

academic curriculum. The argued resources in poor districts and outcomes because regardless facilities, and lower student-conditions in which these children-equipped for learning and in any event.

arguments by characterizing He points out that local boards attributes of education. For not govern teacher certification curriculum and accreditation edized exams, requirements for special education, or higher educational boards do determine how pials are paid, the number of or other educational support red, the condition of school curricular activities, the avail-ool programs, and, if resources amming.

school districts with few ability to exercise local control ool districts with vast resources about how resources will be is merely a straw man; political school districts to equitable resources throughout a state ing poorer school districts that ol.

arguments against local control n juxtaposed against the reali- in which urban schools oper- criticism that added money will ng as a child is hungry, home- table family structure. It seems em cannot begin to address a hen the child's basic human urse, the nation, the state, and responsible for making sure a t. But a school, which has the nnection with the children of a well placed to help a child take ty to learn when the resources d for schools to meet the social



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Under Kozol's analysis, it is ultimately the self-interested wealthy communities that are the major barriers to educational equity.

and academic needs of their students may be the most powerful means for urban schoolchildren to achieve equal educational opportunity.

#### IV. Conclusion

While it does not detract from the book's overall value, Kozol's descriptive approach to the problems of poor schools conveys a sense of hopelessness that is aggravated by the lack of proposed solutions. As social commentary, *Savage Inequalities* successfully portrays Kozol's vision of urban decay and moral degradation of blameless schoolchildren. It is not an authoritative text on either educational theory or legal strategies to address the disparities caused by unjust school financing systems. The book provides a context for understanding why education advocacy must be included among the priorities of issues of concern to the legal services community. Indeed, it is a catalyst for response. □

## The Enforcement of Social Security Act State Plan Requirements After *Suter v. Artist M.*

by Timothy J. Casey\*

In *Suter v. Artist M.*,<sup>1</sup> the Supreme Court held that beneficiaries of assistance under the Adoption Assistance and Child Welfare Act (AACWA)<sup>2</sup> do not have the right to enforce the Act's "reasonable efforts" requirement. The purpose of this note is to explain briefly why

the Court's decision in *Artist M.* does not generally preclude continued judicial enforcement of Social Security Act state plan requirements, as some defendant state officials may argue, and to identify the basis for the decision so that

advocates can begin to assess how it may affect new and pending cases. Readers are cautioned that lower court decisions may have discussed *Artist M.* by the time this note appears in print.<sup>3</sup>

In *Artist M.*, plaintiff children in foster care challenged the Illinois Department of Children and Family Services' failure to make reasonable efforts to avoid removing children from their families and to reunite children in foster care with their families, as required under the AACWA.<sup>4</sup> Like AFDC and Medicaid, the AACWA program is a Social Security Act program with a "state plan" structure; states that choose to participate must operate their programs pursuant to a "plan" ap-

proved by HHS that includes the various provisions specified in the Act, commonly referred to as the "state plan requirements."

Plaintiff foster care children conceded that the Illinois AACWA plan did include a "reasonable efforts"

provision, but argued that in practice the state systematically failed to make such efforts, because it did not promptly assign a caseworker to foster care children. The district court agreed and ordered the state to assign caseworkers promptly,<sup>5</sup> and the

court of appeals affirmed.<sup>6</sup>

The Supreme Court reversed by a seven-to-two vote. The Court held that the AACWA does not give foster care children a "right" to have reasonable efforts made in their cases and that since they have no such right, they cannot sue state officials for allegedly failing to make reasonable efforts.

Following *Artist M.*, some defendant state officials have argued that the Court held that program beneficiaries may no longer sue to enforce state plan requirements, ignoring the fact that the Court did not overrule or even question any of the many cases spanning more than two decades in which it has allowed program beneficiaries to

requirements. Advocates should request this analysis if *Artist M.* is raised as a barrier to enforcement in a new or a pending case. Other national support centers, including but not limited to the National Center for Youth Law and the National Health Law Program, have also prepared material on *Artist M.* and are available to assist in responding to *Artist M.* issues. So that the national support centers can provide thorough assistance on these issues, it is imperative that the appropriate support center be informed about cases in which defendants raise *Artist M.* as a bar to enforcement. If there is doubt about which support center to inform, forward the information to the Center on Social Welfare Policy and Law.

<sup>4</sup> 42 U.S.C. § 671(a)(15).

<sup>5</sup> *Artist M. v. Johnson*, 726 F. Supp. 690 (N.D. Ill. 1989).

<sup>6</sup> *Artist M. v. Johnson*, 917 F.2d 980 (7th Cir. 1990).

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<sup>1</sup> *Suter v. Artist M.*, 112 S. Ct. 1360 (1992) (Clearinghouse No. 48,036).

<sup>2</sup> Adoption Assistance and Child Welfare Act, 42 U.S.C. §§ 670 *et seq.*

<sup>3</sup> The Center on Social Welfare Policy and Law is available to assist advocates in responding to *Artist M.* issues and has prepared a much more detailed analysis of *Artist M.*, including a discussion of how it may affect enforcement of AFDC state plan

do so. This argument seems to stem from statements in the Court's opinion that, if considered in isolation from the entire text, might appear to suggest that a requirement to include a provision in the state plan confers a right to have that provision included in the plan but not a right to have the state comply with the provision. If so, then program beneficiaries could sue a state if the state plan did not include or was otherwise contrary to a required provision, but could not sue a state for a failure to comply in practice with a provision in the state plan.

*Artist M.* did not hold that the Social Security Act does not obligate states to comply with the required provisions in the state plan or that intended beneficiaries may never sue a state for failing to do so. On the contrary, the Court cited approvingly its holding in *Wilder v. Virginia Hospital Association*<sup>7</sup> that the Act gives health care providers a right to have the state comply with the required provision in the state Medicaid plan that reimbursement rates be reasonable and adequate.

Why, then, did the Court hold that foster care children do not have a "right" to have the state make reasonable efforts at foster care prevention and family reunification? Prior cases had established a general rule that federal statutory provisions, including but not limited to Social Security Act provisions, do not confer an enforceable "right" if they express a command that is too vague or amorphous for the courts to enforce. The Court accepted *Artist M.* for review in response to the state's petition for certiorari presenting the question whether the reasonable efforts provision is "too vague and amorphous to create individually enforceable rights."<sup>8</sup> The Court apparently concluded that under this established rule, the reasonable efforts provision was too vague, distinguishing the *Wilder* "reasonable reimbursement rate" provision, which it had held to be sufficiently specific.

In *Wilder* . . . we held that the [Act] actually required states to adopt reasonable and adequate rates, and that this obligation was enforceable by the providers. We relied in part on the fact that the statute and regulations set forth in some



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The Court held that foster care children lacked a "right" to have the state make reasonable efforts at foster care prevention and family reunification.

detail the factors to be considered in determining the methods for calculating rates . . . . In the present case . . . [n]o further statutory guidance is found as to how "reasonable efforts" are to be measured . . . and it is a directive whose meaning will obviously vary with the circumstances of each individual case.<sup>9</sup>

*Artist M.* is likely to lead to arguments that other state requirements are also too vague to confer enforceable rights. The Court itself has enforced a fair number of state plan requirements, such as the AFDC requirement that aid be furnished with reasonable promptness to all eligible individuals. The Court's enforcement of a requirement would seem dispositive on the question of whether it is sufficiently specific to confer an enforceable right.

A good number of state plan requirements have never been at issue before the Supreme Court, although most have probably been enforced in the lower courts. Certainly, in the AFDC program, few if any state plan requirements seem less specific than the Medicaid

<sup>7</sup> *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990).

<sup>8</sup> Petition for Certiorari, *Artist M.*, 59 U.S.L.W. 3745 (U.S. Apr. 30, 1991) (No. 90-1488).

<sup>9</sup> *Artist M.*, 112 S. Ct. 1370 (citation omitted).



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Efforts to ameliorate state foster care programs' failings, which are notorious and often tragic, are set back by the Court's holding.

"reasonable reimbursement rate" provision, which was held sufficiently specific in *Wilder*, or less specific than the federal housing law "reasonable utilities" provision, which was held sufficiently specific in *Wright v. Roanoke*.<sup>10</sup> *Artist M.* cited both these cases approvingly. Indeed, in AFDC, many state plan requirements mandate quite specific policies for determining eligibility and grant amounts. Ambiguity, if any, exists only at the margin of a term (e.g., "income" or "resources") whose core meaning is well understood. Resolving these marginal issues has long been grist for the judicial mill.

Although this note focuses on how *Artist M.* affect the enforcement of other state plan requirements it should be stressed that the Court's refusal to foster care children to enforce the reasonable efforts provision was of great significance. The Court's holding severely sets back efforts to ameliorate systemic deficiencies in state foster care programs, whose failings are notorious and often tragic.<sup>11</sup> □

<sup>10</sup> *Wright v. Roanoke*, 479 U.S. 418 (1987) (Clearinghouse No. 33,657).

<sup>11</sup> The National Center for Youth Law is available to assist advocates with questions about the future of foster care litigation after *Artist M.* In addition, the Mental Health Law Project is

interested in working with advocates who wish to pursue care litigation on behalf of children with disabilities.

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