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VIRGINIA SHOULD OPEN ITS COURTHOUSE DOORS TO REVIEW ADMINISTRATIVE DECISIONS INVOLVING PUBLIC ASSISTANCE

Christopher Allen Stump*
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I. INTRODUCTION

The framers of the Constitution agreed from the outset upon a tripartite system of government. The separation of powers doctrine was adopted to preclude the exercise of arbitrary power. James Madison wrote that "accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny." This distribution of powers among the three governmental branches checks abuses within federal and state governments.

Administrative law has been problematic for the separation of powers doctrine. Administrative agencies are part of the executive branch, and are often delegated legislative authority in order to effectuate agency functions and objectives. When agency case decisions are insulated from judicial review, there is an increased likelihood of inequitable and unjust agency actions. This lack of

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3. J. BARRON & C. DIENES, supra note 2, at 267 (quoting The Federalist No. 47, at 324 (J. Madison) (J. Cooke ed. 1961)).
7. See infra notes 125-28 and accompanying text.
judicial review exists in Virginia with respect to agency denial of public assistance funds.\(^8\)

Recent Virginia decisions interpreting the Virginia Administrative Process Act\(^9\) (VAPA) have interpreted the subject exemption section of VAPA to include agency actions regarding public assistance,\(^10\) thereby prohibiting judicial scrutiny of administrative decisions which grant or deny public assistance.\(^11\) This statutory interpretation effectively closes the courthouse door to persons denied public assistance. Virginia is one of only three states which fail to provide judicial review of public assistance eligibility hearings.\(^12\)

However, Virginia courts may review a wide range of other administrative decisions, including issues regarding permits for septic tanks,\(^13\) zoning classifications,\(^14\) and automobile license plates.\(^15\) The interest of an indigent individual in public assistance benefits is certainly as significant as the interests people have in septic

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8. For purposes of this article, "public assistance" shall refer to those programs enumerated in Va. Code Ann. § 63.1-87 (Cum. Supp. 1985). The programs include the following:


11. See, e.g., Harris v. Lukhard, 733 F.2d 1075 (4th Cir. 1984). For the purposes of this article, any reference to agency decisions "denying" or "regarding" public assistance is actually applicable to any agency action denying, modifying, granting, or terminating public assistance.

12. See infra notes 142-46 and accompanying text for authorities for all fifty states.


tanks and automobile license plates. Virginia's failure to provide adequate judicial redress worsens the plight of some of the commonwealth's most needy citizens and increases the possibility that public assistance benefits may be wrongfully withheld by arbitrary and capricious agency actions.

This article advocates an interpretation of VAPA which would permit judicial review of public assistance cases. This article also will highlight the constitutional and public policy rationales which require the implementation of such review procedures in Virginia. Part II of the article traces the legal development of the present interpretation and advocates a statutory construction which permits judicial review under the present language of VAPA. Part III addresses supremacy clause and due process concerns supporting judicial review, and public policy arguments mandating it.

II. INTERPRETATION OF VAPA

A. Present Interpretation

Although the issue of judicial review of agency decisions denying public assistance has not been addressed by the Virginia Supreme Court, several Virginia circuit courts have rejected judicial review of agency decisions under Virginia Code section 9-6.14:20(ii), the subject exemption section of VAPA. Section 9-6.14:20(ii) was replaced in 1985 by section 9-6.14:4.1(B)(4), which contains the same language as that of the former section. These circuit courts have held that administrative agency decisions denying general relief, hospitalization assistance, food stamps, aid to families with dependent children (AFDC), and decisions canceling Medicaid

16. In Goldberg v. Kelly, 397 U.S. 254 (1970), the Court stated that "[b]y hypothesis, a welfare recipient is destitute, without funds or assets." Id. at 261 (quoting Kelly v. Wyman, 294 F. Supp. 893, 899 (S.D.N.Y. 1968)).
17. See infra notes 85-140 and accompanying text.
18. See Harris v Lukhard, 733 F.2d 1075, 1082 (4th Cir. 1984).
19. See infra notes 22-25 and accompanying text.
20. VA. CODE ANN. § 9-6.14:20 (Repl. Vol. 1978). This section clearly provides that grants of state or federal funds or property are exempted from the chapter. See supra note 10.
24. Redd v. Virginia Dep't of Welfare, Law No. LE-1638 (Richmond City Cir. Ct. Sept. 2, 1982) (holding that a court is without jurisdiction to grant an appeal of a denial of AFDC and food stamp benefits because these are exempt from judicial review).
benefits\textsuperscript{25} are all decisions which relate to grants of state or federal funds\textsuperscript{26} and are therefore exempted from judicial review under VAPA by section 9-6.14:20(ii) of the Virginia Code.\textsuperscript{27}

In 1984, the United States Court of Appeals for the Fourth Circuit had its opportunity, in \textit{Harris v. Lukhard},\textsuperscript{28} to decide whether VAPA had any application to public assistance matters. \textit{Harris} involved a class action challenge to real estate assessment procedures used in determining the eligibility of applicants for Medicaid.\textsuperscript{29} Relying partially upon circuit court cases,\textsuperscript{30} and partially upon an opinion of the Virginia Attorney General,\textsuperscript{31} the court ruled that matters related to public assistance are exempted from VAPA by virtue of the subject exemption section.\textsuperscript{32} The subject matter exemption exempts from VAPA any agency decision that grants state or federal funds or property. While acknowledging that the Virginia Supreme Court might have adhered to the statutory interpretation advocated by the parties seeking public assistance,\textsuperscript{33} the Court of Appeals held that its best judgment was exercised by following the circuit court decisions.\textsuperscript{34}

\textsuperscript{25} White v. Madison County Dep't of Social Servs., Ch. No. 16-1710 (Madison County Cir. Ct. Aug. 17, 1982) (order canceling Medicaid benefits sustained upon demurrers of respondent).

\textsuperscript{26} See cases cited supra notes 22-25.

\textsuperscript{27} See supra note 20. Although all of these actions involve state or federal funds, the authors opine that these programs are specifically controlled by VA. CODE ANN. § 9-6.14:4.1(D)(3) (Repl. Vol. 1985) (formerly § 9-6.14:10(iii)), which "excludes" grants or denials of public assistance from VAPA article three (Case Decisions). This necessarily would include grants or denials of public assistance in the remainder of VAPA (including article four (Court Review)).

\textsuperscript{28} 733 F.2d 1075.

\textsuperscript{29} Id. at 1076-77. This article will not address the substantive merits of the challenges to the assessment procedures used, but rather will focus on the right to have the resulting denials of public assistance judicially reviewed.

\textsuperscript{30} Id. at 1082; see supra notes 22-25 and accompanying text.

\textsuperscript{31} Harris, 733 F.2d at 1082. There are three Virginia Attorney General Opinions on point. The first, 1977-78 Op. Va. Att'y Gen. 1-3 (1977), issued by former Attorney General Anthony F. Troy, favored an interpretation of VAPA which permitted judicial review of administrative agency hearings in public assistance cases. This position was reversed in two separate 1982 opinions by Attorney General Gerald Baliles. 1982-83 Op. Va. Att'y Gen. 11-12 (1982); 1982-83 Op. Va. Att'y Gen. 757-60 (1982). These opinions were issued by the Attorney General during the period between the district court's decision in \textit{Harris} and the case's appeal to the Court of Appeals for the Fourth Circuit. Interestingly, the Attorney General's office was representing the appellee in the pending appeal.

\textsuperscript{32} Id. at 1081-82. For content of VA. CODE ANN. § 9-6.14:20(ii) (Repl. Vol. 1978) see supra note 10 and accompanying text.

\textsuperscript{33} This statutory construction will be advanced in Part II, Section B of this article. See infra notes 44-70 and accompanying text. It should be noted that co-author Jill A. Hanken served as co-counsel for plaintiffs in \textit{Harris}.

\textsuperscript{34} Harris, 733 F.2d at 1082; see supra notes 22-25 and accompanying text.
The plaintiffs in *Harris* argued that if the general “grant-of-funds” exemption exempts grants of public assistance from VAPA articles two, three and four, then the specific exclusion of public assistance under article three serves no function. The court recognized that the plaintiff's argument was “plausible as a matter of statutory construction,” but the court nevertheless declined to accept it. Instead, the court stated that “[i]t seems most unlikely that the Legislature intended judicial review of denials of public assistance, and the only apparent way to avoid such review is to apply the grant-of-funds exemption as the circuit courts have done.” In reaching this conclusion, the Court of Appeals ignored established principles of statutory construction in favor of what it perceived to be legislative intent. The resultant denial of judicial review is inequitable and violative of the legislative purpose.

Where questions of state law have not been addressed by the state's highest court, federal courts necessarily must forecast what the state supreme court would hold if presented with the issue. While federal courts should give “proper regard” to decisions of state trial courts, federal courts are not obligated to follow those decisions. However, federal courts interpreting VAPA are required to use principles of statutory construction that the Virginia Supreme Court would use in construing VAPA.

In reaching its decision in *Harris*, the Court of Appeals chose to follow closely the pertinent decisions of Virginia's circuit courts. However, the court failed to adhere to principles of statutory con-

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35. *Harris*, 733 F.2d at 1082.
36. *Id.* (noting that no Virginia Supreme Court cases addressed the issue; further no Virginia circuit court cases followed the plaintiffs' construction).
37. *Id.*
38. For a more detailed analysis of the authors' opinion complete with factor analysis, see infra notes 120-21 and accompanying text.
39. *Wilson v. Ford Motor Co.*, 656 F.2d 960 (4th Cir. 1981) (citing Commissioner v. *Estate of Bosch*, 387 U.S. 456 (1976); McChung v. *Ford Motor Co.*, 492 F.2d 240 (4th Cir. 1973)). Under such circumstances, it also may be appropriate for the federal court to abstain from adjudicating the issue until the state supreme court has had an opportunity to do so. See C.A. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 52 (3d ed. 1976). A discussion of federal abstention doctrines is beyond the scope of this article.
42. *Harris*, 733 F.2d at 1082. For a discussion of these circuit court cases, see supra notes 22-25 and accompanying text.
struction. If the court had applied statutory construction principles followed by the Virginia Supreme Court, it would have concluded that VAPA does indeed provide for judicial review of agency hearings related to public assistance.\textsuperscript{43}

B. Proposed Interpretation

VAPA was adopted in 1975\textsuperscript{44} to replace the General Administrative Agencies Act (GAAA), which had governed administrative procedures in Virginia since 1952.\textsuperscript{45} GAAA specifically exempted "the receipt of public assistance" from all of its provisions.\textsuperscript{46} Under the express language of GAAA, agency decisions denying public assistance were not subject to judicial review.\textsuperscript{47}

However, when VAPA was adopted, the total public assistance exclusion was not retained.\textsuperscript{48} Instead, VAPA excluded denials of public assistance only from article three of the Act, which governed case decisions.\textsuperscript{49} Amendments adopted in 1985 recodified this section.\textsuperscript{50} Actions of the General Assembly must be deemed intentional, and provisions which are omitted in a revised act may not be revived by statutory construction.\textsuperscript{51} In revising the law, the

\begin{itemize}
\item \textsuperscript{43} See infra notes 55-70 and accompanying text. As previously stated, the majority in \textit{Harris} admitted that this argument "is plausible as a matter of statutory construction." \textit{Harris}, 733 F.2d at 1082.
\item \textsuperscript{44} 1975 Va. Acts 503.
\item \textsuperscript{47} Id.
\item \textsuperscript{49} \textit{Va. Code Ann.} § 9-6.14:10(iii) (Repl. Vol. 1978) provided that "[t]his article [article three (Case Decisions)] shall not apply to case decisions respecting . . . (iii) the grant or denial of public assistance."
\item \textsuperscript{50} This section is presently codified at \textit{Va. Code Ann.} § 9-6.14:4.1(D)(3) (Repl. Vol. 1985).
\item \textsuperscript{51} \textit{See} Godlewski v. Gray, 221 Va. 1092, 277 S.E.2d 213 (1981). The court stated:
\begin{quote}
We invoke the elementary rule of statutory construction that when, as here, a statute . . . is revised, or when, as here one act is framed from another, and portions of the former are omitted, the missing part will not be revived by statutory construction but will be considered as annulled and revoked. A contrary holding would have to be based on a presumption that the omission was inadvertent and \textit{would require us to impute to the legislature gross carelessness, or ignorance, an exercise in which we will not engage.}
\end{quote}
\textit{Id.} at 1096, 277 S.E.2d at 215-16 (emphasis added) (citing Combined Saw & Planner Co. v. Flournoy, 88 Va. 1029, 1034, 143 S.E. 976, 977 (1892) (quoting Ellis v. Paige, 18 Mass. (1 Pick.) 43, 45 (1823))).
\end{itemize}
General Assembly specifically and deliberately removed "public assistance" from the overall subject exemption section and instead excluded "public assistance" from the operation of article three only.

In *Harris*, the Fourth Circuit Court of Appeals interpreted VAPA as exempting grants or denials of public assistance from the entire VAPA by the subject exemption clause. This rendered the exemption in article three superfluous and without effect. This result is unsupportable under established rules of statutory construction.

Principles of statutory construction require that every word and clause of a statute be given effect where possible. In *VEPCO v. Board of County Supervisors*, the Virginia Supreme Court held that "[w]henever possible, . . . it is our duty to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal." The two sections interpreted by the court in *Harris*, sections 9-6.14:20(ii) and 9-6.14:10(iii), can be read together without conflict. To give both of the VAPA provisions effect, it is clear that the "exemption" in section 9-6.14:20(ii) and the "exclusion" in section 9-6.14:10(iii) must address two independent VAPA issues: grants of state or federal

54. If Va. Code Ann. § 9-6.14:20(ii) is interpreted as exempting "public assistance" cases from the totality of VAPA (including article three (Case Decisions)), then § 9-6.14:4.1(D)(3), which specifically excludes public assistance cases from article three provisions, is rendered absolutely meaningless. It is unlikely that the General Assembly would specifically remove "public assistance" cases from one article of VAPA when it was going to completely remove them from every article of the Act.
56. 226 Va. 866, 869, 284 S.E.2d 613, 615 (1981)).
57. *id.* at 388, 309 S.E.2d at 311. The court further stated that "a statute is not to be construed by singling out a particular phrase." *Id.* at 388, 309 S.E.2d at 311 (citing VEPCO v. Citizens for Safe Power, 222 Va. 866, 869, 284 S.E.2d 613, 615 (1981)).
funds and grants or denials of public assistance, respectively.61

Recent organizational and substantive alterations to VAPA support this interpretation.62 As of July 1, 1985, both exemptions and exclusions from VAPA were provided for in a single statute: section 9-6.14:4.1(B)(4) of the Virginia Code.63 This section continues to exempt grants of state or federal funds or property from the entire Act.64 Subsection D of this section provides that "[t]he following agency actions otherwise subject to [VAPA] are excluded from the operation of Article 3 [Case Decisions] . . . of [VAPA]: . . . [t]he grant or denial of public assistance."65 The addition of the explanatory phrase "agency actions otherwise subject to [VAPA]" expressly indicates that actions excluded from article three are otherwise subject to VAPA, including article four.66

This addendum removes any ambiguity that may have existed in


63. This consolidation should aid the court in interpreting the intent of the sections together.


65. Va. Code Ann. § 9-6.14:4.1(D) (Repl. Vol. 1985) (emphasis added). Other agency action precluded from the operation of VAPA article three includes: the award or denial of claims for workers' compensation; the award or denial of individual student loans by the Virginia Education Loan Authority; and the determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority. Va. Code Ann. § 9-6.14:4.1(D) (Repl. Vol. 1985). Agency decisions regarding awards or denials of workers' compensation and student loans certainly involve "grants of state or federal funds." Therefore, using the statutory construction employed in Harris, the above-mentioned actions would be exempt from all of VAPA. See Harris, 733 F.2d at 1075; see also supra notes 28-43 and accompanying text. It seems to run counter to common sense to believe that the General Assembly expressly excluded from article three several types of agency actions otherwise subject to VAPA, since within the same section the General Assembly already had exempted those agency actions from the entire VAPA. This statutory construction is not acceptable under present law. See infra notes 66-70 and accompanying text.

66. Compare Va. Code Ann. § 9-6.14:10 (Repl. Vol. 1978) (stating that "[t]his article shall not apply to case decisions respecting . . . (iii) the grant or denial of public assistance") with id. § 9-6.14:4.1(D) (Repl. Vol. 1985) (citation omitted) (stating that "[t]he following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 of this chapter: . . . [t]he grant or denial of public assistance").
the earlier statute, and must be deemed intentional. Reading section 9-6.14:4.1 as a whole, and giving the plain and ordinary meaning to its words where the words are unambiguous, it is clear that denials of public assistance are subject to judicial review under VAPA. Future litigation on this issue should be decided accordingly.

III. CONSTITUTIONAL AND PUBLIC POLICY RATIONALES IMPLORING JUDICIAL REVIEW

If the statutory interpretation advocated in Part II of this article is rejected by the courts, several constitutional and public policy rationales mandate that the Virginia General Assembly provide for judicial review of administrative agency decisions regarding public assistance. From a constitutional perspective, the present interpretation of Virginia law contradicts an implementing regulation of at least one federally funded public assistance program and violates, at a minimum, the spirit of the United States Supreme Court decisions addressing due process rights arising from public assistance programs. The present interpretation is inequitable because it fails to protect those members of our society who are most vulnerable to arbitrary or unlawful exertions of power.

A. Constitutional Concerns

Federal courts have invalidated state public assistance statutes when the statutes contradict federal requirements and thus violate

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67. See Godlewski, 221 Va. at 1096, 277 S.E.2d at 216; see also supra note 51.
69. See Board of County Supervisors, 226 Va. 382, 309 S.E.2d 308 (1983); see also supra notes 55-57 and accompanying text.
70. See Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944) (stating that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it regardless of what courts think of its wisdom or policy"); see also Perrin v. United States, 444 U.S. 37, 42 (1979); Ambrogi v. Koontz, 224 Va. 381, 297 S.E.2d 660 (1982).
71. See supra notes 44-70 and accompanying text.
72. For a discussion of the 1982 Food Stamp Act, see infra notes 76-77 and accompanying text.
73. See, e.g., Goldberg v. Kelly, 397 U.S. 254, 262 (1970) (holding that welfare benefits, as a matter of statutory entitlement for persons qualified to receive them, are not subject to termination without due process). For a more in-depth discussion of this proposition, see infra notes 85-97 and accompanying text.
74. This proposition is the predominant concern of the authors and serves as the motivating factor behind the drafting of this article.
the supremacy clause.\textsuperscript{75} A regulation governing the Food Stamp Program\textsuperscript{76} specifically addresses judicial review of agency decisions. Section 273.15(q)(3)(i) of the Code of Federal Regulations provides that “[a]fter a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision.”\textsuperscript{77} This regulation presupposes the existence of a right to judicial review.\textsuperscript{78} Accordingly, the present interpretation of VAPA precluding judicial review\textsuperscript{79} violates the federal regulations\textsuperscript{80} to the extent that agency hearings denying food stamp benefits are involved, and concomitantly violates the supremacy clause of the United States Constitution.\textsuperscript{81} At a minimum, Virginia should be compelled to adhere to this federal law and provide for judicial review of agency hearings denying food stamp benefits.

A second constitutional objection to the denial of judicial review is that such a denial violates due process of law. The fourteenth amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law.”\textsuperscript{82} Two questions must be answered to ascertain whether the denial of judicial review constitutes a due process violation. First, do the rights of individuals eligible for public assistance constitute “interests” which are protected by the fifth and fourteenth amendments?\textsuperscript{83} Second, do the procedures presently employed by Virginia satisfy due process requirements?\textsuperscript{84}

The answer to the first inquiry is yes. The “property” protected by the fourteenth amendment has never been interpreted as being

\textsuperscript{75} See, \textit{e.g.}, King v. Smith, 392 U.S. 309 (1968) (invalidating Alabama “substitute father” regulation under which mother who cohabitated lost AFDC benefits); J.A. v. Riti, 377 F. Supp. 1046 (D.N.J. 1974) (invalidating New Jersey statute which granted an administrative agency discretionary power to remove persons convicted of welfare fraud from AFDC programs, because a state cannot remove otherwise eligible individuals from federal relief programs); Lawson v. Brown, 349 F. Supp. 203 (W.D. Va. 1972) (invalidating a Virginia AFDC eligibility statute because it imposed higher requirements than the federal statute).


\textsuperscript{78} It should be noted that the regulation does not contain any language implying that the right of judicial review is contingent upon state law providing for such.

\textsuperscript{79} See supra notes 22-25, 28.


\textsuperscript{81} See supra note 73 (state violation of federal requirements violates supremacy clause).

\textsuperscript{82} U.S. Const. amend. XIV; see also U.S. Const. amend. IV.

\textsuperscript{83} For a discussion of this question, see \textit{infra} notes 85-108 and accompanying text.

\textsuperscript{84} For a discussion of this question, see \textit{infra} notes 116-40 and accompanying text.
restricted to rights of undisputed ownership.\textsuperscript{85} Instead, this protection extends to "any significant property interest,"\textsuperscript{86} including statutory entitlements.\textsuperscript{87} In \textit{Goldberg v. Kelly},\textsuperscript{88} the United States Supreme Court attached this "statutory entitlement" status to the continued receipt of welfare benefits by eligible persons.\textsuperscript{89}

\textit{Goldberg} involved a due process challenge to a New York statute which permitted federal aid to families with dependent children (AFDC) to be terminated without prior notice and hearing.\textsuperscript{90} The Court held that the state termination procedures were unconstitutional,\textsuperscript{91} and declared that public assistance benefits are important rights, not merely privileges.\textsuperscript{92} More importantly, the Court held that "[welfare] benefits are a matter of statutory entitlement for persons qualified to receive them,"\textsuperscript{93} and that procedural due process is therefore applicable to their termination.\textsuperscript{94}

\textsuperscript{87} \textit{Fuentes}, 407 U.S. at 86.
\textsuperscript{88} 397 U.S. 254 (1970).
\textsuperscript{89} \textit{Id.} at 262.
\textsuperscript{90} \textit{Id.} at 255-60. It should be noted that New York law did provide for judicial review of a hearing decision which did not restore the AFDC benefits. See N.Y. Civ. Prac. Law §§7801-7806 (McKinney 1963).
\textsuperscript{91} \textit{Goldberg}, 397 U.S. at 266-68 (holding that the existing posttermination "fair hearing" and informal pretermination review were insufficient).
\textsuperscript{92} \textit{Id.} at 262 (citing \textit{Shapiro v. Thompson}, 394 U.S. 618, 627 n.6 (1969)).
\textsuperscript{93} \textit{Goldberg}, 397 U.S. at 262. It is sometimes presumed that due process guarantees apply only when a property interest is "presently enjoyed." See J. BARRON & C. DIENES, supra note 2, at 380. However, the Court of Appeals for the Ninth Circuit found the expectation of benefits by an applicant to be a sufficient interest to deserve due process protection. See \textit{Griffith v. Detrick}, 603 F.2d 118 (9th Cir. 1979), \textit{cert. denied}, 445 U.S. 970 (1980). The court emphasized the mandatory language of the authorizing statute and the very limited discretion of agency officials in granting assistance due to the definite eligibility criteria established by the implementing regulations. \textit{Griffith}, 603 F.2d at 121-22. This decision suggests that enabling statutes and implementing regulations "may be so specific as to create an expectation that should be accompanied by . . . due process rights." J. BARRON & C. DIENES, supra note 2, at 380.

Virginia's enabling statutes for assistance programs and, more particularly, its implementing regulations, are extremely detailed and specific. They create a legitimate claim of entitlement and expectancy of benefits in persons claiming to meet the eligibility requirements. Arguably, the interest in such benefits is a property interest and may not be denied without due process. See, e.g., VA. CODE ANN. § 32.1-310 to -320 (Repl. Vol. 1985); id. § 63.1-105 to -106 (Repl. Vol. 1980); Virginia Department of Social Services Medicaid Manual (1975) (enabling statute and implementing regulations for Medicaid program); Virginia Department of Social Services, ADC Policy and Procedure Manual (1974) (enabling statute and implementing regulations for AFDC).
\textsuperscript{94} \textit{Goldberg}, 397 U.S. at 262-63.
If an individual has a protected statutory entitlement in the continued receipt of welfare benefits, then that individual has a "quasi-property" interest in the receipt of such benefits. The individual's interests in, and the government's functions pertaining to, the initial extension and continued receipt of welfare benefits are identical. Since the continued receipt of welfare benefits merits procedural due process protection, the initial extension of the same benefits merits the same procedural protections.

In addition to public policy rationales justifying identical treatment, several recent Supreme Court cases appear to require identical treatment. In Board of Regents v. Roth, the Supreme Court identified certain attributes of property interests, within the purview of due process protection, which have evolved from earlier Court decisions. For a property interest to arise from a claim to a benefit, the individual must have more than a unilateral expectation of receiving the benefit. He must have "a legitimate claim of entitlement to it." The Court in Roth stated that the entitle-
ment of the welfare recipients in Goldberg was “grounded in the statute defining eligibility thereby creating a property interest.” Although the claimants in Goldberg had not yet proven their statutory eligibility, they had a “right to a hearing at which they might attempt to do so.” By analogy, individuals satisfying statutory eligibility requirements for other forms of public assistance likewise have a legitimate claim of entitlement grounded in the statute defining eligibility, and therefore should have a right to a hearing to prove their legitimate claim.

The most recent United States Supreme Court case on point does not differentiate between property rights in the initial and continued receipt of public assistance. Atkins v. Parker involved notice requirements necessary to effectuate food stamp benefit reductions. The Court stated that, like welfare benefits, food stamp benefits are a matter of statutory entitlement for persons qualified to receive them. Atkins unconditionally held that these “entitlements are appropriately treated as a form of property protected by the Due Process Clause”; thus, the procedures used to determine continued eligibility must comply with the requirements of the United States Constitution. It is suggested here that, under Atkins, an eligible individual has an entitlement “property” interest in the initial receipt, as well as the continued receipt, of public assistance benefits.

The second question to answer is whether the procedures used in Virginia satisfy due process requirements. The United States

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102. Roth, 408 U.S. at 577. The same statutes define initial eligibility and continued eligibility. Id.
103. Id.; see also Singer v. Schweiker, 694 F.2d 616, 618 (9th Cir. 1982) (holding that the rejection of a second application for survival benefits under the Social Security Act without an opportunity to present its merits constituted a denial of due process).
105. Id. at 2529 (citing Goldberg, 397 U.S. at 262).
106. Atkins, 105 S. Ct. at 2529.
108. This article addresses judicial review of administrative agency decisions denying, modifying, granting, or terminating public assistance. See supra note 11. Virginia’s preclusion of judicial review encompasses all of these types of agency actions. Thus, even if Virginia rejects the interpretation of Atkins advocated herein, agency actions modifying or terminating benefits are absolutely entitled to due process protection under Goldberg. Therefore, at a minimum, some Virginia administrative agency actions not subject to judicial review involve “property” rights protected by the due process clause.
109. See supra note 84 and accompanying text. While the administrative hearing proce-
Supreme Court has articulated a balancing of interests test to ascertain the procedural protections applicable to a particular situation. In *Mathews v. Eldridge*, the Court emphasized three factors which should be considered in identifying the specific requirements of due process:

First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

An explanation of the present agency hearing procedures is merited before the *Mathews* test is analyzed. The State Board of Social Services (the “Board”) has authority to review any decision granting, denying, changing, or discontinuing public assistance upon appeal of the aggrieved applicant or recipient. The Board may delegate its review responsibilities to hearing officers who preside over administrative hearings and render subsequent decisions. Any party dissatisfied with a hearing officer's decision may request review by the Board. The Board’s decision is final, and not subject to further review or appeal, except on the Board's own motion.

However, administrative review of agency decisions concerning Medical Assistance (Medicaid) is handled independently by the Department of Medical Assistance Services. A team of hearing officers presides over the hearings, makes findings of fact, and recommends a decision to the Medical Assistance Program Appeals

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111. Id. at 335.
114. Id. Such review is conducted by a three member committee of the Board. Id.
Board (the "Appeals Board"). The Appeals Board has the options of accepting the recommendations of the hearing officer, reaching its own conclusions, or referring the matter back to the hearing officer for continuation of the hearing. Although the Appeals Board may reconsider its decision if new evidence becomes available, no other administrative reviews of Appeals Board decisions are allowed.

The *Mathews* analysis is comprised of three components. The first component, the private interest that will be affected, is clearly an important interest to both the individual and society. To the individual, public assistance represents minimal subsistence support for the essentials of life. To society, "welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity." The degree of procedural due process protection merited in a particular situation depends upon the extent to which an individual will be "condemned to suffer grievous loss." Therefore, from the perspective of the private interest affected, agency actions impacting on minimum subsistence support should be afforded a high degree of procedural protection, including judicial scrutiny.

The second component, the risk of error and the value of additional procedural safeguards, also merits judicial review. Risk of error is increased by the lack of total impartiality in the agency determination. This does not suggest any moral or ethical deficiency on the part of the hearing officials, but instead recognizes the fundamental differences between an agency hearing official and a judge. An agency official attempts to serve three roles: (1) impartial decisionmaker; (2) representative of the claimant; and (3) rep-

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118. *Id.* § 806.5.
119. *Id.*
120. *Mathews*, 424 U.S. at 335; see *supra* note 102 and accompanying text.
121. See *Goldberg*, 397 U.S. at 265. This assistance can provide the poor with the same opportunities that are available to others, allowing them to participate meaningfully in community life. *Id.*
122. *Id.* The *Goldberg* court also stated that "[p]ublic assistance . . . is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'" *Id.*
124. Dolzer, *supra* note 96, at 558-59. The function of judicial review is to ensure that the agency correctly applies the statutes in specific cases.
Because of these multiple roles, the agency official's perspective tends to be more society-oriented, whereas judges are more concerned with the rights of individuals. Since due process demands impartiality of those who function in judicial capacities, the potentially conflicting concerns of an agency hearing official encourage the implementation of judicial review procedures.

In this respect, Virginia's system of administrative review of agency actions is particularly inadequate. The final decisionmaker for the Department of Social Services is a board composed of nine political appointees. In Medicaid cases, a team of state employees and policy makers issue the only decision, without the benefit of observing witnesses or the hearing proceedings.

The final component to the Mathews test is the interest of the government, including the fiscal and administrative burdens of additional procedures. One governmental interest is to promote societal harmony by providing minimal subsistence support to individuals. In Goldberg, the Supreme Court addressed the fiscal and administrative concerns that relate to the administration of public assistance. The Court in Goldberg stated that "these governmental interests are not overriding in the welfare context." Moreover, judicial review would increase the burden on agencies and courts only slightly. In South Carolina, for example, where public assistance cases are subject to judicial review, only thirty-three client appeals were filed between 1982 and 1985.

127. See Dolzer, supra note 96, at 561. This article further suggests that the individual's interests are protected by an "enlightened" element on an administrative level, and by the impartiality of the judge on the judicial level. See id. at 543-59.
129. See supra notes 116-19 and accompanying text.
130. See supra notes 116-19 and accompanying text.
131. Mathews, 424 U.S. at 335; see supra note 111 and accompanying text.
132. See supra notes 121-22 and accompanying text.
133. See Goldberg, 397 U.S. 254 (specifically addressing those fiscal and administrative concerns relating to welfare benefits).
134. Id. at 266. The Court noted that the state could employ various techniques to minimize the increased cost, including prompt determinations and efficient use of personnel and facilities. Id.
Balancing the three components of the Mathews test—the vital individual interests at stake,\textsuperscript{136} the significant protection which judicial review would provide against the arbitrariness,\textsuperscript{137} and the nominal fiscal burdens which would ensue\textsuperscript{138}—makes it apparent that procedural due process requires Virginia to provide judicial review of administrative agency decisions affecting public assistance benefits.\textsuperscript{139} Although the procedures utilized by Virginia do provide some degree of due process protection,\textsuperscript{140} the decisions in Goldberg and Mathews indicate that more extensive protection is required. This additional protection is best provided by a system of judicial review.

B. Concerns of Fairness and Equity

In addition to the due process basis for requiring judicial review of administrative decisions regarding public assistance, several public policy considerations dictate the implementation of judicial review. The interests analyzed in the previous section\textsuperscript{141} are applicable to this proposition. However, the magnitude of the individual interests at stake, the absence of any judicial check on the potential for abuses of discretion, and traditional notions of fairness and equity require that judicial review be provided.

An examination of the procedures utilized in other states is instructive in ascertaining which procedures satisfy “traditional notions of fairness” and advance positive public objectives. Such an examination reveals that Virginia, Texas, and Ohio are the only states which do not provide for judicial review of administrative agency hearings in public assistance cases.\textsuperscript{142} Thirty-six states and

\textsuperscript{136} See supra notes 120-24 and accompanying text.
\textsuperscript{137} See supra notes 125-30 and accompanying text.
\textsuperscript{138} See supra notes 131-35 and accompanying text.
\textsuperscript{139} It has been suggested that the nature of the interests at stake render appellate review an ineffective check on abuses of power. See Marshaw, supra note 126, at 812-15 (suggesting that a management system is needed to assure adjudication safeguards).
\textsuperscript{140} See supra notes 112-19 and accompanying text.
\textsuperscript{141} See supra notes 75-140 and accompanying text.

In Ohio, the Court of Claims has no jurisdiction to review denials of public assistance benefits. See Bolin v. White, 51 Ohio App. 2d 92, __, 367 N.E.2d 63, 65 (1978). However, when money damages are incurred as a result of an agency's failure to meet its statutory obligations, a claim is permitted. See Morris v. Creasey, Law No. 79AP-410 (Ct. App., Franklin County, Va., February 14, 1980).
the District of Columbia provide for judicial review of public assistance cases through their state's administrative process acts.\textsuperscript{143} Six states utilize judicial review statutes outside of their administrative process acts.\textsuperscript{144} Two states provide for judicial review through court rules.\textsuperscript{145} Three states provide review through a certiorari procedure.\textsuperscript{146}

The fact that Virginia is one of only three states which does not provide for judicial review demonstrates that its position is out of synchronization with contemporary thought. Virginia's position in the extreme minority does not in and of itself mandate an alteration. However, Virginia's deviation from mainstream practice does indicate that Virginia's procedures do not meet traditional notions of fairness in the view of the overwhelming majority of states. Vir-


Virginia should provide for judicial review, not for the purpose of relinquishing its minority status, but rather to provide its indigents deserved additional protection.

Insulating administrative agency decisions from judicial review vests the agency with executive, legislative, and judicial functions, and thus violates the separation of powers doctrine. Without judicial review to help prevent arbitrary decisions and abuses of power, there are no systematic external procedures to check the agency's exercise of authority in specific cases. An individual faced with a denial of benefits based on misapplication of the law or a misunderstanding of the facts by the agency is without redress. Furthermore, one of the functions of the judiciary, enhancing conformity and predictability in the application of the law, is absent.

IV. Conclusion

The importance of the interests of individuals in need of, and eligible for, public assistance cannot be overemphasized. Unwarranted deprivation of public assistance benefits may deprive an eligible claimant of the means for survival. The potential for injustice is simply too significant to ignore or reject because of nominal fiscal burdens. If Virginia can justify providing judicial review for persons dissatisfied with agency decisions regarding automobile license plates and septic tank permits, it should provide the same for decisions affecting the lives of public assistance claimants.

Virginia must alter, either judicially or legislatively, its position of precluding judicial review of administrative agency decisions in public assistance cases. Such a change is necessary to conform Virginia's procedures with the policies of fairness, as evidenced by the overwhelming majority of sister states. Allowing judicial review of agency decisions affecting public assistance

147. See supra notes 112-19 and accompanying text.
148. See Dolzer, supra note 96, at 558-59.
149. Id. at 559.
151. See supra notes 13 & 15 and accompanying text.
152. Although it did not make any recommendations, the 1985 Regulatory Reform Advisory Board did encourage the Virginia General Assembly to consider this issue. See The Governor's Regulatory Reform Advisory Board Final Report 2 (1985). Such a bill was presented to the General Assembly in 1986, S.266, 1986 Sess., but the bill was dismissed in committee.
claimants will help guarantee the commonwealth’s indigents all the protections provided by state and federal law.