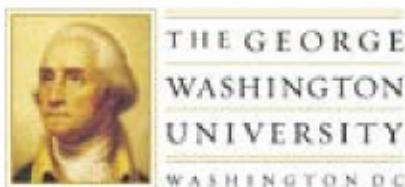


The Burger Court Opinion Writing Database

Department of Agriculture v. Moreno
413 U.S. 528 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



68
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1973

Re: No. 72-534 - U. S. Dept. of Agriculture v. Moreno

Dear Bill:

Please join me in your dissent.

Regards,
LWB

Mr. Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-534 AND 72-848

Circulated: 5-9-73

Recirculated: _____

United States Department of
 Agriculture et al.,
 Appellants,
 72-534 v.
 Jacinta Moreno et al.
 United States Department of
 Agriculture et al.,
 Appellants,
 72-848 v.
 Lula Mae Murry et al.

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

[May —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

The Food Stamp Act, 7 U. S. C. § 2011 *et seq.* as amended in 1971, 84 Stat. 2045, has been applied to appellees in these two cases so as to lead two three-judge District Courts to hold two separate provisions of it unconstitutional.¹ We noted probable jurisdiction of these appeals. 407 U. S. —.

I

There are three appellees in the *Moreno* case. Appellee, Jacinta Moreno, is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's children. The two share common living expenses, Mrs. Sanchez helping to care for this appellee. Appellee's monthly income is \$75, derived from public assistance, and Mrs.

¹ The decision in the *Moreno* case is reported in 345 F. Supp. 310; the one in the *Murry* case is reported in 348 F. Supp. 242.

7 /
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 14, 1973

MEMO TO THE CONFERENCE:

In re U.S. Dept. of Agriculture v. Moreno,
No. 72-534.

These pages should have been added to
the printed text just before II on p. 7.

William O. Douglas

The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

Rider 7

72-534

Dandridge v. Wilhaus, 397 U.S. 471 is not opposed. It sustained a Maryland grant of welfare, against the claim of violation of Equal Protection, which placed an upper limit in the monthly amount any single family could receive. The claimants had large families so that their standard of need exceeded the actual grants. Their claim was that the grants of aid considered in light of the size of their families created an invidious discrimination against them and in favor of small needy families. The claim was rejected on the basis that state economic or social legislation had long been judged by a less strict standard that comes into play when constitutionally protected rights are involved. *Id.* at 484-485. Laws touching social and economic matters can pass muster under the Equal Protection Clause though they are imperfect, the test being whether the classification has some "reasonable basis" *Id.* at 414. Dandridge properly held that "the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy". *Id.* at 486.

Dandridge, however, did not reach classifications touching on associational rights that lie in the penumbra of the First Amendment such as we have here. Since the "related" person provision is not directed to the maintenance of the family as a unit but treats impoverished households composed of relatives more favorably than impoverished households having a single unrelated person, it draws a line that can be sustained only on a showing of a "compelling" governmental interest.



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

2nd DRAFT

From: _____

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 72-534 AND 72-848

Recirculated: 5-15-73

United States Department of
 Agriculture et al.,
 Appellants,
 72-534 v.
 Jacinta Moreno et al.
 United States Department of
 Agriculture et al.,
 Appellants,
 72-848 v.
 Lula Mae Murry et al.

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

[May —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

The Food Stamp Act, 7 U. S. C. § 2011 *et seq.* as amended in 1971, 84 Stat. 2045, has been applied to appellees in these two cases so as to lead two three-judge District Courts to hold two separate provisions of it unconstitutional.¹ We noted probable jurisdiction of these appeals. 407 U. S. —.

I

There are three appellees in the *Moreno* case. Appellee, Jacinta Moreno, is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's children. The two share common living expenses, Mrs. Sanchez helping to care for this appellee. Appellee's monthly income is \$75, derived from public assistance, and Mrs.

¹ The decision in the *Moreno* case is reported in 345 F. Supp. 310; the one in the *Murry* case is reported in 348 F. Supp. 242.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 17, 1973

Dear Chief:

I have asked Bill Brennan to try
his hand at a Court opinion in No. 72-534,
U.S. Dept of Agriculture v. Moreno.

W
William O. Douglas

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPT. OF AGRICULTURE

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF AGRICULTURE

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-534

From: Douglas, J.
Circulated: 6-7
Recirculated:

United States Department of
Agriculture et al.,
Appellants,
v.
Jacinta Moreno et al.

On Appeal from the
United States District
Court for the District
of Columbia.

[May —, 1973]

MR. JUSTICE DOUGLAS, concurring

There are three appellees in the *Moreno* case. Appellee, Jacinta Moreno, is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's children. The two share common living expenses, Mrs. Sanchez helping to care for this appellee. Appellee's monthly income is \$75, derived from public assistance, and Mrs. Sanchez's is \$133, also derived from public assistance. This household pays \$95 a month for rent, of which appellee pays \$40, and \$40 a month for gas and electricity, of which appellee pays \$10. Appellee spends \$10 a month for transportation to a hospital for regular visits and \$5 a month for laundry. That leaves her \$10 a month for food and other necessities. Mrs. Sanchez and the three children received \$108 worth of food stamps per month for \$18. But under the "unrelated" person provision of the Act,¹ she will be cut off if appellee Moreno continues to live with her.

¹ Section 3 (e) of the Food Stamp Act provides in relevant part: "The term 'household' shall mean a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 11, 1973

RE: Nos. 72-534 & 72-848 - United States Department of Agriculture
v. Moreno and Murry

Dear Bill:

I promised you at conference that I'd send you my comments on your memorandum in the above cases.

If I correctly understand your memorandum you would invalidate the unrelated person exception upon the constitutionally guaranteed right of association. That gives me a lot of trouble. I think you and I and perhaps others are in agreement that neither of the stated purposes of the provision are rationally related to the "unrelated" person exception. Indeed, as Judge McGowan stated in his opinion for the District Court: "The relationships among persons constituting one economic unit and sharing cooking facilities have nothing to do with their abilities to stimulate the agricultural economy by purchasing farm supplies, or with their personal nutritional requirements." 345 F. Supp., at 313. The difficulty arises, however, out of the references in the legislative history to "hippies." Your memorandum states that the "unrelated" person provision was intended to "prevent so-called 'hippies' or 'hippy communes' from participating in the Food Stamp Program," (page 6), and argue that, if this is so, the provision clearly touches upon the right of association. This being so, your conclusion is that the statute must be carefully drawn to achieve its purposes. Here, they are not so drawn, so the statute must fall. I concede that this is a possible approach. I think a more palatable approach, however, and one more likely to command a majority, is the one used by Carl McGowan. As I read his opinion, he suggested that it was uncertain whether the statute was intended to regulate morality. He then argued that, since such an intent would affect the right of

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WB

association in the home, we should be somewhat hesitant to impute such an intent to the Congress. Moreover, since the provision was not narrowly drawn to serve this purpose, there is another reason not to impute it to Congress. This approach is quite similar to the one adopted in my Eisenstadt v. Baird, and although it rests somewhat upon a fiction, it might, as Baird did, attract a Court.

Murry raises different, yet equally troublesome, problems. In essence, you suggest a "conclusive presumption" approach--that is, conclusive presumptions are per se unconstitutional. That is Potter's approach in his Vlandis, and I disagree with it. My view, and I thought it was also yours, is that the presumption must be upheld if there is a rational distinction between the two classes created. The only exception is in cases involving strict scrutiny. That, I think, was essentially what Byron had in mind in Stanley v. Illinois in which we both joined. Here, of course, I would agree that strict scrutiny is appropriate, because the challenged provision involves welfare. Didn't we both join Thurgood's dissent to that effect in Dandridge? But I know that we can't get a Court for that approach. In any case, there is no need to reach that question, for here I would say that the presumptions are irrational. It is simply not rational to assume that, simply because a parent declares his child as a dependent, the child is not indigent. To qualify as a dependent, the child need only receive one-half of his support from the parent. Thus, if the child earns \$500 per year, and the parent provides him with \$500, the child is both a dependent and an indigent. I think this type of situation is sufficiently common that the statute cannot be said to have a rational basis. More fully developed, this line of analysis could, I think, be used to dispose of the case without turning the disposition on the use of a conclusive presumption.

Sincerely,



Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.


May 17, 1973

RE: Nos. 72-534 and 72-848 U.S. Dept. of
Agriculture v. Moreno and Murry.

Dear Bill:

Your changes in Murry are helpful and I probably could go along. I am still bothered, however, about your handling of Moreno for the reasons I mentioned in my note of May 11, 1973.

Sincerely,



Mr. Justice Douglas

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WB
WB

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 6/5/73

No. 72-534

Recirculated:

United States Department of
Agriculture et al.
Appellants,
v.
Jacinta Moreno et al.

On Appeal from the
United States District
Court for the District
of Columbia.

June - 1973

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to consider the constitutionality of § 3 (e) of the Food Stamp Act of 1964, 7 U. S. C. § 2012 (e), as amended, 84 Stat. 2048, which, with certain exceptions, excludes from participation in the food stamp program any household containing an individual who is unrelated to any other member of the household. In practical effect, § 3 (e) creates two classes of persons for food stamp purposes: one class is composed of those individuals who live in households all of whose members are related to one another, and the other class consists of those individuals who live in households containing one or more members who are unrelated to the rest. The latter class of persons is denied federal food assistance. A three-judge district court for the District of Columbia held this classification invalid as violative of the Due Process Clause of the Fifth Amendment. 345 F. Supp. 310 (1972). We noted probable jurisdiction. 409 U. S. 1036 (1972). We affirm.

C7

WJB

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

CHAMBERS OF
JUSTICE POTTER STEWART

*You have
concur in
72-848*

June 5, 1973

Re: No. 72-534, U. S. Department of Agriculture
v. Moreno

Dear Bill,

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

Sincerely yours,

*WJB
1.8.1*

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

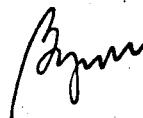
June 5, 1973

Re: No. 72-534 - U. S. Department of Agriculture
v. Moreno

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1973

Re: No. 72-534 - Dept. of Agriculture v. Moreno

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT ADVANCE

9
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1973

Re: No. 72-534 - U.S. Department of Agriculture
v. Moreno

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1973

No. 72-534 U. S. Department of
Agriculture v. Moreno

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-534 AND 72-848

Circulated: 5/11/73

Recirculated:

United States Department of
Agriculture et al.,
Appellants,

72-534 v.

Jacinta Moreno et al.

United States Department of
Agriculture et al.,
Appellants,

72-848 v.

Lula Mae Murry et al.

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

[May —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

Appellees in each of these cases challenge limitations on the availability of food stamps which Congress incorporated in its most recent revision of the Food Stamp Act, 7 U. S. C. § 2011 *et seq.* I cannot agree with the Court's opinion sustaining those challenges on constitutional grounds.

In *Moreno*, the challenged provision limits food stamps to related people living in one "household," with the result that unrelated persons who live under the same roof and pool their resources may not obtain food stamps even though otherwise eligible. The Court quotes the congressional statement of purpose with respect to the Act as a whole, then states what it conceives to have been the purpose of the limitation, and concludes that the limitation "was the shotgun rather than the rifle approach to a problem." Citing *Cantwell v. Connecticut*, 310 U. S. 296, 307 (1940), a case involving itinerant religious preachers, the Court concludes that "[i]f there are abuses inherent in that pattern of living against which

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U. S. DEPARTMENT OF JUSTICE

No. 72-534

UNITED STATES DEPARTMENT OF AGRICULTURE et al.,
Appellants,

v.

JACINTA MORENO et al.

On Appeal from the United States District Court for the
District of Columbia

MR. JUSTICE REHNQUIST, dissenting.

For much the same reasons as those stated in my dissenting opinion in United States Department of Agriculture v. Murry, _____ U.S. _____, I am unable to agree with the Court's disposition of this case. Here appellees challenged a provision in the Federal Food Stamp Act, 7 U.S.C. § 2011 et seq., which limited food stamps to related people living in one "household". The result of this provision is that unrelated persons who live under the same roof and pool their resources may not obtain food stamps even though otherwise eligible.

The Court's opinion would make a very persuasive congressional committee report arguing against the adoption of the limitation in question. Undoubtedly Congress attacked the problem with a rather blunt instrument, and just as

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

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 72-534

Circulated: 6/8/73

Recirculated: _____

United States Department of
Agriculture et al.,
Appellants,
v.
Jacinta Moreno et al.

On Appeal from the
United States District
Court for the District
of Columbia.

[June —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

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The Court's opinion would make a very persuasive congressional committee report arguing against the adoption of the limitation in question. Undoubtedly Congress attacked the problem with a rather blunt instrument, and just as undoubtedly persuasive arguments may be made that what we conceive to be its purpose will not be significantly advanced by the enactment of the limitation. But questions such as this are for Congress, rather than for this Court; our role is limited to the determination of whether there is any rational basis on which Congress could decide that public funds made available under the food stamp program should not go.

To: The Chief Justice
 Mr. Justice Brandeis
 Mr. Justice Black
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell

From: Rehnquist, J.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-534

Circulated: _____

Recirculated: 6/21/73

111-1010 United States Department of
 Agriculture et al.,
 Appellants,
 v.
 Jacinta Moreno et al. } On Appeal from the
 United States District
 Court for the District
 of Columbia.

[June —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

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