

The Burger Court Opinion Writing Database

New York State Department of Social Services v. Dublino

413 U.S. 405 (1973)

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



9

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

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1973

Re: 72-792 - NY State Dept. of Social Services v. Dublino
72-802 - Onondaga County Dept. of Social Services v.
Dublino

Dear Lewis:

Please join me.

Regards,
WRB

Mr. Justice Powell

Copies to the Conference

118-3

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 7, 1973

Dear Lewis:

I voted the other way in No. 72-792 -
New York State Department v. Doblino, and
the companion case.

But you have written a very
commendable opinion, and while I have some
lingering doubts I decided to join you.

Whether or not a dissent will be
circulated I do not know. But if one is
circulated I will of course take a look at
it.

Unless you hear from me to the
contrary, you can assume I am with you in
your opinion in these two cases.

I leave the matter that way because
of the growing intensity in circulations and
the details attendant to the winding up of
the Term of Court.

W. O. D.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 13, 1973

RE: Nos. 72-792 & 72-802 N. Y. State Dept.
of Social Services, etc. v. Dublino

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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CHAMBERS OF
JUSTICE POTTER STEWART

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

June 1, 1973

Nos. 72-792 & 72-802 - N. Y. Dept. of Social
Services v. Dublino

Dear Lewis,

I am glad to join your opinion for the
Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

9

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1973

Re: Nos. 72-792 & 72-802 - New York State
Dept of Social Services v. Dublino

Dear Lewis:

Before finally voting here, I should
like to see what Bill Brennan has to say in
dissent.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1973

Re: Nos. 72-792 & 72-802 - Dublino

Dear Lewis:

I have looked again at your opinion and the dissent, as well as your suggested addition. It would be enough for me if there was inserted at p. 16, before Part III, the attached paragraph or something to this effect.

I have in any event concluded that I should join your opinion.

Sincerely,



Mr. Justice Powell

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: Nos. 72-792 & 72-802 - New York State
Department of Social Services v.
Dublino

Please join me in your opinion in this case.

Mr. Justice Powell

Copies to Conference

file

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL


June 4, 1973

Re: No. 72-792 and 72-802 - Dublino Cases

Dear Lewis:

I may try my hand at a dissent
in these cases.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10-10-2001 BY 60322 UCBAW/STP/MLK

1
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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Nos. 72-792 AND 72-802

Circulated: JUN 12 1973

Recirculated: _____

New York State Department
of Social Services et al.
Appellants

72-792

Dolores Dublino et al.

Onondaga County Department
of Social Services
et al. Appellants

72-802

Dolores Dublino et al.

On Appeals from the
• United States District
Court for the Western
District of New York

June - 1973

MR. JUSTICE MARSHALL, dissenting

Because the Court today ignores a fundamental rule for interpreting the Social Security Act, I must respectfully dissent. As we said in *Townsend v. Swanik*, 405 U. S. 282, 286 (1971), "in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." See also *King v. Smith*, 392 U. S. 309 (1968), *Carleson v. Remillard*, 406 U. S. 598, 600 (1972). The New York Work Rules fall squarely within this statement, they clearly exclude persons eligible for assistance under federal standards, and it could hardly be maintained that they did not impose additional conditions of eligibility.¹ For example, under federal stand-

¹ Appellants state that the Work Rules do not constitute an additional condition of eligibility for public assistance. Reply

WB
WD

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-792 AND 72-802

New York State Department
of Social Services et al.,
Appellants,

72-792

v.

Dolores Dublino et al.

Onondaga County Depart-
ment of Social Services
et al., Appellants.

72-802

v.

Dolores Dublino et al.

On Appeals from the
United States District
Court for the Western
District of New York.

[June — 1973]

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

Because the Court today ignores a fundamental rule for interpreting the Social Security Act, I must respectfully dissent. As we said in *Townsend v. Swank*, 404 U. S. 282, 286 (1971), "in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." See also *King v. Smith*, 392 U. S. 309 (1968); *Carleson v. Remillard*, 406 U. S. 598, 600 (1972). The New York Work Rules fall squarely within this statement; they clearly exclude persons eligible for assistance under federal standards, and it could hardly be maintained that they did not impose additional conditions of eligibility¹. For example, under federal stand-

¹ Appellants state that the Work Rules do not "constitute an additional condition of eligibility for public assistance." Reply

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

From: Marshall, J.

Circulated: _____

Recirculated: JUN 14 1973

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WD

A

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

I have a dissent

June 4, 1973

Re: No. 72-792 - New York State Department v. Dublino
No. 72-802 - Onondaga County Department v. Dublino

Dear Lewis:

I am with you on the merits of the preemption issue as it has been discussed in your circulation of May 30.

I have, however, one mild question. I had thought that we did not note probable jurisdiction in these appeals but had postponed consideration of the question of jurisdiction to the hearing of the cases on the merits. The order now published at 409 U.S. 1123 appears to bear this out. If this is so, should the opinion not contain at least a brief comment and ruling on the jurisdictional issue? My notes indicate that nearly all of us felt that there was jurisdiction.

Sincerely,

Harry

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1973

Re: No. 72-792 - N.Y. State Dept. of Social
Services v. Dublino
No. 72-802 - Onondaga County Dept. of
Social Services v. Dublino

Dear Lewis:

This will supplement my note to you of June 4.
I meant thereby to join you. This note is to indicate
that I definitely do join.

Sincerely,



Mr. Justice Powell

cc: The Conference

May 7, 1973

No. 72-792 N. Y. Dept. of Social Services v. Dublino
No. 72-802 Onondaga v. Dublino

Dear Chief:

Referring to our conversation this morning, I find that Justice Brennan was on "the other side" in Dublino. He was of the opinion that there was preemption. I have started work on Dublino, and am now confident that I can circulate it and the other opinions assigned to me by the end of this month.

Unless you advise to the contrary, I will assume that you wish me to retain this assignment.

Sincerely,

The Chief Justice

lfp/ss

3
1

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: MAY 30 1973

Nos. 72-792 AND 72-802

Recirculated: _____

New York State Department
of Social Services et al.,
Appellants.

72-792 v.

Dolores Dublino et al.

Onondaga County Depart-
ment of Social Services
et al. Appellants.

72-802 v.

Dolores Dublino et al.

On Appeals from the
United States District
Court for the Western
District of New York.

[June --, 1973]

MR. JUSTICE POWELL delivered the opinion of the
Court.

The question before us is whether the Social Security Act of 1935 bars a State from independently requiring individuals to accept employment as a condition of eligibility for federally funded aid to families with dependent children. More precisely, the issue is whether that part of the Social Security Act known as the federal Work Incentive Program, pre-empts the provisions of the New York Social Welfare Law commonly referred to as the New York Work Rules. A brief description of both the state and federal programs will be necessary.

The Work Rules were enacted by New York in 1971¹ as part of Governor Rockefeller's efforts to reorganize

¹ The basic provisions of the Work Rules at the time this action was brought are set forth in § 131 of the New York Social Services Law (52A McKinney's Cons. Laws § 131 (4)).

"4. No assistance or care shall be given to an employable person

p. 6, 7.

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES ^{Powell, J.}

Nos. 72-792 AND 72-802

Circulated: _____

Recirculated: JUN 5 1973

New York State Department
of Social Services et al.
Appellants.

72-792 v.

Dolores Dublino et al.

Onondaga County Depart-
ment of Social Services
et al., Appellants.

72-802 v.

Dolores Dublino et al.

On Appeals from the
United States District
Court for the Western
District of New York.

[June --, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us is whether the Social Security Act of 1935 bars a State from independently requiring individuals to accept employment as a condition of eligibility for federally funded aid to families with dependent children. More precisely, the issue is whether that part of the Social Security Act known as the federal Work Incentive Program, pre-empts the provisions of the New York Social Welfare Law commonly referred to as the New York Work Rules. A brief description of both the state and federal programs will be necessary.

The Work Rules were enacted by New York in 1971¹ as part of Governor Rockefeller's efforts to reorganize

¹ The basic provisions of the Work Rules at the time this action was brought are set forth in § 131 of the New York Social Services Law (52A McKinney's Cons. Laws § 131 (4)).

"4. No assistance or care shall be given to an employable person

9
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

72-792
802

June 7, 1973

Dublino

Dear Bill:

Thank you for your gracious note of
June 7.

I am happy to have you aboard, but understand that if a dissent is filed you will take a look at it.

Unless I hear to the contrary, I will assume that you are still with me.

Sincerely,

Lewis

Mr. Justice Douglas

lfp/ss

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WD

June 13, 1973

No. 72-792 New York v. Dublino

Dear Byron:

In view of our discussion of the rationale of Thurgood's opinion and where it would leave the federal/state relationship in the AFDC program, my assessment of it may be summarized as follows:

1. State AFDC administrative requirements and procedures which differ from federal law would be endangered. The provisions of the Work Rules requiring recipients to report in person to pick up their checks, to report for employment interviews and referrals, to file a certificate from the appropriate employment office stating that no employment is available might well be invalidated since they do not track precisely the federal statute.

2. Thurgood's position, as I read it, would effectively preclude the States from establishing work programs even in those areas where the WIN program does not operate. Persons too remote from WIN offices are exempted from any participation in the WIN program. Under Thurgood's position, if the States set up work programs in these "remote" areas, they would thereby be establishing an additional condition of eligibility for AFDC benefits not contained in the federal program.

3. Thurgood's dissent can hardly be reconciled with Wyman v. James. Since in New York the visit by a caseworker is a condition for the receipt of AFDC funds, it would thereby be viewed as an additional state condition of eligibility. Thurgood

seems to acknowledge as much, since he finds it inexplicable that the Court failed to consider the statutory argument in Wyman. (See Note 3, page 2).

4. In Dandridge, Thurgood argued that the Maryland "regulation creates in effect a class of otherwise eligible dependent children with respect to whom no assistance is granted". 397 U.S. at 511. This view, which in principle is like his dissent now in Dublino, was rejected by the Court.

In sum, I believe the dissent goes beyond the range of existing precedent in an attempt to federalize the AFDC program.

Sincerely,

Mr. Justice White

LFP/gg

June 14, 1973

Nos. 72-792 and 72-802 - Dublino

Dear Byron:

I am happy to adopt your suggested insert, and much appreciate your help.

I am returning the opinion to the printer, and will recirculate it - by tomorrow - I hope.

Many thanks.

Sincerely,

Mr. Justice White

lfp/ss

pp 7.16

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-792 AND 72-802

From: Powell, J.

Circulated: _____

Recirculated: JUN 15 1973

New York State Department
of Social Services et al.,
Appellants,

72-792 v.

Dolores Dublino et al.

Onondaga County Department of Social Services
et al., Appellants,

72-802 v.

Dolores Dublino et al.

On Appeals from the
United States District
Court for the Western
District of New York.

[June —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us is whether the Social Security Act of 1935 bars a State from independently requiring individuals to accept employment as a condition of eligibility for federally funded aid to families with dependent children. More precisely, the issue is whether that part of the Social Security Act known as the federal Work Incentive Program, pre-empts the provisions of the New York Social Welfare Law commonly referred to as the New York Work Rules. A brief description of both the state and federal programs will be necessary.

The Work Rules were enacted by New York in 1971¹ as part of Governor Rockefeller's efforts to reorganize

¹ The basic provisions of the Work Rules at the time this action was brought are set forth in § 131 of the New York Social Services Law (52A McKinney's Cons. Laws § 131 (4)):

"4. No assistance or care shall be given to an employable person

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1973

Cases Held for No. 72-792 New York State
Dept. of Social Services v. Dublino; and No.
72-802 Onondaga County Dept. of Social
Services v. Dublino.

MEMORANDUM TO THE CONFERENCE:

The following cases were held for Dublino:

Handwritten: 1/2 held for 7/1 line
Jeffries v. Sugarman, No. 72-787; Handel v. Sugarman, No. 72-5758 (companion cases) - Appeal from Three Judge Court.

Appellants, who are college enrollees with dependent children, challenged New York's denial of welfare benefits to those who refused to accept employment while attending college and yet continued benefits to those who refused employment while attending vocational schools. The three-judge court below refused relief on these constitutional grounds, but remanded the matter to a single district judge to determine whether the denial of AFDC benefits to parents enrolled in four year college programs was contrary to the Social Security Act.

On remand, the single district judge found the statute to be in conflict with the federal work incentive program. The state appealed this ruling to the CA 2, but no decision had been rendered as of the time appellants brought this appeal from the three-judge court on the Equal Protection and First Amendment claims. To my knowledge, neither party has sought review of the issue of statutory conflict in this Court. As appellants may have received the relief sought independently of the constitutional grounds pressed in this appeal, the case does not appear to be ripe for review here. Nothing in Dublino controls this case. Although I am not sure as to proper disposition, I am inclined to dismiss the appeal as premature.

WBS

- 2 -

64
No. 72-5939 Jimerson v. New York State Dept. of Social Services - Appeal from Three Judge Court.

This is an appeal by Home Relief and AFDC recipients in New York from the same judgment and opinion of the three-judge district court which we considered in Dublino. The Home Relief recipients challenge in this case the failure of the court below to void the Work Rules as violative of the equal protection and due process clauses of the Fourteenth Amendment and the involuntary servitude provision of the Thirteenth. The AFDC recipients contend that the USDC erred in not granting their motion for restoration of the benefits which were found by that court to be wrongly withheld since the Work Rules were preempted by the WIN program.

None of these claims has been discussed or considered in the Dublino opinion. I will personally vote to affirm the constitutional rulings of the court below as they apply to the Home Relief recipients. The question of the restoration of the AFDC benefits is, in light of our remand on the issue of conflict between WIN and the Work Rules, not properly before the Court at this time.

L. F. P., Jr.

SS

MIB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

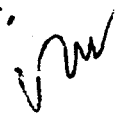
June 1, 1973

Re: No. 72-792 - New York Department of Social
Services v. Dublino

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

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