

The Burger Court Opinion Writing Database

Wyman v. Rothstein

398 U.S. 275 (1970)

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

May 16, 1970

No. 896 - Wyman v. Rothstein

Dear Hugo:

Join me in your dissent.

Regards,

W.E.B.
W. E. B.

Mr. Justice Black

cc: The Conference

To: The Chief
 Mr. Justice Dou
 Mr. Justice Harl
 Mr. Justice Bren
 Mr. Justice Stew
 Mr. Justice White
 Mr. Justice Forta
 Mr. Justice Marsh

1

SUPREME COURT OF THE UNITED STATES

No. 896.—OCTOBER TERM, 1969

From: Black, J.

Circulated: MAY 1

Recirculated:

George K. Wyman, etc., et al.,) On Appeal From the
 Appellants, } United States District
 v. } Court for the Southern
 Edna Rothstein et al. } District of New York.

[May —, 1970]

MR. JUSTICE BLACK, dissenting.

When this action was commenced by appellees, the Secretary of Health, Education, and Welfare was in the process of determining if the New York welfare provisions under attack in this case are consistent with the federal standard requiring uniform statewide application of state welfare plans. See Social Security Act § 402, 42 U. S. C. § 602; 45 CFR § 233.20. Although the federal agency has not yet made a final decision, it appears from the Brief submitted by the United States as *amicus curiae* that HEW had made a preliminary determination that the New York provisions do not conform to the Social Security Act's requirements. Accordingly, the statutory claim which this Court today remands to the District Court for its consideration involves a live controversy between New York and the Federal Government, and, as I said in my dissenting opinion in *Rosado v. Wyman*, — U. S. —, — (1970), it is my belief that such controversies should be resolved in proceedings between the two governments involved, as provided in the Social Security Act. See, e. g., 42 U. S. C. §§ 602, 1316. For this reason, I would vacate the judgment of the District Court and remand with directions that the complaint be dismissed.

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

2

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 896.—OCTOBER TERM, 1969

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[May —, 1970]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE joins, dissenting.

When this action was commenced by appellees, the Secretary of Health, Education, and Welfare was in the process of determining if the New York welfare provisions under attack in this case are consistent with the federal standard requiring uniform statewide application of state welfare plans. See Social Security Act § 402, 42 U. S. C. § 602; 45 CFR § 233.20. Although the federal agency has not yet made a final decision, it appears from the Brief submitted by the United States as *amicus curiae* that HEW has made a preliminary determination that the New York provisions do not conform to the Social Security Act's requirements. Accordingly, the statutory claim which this Court today remands to the District Court for its consideration involves a live controversy between New York and the Federal Government, and, as I said in my dissenting opinion in *Rosado v. Wyman*, — U. S. —, — (1970), it is my belief that such controversies should be resolved in proceedings between the two governments involved, as provided in the Social Security Act. See, e. g., 42 U. S. C. §§ 602, 1316. For this reason, I would vacate the judgment of the District Court and remand with directions that the complaint be dismissed.

WB

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

2

From: Harlan, J.

circulated: MAY 11 1970

SUPREME COURT OF THE UNITED STATES

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George K. Wyman, etc., et al., On Appeal From the
Appellants, United States District
v. Court for the Southern
Edna Rothstein et al. District of New York.

[May —, 1970]

PER CURIAM.

Appellees commenced this action in the federal District Court for the Southern District of New York challenging on equal protection and statutory grounds § 131-a of the New York Welfare Law which provides for payments to welfare recipients in Nassau, Suffolk, and other New York State counties in lesser amounts than provided for residents of New York City should the Welfare Administrator determine that adequate cause exists for the differential. A three-judge court was convened and it found that appellees' likelihood of success on their constitutional claim warranted the issuance of a preliminary injunction against what it found to be the payment of welfare in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court found it unnecessary to consider appellees' statutory claims. We noted probable jurisdiction. — U. S. — (1970).

Subsequent to the decision of the District Court this Court rendered its decision in *Rosado v. Wyman*, — U. S. — (1970), wherein we held that a federal court called upon to pass upon the constitutional validity of a State's welfare program should, before reaching the constitutional issues, consider first any pendent statutory claims that are presented, notwithstanding the pendency

Approved
and
initials

J. W.

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

2

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 Mr. Justice Marshall

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From: Harlan, J.

Circulated:

MAY 15 1970

SUPREME COURT OF THE UNITED STATES

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1 P.2
Mr. Justice Black
Mr. Justice Douglas
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

4

From: Harlan, J.

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No. 896.—OCTOBER TERM, 1969

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On Appeal From the
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[May —, 1970]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 12, 1970

RE: No. 896 - Wyman v. Rothstein, et al.

Dear John:

I agree with your Per Curiam in the
above case.

Sincerely,



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

May 12, 1970

No. 896 - Wyman v. Rothstein

Dear John,

I am glad to join your per curiam opinion, with one suggestion: that the phrase "if necessary" in the 3rd line from the bottom on page 2 be changed to "if the question is reached."

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference

May 12, 1970

Re: No. 886 - By the X. Division

Dear John:

Please join us.

Sincerely,

S.R.V.

Mr. Justice Harlan

cc: The Conference