The Burger Court Opinion Writing Database

Goldberg v. Kelly

397 U.S. 254 (1970)

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

Hugo Here are some thoughts while shaving on the NY + Calif "welfare" cases

URB

Tentative dissent in #62 and #14

Without having seen it!

Although I agree in large part with Mr. Justice Black I would dismiss the writ as prematurely granted and therefore improvidently. The procedures for review of administrative action in the "welfare" area are in a very early stage of development. It is not imperative that the circuits achieve instant uniformity or instant perfection and we are not compelled to exercise all our powers daily. The states and the federal agencies should be permitted to experiment rather than being forced into a mold which may or may not be suited either to expanding or contracting benefits. At least one generation of welfare recipients has grown up without the procedural safeguards now found to be imperative under the Constitution. The history of administrative law and its procedures over the past 30 years teaches very little which is relevant to administration of welfare where, ~~in my view~~ as I see it now, lawyers, records, verbatim transcripts and briefs and all the incidents of the adversary process have little or no place. To plunge into this solution before anyone really knows

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal From the United States District Court for the Southern District of New York.

[February —, 1970]

Mr. Justice Black, dissenting.

In the last half century the United States, along with many, perhaps most, other nations of the world, has moved far towards becoming a welfare state, that is, a nation that for one reason or another taxes its most affluent people to help support, feed, clothe and shelter its less fortunate citizens. The result is that today more than nine million men, women, and children in the United States receive some kind of state or federally financed public assistance in the form of allowances or gratuities, generally paid them periodically, usually by the week, month, or quarter.[1] Since these gratuities are paid on the basis of need, the list of recipients is not static, and some people go off the lists and others are added from time to time. These ever-changing lists put a constant administrative burden on the Government and it cer-

[1] This figure includes all recipients of Old-age Assistance, Aid to Families with Dependent Children, Aid to the Blind, Aid to the Permanently and Totally Disabled, and general assistance. In this case appellants are AFDC and general assistance recipients. In New York State alone there are 951,000 AFDC recipients and 108,000 on general assistance. In the Nation as a whole the comparable figures are 6,080,000 and 391,000. U. S. Bureau of the Census, Statistical Abstract of the United States: 1969 (90th ed.), Table 435, at 297.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 24, 1969

Dear Bill:

In No. 62 - Goldberg v. Kelly and No. 14 - Wheeler v. Montgomery, please count me in your opinions.

WOD

Mr. Justice Brennan

"Trial-type" hearing changed to "evidentiary" hearing throughout ▾ see Pages 4, 6, 12, 13 ▾ 16

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

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated:

Recirculated: 12-16.

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al. } On Appeal from the United States District Court for the Southern District of New York.

[November —, 1969]

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–609. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith*, 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson*, 394 U. S. 619 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y. Social Welfare Law §§ 157–166 (McKinney 1966). It assists any person unable to support himself or to secure support from other sources. *Id.*, § 158.

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

December 11, 1969

Re: No. 62 - Goldberg v. Kelly
No. 14 - Wheeler v. Montgomery

Dear Bill:

As I have already indicated to you in conversation, I am in basic agreement with your opinion in the Goldberg case. However, there are some things in your opinion which carry overtones to which I would not wish to subscribe, and in order to avoid any separate writing on my part (which I would much prefer not to have to do) I thought I would put such matters to you for consideration.

1. I would like to see footnote 7 deleted. It seems to me that there is little to be gained by raising the possibility of a substantive due process right to welfare only then to recognize, as you do, that the issue is not presented in this case. As to the remainder of the footnote, I feel that it really adds nothing to what is already stated in the text, which makes clear, I believe, that this case does not require a hearing with respect to initial applications for welfare.

2. I would like to see the last clause in the last sentence on page 16, including the citation to Wong Yang Sung, deleted, thus making the sentence end with the word "review." Wong Yang Sung was not a constitutional decision, but instead an interpretation of the requirements of the Administrative Procedure Act, which, of course, has no application here. The constitutional principle that "an impartial decision maker is essential" is one with which I entirely agree, but I would not be

willing to hold that the rule of Wong Yang Sung is required under due process standards.

3. Throughout the opinion, reference is made to the necessity of a "trial-type hearing." That term is not, of course, self-defining. While, except as noted, I agree with the procedural safeguards which you hold necessary in cases of this kind, the term "trial-type hearing" might connote something broader. For example, as an abstract proposition I would think that a "trial-type hearing" might be thought to require a transcript which, as your opinion indicates, due process does not require in cases like this. Rather than "trial-type hearing" would it not be better to employ a more neutral term such as "hearing," "adequate hearing," or "evidentiary hearing"?

4. I suggest that it would be well to add a footnote which would make explicit that which is already implicit in your opinion: "Due process does not, of course, require two hearings. If, for example, a State simply wished to continue benefits until after a 'fair hearing' there would be no need for a preliminary hearing." Such a footnote might be placed at the bottom of page 14.

5. I think it should be made clear that due process does not require an evidentiary hearing in a case where there are no factual issues in dispute or where the application of the rule of law is not intertwined with factual issues. In a case where a welfare recipient is simply attacking the validity of a statute or regulation on its face, due process, in my view, does not require an opportunity for cross-examination or an oral argument -- notice, an opportunity to present written submissions, and an impartial decision maker would be sufficient. See Denver Union Stockyard Co. v. Producers Livestock Marketing Assn., 356 U.S. 282, 287-288. I fear that the references on pages 13-14, which indicate that cross-examination and oral hearing are "particularly" important where factual issues (including credibility) are in dispute might be taken to imply that these procedural safeguards should also be required in other circumstances, such as those just indicated.

Forgive me for writing at such length. I have done so because of my feeling that as we embark upon this new consti-

tutional area we should take care to write as narrowly as possible. This, it seems to me, is especially important in light of what I anticipate the dissenters here may say. If you can see your way clear to meeting my suggestions, I am prepared to join your opinion, which I think is a very good one, subject to further suggestions, or possibly some separate writing, after the dissent makes its appearance.

As to the Wheeler case (No. 14), I am not entirely at rest as to its appropriate disposition. However, I will let you know if I have any suggestions.

Sincerely,

Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal from the United States District Court for the Southern District of New York.

[November —, 1969]

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for a trial-type hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under the State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–609. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith*, 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson*, 394 U. S. 619 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y. Social Welfare Law §§ 157–166 (McKinney 1966). It assists any person unable to support himself or to secure support from other sources. *Id.*, § 158.

11-28-69

See 10-11

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal from the United States District Court for the Southern District of New York.

[November —, 1969]

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for a trial-type hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–609. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith*, 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson*, 394 U. S. 619 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y. Social Welfare Law §§ 157–166 (McKinney 1966). It assists any person unable to support himself or to secure support from other sources. *Id.*, § 158.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 15, 1969

RE: No. 62 - Goldberg v. Kelly, et al.

Dear John:

As I told you this morning the enclosed circulation embodies virtually all the changes suggested in your letter of December 11.

(1) I've deleted all of footnote 7 except the first sentence.

(2) The last clause in the last sentence on page 16 makes the sentence end with the word "review" but I have added Wong Yang Sung as a "Cf" following Murchison just above. I thought it would not be improper to alert the Welfare Department to the problem raised by commingling of function, and, while neither case is directly in point, I thought their "Cf" citation might accomplish that purpose.

(3) I have changed "trial type hearing" to "evidentiary hearing" at the eleven places where "trial type hearing" appeared in my original circulation.

(4) I have added as footnote 14 the wording suggested in your (4).

(5) I've deleted the word "particularly" in line 8 from the top of page 13, but propose a compromise for your proposal (5) that we state that due process does not require an oral argument. This is prompted by what was said in FCC v. W.J.R., 337 U.S. 265, as

"[D]ue process of law has never been a term of fixed and invariable content. This is as true with reference to oral argument as with respect to other elements of procedural due process. For this Court has held in some situations that such argument is essential to a fair hearing, Londoner v. Denver, 210 U.S. 373, in others that argument submitted in writing is sufficient. Morgan v. United States, 298 U.S. 468, 481. See also Johnson & Wimsatt v. Hazen, 69 App. D.C. 151; Mitchell v. Reichelderfer, 61 App. DC 50. The decisions cited are sufficient to show that the broad generalization made by the Court of Appeals is not the law. [The Court of Appeals had held that the due process clause requires a hearing, except on interlocutory matters, on every issue in an administrative proceeding.] Rather it is in conflict with this Court's rulings, in effect, that the right of oral argument as a matter of procedural due process varies from case to case in accordance with differing circumstances, as do other procedural regulations." (276) "It follows also that we should not undertake in this case to generalize more broadly than the particular circumstances require upon when and under what circumstances procedural due process may require oral argument. That is not a matter, under our decisions, for broadside generalization and indiscriminate application. It is rather one for case-to-case determination, through which alone account may be taken of differences in the particular interests affected, circumstances involved, and procedures prescribed by Congress for dealing with them . . . . Any other approach would be, in these respects, highly abstract, indeed largely in a vacuum." (277) The Court went on to hold that in the particular circumstances of this FCC proceeding there was no constitutional right to oral argument.

Potter cited W.J.R. with apparent approval in Cafeteria Workers, 367 U.S. at 895. The test of W.J.R. cannot be made on the record in Goldberg. All these cases raise factual questions. Moreover, the petitioner's brief in Goldberg makes some substantial arguments for oral presentation by lawyers where only questions of law are mooted. The emphasis is that those conducting the hearings are not lawyers

and there is a risk that Welfare officials may tend to avoid oral hearings by characterizing the issues for decision as only matters of law. I may add that your point that we should proceed cautiously in this area would be better served, it seems to me, if we leave this question open until the issue is presented in concrete settings that none of the present cases provide. Footnote 15 embodies my suggested compromise.

I'd appreciate your reaction. I'll not circulate the enclosure to the conference until I've heard from you.

Sincerely,

Bill

Mr. Justice Harlan.

Circulated
12-16-69

SUPREME COURT OF THE UNITED STATES

No. 62.—OCTOBER TERM, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal from the United States District Court for the Southern District of New York.

[November —, 1969]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–609. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith,* 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson,* 394 U. S. 619 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y. Social Welfare Law §§ 157–166 (McKinney 1966). It assists any person unable to support himself or to secure support from other sources. *Id.,* § 158.

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal From the United States District Court for the Southern District of New York.

[February —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–610. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith*, 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y.

Changes to be made

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1969

Jack R. Goldberg, Commissioner of Social Services of the City of New York, Appellant, *v.* John Kelly et al.	On Appeal From the United States District Court for the Southern District of New York.

[~~February~~ March 23, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

The question for decision is whether a State which terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.[1] Their complaint alleged that the

[1] AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U. S. C. §§ 601–610. It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education and Welfare. See N. Y. Social Welfare Law §§ 343–362 (McKinney 1966). We considered other aspects of AFDC in *King* v. *Smith*, 392 U. S. 309 (1968), and in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 2, 1969

Re: No. 62 - Goldberg v. Kelly

Dear Bill:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: The Conference