

The Burger Court Opinion Writing Database

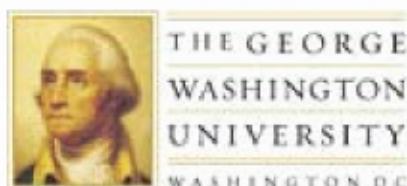
Richardson v. Wright

405 U.S. 208 (1972)

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 21, 1972

Re: No. 70-161 - Richardson v. Wright
No. 70-5211 - Wright v. Richardson

Dear Bill:

I join in your proposed per curiam.

Regards,

WEB

Mr. Justice Brennan

cc: The Conference

Mr. Justice Douglass
Mr. Justice Brewster
Mr. Justice Miller
Mr. Justice Harlan
Mr. Justice Swayne
Mr. Justice Peckham
Mr. Justice Shiras
Mr. Justice Peckham
Mr. Justice Harlan
Mr. Justice Shiras

1st DRAFT

SUPREME COURT OF THE UNITED STATES.

Nos. 70-161 & 70-5211

JAN 20

Castrola 1997

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant.

Rodriguez et al.

70-161 v.
Radie Wright et al.
Radie Wright et al.,
Appellants.

On Appeals from the
United States District
Court for the District
of Columbia Circuit.

70-5211 v.
Elliot L. Richardson et al.

[February —, 1972]

PER CURIAM

We noted probable jurisdiction of these appeals, 404 U. S. 819 (1971), to consider the applicability of *Goldberg v. Kelly*, 397 U. S. 254 (1970), to the suspension and termination of disability benefit payments pursuant to § 225 of the Social Security Act, 42 U. S. C. § 425, and implementing regulations of the Department of Health, Education, and Welfare. Shortly before oral argument, we were advised that the Secretary had adopted new regulations, effective December 27, 1971, governing the procedures to be followed by the Social Security Administration in determining whether to suspend or terminate disability benefits. These procedures include the requirement that a recipient of benefits be given notice of a proposed suspension and the reasons therefor, plus an opportunity to submit rebuttal evidence. In light of that development, we believe that the appropriate course is to withhold judicial action pending reprocessing, under the new regulations, of the determinations here in dispute. If that process results in a determination that Mr. Wright is entitled to disability

2/21
C. 2
2
To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st Draft of Amended Per Curiam

From: The Clerk of the Supreme Court
MAR 29 1972

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

Recirculated: _____

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,
70-161 *v.* Radie Wright et al. } On Appeals from the
Radie Wright et al., Appellants, United States District
70-5211 *v.* Elliot L. Richardson et al. Court for the District
of Columbia Circuit.

[February 24, 1972]

PER CURIAM.

We noted probable jurisdiction of these appeals, 404 U. S. 819 (1971), to consider the applicability of *Goldberg v. Kelly*, 397 U. S. 254 (1970), to the suspension and termination of disability benefit payments pursuant to § 223 of the Social Security Act, 42 U. S. C. § 425, and implementing regulations of the Department of Health, Education, and Welfare. Shortly before oral argument, we were advised that the Secretary had adopted new regulations, effective December 27, 1971, governing the procedures to be followed by the Social Security Administration in determining whether to suspend or terminate disability benefits. These procedures include the requirement that a recipient of benefits be given notice of a proposed suspension and the reasons therefor, plus an opportunity to submit rebuttal evidence. In light of that development, we believe that the appropriate course is to withhold judicial action pend-

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

CHAMBERS OF
THE CHIEF JUSTICE

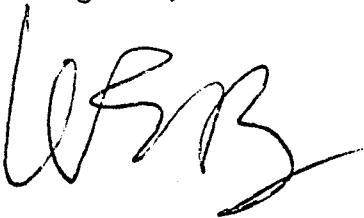
April 24, 1972

Re: No. 70-161 - Richardson v. Wright
No. 70-5211 - Wright v. Richardson

MEMORANDUM TO THE CONFERENCE:

I recently circulated a draft of an amended opinion in the above case, which included some language changes to make clear the intent and to meet concerns of the appellants expressed in their petition for rehearing. Since the change is only a "formal one" which can be made without an order of the Court, I propose, if no one objects, to send copies of the amended form to the parties and to include it with the judgment sent to the District Court.

Regards,



By
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Justice Powell
Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

Argued: [unclear]

1/20/72

Elliot L. Richardson, Secretary of Health, Education, and Welfare. Appellant.

70-161 v.
Radie Wright et al.

On Appeals from the United States District Court for the District of Columbia Circuit.

Radie Wright et al.,
Appellants.

70-5211 v.
Elliot L. Richardson et al.

[January —, 1972]

Memorandum from MR. JUSTICE DOUGLAS.

A three-judge district court held § 225 of the Social Security Act, 42 U. S. C. § 425, unconstitutional, insofar as it purported to authorize the Secretary of Health, Education, and Welfare to suspend the payment of social security disability benefits without giving prior notice and "an opportunity to participate" to the disability beneficiary. — F. Supp. —. The court remanded the cause to the Secretary for the formulation of new procedures consistent with its opinion. Judge Matthews, troubled by an implication in the majority's opinion that participation merely by way of written submissions might satisfy the majority's notions of due process, dissented "from so much of the opinion as seems to suggest that the procedural requirements of due process may be satisfied with something less 'than the 'opportunity' [to participate] specified in [Goldberg v. Kelly, 397 U. S. 254].'" *Id.*, at —. We noted probable jurisdiction in these cross-appeals to evaluate the opinion below in light of *Goldberg*. 404 U. S. —.

Not
Final Draft

Changes Throughout

2nd DRAFT

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

Original: _____

Recirculated: 1-24

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,

70-161 *v.* Radie Wright et al.

On Appeals from the United States District Court for the District of Columbia Circuit.

Radie Wright et al., Appellants,

70-5211 *v.* Elliot L. Richardson et al.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

A three-judge district court held § 225 of the Social Security Act, 42 U. S. C. § 425, unconstitutional, insofar as it purported to authorize the Secretary of Health, Education, and Welfare to suspend the payment of social security disability benefits without giving prior notice and "an opportunity to participate" to the disability beneficiary. — F. Supp. —. The court remanded the cause to the Secretary for the formulation of new procedures consistent with its opinion. Judge Matthews, troubled by an implication in the majority's opinion that participation merely by way of written submissions might satisfy the majority's notions of due process, dissented "from so much of the opinion as seems to suggest that the procedural requirements of due process may be satisfied with something less than the 'opportunity' [to participate] specified in [*Goldberg v. Kelly*, 397 U. S. 254]."
Id., at —. We noted probable jurisdiction in these cross-appeals to evaluate the opinion below in light of *Goldberg*. 404 U. S. 819.

8/3

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Tomasi

From: Douglas, J.

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant.

70-161 v.
Radie Wright et al.

Radie Wright et al.,
Appellants,

70-5211 v.
Elliot L. Richardson et al.

On Appeals from the
United States District
Court for the District
of Columbia Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

A three-judge district court held § 225 of the Social Security Act, 42 U. S. C. § 425, unconstitutional, insofar as it purported to authorize the Secretary of Health, Education, and Welfare to suspend the payment of social security disability benefits without giving prior notice and "an opportunity to participate" to the disability beneficiary. — F. Supp. —. The court remanded the cause to the Secretary for the formulation of new procedures consistent with its opinion. Judge Matthews, troubled by an implication in the majority's opinion that participation merely by way of written submissions might satisfy the majority's notions of due process, dissented "from so much of the opinion as seems to suggest that the procedural requirements of due process may be satisfied with something less than the 'opportunity' [to participate] specified in [*Goldberg v. Kelly*, 397 U. S. 254]."
Id., at —. We noted probable jurisdiction in these cross-appeals to evaluate the opinion below in light of *Goldberg*. 404 U. S. 819.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February fifth
1972

Dear Bill:

In No. 70-161 - Richardson
v. Wright and in the companion case,
please join me in your opinion.

WWD

~~William O. Douglas~~

Mr. Justice Brennan

CC: The Conference

To: The Chief Justice
Mr. Justice BRENNAN
Mr. Justice BLACK
Mr. Justice WHITNEY
Mr. Justice MARSHALL
Mr. Justice POWELL
Mr. Justice REHNQUIST
Mr. Justice BURGER
Mr. Justice STONE
Mr. Justice DOUGLAS

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Arg. January 10, 1972, Decided

Nos. 70-161 & 70-5211

From: Douglas, J.

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,

70-161 v.

Radie Wright et al.

Radie Wright et al.,
Appellants.

70-5211 v.

Elliot L. Richardson et al.

Circulated:

Recirculated: 2-5

On Appeals from the
United States District
Court for the District
of Columbia Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

While I join MR. JUSTICE BRENNAN who reaches the merits, I add a word about the unwisdom of the policy pursued by the Court.

A three-judge district court held § 225 of the Social Security Act, 42 U. S. C. § 425, unconstitutional, insofar as it purported to authorize the Secretary of Health, Education, and Welfare to suspend the payment of social security disability benefits without giving prior notice and "an opportunity to participate" to the disability beneficiary. — F. Supp. —. The court remanded the cause to the Secretary for the formulation of new procedures consistent with its opinion. Judge Matthews, troubled by an implication in the majority's opinion that participation merely by way of written submissions might satisfy the majority's notions of due process, dissented "from so much of the opinion as seems to suggest that the procedural requirements of due process may be satisfied with something less 'than the 'opportunity' [to participate] specified in [Goldberg v. Kelly, 397 U. S. 254].'" *Id.*, at —. We noted probable jurisdiction in these cross-appeals to evaluate the opinion below in light of *Goldberg*. 404 U. S. 819.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 20, 1972

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C 9/16/72 P. O. 11
Prepared and
Reviewed by
M

MEMORANDUM TO THE CONFERENCE

RE: Nos. 70-161 and 70-5211 - Richardson v. Wright, et al.

I believe it was the sense of the Conference that if we sent this case back down it might well disappear. The attached Per Curiam directs the District Court to send it back to HEW. Since the new regulations do not quite meet the requirements imposed by the District Court, the case would probably be right back if we merely remanded for reconsideration by the District Court in light of the new regulations. If, however, there is administrative reprocessing under those regulations, I think the dispute might well be settled without judicial action. Plaintiff Wright wishes to press his claim that, despite the work he did in 1969, he is in fact incapable of working, and it appears that under the new regulations he will be able to present that claim. Hence, BDI's suspension of Wright's benefits may be revoked. As to intervenor Atkins, his benefits were terminated but were reinstated before the decision below, without a break in the payments. The Solicitor General withdrew his suggestion of mootness only because the termination and suspension procedures were identical and thus the District Court's decision, although specifically directed to suspension, applied to termination as well. Thus, Atkins' presence in this case appears to depend upon Wright's. Moreover, should the problem arise again in the future, Atkins will be processed under the new regulations.

W. J. B. Jr.

1st DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

From: Brennan, J.

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,

70-161 *v.*

Radie Wright et al.

Radie Wright et al.,
Appellants,

70-5211 *v.*

Elliot L. Richardson et al.

Circulated: 1/20/72

Recirculated: _____

On Appeals from the
United States District
Court for the District
of Columbia Circuit.

[January —, 1972]

PER CURIAM.

We noted probable jurisdiction of these appeals, 404 U. S. 819 (1971), to consider the applicability of *Goldberg v. Kelly*, 397 U. S. 254 (1970), to the suspension and termination of disability benefit payments pursuant to § 225 of the Social Security Act, 42 U. S. C. § 425, and implementing regulations of the Department of Health, Education, and Welfare. Shortly before oral argument, we were advised that the Secretary had adopted new regulations, effective December 27, 1971, governing the procedures to be followed by the Social Security Administration in determining whether to suspend or terminate disability benefits. In that circumstance, we believe that the appropriate course is to withhold judicial action pending reprocessing, under the new regulations, of the determinations here in dispute. Accordingly, we vacate the judgment of the District Court of the District of Columbia, 321 F. Supp. 383 (1971), with direction to that court to remand the case to the Secretary and to retain jurisdiction for further proceedings upon completion of the administrative procedure.

Vacated and remanded.

Pls. file in my

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Brennan

Circulated: 2-3-72

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

Recirculated: _____

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,

70-161 v.
Radie Wright et al.

Radie Wright et al.,
Appellants,

70-5211 v.
Elliot L. Richardson et al.

On Appeals from the
United States District
Court for the District
of Columbia Circuit.

[February —, 1972]

MR. JUSTICE BRENNAN, dissenting.

I respectfully dissent. Today's action, taken *sua sponte* by the Court, is justified on the ground that if reprocessing under the Secretary's new regulations "results in a determination that Mr. Wright is entitled to disability benefits, there will be no need to consider his constitutional claim that he is entitled to an opportunity to make an *oral* presentation." (Emphasis by the Court.) Avoidance of unnecessary constitutional decisions is of course a preferred practice in appropriate cases. But that course is wholly inappropriate, indeed irresponsible, in this case. We will not avoid the necessity of deciding the important constitutional question presented by this case even should Mr. Wright prevail upon the Secretary's reconsideration. The Secretary informs us that many cases presenting the identical issue wait on our doorstep. The question is being pressed all over the country. The Secretary's brief lists no less than seven cases presenting the question with respect to disability

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 70-161 & 70-5211

Recirculated: 2-7-72

Elliot L. Richardson, Secretary of Health, Education, and Welfare. Appellant.

70-161 *v.*

Radie Wright et al.

Radie Wright et al.,
Appellants.

70-5211 *v.*

Elliot L. Richardson et al.

On Appeals from the United States District Court for the District of Columbia Circuit.

[February —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

I respectfully dissent. Today's action, taken *sua sponte* by the Court, is justified on the ground that if reprocessing under the Secretary's new regulations "results in a determination that Mr. Wright is entitled to disability benefits, there will be no need to consider his constitutional claim that he is entitled to an opportunity to make an *oral* presentation." (Emphasis by the Court.) Avoidance of unnecessary constitutional decisions is of course a preferred practice in appropriate cases. But that course is wholly inappropriate, indeed irresponsible, in this case. We will not avoid the necessity of deciding the important constitutional question presented by this case even should Mr. Wright prevail upon the Secretary's reconsideration. The question is being pressed all over the country. The Secretary's brief lists no less than seven cases presenting it with respect to disability

80/

To: The Chairman
Mr. Justice
Mr. Justice
Mr. Justice
✓Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

3rd DRAFT

From: Mr.

SUPREME COURT OF THE UNITED STATES

Nos. 70-161 & 70-5211

Recirculate

2-8-72

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant.

70-161 *v.* Radie Wright et al.

On Appeals from the United States District Court for the District of Columbia Circuit.

Radie Wright et al., Appellants.

70-5211 *v.* Elliot L. Richardson et al.

[February —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

I respectfully dissent. Today's action, taken *sua sponte* by the Court, is justified on the ground that if reprocessing under the Secretary's new regulations "results in a determination that Mr. Wright is entitled to disability benefits, there will be no need to consider his constitutional claim that he is entitled to an opportunity to make an *oral* presentation." (Emphasis by the Court.) Avoidance of unnecessary constitutional decisions is of course a preferred practice in appropriate cases. But that course is inappropriate, indeed irresponsible, in this case. We will not avoid the necessity of deciding the important constitutional question presented by this case even should Mr. Wright prevail upon the Secretary's reconsideration. The question is being pressed all over the country. The Secretary's brief lists no less than seven cases presenting it with respect to disability

Brennan

Page 9 v. friend's stylistic change

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

4th DRAFT

From: *Brennan, J.*

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 70-161 & 70-5211

Recirculated: 2-17-72

Elliot L. Richardson, Secretary of Health, Education, and Welfare, Appellant,

70-161 *v.*

Radie Wright et al.

Radie Wright et al., Appellants,

70-5211 *v.*

Elliot L. Richardson et al.

On Appeals from the United States District Court for the District of Columbia Circuit.

[February —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

I respectfully dissent. The Court justifies today's *sua sponte* action on the ground that if reprocessing under the Secretary's new regulations "results in a determination that Mr. Wright is entitled to disability benefits, there will be no need to consider his constitutional claim that he is entitled to an opportunity to make an *oral* presentation." (Emphasis by the Court.) Avoidance of unnecessary constitutional decisions is of course a preferred practice when appropriate. But that course is inappropriate, indeed irresponsible, in this case. We will not avoid the necessity of deciding the important constitutional question presented by Mr. Wright even should he prevail upon the Secretary's reconsideration. The question is being pressed all over the country. The Secretary's brief lists no less than seven cases presenting it with respect to disability

CC
January 20, 1972

Nos. 70-161 and 70-5211
Richardson v. Wright

Dear Bill,

I am glad to join your Per Curiam in
this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

(S)

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 31, 1972

70-161, Richardson v. Wright

Dear Chief,

I am glad to join the Per Curiam
you have circulated in these cases.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 27, 1972

Re: Nos. 70-161 & 70-5211 -
Richardson v. Wright

Dear Chief:

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1972

Re: Nos. 70-161 and 70-5211 - Richardson v. Wright, et al.

Dear Bill:

I agree with your proposed per curiam
in this case.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 7, 1972

Re: Nos. 70-161 and 70-5211 - Richardson v. Wright, et

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 27, 1972

Re: No. 70-161 - Richardson v. Wright
No. 70-5211 - Wright v. Richardson

Dear Chief:

Please join me in the Per Curiam circu-
lated January 26.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 21, 1972

Re: No. 70-161 - Richardson v. Wright
No. 70-5211 - Wright v. Richardson

Dear Bill:

I agree with your proposed Per Curiam.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

April 3, 1972

Re: No. 70-161 - Richardson v. Wright
No. 70-5211 - Wright v. Richardson

Dear Chief:

Your proposed amended Per Curiam certainly
meets with my approval.

Sincerely,

HAB

The Chief Justice

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 3, 1972

Re: 70-161 - Richardson v. Wright
70-5211 - Wright v. Richardson

Dear Chief:

I join in Per Curiam of January 26.

Sincerely,

L. F. P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 28, 1972

Re: 70-161 - Richardson v. Wright
70-5211 - Wright v. Richardson

Dear Chief:

I join in your proposed Per Curiam.

Sincerely,



The Chief Justice

Copies to the Conference


Wm. Rehnquist

70-161

Oct 71