The Burger Court Opinion Writing Database

Fusari v. Steinberg

419 U.S. 379 (1975)

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

Nov. 8 Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

November 1, 1974

Re: 73-848 - Fusari v. Steinberg

MEMORANDUM TO THE CONFERENCE:

Enclosed is Susan Goltz' memorandum addressed to the appointment of counsel in the above case.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

December 3, 1974

Re: No. 73-848 - Fusari v. Steinberg

Dear Lewis:

In the second draft at 10, n. 15, l.2, when discussing the tension between Torres and Java, the Torres summary affirmance is referred to as an "opinion." I wonder if you should call it an "opinion"; referring to it as such may well undercut the thrust of the footnote. Would you consider it safer to substitute "judgment."

My accolades for the lawyers in this case will follow in due course. My mood today is too benign!

Regards,

WEB

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1974

Re: 73-848 - Fusari v. Steinberg

MEMORANDUM TO THE CONFERENCE:

I enclose a proposed "snapper" in the above case. Although I speak only for myself, any such statements by one of us, at least for me, should have the benefit of other views.

Regards,

WEB

No. 73-848, Fusari v. Steinberg

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

December 16, 1974

From: The Chief Justice

Circulated: DEC 16 1974

Recirculated:

MR. CHIEF JUSTICE BURGER, concurring:

I join the opinion of the Court; however, it may be useful to mention two points which bear further discussion. First, as the Court notes, Slip Op. at 8, n. 12, both parties failed to inform us that after the District Court entered judgment the Connecticut legislature significantly changed its unemployment compensation system. I agree with the Court that this failure is "difficult to understand." Id. It is disconcerting to this Court to learn of relevant and important developments in a case after the entire Court has come to the Bench to hear arguments.

The parties failed to inform of the changes in law when they were passed, signed into law, and even when they became effective, although both sides filed their briefs after the new system became effective. The case was argued orally long after the effective date of the new statutes. The Connecticut Legislature appears to have changed the system at least in part to speed up administrative appeals and thereby treat claimants more fairly, see Slip Op. at 1, 7-8, thus meeting in part, at least, the basis of the attack on the system. Therefore, both parties had an obligation to inform the Court that the system which the District Court had enjoined had been changed; however, only

a cryptic reference was made to the change of law. The appellees' brief is 122 pages long and notes the change once, at the end of a footnote. Brief for Appellees at 65, n. 52. At that point appellees are contending that the long delay between the seated interview and administrative review of a decision to withhold benefits aggravates the defects which they contend exist in the seated interview itself. There appellees quote Boddie v. Connecticut, 401 U.S. 371, 378 (1971), where the Court said, "[t]he formality and procedural requisites for the hearing can vary depending upon the importance of the interests and the nature of the subsequent proceedings." (Emphasis appellees'.) Given the fact that the changes in the procedures may well have an effect on "subsequent proceedings," Slip Op. at 7, the Court should have been explicitly advised that changes had occurred. The only reference to changes in the law actually gives the impression that their effect is negligible.

This Court must rely on counsel to present issues fully and fairly, and counsel have a continuing duty to inform the Court of any development which may conceivably affect an outcome.

Second, although I agree wholeheartedly with the Court's reasoned discussion of the tension between the summary affirmance in Torres v. New York State Dept. of Labor, 405 U.S. 949 (1972), aff'g 321 F. Supp. 432 (S.D. N.Y., 1971), and the Court's opinion in California Human

esources Dept. v. Java, 402 U.S. 121 (1971), Slip Op. at 9-10, n. 15, we might well go beyond that and make explicit what is implicit in some prior holdings. E.g., Gibson v. Berryhill, 411 U.S. 562, 576 (1971); Edelman v. Jordan, 415 U.S. 651, 671 (1974). When we summarily affirm without opinion the judgment of a three-judge District Court we affirm the judgment but not necessarily the reasoning by which it was reached.[1/] An unexplicated summary affirmance settles the issues for the parties, and is not to be read as a casual renunciation of doctrines previously announced in opinions of the Court after full argument. Indeed, upon fuller consideration of an issue under plenary review, the Court has not hesitated to discard a rule which a line of summary affirmances may appear to have established. E.g., Edelman v. Jordan, supra, 415 U.S. at 671; Sniadach v. Family Finance Corp., 395 U.S. 337, 344 (Harlan, J., concurring); 395 U.S. 350 (Black, J., dissenting); Reynolds v. Sims, 377 U.S. 533, 614 (1964) (Harlan, J., dissenting).

1/ Some are quick to use the District Court opinion to define this Court's judgment. See Note, The Supreme Court, 1953 Term, 68 Harv. L. Rev. 96, 102 (1955); Note, Summary Disposition of Supreme Court Appeals: The Significance of Limited Discretion and a Theory of Limited Precedent, 52 F. U. L. Rev. 373, 409 (1972). Another common response to three-judge summary affirmances is confusion as to what they actually do mean. See, Currie, The Three-Judge District Court in Constitutional Litigation, 32 U. Chi. L. Rev. 1, 74, n. 365; Shanks, Book Review, 84 Harv. L. Rev. 256, 257-58, n. 17 (1970); Note, Impact of the Supreme Court's Summary Disposition Practice on its Appeals Jurisdiction, 27 Rutgers L. Rev. 952, 962 (1974); Note, 52 B. U. L. Rev., supra, at 407-15.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 8, 1975

Re: 73-848 - Fusari v. Steinberg

Dear Lewis:

Please join me in your circulation of December 28.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

P.S. My statement is being printed in substantially the typed form circulated.

WEB

page 1

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

2nd DRAFT

From: Mr. Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 73-848

Recirculated: JAN 9 1975

Jack A. Fusari, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant,
v.
Larry Steinberg et al.

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

[January —, 1975]

MR. CHIEF JUSTICE BURGER, concurring.

I join the opinion of the Court; however, it may be useful to mention two points which bear further discussion. First, as the Court notes, Slip Op., at 8, n. 12, both parties failed to inform us that after the District Court entered judgment the Connecticut legislature significantly changed its unemployment compensation system. I agree with the Court that this failure is "difficult to understand." *Ibid.* It is disconcerting to this Court to learn of relevant and important developments in a case after the entire Court has come to the Bench to hear arguments.

Even at oral argument we were not informed of the changes in state law although both parties filed their briefs after the new statute became effective. The Connecticut Legislature appears to have changed the system at least in part to expedite administrative appeals and thereby treat claimants more fairly, see Slip Op., at 1, 7–8, thus meeting in part, at least, the basis of the attack on the system. Both parties had an obligation to inform the Court that the system which the District Court had enjoined had been changed; however, only a cryptic reference was made to the change of law. The appellees'

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 25, 1974

Dear Lewis:

In 73-848, FUSARI v. STEINBERG

please join me in your per curiam.

WOD/sdm

William O. Douglas

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 3, 1974

RE: No. 73-848 Fusari v. Steinberg

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 21, 1974

Re: No. 73-848, Fusari v. Steinberg

Dear Lewis,

I am glad to join the opinion you have written for the Court in this case, and I strongly believe it should be a signed opinion.

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

November 29, 1974

Re: No. 63-848 - Fusari v. Steinberg

Dear Lewis:

I join your suggested per curiam in this case as recirculated on November 26, 1974.

Sincerely,

Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1974

Re: No. 73-848 -- Jack A. Fusari v. Larry Steinberg et al.

Dear Lewis:

Please join me in your opinion in this case.

Sincerely,

T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 29, 1974

Re: No. 73-848 - Fusari v. Steinberg

Dear Lewis:

Please join me in your recirculation of November 26.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

February 11, 1975

Re: No. 73-848 - Fusari v. Steinberg

Dear Lewis:

Your suggested order meets with my approval.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Wm. Douglas
OCT 7 1

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 20, 1974

No. 73-848 Fusari v. Steinberg

1x3-9

MEMORANDUM TO THE CONFERENCE:

This case, involving the validity of the Connecticut procedure for determining eligibility for unemployment compensation benefits, was assigned to me to write by Bill Douglas. As stated at the Conference, my view was that Connecticut's procedure did not accord with the "when due" requirements of the federal statute, and I would affirm on the statutory ground.

I drafted an opinion accordingly, but discovered in the process - for the first time - that following the District Court's decision Connecticut made substantial changes in its relevant statutes. This change in the governing law was not mentioned in oral argument by either counsel; it was not mentioned at all in appellant's brief, and was referred to only tangentially in a footnote on page 65 of appellee's brief.

I obtained a copy of the amended statutes through the Library of Congress. In addition, after considerable delay, the authorities in Connecticut sent me a copy of the available "legislative history". It is quite evident that the amendments were enacted with the view of correcting some, if not all, of the perceived deficiencies in the Connecticut procedures.

In light of the foregoing, I concluded that it would be inappropriate to write the opinion as we originally contemplated. Rather, it seems necessary to me that the case be remanded for reconsideration in light of the intervening change in Connecticut law.

Accordingly, I have prepared, and circulate herewith, a per curiam opinion to this effect. I also send to each

of you a copy of the 1974 amendments and of the available legislative history.

L.F.P., Jr.

ss

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-848

Jack A. Fusari, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant, *v.* Larry Steinberg et al.	On Appeal from the United States District Court for the District of Connecticut.

[November —, 1974]

PER CURIAM.

This case comes to us on appeal from a three-judge District Court determination that the Connecticut "seated interview" procedures for assessing continuing eligibility for unemployment compensation benefits violate the Due Process Clause of the Fourteenth Amendment. 364 F. Supp. 922 (1973). Our independent examination of Connecticut law reveals that the State significantly revised its unemployment compensation system following the District Court's decision. Some of the amendments are designed to ameliorate problems that the Court identified. In these circumstances, we think it inappropriate to decide the issues tendered by the parties. We therefore vacate the decision of the District Court and remand for reconsideration in light of the intervening changes in Connecticut law.

I

In Connecticut, unemployment compensation benefits are paid from a trust fund maintained by employer contributions. Appellant Fusari, State Commissioner of Labor and Administrator of the Unemployment Compen-

P 3, 7, 8, 10

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

From: Powell, J.

Circulated: _____

Recirculated: NOV 26 1974

SUPREME COURT OF THE UNITED STATES

No. 73-848

Jack A. Fusari, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant, *v.* Larry Steinberg et al.

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

[November —, 1974]

PER CURIAM.

This case comes to us on appeal from a three-judge District Court determination that the Connecticut "seated interview" procedures for assessing continuing eligibility for unemployment compensation benefits violate the Due Process Clause of the Fourteenth Amendment. 364 F. Supp. 922 (1973). Our independent examination of Connecticut law reveals that the State significantly revised its unemployment compensation system following the District Court's decision. Some of the amendments are designed to ameliorate problems that the court identified. In these circumstances, we think it inappropriate to decide the issues tendered by the parties. We therefore vacate the decision of the District Court and remand for reconsideration in light of the intervening changes in Connecticut law.

I

In Connecticut, unemployment compensation benefits are paid from a trust fund maintained by employer contributions. Appellant Fusari, State Commissioner of Labor and Administrator of the Unemployment Compen-

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-848

Jack A. Fusari, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant, *v.* Larry Steinberg et al.	On Appeal from the United States District Court for the District of Connecticut.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case comes to us on appeal from a three-judge District Court determination that the Connecticut "seated interview" procedures for assessing continuing eligibility for unemployment compensation benefits violate the Due Process Clause of the Fourteenth Amendment. 364 F. Supp. 922 (1973). Our independent examination of Connecticut law reveals that the State significantly revised its unemployment compensation system following the District Court's decision. Some of the amendments are designed to ameliorate problems that the court identified. In these circumstances, we think it inappropriate to decide the issues tendered by the parties. We therefore vacate the decision of the District Court and remand for reconsideration in light of the intervening changes in Connecticut law.

I

In Connecticut, unemployment compensation benefits are paid from a trust fund maintained by employer contributions. Appellant Fusari, State Commissioner of Labor and Administrator of the Unemployment Compen-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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PLEASE RETURN
TO FILE

January 23, 1975

MEMORANDUM TO THE CONFERENCE:

Hold for No. 73-848, Fusari v. Steinberg

No. 73-1015 CROW, AFL-CIO, UNITED STEELWORKERS, et al
v. CALIFORNIA DEPT. OF HUMAN RESOURCES

This case arises on writ of certiorari to the Ninth Circuit, seeking to challenge that court's decision that the California system for assessing continuing eligibility for unemployment compensation benefits did not violate the Due Process Clause. Petitioners question whether the California procedures comport with the federal "fair hearing" and "when due" requirements, 42 U.S.C. §§ 503(a)(1) and (3), and with the Due Process Clause. I recommend that we vacate the judgment and remand the case for consideration of the mootness issue in light of Burney and Sosna. The court should additionally be instructed to convene a three-judge court if it determines that the case is not moot.

In many respects the California procedure appears to resemble the Connecticut procedure we sought to consider in Fusari. Like Fusari, the dispute in this case focuses on the initial interview. Petitioners contend that California's failure to provide a pre-termination Goldberg-type hearing at that stage violates due process and the "fair hearing" and "when due"

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 10, 1975

Case Held for No. 73-848 Fusari v. Steinberg

MEMORANDUM TO THE CONFERENCE:

No. 73-1015 Crow, et al v. California Dept. of Human Resources. Attached is a proposed order for the disposition of this case that we held to await our decision in Fusari v. Steinberg. Further consideration has led me to discover an additional three-judge court problem that I did not identify in my previous memorandum to the Conference. I have attempted to accommodate that issue, outlined below, in the proposed order.

The complaint alleged violations of the "when due" and "fair hearing" clauses of the Social Security Act as well as a violation of the Due Process Clause. As mentioned in my prior memorandum, the District Court determined that a three-judge court was not required for resolution of the constitutional issue, and it decided that issue without any apparent consideration of the statutory questions. Although both the District Court and the Court of Appeals lacked jurisdiction over the constitutional claim, each had jurisdiction preliminarily to consider the statutory contentions. As outlined in Hagans v. Lavine, 415 U.S. 528, 543-545 (1974), the preferable procedure generally is for the District Court to consider the statutory claim. Only if that claim does not dispose of the case should it order that a three-judge court be convened. I have therefore included reference to Hagans in the remand order. That reference and the citation to Fusari should alert the courts below to the options that are available and to the proper method of procedure.

L.F.P., Jr.

ss

Wm. Douglas Ok 74

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 3, 1974

Re: No. 73-848 - Fusari v. Steinberg

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference