

Case No. 17-11500-U
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SHEENA YARBROUGH,

Plaintiff-Appellant,

vs.

DECATUR HOUSING AUTHORITY,

Defendant-Appellee.

En Banc Review Following A Decision By A Panel Of This Court On Appeal
From The United States District Court
Northern District of Alabama
No. 5:15-CV-2325-AKK

**BRIEF OF AMICUS CURIAE SARGENT SHRIVER NATIONAL
CENTER ON POVERTY LAW, INC. IN SUPPORT
OF APPELLANT SHEENA YARBROUGH**

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SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, INC.'S
SUPPLEMENTAL FRAP 29(2) NOTICE OF ALL PARTIES
CONSENT TO FILE AMICUS BRIEF

Pursuant to FRAP 29(2), *Amici* provide this supplemental notice to the Court that all consent to the filing of this *Amicus Curiae* brief. Amicus received consent from all counsel on March 11, 2019 after hard copies of the *amicus* brief were already placed in the mail for delivery to the Court.

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 and 26.1.2, Amicus Curiae Sargent Shriver National Center on Poverty Law, Inc. (“Amicus”) discloses that it is an Illinois nonprofit corporation, has no parent corporation, subsidiaries, or affiliates and does not issue shares of stock.*

Counsel for amicus certifies that in addition to the persons and entities identified in the Certificate of Interested Persons and Corporate Disclosure Statement provided by Appellant/Plaintiff in their brief, the following persons and entities have an interest in the outcome of this case:

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* As required by Rule 29(c)(5) of the Federal Rules of Appellate Procedure, the undersigned certifies that (A) no party’s counsel authored this brief by Amicus in whole or in part; (B) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief by Amicus; and no person other than Amicus, its members or its counsel contributed money that was intended to fund preparing or submitting the brief by Amicus.

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INTEREST OF THE AMICUS CURIAE

Sargent Shriver National Center on Poverty Law, Inc. (“Amicus” or the “Shriver Center”) has a strong and unique interest in this case involving the procedural due process rights of public benefits recipients before their benefits are terminated. The Shriver Center is a national non-profit legal and policy advocacy organization that has litigated and advanced policy on behalf of recipients of a range of public benefits, including federal housing assistance, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and Medicaid. The Shriver Center also organizes multiple networks of statewide law and policy organizations and legal aid lawyers. As a national clearinghouse for the legal aid community for over 50 years, the Shriver Center supports litigation affecting the rights of poor Americans to receive the public supports they need to survive.

The Shriver Center is deeply concerned that the Appellee’s arguments as well as the concurring opinion by Judge Pryor has the potential to erode the due process rights of recipients of public benefit programs and deprive them of the right to redress in federal court. From firsthand experience and as a convener of legal aid attorneys across the country who work on behalf of participants in the federal housing programs at issue here, who also rely upon SNAP, TANF, and

Medicaid, among others, the Shriver Center has deep knowledge of the vital role these programs play in stabilizing families and avoiding extreme poverty.

STATEMENT OF ISSUES AND SUMMARY OF ARGUMENT

This case involves a question of exceptional importance: whether recipients of public benefits who have their benefits terminated by administrative agencies without due process of law are entitled to federal court review via 42 U.S.C. § 1983. While the rights of federal “Section 8 Housing Choice Voucher” program recipients are at issue here, this case has the potential to erode the due process rights of all public benefits recipients to an evidentiary hearing with minimum procedural safeguards before their benefits are terminated. Any erosion of those due process rights runs afoul of long-standing precedent established by *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathews v. Eldridge*, 424 U.S. 319 (1976) as well as this Court’s decision in *Basco v. Machin*, 514 F. 3d 1177 (11th Cir. 2008).

Adhering to the tenets of *Goldberg*, *Mathews*, and *Basco* is even more critical now in an era where low-income families and individuals face a heightened set of eligibility and criteria as a condition of receiving public benefits. Otherwise, state and local agencies administering these federal assistance programs can readily ignore their obligation to comply with due process and expeditiously move to deny or terminate assistance to critical safety net programs. *Monroe v. Pape*, 365 U.S. 167, 180 (1961). Because the disconnection of low-income families from public

benefit programs has increased the number of people living in deep poverty in the U.S, procedural due process is a vital protector against state action that has devastating and long lasting consequences for those experiencing it.

ARGUMENT

I. ALL PUBLIC BENEFIT RECIPIENTS ARE AFFORDED THE DUE PROCESS PROTECTIONS OF THE 14TH AMENDMENT BEFORE BEING DEPRIVED OF THEIR BENEFITS.

The Fourteenth Amendment prohibits any state from “depriv[ing] any person of life, liberty, or property, without due process of law. The U.S. Supreme Court has long recognized the importance of ensuring that low-income individuals and families in this country are not deprived of the public benefits without due process of law. Indeed, in the seminal case on this issue, *Goldberg v. Kelly*, the Supreme Court determined that recipients of Aid To Families With Dependent Children (AFDC) welfare benefits retain a property interest that cannot be revoked without due process of law. 397 U.S. 254 (1970). In finding that welfare recipients retain a property interest that is protected by the procedural due process clause of the Fourteenth Amendment, the *Goldberg* Court focused on how welfare provides “essential food, clothing, housing and medical care.” *Id.* at 264. Because “the termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits,” the court found that due process entitles an individual recipient for public benefits to pre-

deprivation notice and an opportunity to be heard. *Id.* *Mathews v. Eldridge* affirmed *Goldberg* and clarified how to determine whether and how much due process applies to the termination of public benefits programs, including the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. 319, 335 (1976). If any of these elements are not met in the pre-termination hearing, then welfare recipients can seek relief from the federal courts.

In a failed attempt to overrule *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008), Appellee begs this Court to ignore the well-established principles of *Goldberg* and *Mathews*, and in turn, deprive housing voucher holders and perhaps all public benefit recipients of their right to seek judicial review of administrative decisions that terminate their benefits in violation of due process. *See also Yarbrough v. Decatur Hous. Auth.*, 905 F.3d 1222, 1226-31(11th Cir. 2018) (Pryor, J., concurring). Yet once it is established that there is a property interest it cannot be taken without adhering to due process of law. And when the termination of public benefits is at stake a higher standard of due process as set forth in

Goldberg must be applied. *Richardson v. Perales*, 402 U.S. 389, 407 (1971); *See also U. S. Pipe & Foundry Co. v. Webb*, 595 F.2d 264 (5th Cir. 1979).

A. LIKE HOUSING BENEFITS, OTHER PUBLIC BENEFITS CANNOT BE TERMINATED WITHOUT DUE PROCESS OF LAW.

While *Yarbrough* is a case involving the federal Section 8 Housing Choice Voucher program, the outcome here could upend what rights other public benefit recipients have to judicial review via Section 1983 when their benefits are terminated without due process of law.

One such group would be participants in SNAP, formerly known as the Food Stamp Program, which provides essential food assistance to low-income families, seniors, and people with disabilities. 7 U.S.C.A. § 2011 (West). The program is administered by the United States Department of Agriculture in conjunction with the states. Center on Budget and Policy Priorities, *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, Policy Basics (Feb. 13, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf>.

SNAP recipients have a property interest in their benefits that is protected by the Procedural Due Process Clause of the Fourteenth Amendment. *Atkins v. Parker*, 472 U.S. 115, 128 (1985) (*quoting Goldberg*, 397 U.S. at 262–63); *see also Davis v. Proud*, 2 F. Supp. 3d 460, 484 (E.D.N.Y. 2014) ("Social welfare benefits,' such as SNAP, 'have long been afforded constitutional protection as a species of property protected by the federal Due Process Clause"). Thus, before

SNAP benefits can be terminated due process must be followed. *Kapps v. Wing*, 404 F.3d 105, 113 (2d Cir.2005); *Goldberg*, 397 U.S. at 267; *see also Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (“It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims”). Like federal housing recipients, if SNAP recipients’ due process rights are violated, they have a right to redress. *Barry v. Lyon*, 834 F.3d 706, 716-718 (6th Cir. 2016) (holding that SNAP beneficiaries possess the right of private enforcement actionable under Section 1983).

The right of Medicaid recipients to seek redress from the courts could also be in jeopardy. Medicaid is a federal-state program through which the federal government provides financial assistance to states so that they may furnish medical care to needy individuals. *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990).

Federal courts have consistently held that Medicaid recipients have a property interest in their continued receipt of Medicaid benefits. *See Haymons v. Williams*, 795 F. Supp. 1511, 1523 (M.D. Fla. 1992); *Moffitt v. Austin*, 600 F. Supp. 295, 297 (W.D. Ky. 1984); *Goldberg*, 397 U.S. at 254.; *Roth*, 408 U.S. at 577 (“Property interests...are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law –

rules or understandings that secure certain benefits and support claims of entitlement to those benefits”).

The Fourteenth Amendment requires that states adhere to procedural due process prior to terminating an individual’s Medicaid benefits. *Haymons*, 795 F. Supp. at 1520; *See also Roth*, 408 U.S. at 569-70 (“The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount”). Thus, if Medicaid recipients’ benefits are terminated in violation of the Fourteenth Amendment, they have a right to seek redress pursuant to Section 1983. *Haymons*, 795 F. Supp. at 1516-17 (citing *Wilder*, 496 U.S. 498).

Even outside of public benefits, these same due process principles also apply when denying or revoking a professional license or employment. *See Greenlee v. Bd. of Med. of D.C.*, 813 F. Supp. 48 (D.D.C. 1993) (finding that the denial of a medical license implicates a liberty interest that cannot be denied without due process); *Coaxum v. Washington*, 2012 WL 1034231 (W.D. Wash. 2012) (noting that the state’s Board of Appeals is constitutionally-bound to use the preponderance of the evidence standard in day care licensing revocation cases); *Holley v. Seminole Cty. Sch. Dist.*, 755 F.2d 1492, 1499-1500 (11th Cir. 1985) (finding that a school board's decision finding not to renew a teaching contract

must be supported by substantial evidence in order to meet the requirements of due process). Ultimately, no property or liberty interest cannot be dispossessed without adherence to its constitutional origin.

II. WITHOUT JUDICIAL REVIEW, LOCAL AND STATE AGENCY DECISIONS CAN HAVE CATASTROPHIC IMPACTS ON LOW-INCOME FAMILIES.

Should Appellee's arguments prevail, low-income families could experience a litany of procedural due process violations – garden variety and otherwise - from agencies administering public benefit programs, but they would have no vehicle for relief. A recent case highlights the importance of judicial review of agency action. In *Barry v. Lyons*, the 6th Circuit affirmed the district court's decision finding that Michigan's policy that automatically denied benefits to "fugitive felons" violated due process. 834 F.3d at 710. Under Michigan's rule, a plaintiff's benefits were terminated due to an arrest warrant being issued that resulted from her being a victim of identity theft. *Id.* at 713. Based solely on the arrest warrant and without notice or a fair hearing, the agency terminated her benefits. *Id.* The court ruled that the state's automatic disqualification policy violated due process. *Id.* at 710.

Likewise, in *V.L. v. Wagner*, a preliminary injunction was issued, staying a change in California Medicaid policy that would have reduced or terminated benefits for roughly 130,000 elderly and disabled residents receiving in-home assistance. 669 F. Supp. 2d 1106 (N.D. Cal. 2009). The court ruled that simply mailing notices to

benefit recipients that their benefits had been reduced or terminated likely violated due process. *Id.* at 1120. The courts' intervention in both cases were critical to protect the due process rights of public benefit recipients.

III. ADHERANCE TO *GOLDBERG*, *MATHEWS*, AND *BASCO* ARE CRITICAL IN AN ERA MARKED BY INCREASED DENIALS AND TERMINATIONS OF PUBLIC BENEFITS.

Many federal assistance programs are set up in ways that make it difficult for individuals and families to enroll and to successfully stay enrolled. These challenges result in deeper levels of poverty and a real crisis for low-income families. Given the harm that can come from disconnecting families from public benefits, it is critical that there is an administrative system in place that both comports with procedural due process and is reviewable by the federal courts. Left to their own devices, state and local agencies administering these federal assistance programs can readily ignore their obligation to comply with due process and expeditiously move to deny or terminate assistance to critical safety net programs. *Monroe v. Pape*, 365 U.S. 167, 180 (1961) ("It is abundantly clear that one reason [Section 1983] was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies"); John L. Kane, Jr., *Public Perceptions of Justice: Judicial*

Independence and Accountability, 17 J. Nat'l Ass'n Admin. L. Judges 203, 207 (1997) (“...[H]aving the agency or department that litigates before an administrative law judge exercise the power to appoint, promote or assign is the same as having the fox guard the henhouse. Even the most benign fox can be expected to make supper every now and then. Aside, from the lack of institutional separation, the fundamental purpose of an agency is to further its policy, and that is often in direct conflict with the basic objective of adjudication”).

Adhering to the tenets of *Goldberg*, *Mathews*, and *Basco* is even more critical now in an era where low-income families and individuals face a heightened set of eligibility and criteria as a condition of receiving benefits. For example, the successor to AFDC at issue in *Goldberg* is the TANF program. TANF was created through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as part of a welfare reform effort. 8 U.S.C.S. §§ 1601 et seq; Alana Semuels, *The End of Welfare as We Know It*, The Atlantic, (April 1, 2016), <https://www.theatlantic.com/business/archive/2016/04/the-end-of-welfare-as-we-know-it/476322/>. TANF has much stricter eligibility guidelines, time limits, and work requirements, all of which make it very likely that a family can be denied assistance or have their benefits terminated. Newkirk, *supra*. Vann R. Newkirk II, *The Real Lessons From Bill Clinton's Welfare Reform*, The Atlantic, (Feb. 5, 2018), <https://www.theatlantic.com/politics/archive/2018/02/welfare-reform-tanf->

medicaid-food-stamps/552299/. Sanctions and restrictions are so aggressive that some states that administer TANF have built up TANF reserve funds. For example, Ohio has over \$500 million in reserve TANF funds, largely because of declining caseloads. Tara Britton & Brie Luscheck, *Majority of Ohioans Living in Deep Poverty Don't Receive Cash Assistance: Temporary Assistance For Needy Families In Ohio*, Ctr. for Community Solutions (Oct. 1, 2018), <https://www.communitysolutions.com/research/temporary-assistance-needy-families-ohio-balancing-program-integrity-entitlement-reducing-poverty-not-goal/>.

The effect of TANF's strict guidelines has been an increase in TANF terminations and a steep decline in the number of households receiving TANF. Indeed, since shortly after the TANF program began, more than 2 million households have had their TANF benefits terminated due to work-related sanctions. Newkirk, *supra*; LaDonna Pavetti, *TANF Studies Show Work Requirement Proposals For Other Programs Would Harm Millions, Do Little To Increase Work*, Center on Budget and Policy Priorities (Nov. 13, 2018), <https://www.cbpp.org/sites/default/files/atoms/files/11-13-18tanf.pdf>. These terminations were more likely born by households who could not meet the work requirements due to physical or mental health issues, as well as lower levels of education. Floye, Burnside, and Schott, *supra*. In 1996, for every 100 families in poverty, 68 received TANF benefits, but by 2017 only 23 out of 100 were

receiving assistance from TANF. Ife Floyd, Ashley Burnside & Liz Schott, *TANF Reaching Few Poor Families*, Center on Budget and Policy Priorities, 1 (Nov. 28, 2018), <https://www.cbpp.org/research/family-income-support/tanf-reaching-few-poor-families>. SNAP has also seen a decline in caseloads, after new restrictions focused on work and time limit restrictions were imposed on able-bodied adults without dependents, which increased benefit denials and terminations. Brynne Keith-Jennings, *SNAP Caseloads Fall Sharply; Three-Month Time Limit a Major Driver*, Center on Budget and Policy Priorities (July 13, 2016), <https://www.cbpp.org/blog/snap-caseloads-fall-sharply-three-month-time-limit-a-major-driver>. Because these individuals often turn to SNAP because they face barriers to work, such as low skill or education levels or physical and/or mental health issues, losing SNAP only increases their poverty. *Id.* The procedural soundness of an administrative process then is especially critical here, as many of these individuals may struggle to advance or articulate their right to assistance.

Medicaid recipients likewise face a panoply of hurdles, such as work requirements and rigorous income verification, that increase the chance they will lose their benefits. In less than a year after Arkansas implemented Medicaid work requirements, 12,277 recipients had been removed from the program. Benjamin Hardy, *Holes in the System: Arkansas Works Program Causes Issues for Many on Medicaid*, *Baxter Bulletin* (Nov. 27, 2018),

<https://www.baxterbulletin.com/story/news/local/2018/11/28/arkansas-works-medicaid-program-department-human-services-health-insurance-flaws-system/2127806002/>. Beyond the barrier to benefits created by the work requirement, work activity hours must be submitted online even though many Arkansans lack internet access or experience several difficulties with the online system. Benjamin Hardy, *Locked Out of Medicaid: New Arkansas Requirement Leaves Thousands Without Insurance*, The Baxter Bulletin (Nov. 25, 2018), <https://www.baxterbulletin.com/story/news/local/2018/11/26/arkansas-medicaid-requirement-takes-medications-health-care-away-medical-insurance/2079839002/>.

Kentucky Medicaid recipients face similar challenges now that Kentucky will terminate recipients' benefits for six months if they fail to report changes affecting eligibility, such as someone leaving the home. Judith Solomon, *Locking People Out of Medicaid Coverage Will Increase Uninsured, Harm Beneficiaries' Health*, Center on Budget and Policy Priorities, 7 (July 13, 2016), <https://www.cbpp.org/sites/default/files/atoms/files/2-22-18health.pdf>. Many Medicaid recipients in Kentucky also lack internet access, making it challenging for individuals to comply with the online reporting requirements. *Id.* at 8

Households have also had their benefits terminated after system automation. This modernization has only increased the risk that households will be denied the benefits they need, making access to the courts for even “garden variety” matters

critical. For example, in 2006, Indiana contracted out eligibility processing for Medicaid, SNAP, and TANF to an automated system. Bryan Corbin, *Bill Filed to Halt Further Expansion of Indiana's New Welfare Eligibility Program*, Evansville Courier & Press (Jan. 19, 2009), <https://indianaeconomicdigest.com/main.asp?SectionID=31&subsectionID=135&articleID=45493>. Applicants encountered problems enrolling in and renewing their benefits and calls and documents were routinely lost. As a result, over two years, Indiana denied more than a million applications for SNAP, Medicaid, and TANF. Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* 50–51 (2017).

The disconnection of low-income families and individuals from public benefit programs has exacerbated the levels of deep poverty in the U.S. Indeed, the United Nations found that rates of extreme poverty (living on less than \$2 per day per person) are increasing in part because of an increasing disconnection from the federal safety net. United Nations Office of the High Commissioner on Human Rights, *Statement On Visit To The USA, By Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights* (Dec. 15, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533&LangID=E>; H. Luke Shaefer et al., *The Decline of Cash Assistance and the Well-*

Being of Households with Children, (Poverty Solutions U. Mich., Working Paper Series 6-18, 2018), <https://poverty.umich.edu/files/2018/08/Shaefer-TANF-caseloads.4.25.18.pdf>. Especially given the modern state of these public benefit programs, procedural due process is a vital protector against deep and extreme poverty, which has devastating consequences for all of those experiencing it.

CONCLUSION

For these reasons, Amicus urges this Court to find in favor of Plaintiff-Appellant Sheena Yarbrough and uphold *Basco*.

DATED: March 12, 2019

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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that this brief complies with the requirements of Fed. R. App. P. 32 (a)(7)(B)(i) and 11th Cir. R. 35-6 because the brief, exclusive of the Cover Page, Certificate of Interested Persons and Corporate Disclosure Statement, Certificate of Service, Table of Contents, Table of Citations, and this Certificate, is no longer than 15 pages and is printed in 14 point Times New Roman proportionally spaced typeface.

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CERTIFICATE OF SERVICE

I certify that on March 12, 2019, I electronically filed this brief by Amicus Curiae with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I also certify that on March 12, 2019 copies of this brief were dispatched for delivery to the Clerk's Office of the United States Court of Appeals for the Eleventh Circuit by third-party commercial carrier for overnight delivery at the following address:

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