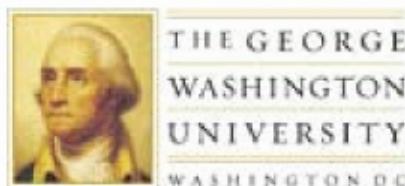


The Burger Court Opinion Writing Database

Wyman v. James

400 U.S. 309 (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

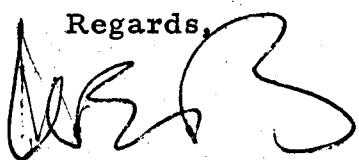
January 7, 1971

Re: No. 69 - Wyman v. James

Dear Harry:

Please join me in your opinion in the above.

Regards,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

#69

12-7-70

CHAMBERS OF
THE CHIEF JUSTICE

Harry
This is a solid and
workmanlike job and an
excellent "opener" for your
long season here. More
power to the Frankfurt School!
Warren

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 15, 1970

Dear Harry:

Re: No. 69 - Wyman v. James, Etc.

I like your first Supreme Court opinion. There are several word changes, however, that I would like to suggest:

- (1) On page 7, strike the word "privacy" in line 7 of Part I and substitute the words, "security in the home". ✓
- (2) On page 9 substitute the words, "Mrs. James is not unreasonable" on lines 8 and 9. ✓
- (3) Substitute for lines 1 and 2 on page 12 these words: "All this minimizes any 'burden' upon the homeowner's right against unreasonable intrusion." ✓
- (4) Substitute for the words "invasion of her privacy" on page 12 the words "unreasonable intrusion of her home" line 4

With the above changes I shall be very happy to agree.

Sincerely,



Hugo

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 4, 1971

Dear Harry,

Re: No. 69 - Wyman v. James.

Changes o. k. in your circu-
lation of 12/22/70 (print 3).

Sincerely,
H. L. B.
H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

George K. Wyman, Individually
 and as Commissioner of the
 State of New York, Depart-
 ment of Social Services, et al.,
 Appellant,
 v.
 Barbara James, Etc.

On Appeal From the
 United States Dis-
 trict Court for the
 Southern District of
 New York.

[December —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

We are living in a society where one of the most important forms of property is government largesse which some call the "new property."¹ The payrolls of government are but one aspect of that "new property." Defense contracts, highway contracts, and the other multifarious forms of contracts are another part. So are subsidies to air, rail, and other carriers. So are disbursements by government for scientific research.² So are TV and radio licenses to use the air space which of course is part of the public domain. Our concern here is not with those subsidies but with grants that directly or indirectly implicate the *home life* of the recipients.

In 1969 roughly 126 billion dollars were spent by the federal, state, and local governments on "social welfare."³ To farmers alone, whose numbers totalled 128,987, nearly four billion was paid, in part for not growing certain crops.⁴ Those payments were in some instances very

¹ See Reich, The New Property, 73 Yale L. J. 733, 737-739.

² See Ginzberg, What Science Policy? Columbia Forum, Fall 1970, p. 12.

³ See Appendix I to this opinion.

⁴ See Appendix II to this opinion.

1216
/ 21

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

5

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 69.—OCTOBER TERM, 1970 Circulated:

George K. Wyman, Individually
and as Commissioner of the
State of New York, Depart-
ment of Social Services, et al.,
Appellant,
v.
Barbara James, Etc.

Recirculated: 116/71
On Appeal From the
United States Dis-
trict Court for the
Southern District of
New York.

[January —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

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portant forms of property is government largesse which
some call the "new property."¹ The payrolls of gov-
ernment are but one aspect of that "new property."
Defense contracts, highway contracts, and the other
multifarious forms of contracts are another part. So
are subsidies to air, rail, and other carriers. So are
disbursements by government for scientific research.² So
are TV and radio licenses to use the air space which of
course is part of the public domain. Our concern here
is not with those subsidies but with grants that directly
or indirectly implicate the *home life* of the recipients.

In 1969 roughly 126 billion dollars were spent by the
federal, state, and local governments on "social welfare."³
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crops.⁴ Those payments were in some instances very

¹ See Reich, The New Property, 73 Yale L. J. 733, 737-739.

² See Ginzberg, What Science Policy? Columbia Forum, Fall
1970, p. 12.

³ See Appendix I to this opinion.

⁴ See Appendix II to this opinion.

December 7, 1970

Re: No. 69 - Wyman v. James

Dear Harry:

It gives me great pleasure to join your first opinion for the Court, which, if you will allow me to say so, I think is an excellent one.

Sincerely,

J. M. H.

Mr. Justice Blackmun

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

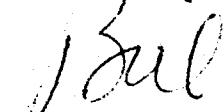
December 22, 1970

RE: No. 69 - Wyman v. James

Dear Thurgood:

Please join me in your dissent in the
above case.

Sincerely,


W. J. B. Jr.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1971

Re: No. 69 - Wyman v. James

Dear Harry:

Please note at the foot of your opinion in this case that Mr. Justice White concurs in the judgment and joins the opinion of the Court with the exception of Part IV thereof.


B.R.W.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1971

Re: No. 69 - Wyman v. James

Dear Harry:

Please note at the foot of your opinion in this case that [Mr. Justice White concurs in the judgment and joins the opinion of the Court with the exception of Part IV thereof.]

*Byron
B.R.W.*

Mr. Justice Blackmun

Copies to the Conference

*Harry: Sorry to be so long. After reading TH's
dissent I tried a concurrence with him but
found it unsatisfactory and will not file it.
Byrd.*

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

SUPREME COURT OF THE UNITED STATES

By: Marshall, J.

No. 69.—OCTOBER TERM, 1970

Circulated: DEC 18 1970

Recirculated: _____

George K. Wyman, Individually
and as Commissioner of the
State of New York, Depart-
ment of Social Services, et al.,
Appellant,
v.
Barbara James, Etc.

On Appeal From the
United States Dis-
trict Court for the
Southern District of
New York.

[January —, 1971]

MR. JUSTICE MARSHALL, dissenting.

Although I substantially agree with its initial statement of the issue in this case, the majority opinion goes on to imply that the appellee has refused to provide information germane to a determination of her eligibility for AFDC benefits. The record plainly shows, however, that Mrs. James offered to furnish any information that the appellants desired and to be interviewed at any place other than her home. Appellants rejected her offers and terminated her benefits solely on the ground that she refused to permit a home visit. In addition appellants make no contention that any sort of probable cause exists to suspect appellee of welfare fraud or child abuse.

Simply stated, the issue in this case is whether a state welfare agency can require all recipients of AFDC benefits to submit to warrantless "visitations" of their homes. In answering that question, the majority dodges between constitutional issues to reach a result clearly inconsistent with the decisions of this Court. The majority tells us that there is no search involved in this case; that even if there were a search, it would not be unreasonable; and that even if this were an unreasonable search, a welfare

SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

George K. Wyman, Individually
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ment of Social Services, et al.,
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v.
Barbara James, Etc.

On Appeal From the
United States Dis-
trict Court for the
Southern District of
New York.

[January —, 1971]

MR. JUSTICE MARSHALL, dissenting.

Although I substantially agree with its initial statement of the issue in this case, the majority opinion goes on to imply that the appellee has refused to provide information germane to a determination of her eligibility for AFDC benefits. The record plainly shows, however, that Mrs. James offered to furnish any information that the appellants desired and to be interviewed at any place other than her home. Appellants rejected her offers and terminated her benefits solely on the ground that she refused to permit a home visit. In addition appellants make no contention that any sort of probable cause exists to suspect appellee of welfare fraud or child abuse.

Simply stated, the issue in this case is whether a state welfare agency can require all recipients of AFDC benefits to submit to warrantless "visitations" of their homes. In answering that question, the majority dodges between constitutional issues to reach a result clearly inconsistent with the decisions of this Court. The majority tells us that there is no search involved in this case; that even if there were a search, it would not be unreasonable; and that even if this were an unreasonable search, a welfare

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 69.—OCTOBER TERM, 1970 Recirculated: 1-11-71

George K. Wyman, Individually
and as Commissioner of the
State of New York, Depart-
ment of Social Services, et al., Appellant,
v.
Barbara James, Etc.

On Appeal From the
United States Dis-
trict Court for the
Southern District of
New York.

[January 12, 1971]

MR. JUSTICE MARSHALL, whom MR. JUSTICE BRENNAN joins, dissenting.

Although I substantially agree with its initial statement of the issue in this case, the Court's opinion goes on to imply that the appellee has refused to provide information germane to a determination of her eligibility for AFDC benefits. The record plainly shows, however, that Mrs. James offered to furnish any information that the appellants desired and to be interviewed at any place other than her home. Appellants rejected her offers and terminated her benefits solely on the ground that she refused to permit a home visit. In addition, appellants make no contention that any sort of probable cause exists to suspect appellee of welfare fraud or child abuse.

Simply stated, the issue in this case is whether a state welfare agency can require all recipients of AFDC benefits to submit to warrantless "visitations" of their homes. In answering that question, the majority dodges between constitutional issues to reach a result clearly inconsistent with the decisions of this Court. We are told that there is no search involved in this case; that even if there were a search, it would not be unreasonable; and

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

From: Blackmun, J.

Circulated: 12/4/70

1

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

George K. Wyman, Individually
 and as Commissioner of the
 State of New York, Depart-
 ment of Social Services, et al.,
 Appellant,

v.

Barbara James, Etc.

On Appeal From the
 United States Dis-
 trict Court for the
 Southern District of
 New York.

[December —, 1970]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This appeal presents the issue whether a beneficiary of the program for Aid to Families with Dependent Children (AFDC)¹ may refuse a home visit by the caseworker without risking the termination of benefits.

The New York State and City social services commissioners appeal from a judgment and decree of a divided three-judge District Court holding invalid and unconstitutional in application § 134 of the New York Social Welfare Law,² § 175 of the New York Policies Governing

¹ In *Goldberg v. Kelly*, 397 U. S. 254, 256 n. 1 (1970), the Court observed that AFDC 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 New York Social Welfare Law §§ 343–362. Aspects of AFDC have been considered in *King v. Smith*, 392 U. S. 309 (1968); *Shapiro v. Thompson*, 394 U. S. 618 (1969); *Goldberg v. Kelly*, *supra*; *Rosado v. Wyman*, 397 U. S. 397 (1970); and *Dandridge v. Williams*, 397 U. S. 471 (1970).

² “§ 134. Supervision

“The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons

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

pp. 4, 9, 11

2

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

Recirculated: 12/10/70

George K. Wyman, Individually
 and as Commissioner of the
 State of New York, Depart-
 ment of Social Services, et al.,
 Appellant,

v.

Barbara James, Etc.

On Appeal From the
 United States Dis-
 trict Court for the
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 New York.

[December —, 1970]

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² “§ 134. Supervision

“The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons

December 21, 1970

Re: No. 69 - Wyman v. James

Dear Hugo:

The suggestions you propose in your note of December 15 are good ones and, of course, I am pleased to make the changes in the opinion. A new draft is being run and will be circulated today or tomorrow.

Sincerely,

HAB

Mr. Justice Black

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

From: Blackmun, J.

Circulated: _____

Recirculated: 12/22/70

pp. 7, 8, 9, 12.17
 SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

George K. Wyman, Individually
 and as Commissioner of the
 State of New York, Depart-
 ment of Social Services, et al.,
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 v.

Barbara James, Etc.

On Appeal From the
 United States Dis-
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[January —, 1971]

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"The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

From: Blackmun, J.

4

Circulated:

Recirculated: 1/5/71

SUPREME COURT OF THE UNITED STATES

No. 69.—OCTOBER TERM, 1970

George K. Wyman, Individually
and as Commissioner of the
State of New York, Depart-
ment of Social Services, et al.,
Appellant,
v.

On Appeal From the
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trict Court for the
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Barbara James, Etc.

[January —, 1971]

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“The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons