

# The Burger Court Opinion Writing Database

## *Edelman v. Jordan*

415 U.S. 651 (1974)

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



Wm

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 17, 1973  
PERSONAL

RF

Re: 72-1410 - Edelman v. Jordan

Dear Bill:

Would you be willing to undertake the assignment of a memorandum in the above case? If Stewart, White and Powell remain stationery, it will be something to convert into an opinion later on. I will defer my vote until I see your memorandum, if you are willing to take this assignment.

I will explain my posture in more detail when we can visit.

Regards,

WJB

Mr. Justice Rehnquist



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

CHAMBERS OF  
THE CHIEF JUSTICE

December 18, 1973


Re: 72-1410 - Edelman v. Jordan

MEMORANDUM TO THE CONFERENCE:

The vote in the above case now stands at 4-4 in light of Lewis Powell's memorandum of December 17.

As I indicated on the assignment sheet I will defer my vote. Meanwhile I have asked Justice Rehnquist to do a memorandum on the case to which others may then address their comments.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

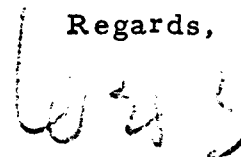
January 22, 1974

Re: No. 72-1410 - Edelman v. Jordan

Dear Bill:

I find much I agree with in your memorandum as to the 11th Amendment. The responses will indicate whether a consensus forms on your approach or Bill Douglas'.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

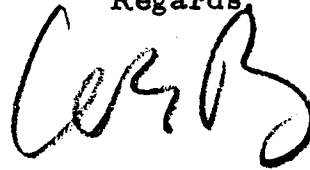
March 18, 1974

Re: 72-1410 - Edelman v. Jordan

Dear Bill:

Please join me.

Regards

A handwritten signature in dark ink, appearing to be 'C. E. B.' with a large, stylized flourish at the end.

Mr. Justice Rehnquist

Copies to the Conference

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner. v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
---	---	---

[January —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

Congress provided in 42 U. S. C. § 1983 that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In this class action respondent sought to enforce against state aid officials of Illinois a provision of the Social Security Act, 42 U. S. C. §§ 1381-1385, known as Aid to the Aged, Blind, or Disabled (AABD).<sup>1</sup> The complaint alleges violations of the Equal Protection Clause of the Fourteenth Amendment and also violations of the Social Security Act. Hence § 1983 is satisfied *in haec verba*, for a deprivation of "rights" which are "secured by the

<sup>1</sup> The program in Illinois is administered by the Department of Public Aid. Ill. Rev. Stat. c. 23, §§ 3-1 to 3-12 (1971). The program is funded 50% by the State and 50% by the Federal Government, 42 U. S. C. §§ 303-306, 1201-1206, 1351-1355, 1381-1385.

6, 7, 9, 10

To

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

1-15

[January —, 1973]

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"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In this class action respondent sought to enforce against state aid officials of Illinois a provision of the Social Security Act, 42 U. S. C. §§ 1381-1385, known as Aid to the Aged, Blind, or Disabled (AABD).<sup>1</sup> The complaint alleges violations of the Equal Protection Clause of the Fourteenth Amendment and also violations of the Social Security Act. Hence § 1983 is satisfied *in haec verba*, for a deprivation of "rights" which are "secured by the

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To : The Chief Justice  
Mr. [illegible]  
[illegible]

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Circular

Received

1-21

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

[January —, 1973]

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

2-1

[February —, 1974]

Memorandum from MR. JUSTICE DOUGLAS.

Congress provided in 42 U. S. C. § 1983 that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

From: Douglas, J.

Circulate:

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

Encirculated: 2-12

[February —, 1974]

Memorandum from MR. JUSTICE DOUGLAS.

Congress provided in 42 U. S. C. § 1983 that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Stevens  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-1410

Circulate:

Reconsidered: 3-13

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

[February —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

Congress provided in 42 U. S. C. § 1983 that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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Not Amended

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, <i>v.</i> John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
--	---	---

[February —, 1974]

MR. JUSTICE BRENNAN.

This suit is brought by Illinois citizens against Illinois officials. In that circumstance, Illinois may not invoke the Eleventh Amendment, since that Amendment bars only federal court suits against States by citizens of other States. Rather, the question is whether Illinois may avail itself of the nonconstitutional but ancient doctrine of sovereign immunity as a bar to respondents' claim for retroactive AABD payments. In my view Illinois may not assert sovereign immunity for the reason I expressed in dissent in *Employees v. Missouri Public Health*, 411 U. S. 279, 298-324 (1973): the States surrendered that immunity, in Hamilton's words, "in the plan of the Convention" that formed the Union, at least insofar as the States granted Congress specifically enumerated powers. *Id.*, at 319 n. 7; *Parden v. Terminal R. Co.*, 377 U. S. 184 (1964). Congressional authority to enact the Social Security Act, of which AABD is a part, 42 U. S. C. §§ 1381-1385, funded 50% by the Federal Government, 42 U. S. C. §§ 303-306, is to be found in Art. I, § 8, cl. 1, one of the enumerated powers granted Congress by the States in the Constitution. In other words, the States surrendered their sovereignty to con-

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Circulated  
2-5-74

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner.  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

[February —, 1974]

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[February —, 1974]

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Not Circulated

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
---	---	---

[February —, 1974]

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Final

# SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
---	---	---

[March 25, 1974]

MR. JUSTICE BRENNAN, dissenting.

This suit is brought by Illinois citizens against Illinois officials. In that circumstance, Illinois may not invoke the Eleventh Amendment, since that Amendment bars only federal court suits against States by citizens of other States. Rather, the question is whether Illinois may avail itself of the nonconstitutional but ancient doctrine of sovereign immunity as a bar to respondents' claim for retroactive AABD payments. In my view Illinois may not assert sovereign immunity for the reason I expressed in dissent in *Employees v. Department of Public Health and Welfare*, 411 U. S. 279, 298 (1973): the States surrendered that immunity in Hamilton's words, "in the plan of the Convention," that formed the Union, at least insofar as the States granted Congress specifically enumerated powers. See *id.*, at 319 n. 7; *Parden v. Terminal Railway*, 377 U. S. 184 (1964). Congressional authority to enact the Social Security Act, of which AABD is a part, 42 U. S. C. §§ 1381-1385, is to be found in Art. I, § 8, cl. 1, one of the enumerated powers granted Congress by the States in the Constitution. I remain of the opinion that "because of its surrender, no immunity exists that can be the subject of a

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 19, 1974

Re: No. 72-1410, Edelman v. Jordan

Dear Bill,

I agree with your memorandum in this case, although I have reservations about the preliminary question of federal jurisdiction. Should your memorandum become the opinion of the Court, I may write a few concurring words.

Sincerely yours,

P.S.  
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 20, 1974

72-1410, Edelman v. Jordan

Dear Bill,

Upon further reflection, I have  
decided not to undertake any separate writ-  
ing 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 BYRON R. WHITE

January 22, 1974

Re: No. 72-1410 - Edelman v. Jordan

Dear Bill:

As now advised, I would be in essential agreement with an opinion cast in the form of your memorandum.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 26, 1974

Re: No. 72-1410 - Edelman v. Jordan

Dear Bill:

I agree.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 23, 1974

MEMORANDUM TO THE CONFERENCE:

Re: No. 72-1410 -- Edelman v. Jordan

I find my views to be much closer to the  
Douglas memorandum than to the Rehnquist one.

  
T. M.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 72-1410

Circulated: MAR 12 1974

Recirculated:

Joel Edelman, Director of  
 Illinois Department of  
 Public Aid, Etc.,  
 Petitioner,  
 v.  
 John Jordan et al.

On Writ of Certiorari to the  
 United States Court of  
 Appeals for the Seventh  
 Circuit.

[March —, 1974]

MR. JUSTICE MARSHALL, dissenting.

The Social Security Act's categorical assistance programs, including the Aid to the Aged, Blind, and Disabled (AABD) program involved here, are fundamentally different from most federal legislation. Unlike the Fair Labor Standards Act involved in last Term's decision in *Employees v. Department of Public Health & Welfare*, 411 U. S. 279 (1973), or the FELA at issue in *Parden v. Terminal Railway*, 377 U. S. 184 (1964), the Social Security Act does not impose federal standards and liability upon all who engage in certain regulated activities, including often-unwilling state agencies. Instead, the Act seeks to induce state participation in the federal welfare programs by offering federal matching funds in exchange for the State's voluntary assumption of the Act's requirements. I find this basic distinction crucial: it leads me to conclude that by participation in the programs, the States waive whatever immunity they might otherwise have from federal court orders requiring retroactive payment of welfare benefits.<sup>1</sup>

<sup>1</sup> In view of my conclusion on this issue, I find it unnecessary to consider whether the Court correctly treats this suit as one against the State rather than as a suit against a state officer permissible under the rationale of *Ex parte Young*, 209 U. S. 123 (1908).

✓  
1, 2, 6  
MAR 13 1974

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
---	---	---

[March —, 1974]

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

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 29, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1410 - Edelman v. Jordan

After reading the interesting and provocative memoranda, pro and con, I remain about where I was at the time of our Conference on December 14.

I still would affirm, but I would do so about as follows:

1. I regard the Eleventh Amendment not as jurisdictional, in the traditional sense, but as withholding judicial power from the federal courts. Bill Douglas has described it this way on page 9 of his memorandum.
2. In my view, however, when Illinois embarked upon the federal-state welfare programs at issue here, she waived her Eleventh Amendment immunity. If it is a question of choosing between Parden on the one hand and Missouri Employees on the other, it seems to me that this case is closer to Parden.
3. I do not accept, at this late date, the argument advanced by the NAACP, as amicus, and reflected somewhat in Bill Douglas' memorandum, page 7, that the Eleventh Amendment was cut back by the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments.
4. I do not think that in Graham v. Richardson we affirmed the ordering of back payments. Both complaints there requested

retroactive payments, but, as I read the respective district court opinions, relief of that kind was not granted. A glance at the respective judgment and order appears to confirm this impression. O. T. No. 609, App. 50; O. T. No. 727, App. 162a. I thus believe that the description in footnote 13 of Bill Rehnquist's memorandum is the correct one.

H. A. B.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN


March 12, 1974

Dear Thurgood:

Re: No. 72-1410 - Edelman v. Jordan

I am glad to join your dissenting opinion circulated today.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 17, 1973

No. 72-1410 Edelman v. Jordan

Dear Chief:

At the Conference I voted tentatively (with at least two question marks) to affirm in the above case.

Over the weekend, I have reexamined my position and now wish to record my vote in favor of reversal. The case is still a close one for me because we may leave the respondents remediless. Yet we have not extended Ex parte Young to cover the compelling of a state to pay money from general tax funds to private citizens. Before I go that far, I will have to be satisfied that there was a waiver by the state. I have reread Parden and Employees and concluded that there is no waiver here. The concept of waiver contemplates the voluntary and conscious relinquishment of a right. Before a state is held to have waived the shield of the 11th Amendment, waiver should be shown by the party asserting it to have been reasonably intended by both the federal government and the state. The importance of a clear showing of waiver is more evident where retroactive payments are demanded from the general treasury of a state.

I find myself in agreement with the excellent opinion of Carl McGowan (concurring in by Judges Friendly and Timers) in Rothstein v. Wyman, 467 F.2d 226 (1972).

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

MEMORANDUM

TO: Mr. Justice Douglas  
Mr. Justice Rehnquist

DATE: January 19, 1974

FROM: Lewis F. Powell, Jr.

No. 72-1410 Edelman v. Jordan

As Jo and I expect to be away for the next ten days, I will not be able to review the memoranda circulated by you on the above case until after our return.

L. F. P., Jr.

bc: Mr. John Buckley

John: If you have an opportunity to review the above drafts, and if your comments are not extensive, you might send your copy to me in Florida.

L. F. P., Jr.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 19, 1974

No. 72-1410 Edelman v. Jordan

Dear Bill:

I should have advised you earlier that if your memorandum becomes an opinion of the Court, I will join it.

As others have mentioned, I had some reservations about the jurisdictional question, but I take it you are now proceeding on the theory of pendant jurisdiction.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 26, 1974

No. 72-1410 Edleman v. Jordan

Dear Bill:

Please join me.

Sincerely,

*Levin*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 14, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1410 - Edelman v. Jordan

As requested by the Chief, I have prepared the attached memorandum as an opinion to reverse the judgment of the Court of Appeals for the Seventh Circuit in this case.

Sincerely,

*WHR*

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES Rehnquist, J.

No. 72-1410

Circulated: 1-14-74

Uncirculated

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[January —, 1974]

Memorandum of MR. JUSTICE REHNQUIST.

Respondent John Jordan filed a complaint in the United States District Court for the Northern District of Illinois, individually and as a representative of a class, seeking declaratory and injunctive relief against two former directors of the Illinois Department of Public Aid, the director of the Cook County Department of Public Aid, and the comptroller of Cook County. Respondent alleged that these state officials were administering the federal-state programs of Aid to the Aged, Blind and Disabled (AABD) in a manner inconsistent with various federal regulations and with the Fourteenth Amendment to the Constitution.<sup>1</sup>

<sup>1</sup> In his complaint in the District Court, respondent claimed that the Illinois Department of Public Aid was not complying with federal regulations in its processing of public aid applications, and also that its refusal to pay benefits as of the date the applications were made (as opposed to the date on which the benefits were approved) violated the Equal Protection Clause of the Fourteenth Amendment. Respondent asserted that the District Court could exercise jurisdiction over the cause by virtue of 28 U. S. C. §§ 1331 and 1343 (3) and (4). Though not briefed by the parties before this Court, we think the District Court was correct in exercising

72-1410

Supreme Court of the United States

Memorandum

1-16-74  
from WJR, 19

Harry —

A dispute is in pro-  
cess between WOD & me, in  
our Edelman opinions, re  
Graham v. Richardson be-  
cause you voted w/ WOD at conf  
on Edelman, I didn't think  
it right to bother you be-  
fore circulating, but I hope  
I am right on Richardson record

pg. 6, 14, 15, 16, 18

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

1-17-7

Joel Edelman, Director of Illinois Department of Public Aid, Etc., Petitioner, v. John Jordan et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[January —, 1974]

Memorandum of Mr. JUSTICE REHNQUIST

Respondent John Jordan filed a complaint in the United States District Court for the Northern District of Illinois, individually and as a representative of a class, seeking declaratory and injunctive relief against two former directors of the Illinois Department of Public Aid, the director of the Cook County Department of Public Aid, and the comptroller of Cook County. Respondent alleged that these state officials were administering the federal-state programs of Aid to the Aged, Blind and Disabled (AABD) in a manner inconsistent with various federal regulations and with the Fourteenth Amendment to the Constitution.<sup>1</sup>

<sup>1</sup> In his complaint in the District Court, respondent claimed that the Illinois Department of Public Aid was not complying with federal regulations in its processing of public aid applications, and also that its refusal to pay benefits as of the date the applications were made (as opposed to the date on which the benefits were approved) violated the Equal Protection Clause of the Fourteenth Amendment. Respondent asserted that the District Court could exercise jurisdiction over the cause by virtue of 28 U. S. C. §§ 1331 and 1343 (3) and (4). Though not briefed by the parties before this Court, we think the District Court was correct in exercising

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

11, 16, 17

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, W.

No. 72-1410

Circulated: \_\_\_\_\_

Revised: 2-13-74

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

[February —, 1974]

Memorandum of Mr. JUSTICE REHNQUIST

Respondent John Jordan filed a complaint in the United States District Court for the Northern District of Illinois, individually and as a representative of a class, seeking declaratory and injunctive relief against two former directors of the Illinois Department of Public Aid, the director of the Cook County Department of Public Aid, and the comptroller of Cook County. Respondent alleged that these state officials were administering the federal-state programs of Aid to the Aged, Blind and Disabled (AABD) in a manner inconsistent with various federal regulations and with the Fourteenth Amendment to the Constitution.<sup>1</sup>

<sup>1</sup> In his complaint in the District Court, respondent claimed that the Illinois Department of Public Aid was not complying with federal regulations in its processing of public aid applications, and also that its refusal to pay benefits as of the date the applications were made (as opposed to the date on which the benefits were approved) violated the Equal Protection Clause of the Fourteenth Amendment. Respondent asserted that the District Court could exercise jurisdiction over the cause by virtue of 28 U. S. C. §§ 1331 and 1343 (3) and (4). Though not briefed by the parties before this Court, we think the District Court was correct in exercising

1, 2  
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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1410

Circulated

Revised: 2-26-74

Joel Edelman, Director of  
Illinois Department of  
Public Aid, Etc.,  
Petitioner,  
v.  
John Jordan et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

[February —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the  
Court.

Respondent John Jordan filed a complaint in the United States District Court for the Northern District of Illinois, individually and as a representative of a class, seeking declaratory and injunctive relief against two former directors of the Illinois Department of Public Aid, the director of the Cook County Department of Public Aid, and the comptroller of Cook County. Respondent alleged that these state officials were administering the federal-state programs of Aid to the Aged, Blind and Disabled (AABD) in a manner inconsistent with various federal regulations and with the Fourteenth Amendment to the Constitution.<sup>1</sup>

<sup>1</sup> In his complaint in the District Court, respondent claimed that the Illinois Department of Public Aid was not complying with federal regulations in its processing of public aid applications, and also that its refusal to process and allow respondent's claim for a period of four months, while processing and allowing the claims of those similarly situated, violated the Equal Protection Clause of the Fourteenth Amendment. Respondent asserted that the District Court could exercise jurisdiction over the cause by virtue of 28 U. S. C. §§ 1331 and 1343 (3) and (4). Though not briefed by

99-23-25

From September 1969, 1970

## STATES

Recirculated: 3-14-7

On Writ of Certiorari to the  
United States Court of  
Appeals for the Seventh  
Circuit.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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<sup>1</sup> In his complaint in the District Court, respondent claimed that the Illinois Department of Public Aid was not complying with federal regulations in its processing of public aid applications, and also that its refusal to process and allow respondent's claim for a period of four months, while processing and allowing the claims of those similarly situated, violated the Equal Protection Clause of the Fourteenth Amendment. Respondent asserted that the District Court could exercise jurisdiction over the cause by virtue of 28 U. S. C. §§ 1331 and 1343 (3) and (4). Though not briefed by

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 3, 1974

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Edelman v. Jordan, No. 72-1410:  
No. 72-1734 Samkowski v. Carter  
No. 73-37 Stanton v. Carter  
No. 73-721 Myers v. Pennsylvania  
No. 73-5954 Doe v. Flowers

The above cases have previously been held for the decision in Edelman v. Jordan, and will be relisted for the April 12, 1974 Conference.

(1) No. 72-1734 Samkowski v. Carter  
No. 73-37 Stanton v. Carter

In these cases, a three-judge District Court for the Southern District of Indiana, specifically relying on the opinion of the Seventh Circuit in Edelman (472 F.2d 985), ordered Indiana public aid officials to make retroactive payments to public aid recipients from whom benefits had been withheld pursuant to state regulations which were found to be inconsistent with the Social Security Act. The state officials have appealed that judgment. I would therefore note, vacate and remand both appeals for reconsideration in light of Edelman. ✓

(2) No. 73-721 Myers v. Pennsylvania

In this case, the Court of Appeals for the Third Circuit upheld the District Court's dismissal of actions brought by the various petitioners against the Commonwealth of Pennsylvania seeking damages for the deaths of and injuries to various students caused by a school bus skidding across the wet pavement of an interstate highway in Pennsylvania. Petitioners claimed that the Commonwealth had failed to properly maintain the interstate highway in violation of the Federal-Aid Highway

Act, 23 U.S.C. § 101 et seq., and the Highway Safety Act, 23 U.S.C. § 401 et seq. Both the District Court and the Court of Appeals found that the Commonwealth had not waived its Eleventh Amendment immunity by its participation in the federal aid programs, and that neither program created a specific cause of action. The case does not involve an order of retroactive payments by a State. The decision is consistent with our holding in Edelman, that Illinois did not waive its Eleventh Amendment immunity simply by participating in a federal aid program. I would deny certiorari. Bill Douglas has circulated a memorandum in this case indicating that he would grant certiorari to consider whether Pennsylvania waived its Eleventh Amendment immunity by its acceptance of federal funds. ✓

(3) No. 73-5954 Doe v. Flowers

In this case, a three-judge District Court for the Northern District of West Virginia enjoined West Virginia public aid officials from enforcement of a West Virginia public aid regulation found inconsistent with the AFDC program's requirement of "reasonable promptness" in the furnishing of public aid by participating States in the federal program. The District Court refused, however, to award retroactive benefits ✓ for payments wrongfully withheld by the state officials. The appellant public aid recipients have appealed from that portion of the decision. This case is controlled by the decision in Edelman, and accordingly, I would affirm the judgment of ✓ the District Court.

Sincerely,

Wm