The Burger Court Opinion Writing Database

Boddie v. Connecticut

401 U.S. 371 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1970

Re: No. 265 - Boddie v. Connecticut

Dear John:

Please join me in the above.

Regards,

W. E. B.

Mr. Justice Harlan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

June 18, 1970

Dear John,

Re: No. 265- Boddie v. Conn.
No. 266- Sanks v. Georgia

I had hoped to get out a dissent in these two cases this week but find now that I cannot. I shall try to get both of them out by the middle of next week.

Sincerely,

H. L. B.

Mr. Justice Harlan

cc: Members of the Conference

SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al. | On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Black, dissenting.

This is a strange case and a strange holding. Absent some specific federal constitutional or statutory provision, marriage in this country is completely under state control, and so is divorce. When the first settlers arrived here the power to grant divorces in Great Britain was not vested in that country's courts but in its Parliaments. And as recently as 1888 this Court in *Maynard* v. *Hill*, 125 U. S. 190, upheld a divorce granted by the Legislature of the Territory of Oregon. Since that time the power of state legislatures to grant divorces or vest that power in their courts seems not to have been questioned. It is not by accident that marriage and divorce have always been considered to be under state control. The institution of marriage is of peculiar importance to the people of the States. It is within the States that they live and vote and rear their children under laws passed by their elected representatives. The States provide for the children of broken homes, for the good morals of all their citizens, and for the stability of their social order. The States, therefore, have particular interests in the kinds of laws regulating their citizens when they enter into, maintain, and dissolve marriages. The power of the States over marriage and divorce is complete except as limited by specific constitu-

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Douglas, concurring.

This Connecticut divorce case, like *Sanks* v. *Georgia* and *Simmons* v. *West Haven Housing Authority, ante,* at —, involving landlord-tenant problems, presents for me a classic Equal Protection question which I would resolve in favor of appellants for substantially the reasons stated in my separate opinion in *Sanks* and my dissenting opinion in *Simmons*.

SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Douglas, concurring.

While I join the opinion of the Court I add a word. This Connecticut divorce case also presents for me a classic Equal Protection question which I would resolve in favor of appellants for substantially the reasons stated in my dissenting opinion in *Simmons*.

deletion

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 265.—October Term, 1969

Circulated: JUN 1 1 1970

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Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

Dear John
I agree
WJW

[June —, 1970]

Mr. Justice Harlan delivered the opinion of the Court.

Appellants, welfare recipients residing in the State of Connecticut, brought this action in the Federal District Court for the District of Connecticut on behalf of themselves and others similarly situated, challenging, as applied, certain state procedures for the commencement of a litigation, including court fees and costs for service of process, that restrict their access to the courts in their effort to bring an action for divorce.

It appears from the briefs and oral argument that the average cost to a litigant for bringing an action in divorce is $60. Section 3 of Connecticut Public Act No. 628, 1967, provides: "There shall be paid to the clerks of the Supreme Court or the superior court, for entering each civil cause, forty-five dollars . . . ."[1] An additional $15

[1] Public Act 628 amends Conn. Gen. Stat. § 52-259, which provides:

"There shall be paid to the clerks of the supreme court or the superior court, for entering each civil case, twenty-two dollars . . . and, for recording each judgment the following amounts: . . . (4) divorce judgments, whether for the plaintiff or the defendant not including judgments annulling a marriage,

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Harlan, J.

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SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Harlan delivered the opinion of the Court.

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SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

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Mr. Justice Harlan delivered the opinion of the Court.

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p. 3,4,5

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

From: Harlan, J.

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SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Harlan delivered the opinion of the Court.

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(Fact)

365 Mue
354 Mue
49 Mue
86 Mue

MEMORANDUM TO THE CONFERENCE
FROM MR. JUSTICE HARLAN

Re: No. 266 - Sanks v. Georgia
No. 265 - Boddie v. Conn.

Attached for the consideration of the Conference are the following items:

1. A revision of footnotes 9 and 10 in my Sanks opinion which might make it possible for this case to come down on Monday. In that event the Boddie opinion would issue as it presently stands.

2. A revision of Boddie which, if Sanks is to go over until next Term, would make it possible to bring down Boddie on Monday.

J.M.H.

June 27, 1970

1st page of JMH Attachment 6/27/70

9/ The dissenting opinion is in error in suggesting that this case consists "of two separate appeals in two cases." The civil court consolidated the separate eviction proceedings brought against Mrs. Sanks and Mrs. Mamman because both raised the identical constitutional attacks against the bond requirement of the summary eviction statute. (Tr. 73.) By a single decision and order the Superior Court held that both Mrs. Sanks and Mrs. Mamman should be allowed to come forward with any defense they might have without first posting the bond. The State of Georgia, and the Housing Authority of Atlanta (Mrs. Mamman's landlord), both took an appeal to the Supreme Court of Georgia from this decision in what each termed "consolidated dispossessory proceedings," (tr. 11 - No. 24992; Tr. 8 - No. 24993). Mrs. Sanks and Mrs. Mamman were appellees in both appeals. The Georgia Supreme Court reversed in a single opinion that made no distinction between the eviction proceeding against Mrs. Mamman, and that against Mrs. Sanks.

In these circumstances, we reject as untenable the dissent's suggestion that there is a "jurisdictional defect" that forecloses the Court from treating Mrs. Mamman as a party here simply because the notice of appeal filed by the attorney who was at the time representing both Mrs. Sanks and Mrs. Mamman (Tr. 32 - No. 24993) omitted Mrs. Mamman's name as an appellant. Rule 10(4) explicitly provides that "[a]ll parties to the proceeding in the court from whose judgment the appeal is being taken shall be deemed parties in this court, unless the appellant shall notify the clerk of this

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Harlan, J.

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SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al. | On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Harlan delivered the opinion of the Court.

Appellants, welfare recipients residing in the State of Connecticut, brought this action in the Federal District Court for the District of Connecticut on behalf of themselves and others similarly situated, challenging, as applied, certain state procedures for the commencement of a litigation, including court fees and costs for service of process, that restrict their access to the courts in their effort to bring an action for divorce.

It appears from the briefs and oral argument that the average cost to a litigant for bringing an action in divorce is $60. Section 3 of Connecticut Public Act No. 628, 1967, provides: "There shall be paid to the clerks of the Supreme Court or the superior court, for entering each civil cause, forty-five dollars . . . ."[1] An additional $15

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Corrected
6-16-70

SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Brennan, concurring.

I agree that the Due Process Clause prohibits a State from denying an indigent access to its courts for the sole reason that he cannot pay a required fee. "[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Cafeteria & Restaurant Workers Union* v. *McElroy*, 367 U. S. 886, 895 (1961); *Goldberg* v. *Kelly*, 397 U. S. 254, 263 (1970). When the State's interest in imposing a fee requirement on an indigent is compared to the indigent's interest in being heard, it is clear, under *Sanks* v. *Georgia, ante*, that the latter is the weightier. It is an unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee, where the State has decided that its courts shall be open generally for the presentation of legal claims and defenses.

But I do not see why today's holding should be made to depend upon the factor that only the State can grant a divorce and that an indigent would be locked into a marriage if unable to pay the fees required to obtain a divorce. A State has an ultimate monopoly of all judi-

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6-18-70

SUPREME COURT OF THE UNITED STATES

No. 265.—October Term, 1969

Gladys Boddie et al., Appellants, *v.* State of Connecticut et al.	On Appeal From the United States District Court for the District of Connecticut.

[June —, 1970]

Mr. Justice Brennan, with whom Mr. Justice Marshall joins, concurring.

I agree that the Due Process Clause prohibits a State from denying an indigent access to its courts for the sole reason that he cannot pay a required fee. "[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Cafeteria & Restaurant Workers Union* v. *McElroy*, 367 U. S. 886, 895 (1961); *Goldberg* v. *Kelly*, 397 U. S. 254, 263 (1970). When a State's interest in imposing a fee requirement on an indigent is compared to the indigent's interest in being heard, it is clear, for the reasons stated in *Sanks* v. *Georgia, ante,* that the latter is the weightier. It is an unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee.

But I do not see why today's holding should be made to depend upon the factor that only the State can grant a divorce and that an indigent would be locked into a marriage if unable to pay the fees required to obtain a divorce. A State has an ultimate monopoly of all judicial process and attendant enforcement machinery. As a practical matter, if fee requirements close the courts

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1970

No. 265 - Boddie v. Connecticut

Dear John,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1970

Re: No. 265 - Boddie v. Connecticut

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference