The Burger Court Opinion Writing Database

Burns v. Alcala

420 U.S. 575 (1975)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1975

Re: 73-1708 - Burns v. Alcala

Dear Lewis:

I join in your opinion dated February 14, 1975.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 18, 1975

RE: No. 73-1708 Burns v. Alcala, et al.

Dear Lewis:

I was the other way but am persuaded. Please join me.

Sincerely,

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 18, 1975

Re: No. 73-1708, Burns v. Linda Alcala

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1975

Re: No. 73-1708 - Burns v. Alcala

Dear Lewis:

Please join me.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

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: MAR 4 1975

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1708

Kevin J. Burns, Etc., et al., Petitioners, *v.* Linda Alcala et al. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1975]

MR. JUSTICE MARSHALL, dissenting.

As the majority implicitly acknowledges, the evidence available to help resolve the issue of statutory construction presented by this case does not point decisively in either direction. When it passed the Social Security Act in 1935 Congress gave no indication that it meant to include or exclude unborn children from the definition of "dependent child." Nor has it shed any further light on the question other than to consider, and fail to pass, legislation that would indisputably have excluded unborn children from coverage.

The majority has parsed the language and touched on the legislative history of the Act in an effort to muster support for the view that unborn children were not meant to benefit from the Act. Even given its best face, however, this evidence provides only modest support for the majority's position. The lengthy course of administrative practice cuts quite the other way. Although the question is a close one, I agree with the conclusion reached by five of the six courts of appeals that have considered this issue,[1] and would accordingly affirm the judgment below.

[1] Besides the court below, the circuit courts holding that unborn children are within the eligibility terms of § 406 (a) include the First, the Fourth, the Fifth, and the Seventh, see *Carver v. Hooker,*

— 5 —

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: MAR 11 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1708

Kevin J. Burns, Etc., et al., Petitioners, *v.* Linda Alcala et al. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 18, 1975

Re: No. 73-1708 - Burns v. Alcala

Dear Lewis:

Please join me.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1708

Kevin J. Burns, Etc., et al., Petitioners, *v.* Linda Alcala et al. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question presented by this case is whether States receiving federal financial aid under the program of Aid to Families with Dependent Children (AFDC) must offer welfare benefits to pregnant women for their unborn children. As the case comes to this Court, the issue is solely one of statutory interpretation.

I

Respondents, residents of Iowa, were pregnant at the time they filed this action. Their circumstances were such that their children would be eligible for AFDC benefits upon birth. They applied for welfare assistance but were refused on the ground that they had no "dependent children" eligible for the AFDC program. Respondents then filed this action against petitioners, Iowa welfare officials. On behalf of themselves and other women similarly situated, respondents contended that the Iowa policy of denying benefits to unborn children conflicted with the federal standard of eligibility under § 406 (a) of the Social Security Act, as amended, 42 U. S. C. § 606 (a), and resulted in a denial of due process and

cite checking corrections throughout
see pp 2, 6, 7, 9

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

From: Powell, J.

Circulated: _____

Recirculated: FEB 24 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1708

Kevin J. Burns, Etc., et al., Petitioners, *v.* Linda Alcala et al. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 21, 1975

Cases Held for Burns v. Alcala, No. 73-1708

MEMORANDUM TO THE CONFERENCE:

The following petitions were held for Alcala:

Lukhard v. Doe, No. 73-1763, and Trainor v. Wilson, No. 74-637, are identical to Burns. In each the Court of Appeals held that the statutory term "dependent child" included unborn children. In neither case did the lower courts consider the constitutional questions pleaded as a jurisdictional peg. Consequently, the appropriate disposition should be identical to that in Burns: grant certiorari, reverse the judgment, and remand so that the plaintiffs may press their constitutional contentions if they wish.

* * * * *

Hooker v. Carver, No. 74-242, is somewhat different. In that case CA1 held that Congress had included unborn children in the AFDC program, and had not expressly made coverage optional. The court added an alternative holding: even if Congress had meant to include unborn children only at the option of the states, New Hampshire had exercised its option to include them. This holding was based on an administrative practice of paying for the cost of delivering a child that was eligible for AFDC benefits upon birth. For administrative convenience, the New Hampshire agency did not insist that delivery costs be billed separately from prenatal obstetrical services, and regularly paid the entire doctor's bill. The court interpreted this practice as retroactive payment to some unborn children and held that New Hampshire was therefore foreclosed from denying benefits

Wm. Layton
OCT 74.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1975

Re: No. 73-1708 - Burns v. Alcala

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference