The Burger Court Opinion Writing Database

Boddie v. Connecticut

401 U.S. 371 (March 2, 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

March 1, 1971

Re: No. 27--Boddie v. Connecticut

Dear John:

Please join me.

Regards,

WEB

Mr. Justice Harlan

cc: The Conference

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

1st DRAFT

From: Black, J.

Circulated: FEB 10 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

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

[February —, 1971]

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 stability of their social order, for the good morals of all their citizens, and for the needs of children from broken homes. 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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

From: Douglas, J.

2/3/71

Circulated:

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

[February —, 1971]

Mr. Justice Douglas, concurring .

I believe this case should be decided upon the principles developed in the line of cases marked by *Griffin* v. *Illinois*, 351 U. S. 12. There we considered a state law which denied persons convicted of a crime a transcript for purposes of appeal if they could not pay for it. The plurality opinion stated:

> "Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law. There can be no equal justice where the kind of a trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." *Id.*, at 19.

Griffin has had a sturdy growth. "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." *Roberts* v. *LaVallee*, 389 U. S. 40, 42. See also *Williams* v. *Oklahoma City*, 395 U. S. 458; *Long* v. *District Court of Iowa*, 385 U. S. 192; *Draper* v. *Washington*, 372 U. S. 487. But *Griffin* has not been limited to securing a record for indi-

3,4

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

Circ: Douglas, J.

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

2/11/71

[February —, 1971]

Mr. Justice Douglas, concurring.

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March first
1971

Dear John:

When you announce No. 27 -- Boddie v. Connecticut, tomorrow, would you kindly say I have filed a concurring opinion?

William O. Douglas

Mr. Justice Harlan

WOD
adm.

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

3rd DRAFT

From: Harlan, J.

Circulated: FEB 1 1971

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 27. October Term, 1970

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

[February —, 1971]

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 to them, certain state procedures for the commencement of a litigation, including requirements for payment of 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 for divorce is $60. Section 52–259 of the Connecticut General Statutes provides: "There shall be paid to the clerks of the Supreme Court or the superior court, for entering each civil cause, forty-five dollars . . . ." An additional $15 is usually required for the service of process by the sheriff, although as much as $40 or $50 may be necessary where notice must be accomplished by publication.[1]

[1] App., at 9. The dollar figures are averages taken from the undisputed allegations of the complaint. The particular fee the sheriff receives from the plaintiff for service of process in any one case depends on the distance he must travel to effectuate service of process. Conn. Gen. Stats. § 52–261.

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.

4th DRAFT

Circulated: _____

Recirculated: MAR 1 1971

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

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

[March —, 1971]

Mr. Justice Harlan delivered the opinion of the Court.

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March 1, 1971

Re: No. 27 - Boddie v. Connecticut

Dear Chief:

I thought that I should let you know that this case will be ready to come down tomorrow.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

Circulated
2-3-71

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

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

[February —, 1971]

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 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 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 disputes cannot be successfully settled between the parties, the court system is usually

WB

February 11, 1971

RE: No. 27 - Boddie v. Connecticut

Dear John:

The best I can suggest is the following:

(a) That I substitute for the first sentence of my opinion the following:

> I join the Court's opinion to the extent of its holding that Connecticut denies procedural due process in denying the indigent appellants access to its courts for the sole reason that they cannot pay a required fee.

(b) That I revise the first sentence of the second paragraph to introduce it as follows:

> But I cannot join the Court's opinion insofar as today's holding is made, etc.

Will these be any help?

Sincerely,

Mr. Justice Harlan

Circulated 2-16-71

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

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

[February —, 1971]

Mr. Justice Brennan, concurring.

I join the Court's opinion to the extent that it holds that Connecticut denies procedural due process in denying the indigent appellants access to its courts for the sole reason that they 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 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 cannot join the Court's opinion insofar as today's holding is 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 disputes cannot be success-

SUPREME COURT OF THE UNITED STATES

No. 27.—October Term, 1970

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

[March 2, 1971]

Mr. Justice Brennan, concurring.

I join the Court's opinion to the extent that it holds that Connecticut denies procedural due process in denying the indigent appellants access to its courts for the sole reason that they 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 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 cannot join the Court's opinion insofar as today's holding is 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 disputes cannot be success-

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 2, 1971

Re: No. 27, Boddie v. Connecticut

Dear John:

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

Sincerely yours,

P. S.

P. S.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 20, 1971

Re: Boddie Holds 27

Dear Harry,

My Conference notes coincide with your memorandum of April 19, with the exception of No. 5050, Frederick v. Schwartz. In that case my notes indicate that in our final provisional vote a majority voted to vacate and remand for reconsideration in the light of Boddie.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 10, 1971

Re: No. 27 - Boddie v. Connecticut

Dear John:

Please join me.

Sincerely,

Mr. Justice Harlan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 3, 1971

Re: No. 27 - Boddie v. Connecticut

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Harlan

cc: The Conference

February 12, 1971

Re: No. 27 - Boddie v. Connecticut

Dear John:

I shall be pleased to have you join me in your opinion.

Sincerely,

H.A.B.

Mr. Justice Harlan

cc: The Conference

April 19, 1971

MEMORANDUM TO THE CONFERENCE

Re: Boddie Holds 27

I have endeavored to decipher my notes as to the tentative conclusions reached by the Conference in the eight cases that have heretofore been held for No. 27 - Boddie v. Connecticut. There were divided votes in most, but not all, of these. I do not describe these divisions for I have assumed that they will be reflected in any writing which is forthcoming.

A summary is attached. It is to be observed that as of the moment my notes indicate that two will be taken, namely, No. 5050 and No. 6158.

H. A. B.

April 21, 1971

MEMORANDUM TO THE CONFERENCE

Re: Boddie Holds 27

In response to Potter's note, I shall change my listing for No. 5050 - Frederick v. Schwartz to a grant, vacate and remand for reconsideration in the light of Boddie.

H.A.B.