The Burger Court Opinion Writing Database

Arnett v. Kennedy

416 U.S. 134 (1974)

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 22, 1974

Personal

Re: No. 72-1118 - Arnett v. Kennedy

Dear Bill:

I will doubtless join you but I will defer formal "join" until I have seen the dissents.

Regards,

Mr. Justice Rehnquist

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

CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1974

Re: 72-1118 - Arnett v. Kennedy

Dear Bill:

Byron's (long) memo gives me some problems on the need for a "neutral" hearing officer when the discharge is predicated on something of a personal clash between the superior and the dischargee.

I have been absorbed on budget matters and haven't really shaken this case down but wondered whether you contemplated any reaction to Byron's point.

Regards,

Mr. Justice Rehnquist

PERSONAL

BCC: Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

March 29, 1974

Re: No. 72-1118 - Arnett v. Kennedy

Dear Bill:

Please join me.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1974

Personal

Re: No. 72-1118 - Arnett, et al v. Kennedy, etc. et al

Dear Bill:

I think I indicated to you in our discussion of this case before the separate opinion of Lewis and Harry came around that I was disturbed about the point Byron had raised. I joined you to avoid a plurality of two which is undesirable even when you have a Court on result.

Byron's position has much support from Goldberg, Morrissey and the underlying rationale of Mayberry and my concern resurfaces. Until I can resolve it I will not "rock the boat" but I confess the thing sticks in my throat." Let me mull on it and see whether I can resolve my concerns.

Regards,

WEB

Mr. Justice Rehnquist

April 12, 1974

Re: No. 72-1118 - Arnett v. Kennedy

Dear Bill:

I have worked my way out of the problems I mentioned and you may proceed to put this case out in regular course.

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 11, 1974

Dear Thurgood:

I am writing a dissent in 72-1118, Arnett v. Kennedy. But please join me in yours too.

William O. Douglas

P.S. In line 5, p. 4 I gather that "Fourteenth" should be "Fifth".

Mr. Justice Marshall
cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

2-13

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, v. Wayne Kennedy, Etc., et al. } On Appeal from the United States District Court for the Northern District of Illinois.

[February —, 1974]

MR. JUSTICE DOUGLAS, dissenting

The federal bureaucracy controls a vast conglomerate of people who walk more and more submissively to the dictates of their superiors. Our federal employees have lost many important political rights. *CSC* v *Letter Carriers*, 413 U. S. 548, held that they could be barred from taking "an active part in political management or in political campaigns," a restriction that some of us thought to be unconstitutional. *id.*, 595 *et seq* To-day's decision deprives them of other important First Amendment rights

Heretofore, as my Brother MARSHALL has shown, we have insisted that before a vital stake of the individual in society is destroyed by government he be given a hearing on the merits of the government's claim Among these personal and vital stakes are welfare benefits, *Goldberg* v. *Kelley*, 397 U. S. 254; the weekly wage of a worker, *Sniadach* v. *Family Finance Corp.*, 395 U. S 337; a person's driver's license, *Bell* v. *Burson*, 402 U. S 535; repossession of household goods, *Fuentes* v. *Shevin*, 407 U. S. 67; the position of a tenured professor in a state educational institution, *Board of Regents* v. *Roth*, 408 U. S. 564; revocation of parole, *Morrisey* v *Brewer*, 408 U. S. 471.

3

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Circulated:

Recirculated: 2-19

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, v. Wayne Kennedy, Etc., et al.

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

[February —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

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Heretofore, as my Brother MARSHALL has shown, we have insisted that before a vital stake of the individual in society is destroyed by government he be given a hearing on the merits of the government's claim. Among these personal and vital stakes are welfare benefits, *Goldberg* v. *Kelley*, 397 U. S. 254; the weekly wage of a worker, *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337; a person's driver's license, *Bell* v. *Burson*, 402 U. S. 535; repossession of household goods, *Fuentes* v. *Shevin*, 407 U. S. 67; the position of a tenured professor in a state educational institution, *Board of Regents* v. *Roth*, 408 U. S. 564; revocation of parole, *Morrisey* v. *Brewer*, 408 U. S. 471.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 11, 1974

Dear Thurgood:

Re: No. 72-1118, Arnett v Kennedy

Please join me in your dissent in this case.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 16, 1974

72-1118 - Arnett v. Kennedy

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 29, 1974

Re: No. 72-1118, Arnett v. Kennedy

Dear Bill,

So far as I am concerned, your opinion for the Court in this case is fine just the way it is. I could not and would not at this time join an opinion that went on to say that even if the appellee had unqualified "tenure", the statutory procedure would satisfy the Due Process Clause.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to The Chief Justice
Mr. Justice Blackmun
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 22, 1974

Re: 72-1118 - Arnett v. Kennedy

Dear Bill:

I am not entirely at rest in this case and am considering concurring in the judgment.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

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

2nd DRAFT

From: White, J.

Circulated: 2-12-74

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72–1118

Alvin J. Arnett, Director, Office of Econonic Opportunity, et al., Appellants, v. Wayne Kennedy, Etc., et al.

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

[February —, 1974]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

The Lloyd-LaFollette Act, 5 U. S. C. § 7501, provides that "[a]n individual in the competitive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service."[1] The

[1] The full text of the Act provides:

"(a) An individual in the competitive service may be removed or suspended without pay only for such causes as will promote the efficiency of the service.

"(b) An individual in the competitive service whose removal or suspension without pay is sought is entitled to reasons in writing and to—

"(1) notice of the action sought and of any charges preferred against him;

"(2) a copy of the charges;

"(3) a reasonable time for filing a written answer to the charges, with affidavits; and

"(4) a written decision on the answer at the earliest practicable date.

"Examination of witnesses, trial, or hearing is not required but may be provided in the discretion of the individual directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for and the order of removal or suspension without pay, and also the reasons for reduction in grade or pay,

pp 15, 24

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

From: White, J.

Circulated: _____

Recirculated: 4-10-

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Econonic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al. | On Appeal from the United States District Court for the Northern District of Illinois.

[February —, 1974]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1974

MEMORANDUM TO THE CONFERENCE

Re: 72-1118 -- Arnett v. Kennedy

In due course I will circulate a dissent in this case.

TM

Thurgood Marshall

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.

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

[February —, 1974]

MR. JUSTICE MARSHALL, dissenting.

The Court today turns back the pages of constitutional history—ignoring the plain import of the Court's recent decisions that guarantee the right to be heard before suffering grievous loss and subject statutes touching on vital First Amendment rights to strict overbreadth scrutiny.

I

The first issue in this case is a relatively narrow one—whether a federal employee in the competitive service, entitled, by statute, to serve in his job without fear of dismissal except for cause,[1] must be given an evidentiary hearing before he is discharged. We are hardly writing on a clean slate in this area. In just the last five years, the Court has held that such a hearing must be afforded before wages can be garnished, *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969); welfare benefits terminated, *Goldberg* v. *Kelly*, 397 U. S. 254 (1970); a driver's license revoked, *Bell* v. *Burson*, 402 U. S. 535 (1971); consumer goods repossessed, *Fuentes* v. *Shevin*, 407 U. S. 67 (1972); parole revoked, *Morrissey* v. *Brewer*, 408 U. S. 471 (1972); or a tenured college professor fired by a public educational institution, *Board of Regents* v.

[1] 5 U. S. C. § 7501; 5 CFR § 735.2-1a.

changes at 4, 7, 9, 10, 13, 18

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

From: Marshall, J.

Circulated: _____

Recirculated: MAR 8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.	On Appeal from the United States District Court for the Northern District of Illinois.

[February —, 1974]

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

The Court today turns back the pages of constitutional history—ignoring the plain import of the Court's recent decisions that guarantee the right to be heard before suffering grievous loss and subject statutes touching on vital First Amendment rights to strict overbreadth scrutiny.

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[1] 5 U. S. C. § 7501; 5 CFR § 735.2-1a

— 4,5,6,7,8,9,12,13,15,16,20

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Bla
Mr. Justice Pow
Mr. Justice Reh

From: Marshall, J.

Circulated: _____

Recirculated: APR

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.

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

[February —, 1974]

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

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[1] 5 U. S. C. § 7501; 5 CFR § 735.2-1a.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackm
Mr. Justice Powell
Mr. Justice Rehnqu

From: Marshall, J.

Circulated:

Recirculated: APR 15 1

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.

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

[April 16, 1974]

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

I would affirm the judgment of the District Court, both in its holding that a tenured government employee must be afforded an evidentiary hearing prior to a dismissal for cause and in its decision that 5 U. S. C. § 7501 is unconstitutionally vague and overbroad as a regulation of employees' speech.

I

The first issue in this case is a relatively narrow one—whether a federal employee in the competitive service, entitled, by statute, to serve in his job without fear of dismissal except for cause,[1] must be given an evidentiary hearing before he is discharged. We are hardly writing on a clean slate in this area. In just the last five years, the Court has held that such a hearing must be afforded before wages can be garnished, *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969); welfare benefits terminated, *Goldberg* v. *Kelly*, 397 U. S. 254 (1970); a driver's license revoked, *Bell* v. *Burson*, 402 U. S. 535 (1971); consumer goods repossessed, *Fuentes* v. *Shevin*, 407 U. S. 67 (1972); parole revoked, *Morrissey* v. *Brewer*,

[1] 5 U. S. C. § 7501.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 29, 1974

Dear Bill:

Re: No. 72-1118 - Arnett v. Kennedy

I, too, am not at rest in this case and shall await the expression of additional views.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 26, 1974

Re: No. 72-1118 - Arnett v. Kennedy

Dear Lewis:

Thank you for sending me a copy of your letter of January 19 to Bill Rehnquist. What you outline in your letter is about where I come out. Thus, you may have a "join" from me if you are proceeding along this line.

Sincerely,

Harry

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1974

Dear Lewis:

Re: No. 72-1118 - Arnett v. Kennedy

This will formally confirm my joinder in your separate opinion in this case.

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

January 19, 1974

No. 72-1118 Arnett v. Kennedy

Dear Bill:

I am in agreement generally with your opinion circulated on January 15, and expect to join you. There is a point which I would appreciate your considering.

You forcefully argue the significance of the juxtaposition of the right not to be removed except for cause and the procedural limitations attached thereto. But as I read the draft, it leaves me with the impression that this is the primary basis for the ultimate conclusion.

It occurs to me that the opinion could be strengthened by an additional emphasis on the substance of the due process issue. As I understand appellee's basic position, he claims that the statute confers a right (presumably a "property right" under Roth) not to be removed except "for cause", and that cause must be determined in a due process hearing. But what constitutes due process is a separate question that must be answered in light of the nature of the property interest asserted and the particular circumstances. Under the present statutory scheme, an employee is accorded written advance notice and an informal hearing on the issue of "cause". He may thereafter appeal any adverse decision and receive a full trial-type hearing, usually within three months of removal. If he prevails, he is entitled to reinstatement and back pay.

When one balances the interests here implicated (the individual's interest in job security and not being removed without "cause", and the public interest in preserving an efficient civil service), I have no difficulty in concluding that the foregoing procedure comports fully

with due process. One of the essential factors is that an adversary hearing is provided ultimately and back pay (as well as reinstatement) guaranteed if the removal was wrongful.

In short, while your statutory argument is persuasive, the substantive question whether the procedure meets due process standards seems to me to be the more fundamental issue. I think this can be met head on, and answered affirmatively.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

February 27, 1974

No. 72-1118 Arnett v. Kennedy

Dear Harry:

My thanks for yours of February 26.

I will be happy to do a brief concurring opinion in the above case along the lines of my letter of January 19 to Bill Rehnquist.

In view of the other obvious pressing commitments for the rest of this week, it will probably be the middle of next week at the earliest before I can do this.

I appreciate your suggestion.

Sincerely,

Mr. Justice Blackmun

lfp/ss

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: MAR 28 1974

No. 72-1118

Recirculated: _____

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, v. Wayne Kennedy, Etc., et al.

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

[April —, 1974]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring in part and concurring in the result.

For the reasons stated by MR. JUSTICE REHNQUIST, I agree that the provisions of 5 U. S. C. § 7501 (a) are neither unconstitutionally vague nor overbroad. I also agree that appellee's discharge did not contravene the Fifth Amendment guarantee of procedural due process. Because I reach that conclusion on the basis of different reasoning, I state my views separately.

I

The applicability of the constitutional guarantee of procedural due process depends in the first instance on the presence of a legitimate "property" or "liberty" interest within the meaning of the Fifth or Fourteenth Amendment. Governmental deprivation of such an interest must be accompanied by minimum procedural safeguards, including some form of notice and a hearing.[1]

[1] As the Court stated in *Boddie* v. *Connecticut*, 401 U. S. 371, 378 (1970), "The formality and procedural requisites for [a due process] hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." In this case, we are concerned with an administrative hearing in the context of appellee's discharge from public employment.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.	On Appeal from the United States District Court for the Northern District of Illinois.

[January —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Prior to the events leading to his discharge, appellee Wayne Kennedy [1] was a nonprobationary federal employee in the competitive Civil Service. He was a field representative in the Chicago Regional Office of the Office of Economic Opportunity (OEO). In March 1972, he was removed from the federal service pursuant to the provisions of the Lloyd-LaFollette Act, 5 U. S. C. § 7501, after Wendell Verduin, the Regional Director of

[1] "Appellee" refers to appellee Wayne Kennedy, the named plaintiff in the original complaint. The participation of the 18 other named plaintiffs, who were added in the amended complaint, see n. 3, *infra*, appears to have been little more than nominal. The amended complaint alleged that the added named plaintiffs' exercise of their rights of free speech were chilled because they feared that any off-duty public comments made by them would constitute grounds for discharge or punishment under the Lloyd-LaFollette Act. Two conclusory affidavits supporting that bare allegation (one signed by one of the added named plaintiffs, the other by the remaining 17) were filed in connection with plaintiffs' motion for summary judgment or temporary injunctive relief.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 28, 1974

Re: No. 72-1118 - Arnett v. Kennedy

Dear Lewis:

Your letter of January 19th suggests that my proposed opinion for the Court could be strengthened by going on to conclude that even if appellee had a "property" interest which was protected by the Due Process Clause, the administrative procedures provided for the processing of his claim with a sufficient compliance with the requirements of that clause. Your inquiry is obviously a pertinent one, and since something of a similar nature has been suggested to me by Harry I am taking the liberty of sending copies of this reply to the other three who voted to reverse in this case -- the Chief, Potter, and Harry. I am inclined to stay with the basic format I have used, but any possible defection could cause me to make an "agonizing re-appraisal".

As you know, the opinion as presently drafted holds that appellee's statutory right not to be discharged except for cause was sufficiently qualified by language in the same statute that it did not amount to a full-fledged "property" interest for Fourteenth Amendment purposes under Roth. It was therefore unnecessary, I thought, to go on and decide whether the hearing procedure was constitutionally adequate if we were dealing with a Roth-type property interest in job tenure.

It seems to me that this holding is itself a constitutional one, and although necessarily premised in part on the circumstances surrounding the adoption of the Lloyd-LaFollette Act, is by no means a throwaway in a completely unique situation. I think the Fahey v. Mallonee reasoning has a good deal of equity to it, and I think it ties in, too, with Potter's emphasis on "expectation" as an element of property interest in Roth and Perry.

I would not be at all disposed to reach a contrary conclusion on this point, and I gather from your letter that you agree with it. As one who tends to be very cautious in reading new meanings into the Constitution, I would be very loath to hold that there is a property right here simply for the purpose of reaching and passing upon the important due process question which you spell out in your letter. Even in our brief tenure here, I can't help noticing how every new holding that there is a constitutional right to something or other inevitably spawns derivative claims on the part of ingenious lawyers, and I would think that a holding that there was a property interest here would have a like effect.

The reason why I stopped where I did, and did not go on to discuss whether or not the hearing procedures would have been adequate if there had been a property right, was that I felt that such a conclusion would probably be dicta. I also felt that, in view of Potter's comments at Conference, he might very likely not join in any such conclusion. Since both the issue decided as I have written the case, and the issue you would like to see decided seem to me to be constitutional questions, I do not think you can prefer one to the other on that basis. From a strictly logical point of view, I think that you have to inquire whether or not there is a property interest before you reach the question of whether its deprivation complied with due process of law.

I hasten to add that, as presently advised, I am pretty much in accord with your suggested disposition of the second issue when it gets here. But my present inclination,

both because of doubt as to Potter's position and my thought that it is better to avoid two separate constitutional pronouncements when one would decide the case, is that this is not the case in which to reach that question.

Sincerely,

Mr. Justice Powell

Copy to: The Chief Justice
Mr. Justice Stewart
Mr. Justice Blackmun

20-71

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

4/15
2/22

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, *v.* Wayne Kennedy, Etc., et al.	On Appeal from the United States District Court for the Northern District of Illinois.

[January —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Prior to the events leading to his discharge, appellee Wayne Kennedy[1] was a nonprobationary federal employee in the competitive Civil Service. He was a field representative in the Chicago Regional Office of the Office of Economic Opportunity (OEO). In March 1972, he was removed from the federal service pursuant to the provisions of the Lloyd-LaFollette Act, 5 U. S. C. § 7501, after Wendell Verduin, the Regional Director of

[1] "Appellee" refers to appellee Wayne Kennedy, the named plaintiff in the original complaint. The participation of the 18 other named plaintiffs, who were added in the amended complaint, see n. 3, *infra*, appears to have been little more than nominal. The amended complaint alleged that the added named plaintiffs' exercise of their rights of free speech were chilled because they feared that any off-duty public comments made by them would constitute grounds for discharge or punishment under the Lloyd-LaFollette Act. Two conclusory affidavits supporting that bare allegation (one signed by one of the added named plaintiffs, the other by the remaining 17) were filed in connection with plaintiffs' motion for summary judgment or temporary injunctive relief.

p24

Mr. Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

3rd DRAFT

From: Rehnquist, J.

Circulated:

Recirculated: 4/2/74

SUPREME COURT OF THE UNITED STATES

No. 72-1118

Alvin J. Arnett, Director, Office of Economic Opportunity, et al., Appellants, v. Wayne Kennedy, Etc., et al.	On Appeal from the United States District Court for the Northern District of Illinois.

[January —, 1974]

MR. JUSTICE REHNQUIST announced the judgment of the Court in an opinion in which THE CHIEF JUSTICE and MR. JUSTICE STEWART join.

Prior to the events leading to his discharge, appellee Wayne Kennedy[1] was a nonprobationary federal employee in the competitive Civil Service. He was a field representative in the Chicago Regional Office of the Office of Economic Opportunity (OEO). In March 1972, he was removed from the federal service pursuant to the provisions of the Lloyd-LaFollette Act, 5 U. S. C. § 7501, after Wendell Verduin, the Regional Director of

[1] "Appellee" refers to appellee Wayne Kennedy the named plaintiff in the original complaint. The participation of the 18 other named plaintiffs, who were added in the amended complaint, see n. 3, *infra*, appears to have been little more than nominal. The amended complaint alleged that the added named plaintiffs' exercise of their rights of free speech were chilled because they feared that any off-duty public comments made by them would constitute grounds for discharge or punishment under the Lloyd-LaFollette Act. Two conclusory affidavits supporting that bare allegation (one signed by one of the added named plaintiffs, the other by the remaining 17) were filed in connection with plaintiffs' motion for summary judgment or temporary injunctive relief.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1974

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Arnett v. Kennedy, No. 72-1118

(1) No. 72-1617 Civil Service Comm. of the State of New York et al. v. Snead

No. 72-1691 Dep't of Social Services of the City of New York et al. v. Snead

(2) No. 73-90 Shelton v. EEOC

(3) No. 73-208 Collins v. Rockefeller

No. 73-219 Sanford v. Rockefeller

(1) No. 72-1617 Civil Service Comm. of the State of New York et al. v. Snead and No. 72-1691 Dep't of Social Services of the City of New York et al. v. Snead. In both cases appellants appeal from the decision of a three-judge district court (SDNY, Mulligan, Weinfeld, Bryan) in this section 1983 action declaring section 72 of the New York Civil Service Law, which provides for involuntary leaves of absence for civil service employees for mental disability after medical examination but without hearing, unconstitutional and enjoining appellants from taking any action thereunder. The District Court also ordered appellee reinstated with back pay for her involuntary leave of absence.

Section 72, enacted in 1969, provides that when an employee's "appointing authority" believes he is unable to perform his duties because of mental disability he may require him to undergo a medical examination by a medical officer selected by the employing agency. If the medical officer certifies that he is not mentally fit to do his job, the appointing authority may place him on involuntary leave without pay, supplying him with "a written statement of the reasons therefore." Any time within a year, or before his