

The Burger Court Opinion Writing Database

Townsend v. Swank

404 U.S. 282 (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

December 1, 1971

Re: No. 70-5021 - Townsend v. Swank
No. 70-5032 - Alexander v. Swank

Dear Bill:

I acknowledge your draft opinion reversing. As I
read it you really rest on constitutional grounds.

I cannot join and will await dissenting views.

Regards,

W.B.

Mr. Justice Brennan

cc: The Conference

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

December 13, 1971

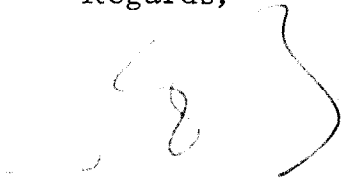
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 70-5021 -- Townsend v. Swank
No. 70-5032 -- Alexander v. Swank

Dear Harry:

Perhaps you should check Justice Brennan's
cite of King v. Smith, which he uses for the Suprem-
acy Clause. But King v. Smith does not rest on the
Supremacy Clause. This is another example of
"bootstrapping."

Regards,



Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1971

Re: No. 70-5021 - Townsend v. Swank
No. 70-5032 - Alexander v. Swank

Dear Bill:

Please show me as follows:

I concur in the result reached by the Court but
the reference to King v. Smith, cited in relation
to the supremacy clause seems misplaced.
King v. Smith is not a supremacy clause holding.
Nowhere in the opinion is there any reference
to the clause.

Regards,

W B B

Mr. Justice Brennan

cc: The Conference

CHAMBERS OF
THE CHIEF JUSTICE

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

December 17, 1971

No. 70-5021 -- Townsend v. Swank
70-5032 -- Alexander v. Swank

Dear Bill:

With a bit more time, I conclude to revise
my concurrence as ~~follows~~ ^{per attached} in lieu of the short "snapper"
sent previously.

Regards,

WJB

Mr. Justice Brennan

cc: The Conference

Recirculated: _____

No. 70-5021 - Townsend v. Swank

70-5032 - Alexander v. Swank

MR. CHIEF JUSTICE BURGER, concurring:

I concur in the result reached by the Court, but add this brief comment. In dealing with this case -- and the other AFDC cases on the Court's docket -- it seems appropriate to keep clearly in mind that Title IV of the Social Security Act governs the dispensation of federal funds and that it does no more than that. True, Congress has used the "power of the purse" to force the States to adhere to its wishes to a certain extent; but adherence to the provisions of Title IV is in no way mandatory upon the States under the Supremacy Clause. The appropriate inquiry in any case should be, simply, whether the State has indeed adhered to the provisions and is accordingly entitled to utilize federal funds in support of its program. Cf. Rosado v. Wyman, 397 U.S. 397, 420 (1970). I agree that the answer to that inquiry in this case must be in the negative; I therefore concur in the judgment of the Court.

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W

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

November 26, 1971

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

Dear Bill:

In the Swank cases - Nos.
70-5021 and 70-5032, please join me in
your opinion.

W. O. D.

Mr. Justice Brennan

Mr. Justice Brandeis
Mr. Justice Cardozo
Mr. Justice Hughes
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES No. 11-26-71

Nos. 70-5021 AND 70-5032

Recirculated: _____

Georgia Townsend, Etc.,
Appellant.

70-5021 v.

Harold O. Swank, Director,
Illinois Department of
Public Aid, et al.

Loverta Alexander et al.,
Appellants.

70-5032 v.

Harold O. Swank et al.

On Appeal from the United
States District Court for
the Northern District of
Illinois.

[December —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellants, two college students and their mothers, brought this class action in the District Court for the Northern District of Illinois alleging that § 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. § 4-1.1 (1969) and implementing Illinois Public Aid Regulation 150 violate the Equal Protection Clause of the Fourteenth Amendment, and, because inconsistent with § 406 (a)(2) (B) of the Social Security Act, 42 U. S. C. § 606 (a)(2) (B), also violate the Supremacy Clause of the Constitution.¹ Under the Illinois statute and regulation needy

¹ Section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. c. 23, § 4-1.1 (1969), provides:

“Child Age Eligibility. The Child or Children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in vocational or technical training school. “Regular attend-

BP — M
See Pages 3, 4, 5, 9 & 10
You have joined J &

For the United States
Mr. Justice Black
Mr. Justice White
Mr. Justice Brennan
Mr. Justice Marshall
✓ Mr. Justice Blackmun
Mr. Justice

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Nos. 70-5021 AND 70-5032

Georgia Townsend, Etc.,
Appellant,

70-5021 v.

Harold O. Swank, Director,
Illinois Department of
Public Aid, et al.

Loverta Alexander et al.,
Appellants,

70-5032 v.

Harold O. Swank et al.

On Appeal from the United
States District Court for
the Northern District of
Illinois.

[December —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellants, two college students and their mothers, brought this class action in the District Court for the Northern District of Illinois alleging that § 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. § 4-1.1 (1969) and implementing Illinois Public Aid Regulation 150 violate the Equal Protection Clause of the Fourteenth Amendment, and, because inconsistent with § 406 (a)(2) (B) of the Social Security Act, 42 U. S. C. § 606 (a)(2) (B), also violate the Supremacy Clause of the Constitution.¹ Under the Illinois statute and regulation needy

¹ Section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. c. 23, § 4-1.1 (1969), provides:

"Child Age Eligibility. The Child or Children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in vocational or technical training school. Regular attend-

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

3rd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Nos. 70-5021 AND 70-5032

Recirculated: 12/4/71

Georgia Townsend, Etc.,
Appellant,

70-5021 v.

Harold O. Swank, Director,
Illinois Department of
Public Aid, et al.

Loverta Alexander et al.,
Appellants,

70-5032 v.

Harold O. Swank et al.

On Appeal from the United
States District Court for
the Northern District of
Illinois.

[December —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellants, two college students and their mothers, brought this class action in the District Court for the Northern District of Illinois alleging that § 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. § 4-1.1 (1969) and implementing Illinois Public Aid Regulation 150 violate the Equal Protection Clause of the Fourteenth Amendment, and, because inconsistent with § 406 (a)(2) (B) of the Social Security Act, 42 U. S. C. § 606 (a)(2) (B), also violate the Supremacy Clause of the Constitution.¹ Under the Illinois statute and regulation needy

¹ Section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. c. 23, § 4-1.1 (1969), provides:

"Child Age Eligibility. The Child or Children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in vocational or technical training school. Regular attend-

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W

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 29, 1971

Nos. 70-5021 and 70-5032
Townsend v. Swank

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 30, 1971

Re: Nos. 70-5021 & 70-5032 - Townsend v. Swank

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 30, 1971

Re: Nos. 70-5021 & 70-5032 - Townsend v. Swank

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Brennan

Copies to Conference

Bill —

A minor point: Because the choices you note the states have seem to appear in the legislative history, perhaps it would be well to strike the word "express" in the second line, first full paragraph on p4 and add after "exclusion" in the next line something like "clearly evident from the statute or its legislative history."

BW

Wm. Brennan
OG 11

*(See report on 11/30/71)
11/30/71
11/30/71*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1971

Re: Nos. 70-5021 and 70-5032 - Townsend v. Swank, etc.

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

g

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1971

Re: No. 70-5021 - Townsend v. Swank
No. 70-5032 - Alexander v. Swank

Dear Bill:

Subject to my review of any dissent that may
be forthcoming, please join me in your opinion for
these cases.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference