The Burger Court Opinion Writing Database

Rosado v. Wyman

396 U.S. 1213 (1969)

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

March 31, 1970

Re: No. 540 - Rosado v. Wyman

Dear Hugo:

Please join me in your dissent.

W.E.B.

Mr. Justice Black

cc: The Conference

SUPREME COURT OF THE UNITED STATES

No. 540.—October Term, 1969

Julia Rosado et al., Petitioners, v. George K. Wyman, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1970]

Mr. Justice Black, dissenting.

Petitioners are New York welfare recipients who contend that recently enacted New York welfare legislation which reduces the welfare benefits to which they are entitled under the Aid to Families with Dependent Children (AFDC) program is inconsistent with the federal AFDC requirements found in § 402 (a)(23), of the Social Security Act, 42 U. S. C. § 602 (a)(23). The New York statute which petitioners are challenging, § 131–a of the New York Social Services Law, was enacted on March 31, 1969. Little more than a week later on April 9, petitioners filed their complaint challenging this statute. The Court today holds that "the District Court correctly exercised its discretion by proceeding to the merits" of petitioners' claim that the federal and state statutes are inconsistent. *Ante,* at 3. The Court reaches this conclusion despite the fact that the determination of whether a State is following the federal AFDC requirements is clearly vested in the first instance not in the federal courts but in the Department of Health, Education, and Welfare (HEW); despite the fact that at the very moment the District Court was deciding the merits of petitioners' claim HEW was performing its statutory duty of reviewing the New York statute to determine if it was at odds with § 402 [illegible] despite the fact that if HEW had been

1,6

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

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

Recirculated: APR 2 1970

No. 540.—October Term, 1969

Julia Rosado et al., Petitioners, v. George K. Wyman, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1970]

Mr. Justice Black, with whom The Chief Justice joins, dissenting.

Petitioners are New York welfare recipients who contend that recently enacted New York welfare legislation which reduces the welfare benefits to which they are entitled under the Aid to Families with Dependent Children (AFDC) program is inconsistent with the federal AFDC requirements found in § 402 (a)(23), of the Social Security Act, 42 U. S. C. § 602 (a)(23). The New York statute which petitioners are challenging, § 131–a of the New York Social Services Law, was enacted on March 31, 1969. Little more than a week later on April 9, petitioners filed their complaint challenging this statute. The Court today holds that "the District Court correctly exercised its discretion by proceeding to the merits" of petitioners' claim that the federal and state statutes are inconsistent. *Ante,* at 3. The Court reaches this conclusion despite the fact that the determination whether a State is following the federal AFDC requirements is clearly vested in the first instance not in the federal courts but in the Department of Health, Education, and Welfare (HEW); despite the fact that at the very moment the District Court was deciding the merits of petitioners' claim HEW was performing its statutory duty of reviewing the New York legislation to determine if it was at odds with § 402 (a)(23); and despite the fact that if HEW had been

SUPREME COURT OF THE UNITED STATES

No. 540.—October Term, 1969

Julia Rosado, et al., Petitioners, v. George K. Wyman, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1970]

Memorandum from Mr. Justice Douglas.

Petitioners, welfare recipients in New York City and Nassau County, brought this action for declaratory and injunctive relief against § 131–a of the New York Social Services Law. This new statutory provision, which was enacted March 30, 1969, provides a schedule of maximum monthly grants and allowances of public assistance. Petitioners attacked the statute on two grounds. First they claimed that § 131–a violated § 602 (a)(23) of the Social Security Act by reducing, contrary to the mandate of the federal law, the amount of AFDC benefits paid to them. Section 602 (a)(23) requires States to make cost-of-living adjustments in the amounts used to compute need for AFDC programs. The second claim, made by those appellees who are residents of Nassau County, was that § 131–a violated the Equal Protection Clause of the Fourteenth Amendment by providing for lower payments to AFDC recipients in Nassau County than to those in New York City, although the cost of living is substantially the same in both areas. A three-judge court was constituted to hear the case because of the constitutional claim for an injunction of the state statute.

While the action was pending before the three-judge court, § 131–a was amended to permit the New York Commissioner of Social Services to increase scheduled payments for areas outside New York City up to a maximum no higher than the levels for New York City,

Circuit Memo

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

SUPREME COURT OF THE UNITED STATES

No. 540.—October Term, 1969

From: Douglas, J.

Circulated: 3/13/70

Julia Rosado, et al., Petitioners,
v.
George K. Wyman, etc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1970]

Mr. Justice Douglas, dissenting in part.

I

On the matter of pendent jurisdiction I agree substantially with the Court.

The leading case on pendent jurisdiction is *United Mine Workers* v. *Gibbs,* 383 U. S. 715, 721–729. In line with *Gibbs,* the courts below distinguished between the power to exercise pendent jurisdiction and the discretionary use of that power. *Gibbs* abandoned the "single cause of action" test which had been the controlling standard under *Hurn* v. *Oursler,* 289 U. S. 283, and instead held that pendent jurisdiction exists when "the state and federal claims . . . derive from a common nucleus of operative fact" and "if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding." 383 U. S., at 725.

The claims presented in this case attacked the New York statute on two grounds. The constitutional ground attacked the differential in the level of welfare payments between New York City and all other social services districts in the State of New York. The statutory claim attacked the State's reduction in the level of all grants, on the ground that it violated 42 U. S. C. § 602 (a)(23) which requires States to make cost-of-

March 13, 1970

Dear John:

I hope and pray you may strike from No. 540 - Rosado v. Wyman, the proposal to make HEW a Master. Then I can happily join your opinion.

William O. Douglas

Mr. Justice Harlan

March 18, 1970

Dear John:

In No. 540 - Rosado v. Wyman, I am happy to join your opinion.

As I said over the phone last night, §604(a) which I have put in Footnote 2 of my concurring opinion in that case, spells out the procedure whereby federal funds are denied non-complying States. There is in my mind a nice question whether the federal court should ever short-circuit the precise procedure that Congress laid out.

Moreover, in this case there is no federal agency that is a party. Even assuming that we entered a mandate, it could not run against HEW because HEW is not here. And it would not be an appropriate mandate to direct to either a welfare recipient or to a state agency. That is the reason I thought you might want to delete or recast the sentence or two that deals with the mandate.

William O. Douglas

Mr. Justice Harlan

CC: Mr. Justice Brennan

- 1, 6

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

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 540.—October Term, 1969

Circulated: 3/18/70

Julia Rosado, et al., Petitioners, v. George K. Wyman, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Recirculated:

[March —, 1970]

Mr. Justice Douglas, concurring.

While I join this opinion of the Court, I add a few words.

I

Our leading case on pendent jurisdiction is *United Mine Workers* v. *Gibbs*, 383 U. S. 715, 721–729. In line with *Gibbs*, the courts below distinguished between the power to exercise pendent jurisdiction and the discretionary use of that power. *Gibbs* abandoned the "single cause of action" test which had been the controlling standard under *Hurn* v. *Oursler*, 289 U. S. 283, and instead held that pendent jurisdiction exists when "the state and federal claims . . . derive from a common nucleus of operative fact" and "if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding." 383 U. S., at 725.

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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.

MAR 12 1970

Circulated:

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 540.—October Term, 1969

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[March —, 1970]

Mr. Justice Harlan delivered the opinion of the Court.

The present controversy, which involves the compatibility of the New York Social Services Law (c. 184, L. 1969) with § 402 (a)(23), 42 U. S. C. § 602 (a)(23) (Supp. II, 1970), of the Federal Social Security Act of 1935, arises out of a pendent claim originally included in petitioner's complaint bringing a class action challenging § 131–a of the same New York statute as violative of equal protection by virtue of its provision for lesser payments to Aid For Dependent Children recipients in Nassau County than those allowed for New York City residents. Pursuant to the recommendation of Judge Weinstein, a three-judge court was convened on April 24, 1969, and a hearing was held. 304 F. Supp. 1350.

Before a decision was rendered New York State amended § 131–a to permit the State Commissioner of Social Service to make, in his discretion, grants to recipients in Nassau County equal to those provided for New York City residents. The three-judge panel in a memorandum opinion of May 12, 1969, concluded that the equal protection issue was "no longer justiciable" and that "the constitutional attack on the provision [§ 131–a] as originally adopted has been rendered moot and any attack on the newly adopted subdivision would not be

March 16, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 540 - Rosado v. Wyman

Dear Brethren:

Having considered the separate opinion of Brother Douglas and the return of Brother Marshall to my original circulation in this case, respecting the contemplated Special Master procedure, I am satisfied that their objections to this course are well taken. Accordingly, I am recirculating my opinion, eliminating that feature.

Sincerely,

T.M.

5,8,9,18,22-23

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

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From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 540.—October Term, 1969

Recirculated MAR 17 1970

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On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

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14, 15, 21-23

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

SUPREME COURT OF THE UNITED STATES

Harlan, J.

Circulated:

Recirculated: MAR 18 1970

No. 540.—October Term, 1969

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March 19, 1970

Re: No. 540 - Rosado v. Wyman

Dear Potter:

With reference to our phone conversation of last Monday, I have added to my opinion (p. 15) the words "may desire to maintain" in order to leave no doubt that Congress envisioned continued use of maximums in the discretion of the State. I do not consider this inconsistent with the view expressed by HEW in its amicus brief in Rosado, and adopted by the opinion, that, by imposing on only those States that fix "maximums" the requirement of an adjustment, Congress has apparently expressed a preference for ratable reductions.

I think this interpretation of § 402 both correct and proper to set forth in Rosado. By leaving open the question of whether the word "maximum" as used in § 402 may connote ceiling or upper limit of any sort, including ratable reductions, as opposed to "maximum" as a term of welfare art, we would come close to suggesting that Judge Weinstein's interpretation -- that § 402 places a floor under welfare payments -- may be correct. I do not think such a sweeping interpretation can be thought to emanate from this opaque and little-debated provision and I think it important, given the sensitivity of the problem, to squelch any uncertainty as to whether the Court might adopt such an interpretation.

I gather from my law clerk's report of a conversation with your clerk that you may have some difficulty with ascribing to Congress the intent to disapprove flat maximums. While the HEW regulation and implementing letter are less than clear on this point, their amicus brief leaves no doubt as to the Department's view. I think it sound. Congress, however haphazard it was in passing this statute, should be held to be cognizant of the special meaning of "maximums"

in the welfare field. If this is so, I would suppose the most reasonable explanation for it is the feeling, however slight, that maximums are less desirable than ratable reductions, although perfectly compatible with the federal program. What this means is that a State with maximums has to pay more after § 402 unless it shifts to a pure ratable reduction program.

A State surely may not superimpose a ratable reduction upon a maximum adjusted pursuant to § 402 in order to tread water. Thus, for example, where a maximum is $100 and the avowed standard $180 prior to the cost of living adjustment and the required increase $20, I would think that if the State wished to remain on the maximum system it must pay $120. If a State desired to limit its payments to $100 it could not accomplish this by paying 83% of $120 but would have to ratably reduce $200 by 50%. While this might appear to be only bookkeeping, it might be significant where the State pays family rather than individual maximums if ratable reductions require that each recipient receive the fixed proportion of the designated need. In any event, this formula, even if it amounts only to a different bookkeeping entry, is consistent with the overall approach we attribute to § 402 -- to require the States to take a realistic look at their public assistance programs and recognize how far short of actual need their efforts fall. This, incidentally, might be another reason for preferring the more forthright percent reduction system which makes immediately apparent the extent to which the assistance program falls short of the ideal.

I would accordingly resolve any tension between HEW's brief and its regulation and implementing letter in favor of the clearer statement in the brief which was certainly a fully thought-out statement of its position.

If you are still troubled by this matter, please let me have your further thoughts.

Sincerely,

JMH?

Mr. Justice Stewart

Stylistic changes p. 5, 6, 15-16, 19, 20, 11

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

7

From: Harlan, J.

Circulated:

Recirculated: MAR 31 1970

SUPREME COURT OF THE UNITED STATES

No. 540.—October Term, 1969

Julia Rosado et al., Petitioners,
v.
George K. Wyman, etc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1970]

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

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From: Harlan, J.

Circulated: _____

Recirculated: APR 1 '70

SUPREME COURT OF THE UNITED STATES

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[April —, 1970]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 19, 1970

RE: No. 540 - Rosado v. Wyman

Dear John:

I am very happy to join your opinion in the above as revised in your print 6.

Sincerely,

Bill

W.J.B. Jr.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 19, 1970

No. 540 - Rosado v. Wyman

Dear John,

I am glad to join the opinion you have written for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference

March 19, 1970

Re: No. 540 - Rosado v. Wyman

Dear John:

I join your opinion in this case as re-circulated on March 18. You did an excellent job.

Sincerely,

B.R.W.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 16, 1970

Re: No. 540 - Rosado v. Wyman

Dear John:

Though I had initially inclined toward the view of the merits taken by Judge Weinstein, you have convinced me, in Part II of your opinion, that his construction of §402(a)(23) probably can't be drawn from the legislative history. I agree with Part III of your opinion, and with substantially all of Part I. However I do have some reservations about your recommendation that HEW be assigned as a special master under Rule 53 where it has not otherwise expressed its views on the alleged non-compliance of a state plan with the federal statute.

I agree that the views of HEW should be solicited, but it seemsto me that the conventional amicus brief can do the trick. Rule 53 contemplates placing the master in a position to adjudicate (his findings of fact are to be accepted "unless clearly erroneous" in non-jury cases under 53(e)(2)), and in the absence of any Congressional intent, I would not want to put a political department of the government in such an adjudicative role. I gather that negotiations between the states and HEW on compliance matters are often delicate and rather political affairs, and a position in negotiations of this type might not be wholly consistent with the role of neutral arbiter. (By way of analogy, I am thinking of the alleged communication between the White House and the Secretary of HEW with respect to school desegregation compliance, brought out this weekend.)

The cases you cite as precedent involve reference of a matter to traditional independent administrative agencies, with established adversary procedures, and in any case do not seem to contemplate the Special Master device.

It may be that in some cases HEW will decline an invitation to file an amicus brief, and thus deprive the court of its expert views, but I suppose that it could, in the absence of Congressional direction to the contrary, equally decline to act as Special Master.

I very much liked the opinion in general and will no doubt join it even if I have to add a word in concurring.

Sincerely,

T.M.

Mr. Justice Harlan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 18, 1970

Re: No. 540 - Rosado v. Wyman

Dear John:

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Sincerely,

T.M.

Mr. Justice Harlan

cc: The Conference