

# 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



100M  
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,

WB

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 Supremacy Clause. But King v. Smith does not rest on the Supremacy Clause. This is another example of "bootstrapping."

Regards,

Mr. Justice Blackmun

3  
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,

WSB

Mr. Justice Brennan

cc: The Conference

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

December 17, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

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

Dear Bill:

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

Regards,

WSB

Mr. Justice Brennan

cc: The Conference

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Clark  
Mr. Justice White

From: The Chief Justice

Circulated: DEC 17 1971

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.

⑨<sup>W</sup>  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 26, 1971

Dear Bill:

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

W. O. D.

Mr. Justice Brennan

*Please give me  
PL*

Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun

## 1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES *ed: 11-26-71*

Nos. 70-5021 AND 70-5032

Recirculation:

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.<sup>1</sup> Under the Illinois statute and regulation needy

<sup>1</sup> 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-

See Pages 3, 4, 5, 7 & 10

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BP / M

You have joined

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

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  
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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.<sup>1</sup> Under the Illinois statute and regulation needy

<sup>1</sup> 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-

See Page 2 & 10  
 B.M.  
 You have focused  
 3rd DRAFT  
 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: 12/1/71

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.<sup>1</sup> Under the Illinois statute and regulation needy

<sup>1</sup> 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-

*PS*  
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,

*PS*

Mr. Justice Brennan

Copies to the Conference

1044  
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 p 4 and add after "exclusion" in the next line something like "clearly evident from the statute or its legislative history."

*Byron*

Wm. Brennan  
OCT 11

5 (100-1000)  
Wm. Brennan

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

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