remedial schemes. In Sea
15 Clammers, the Court held that the remedial scheme included in the Federal Water
16 Pollution Control Act, 33 U.S.C. § 1251 et seq., evidenced a congressional intent to
17 foreclose resort to § 1983. This remedial scheme granted the Environmental
18 Protection Agency enforcement power via noncompliance orders, civil suits and
19 criminal penalties; and it included two citizen suits provisions. Similarly, in Smith, the
20 Supreme Court held that the detailed administrative scheme in the Education of the
21 Handicapped Act, 20 U.S.C. § 1400 et seq., foreclosed reliance on § 1983 because
22 it included local administrative review that culminated in a right to judicial review.

23
24 The common thread of Sea Clammers and Smith is that both Acts contained
25 provisions for private enforcement of statutorily conferred rights. In stark contrast,

1 Title IV-D provides no such provision for private enforcement by the beneficiaries of
2 the legislation. Indeed, the Supreme Court's rejection in Wilder of a similar argument
3 proffered by the State of Virginia with regard to the Medicaid Act is equally applicable
4 here:

5

6 The Medicaid Act contains no comparable provision for private judicial
7 or administrative enforcement. Instead, the Act authorizes the
8 Secretary to withhold approval of plans, or to curtail federal funds to
9 states whose plans are not in compliance with the Act ... By regulation,
10 the states are required to adopt an appeals procedure by which the
11 individual providers may obtain administrative review of reimbursement
12 rates

13

14 This administrative scheme cannot be considered sufficiently
15 comprehensive to demonstrate a congressional intent to withdraw the
16 private remedy of § 1983.

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18 Wilder, 496 U.S. at 521-22, 110 S.Ct. at 2524.

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Because the Supreme Court decisions in this area have required some type of
23 private remedy in order to manifest congressional intent to preclude reliance on §
24 1983, and because Title IV-D contains no such provision, we conclude that the
25 Secretary's audit authority does not implicitly foreclose resort to § 1983.

26

27

SCOPE OF SECTION 1983 AVAILABILITY

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29

Because we have determined that Title IV-D creates enforceable rights in
30 favor of custodial mothers and their children and that Congress did not intend to
31 foreclose resort to § 1983, we therefore hold that plaintiffs may utilize § 1983 to
32 redress violations of their Title IV-D rights by state actors. This general holding,
33 however, leaves a very important issue unresolved: is the plaintiffs use of § 1983

1 limited to enjoining the state to "substantially comply" with the requirements of Title
2 IV-D; or may the plaintiffs use § 1983 to obtain relief in their individual cases,
3 regardless of whether the state is substantially complying? More specifically, is the
4 plaintiff limited to suing the state for the purpose of forcing it to bring its program into
5 substantial compliance, as defined in Part 305 of the regulations, which would not
6 necessarily guarantee relief in an individual case; or does the plaintiff have a right,
7 enforceable by § 1983, to receive child support services according to the specific,
8 mandatory guidelines in the Act, such as those enunciated in Part 303?

9
10 As with the general § 1983 issue, this specific question has generated a split
11 among the jurisdictions that have considered it. In Albiston v. Maine Com'r of Human
12 Services, 7 F.3d 258 (1st Cir. 1993), the First Circuit Court of Appeals considered a
13 § 1983 action brought to compel the State of Maine to promptly distribute child
14 support payments to families in accordance with the mandatory language of U.S.C.
15 § 652(i) and its supporting regulations. In that case, Maine argued that "the statutory
16 requirement of 'substantial' rather than 'total' compliance renders the state's ...
17 obligation under the plan ambiguous in individual cases, and therefore unenforceable
18 in a private action under 42 U.S.C. § 1983." The Court rejected this argument,
19 reasoning that:

20
21 More generally, however, the 'substantial compliance' required to avoid
22 administrative penalties under [the statutory provisions and regulations]
23 is independent of, and narrower than, the State's direct obligation to
24 AFDC recipients. As the Ninth Circuit has stated, in an analogous
25 context, '[t]he funding standard [of 'substantial compliance'] is not... the
26 measure of what the regulations require; it is intended to measure how
27 great a failure to meet those requirements should cause funds to be cut
28 off.'
29

1 Albiston, 7 F.3d at 266 (emphasis added).
2
3

4 Because the mandatory requirements of Part 303 clearly constitute a "direct
5 obligation" on state Title IV-D agencies in the same way as § 652(i) and its supporting
6 regulations, the Albiston court would allow plaintiffs to bring an action for individual
7 relief in accordance with these regulations regardless of whether the State was
8 substantially complying.

9
10 The opposite view on this issue has been taken by the District Court for the
11 Northern District of Illinois in King v. Bradley, 829 F.2d 989 (N.D. Ill. 1993). In
12 rejecting the plaintiffs' argument that they had a right to individual relief, the King
13 court stated:

14
15 Plaintiffs claim that they have an enforceable right to more than
16 substantial, or 75%, compliance. They argue that the Part 305
17 regulations, which set out the 75% compliance requirement, govern
18 only the audit process and do not define the level of compliance on
19 which the federal funding is conditioned. They contend that instead,
20 the Part 303 regulations governing 'program operation' define the
21 necessary level of compliance. Part 303 requires compliance with
22 federal procedures 'in all cases.' This argument ignores the Suter,
23 Wilder and Pennhurst decisions. Part 303 regulations do not create an
24 enforceable right because compliance with Part 303 regulations is not
25 a condition for receipt of federal funds. Furthermore, requiring
26 compliance 'in all cases' pursuant to the Part 303 regulations would
27 contradict the statutory language which requires only 'substantial
28 compliance,' not strict compliance.

29
30 King, 829 F.2d at 994.
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34 As previously noted, the Court of Appeals in this case effectively adopted the
35 King rationale, holding that the plaintiffs could bring an action to force the state to

1 substantially comply with the Part 305 regulations, but that the plaintiffs were not
2 guaranteed to be within the class to which relief was granted. We conclude,
3 however, that King is flawed on a number of grounds. First, King completely
4 bypasses the question of the purpose to be served by Part 303 regulations if there
5 is no mechanism whatsoever for enforcing them. These regulations are very specific
6 and phrased in mandatory terms; certainly they are far stronger than the open-ended
7 "congressional preference" dealt with in Pennhurst. We find it inconceivable that
8 these detailed regulations, which have the force of law, were passed by the Secretary
9 as simply a non-binding "suggestion" to state Title IV-D agencies that they engage
10 in certain operative practices. But under the King rationale, these regulations
11 effectively become a dead letter, a result specifically condemned by the Wilder court
12 when it stated: "[w]e reject that argument because it would render the statutory
13 requirements of findings and assurances, and thus the entire reimbursement
14 provision, essentially meaningless." Wilder, 496 U.S. at 514, 110 S.Ct. at 2519-2520.

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16
17 There are other major problems with the King rationale. First, that decision
18 totally ignores the fact that the compliance of state programs is judged on a state-
19 wide, not a county-wide, basis. This is important, because the residents of a county
20 with particularly acute problems in its child support program, as Davidson County is
21 alleged to have, would receive no relief if the State could prove that its overall state-
22 wide compliance rate was 75%. Finally, if we were to adopt the King rationale, a
23 plaintiff could potentially bring an action to enforce substantial compliance, achieve
24 a positive result at trial and on appeal, and still not be guaranteed to be among the
25 class to which relief was granted. Thus, the very instigator of the action could

1 conceivably be denied any relief. We cannot countenance such a perverse
2 possibility, and therefore decline to adopt the King rationale.

3

4 To summarize, we hold that a plaintiff may bring an action pursuant to § 1983
5 to enforce the state's "direct obligations" to him or her under Title IV-D; and that this
6 right is not dependent upon whether the State is in "substantial compliance" with the
7 requirements of Title IV-D for purposes of the Secretary's audit.⁸ The judgment of the
8 Court of Appeals is therefore affirmed only insofar as it is consistent with this holding.

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FRANK F. DROWOTA III
JUSTICE

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15 Concur:

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17 Anderson, C.J.

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Reid, Birch, JJ.

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O'Brien, Sp. J. - dissenting - see separate Dissent

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⁸Although the plaintiffs also request declaratory relief and a writ of mandamus, we agree with the Court of Appeals that § 1983 is an adequate remedy, thus obviating the need for a writ of mandamus, an extraordinary remedy; and that § 1983 provides a better and more efficient remedy than a declaratory judgment.