The Burger Court Opinion Writing Database

Califano v. Goldfarb

430 U.S. 199 (1977)

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

October 20, 1976

MEMORANDUM TO THE CONFERENCE

RE: 75-699 - Matthews v. Goldfarb

I have Potter's memo of October 18 still as a "tentative" vote to affirm, changing from "reverse" - at least on my record. Lewis is also "tentative affirm."

If both Potter and Lewis remain in the "affirm" column (I having now voted to reverse), I, therefore, ask Bill Brennan to assign.

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

January 4, 1977

Re: 75-699 Mathews v. Goldfarb

Dear Bill:

I join your dissent. It should convince even the most ardent "equal protector"!

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 21, 1976

RE: No. 75-699 Mathews v. Goldfarb

Dear Chief:

I have assigned the above case to myself.

Sincerely,

Bill

The Chief Justice

cc: The Conference

To: The Chief [illegible]
Mr. Justice [illegible]rt
Mr. Just[illegible]
Mr. Justice [illegible]ll
Mr. Just[illegible]n
Mr [illegible]
Mr [illegible]
Mr [illegible]

From: Mr [illegible]

Circulated: 12/2/76

Recirculated: [illegible]

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-699

F. David Mathews, Secretary of Health, Education, and Welfare, Appellant,
v.
Leon Goldfarb.

On Appeal from the United States District Court for the Eastern District of New York.

[November —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Under the Federal Old-Age, Survivors, and Disability Insurance Benefits program (OASDI) 42 U. S. C. §§ 401–431, survivors' benefits based on the earnings of a deceased husband covered by the Act are payable to his widow. Such benefits on the basis of the earnings of a deceased wife covered by the Act are payable to the widower, however, only if he "was receiving at least one-half of his support" from his deceased wife.[1] The question in this case is whether

[1] 42 U. S. C. § 402 (f) (1), in pertinent part, provides:

"The widower . . . of an individual who died a fully insured individual, if such widower—

"(A) has not remarried,

. . . . . .

"(B) (i) has attained age 60, or (ii) has attained age 50 . . . and is under a disability . . . ,

"(C) has filed application for widower's insurance benefits . . . ,

"(D) (i) was receiving at least one-half of his support . . . from such individual at the time of her death, or if such individual had a period of disability which did not end prior to the month in which she died, at the time such period began or at the time of her death, and filed proof of such support within two years after the date of such death . . . , or (ii) was receiving at least one-half of his support . . . from such individual at the time she became entitled to old-age . . . insurance bene-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 3, 1977

MEMORANDUM TO THE CONFERENCE

RE: No. 75-699 Mathews v. Goldfarb

Upon reading Bill Rehnquist's dissent, I propose to make no changes beyond insertion of the following footnote at the end of the first paragraph of Part II on page 4:

> The dissent maintains that this sentence "overstates [the] relevance" of Wiesenfeld and Frontiero. It is sufficient to answer that the principal propositions argued by appellant and in the dissent, -- namely, the focus on discrimination between surviving, rather than insured, spouses; the reliance on Kahn v. Shevin, 416 U.S. 351 (1974), the argument that the presumption of female dependence is empirically supportable, and the emphasis on the special deference due to classifications in the Social Security Act -- were all asserted and rejected in one or both of those cases as justifications for statutes substantially similar in effect to Sec. 402(f)(1)(D).

W.J.B. Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1977

MEMORANDUM TO THE CONFERENCE

RE: No. 75-699 Mathews v. Goldfarb

My circulation in this case explains why this case is controlled by Frontiero and Wiesenfeld, and this memo is circulated simply to suggest why Bill Rehnquist's dissent does not, in my view, succeed in distinguishing those cases.

Bill's first major thread is that the Social Security Act is somehow sui generis and therefore invulnerable to equal protection attacks. This is precisely the argument, however, that was used to attempt to distinguish Wiesenfeld from Frontiero, and we squarely rejected it. 420 U.S., at 646-647. Indeed, Wiesenfeld held that the fact that the case arose in the context of the contributory social security system made the discrimination there "more pernicious" than that in Frontiero. 420 U.S., at 645. Bill argues, however, that Mathews v. Lucas, 44 USLW 5139 (1976), and Weinberger v. Salfi, 422 U.S. 749 (1975), embraced the argument rejected in Wiesenfeld and established a new principle that constitutional doctrines developed in other fields of law do not have the same force in the context of the Social Security Act, and that this new principle undercuts Wiesenfeld.

But nothing in Salfi or Lucas purports to establish any new principle, or to cast any doubt on Wiesenfeld. Salfi was decided only three months after Wiesenfeld. It relies on such cases as Flemming v. Nestor, 363 U.S. 603 (1960), Dandridge v. Williams, 397 U.S. 471 (1970), and Richardson v. Belcher, 404 U.S. 78 (1971). See 422 U.S., at 768-770. All of these cases pre-dated Wiesenfeld, and Wiesenfeld and my opinion in Goldfarb, like Salfi, recognize the principle they establish, namely that congressional judgments in the field of social welfare are to be accorded considerable deference. Salfi did not involve sex discrimination, or indeed any equal protection issue at all, dealing instead with the quite

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

3/4/77

MEMORANDUM TO THE CONFERENCE

Cases held for Califano v. Goldfarb, No. 75-699

No. 75-712 Califano v. Silbowitz
No. 75-739 Califano v. Jablon
No. 75-791 Califano v. Coffin
No. 75-1643 Califano v. Abbott

These four cases raise the question of the constitutionality of 42 U.S.C. § 402(c)(1)(C), which imposes a dependency test on men applying for old-age insurance benefits under the Social Security Act as the husbands of insured wage earners. No similar requirement is imposed on women applying for benefits as the wives of insured males. 42 U.S.C. § 402(b). The discrimination is in all respects identical with that in §§ 402(e), (f)(1)(D), applying to widowers and widows seeking survivors' benefits, which the Court struck down in Goldfarb.

There is no meaningful distinction between the spouses and survivors' benefits. The statutes accomplish precisely the same discrimination, have the same legislative history, and rest on the same assumptions as to female dependency. The district courts that have considered each statute have

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

CHAMBERS OF
JUSTICE POTTER STEWART

October 18, 1976

Re: No. 75-699, Matthews v. Goldfarb

Dear Chief,

As presently advised, I vote to affirm the judgment under the authority of our prior decisions. I am not particularly happy with this result, however, and shall read with hospitable interest what is written on the other side.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 14, 1976

75-699 - Mathews v. Goldfarb

Dear Bill,

As I have indicated to you orally, I think your proposed opinion for the Court is a remarkably fine job, and that, given Weinberger v. Wiesenfeld, the result it reaches is close to unanswerable. As I have also orally indicated, however, I have had some second thoughts about the Wiesenfeld decision, and for that reason shall await the dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 4, 1977

No. 75-699, Mathews v. Goldfarb

Dear Bill,

After considerable backing and filling, I have concluded that yours is the preferable conclusion 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

December 7, 1976

Re: No. 75-699 - Mathews v. Goldfarb

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 2, 1976

Re: No. 75-699 - Mathews v. Coldfarb

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 13, 1976

Re: No. 75-699 - Mathews v. Goldfarb

Dear Bill:

I am, of course, awaiting the dissent.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1977

Re: No. 75-699 - Mathews v. Goldfarb

Dear Bill:

Please join me in your dissent.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 6, 1976

No. 75-699 Mathews v. Goldfarb

Dear Bill:

Please join me in your opinion for the Court.

I do have some reservation as to note 18 (p. 17). It seems to be unnecessary dicta, and may have implications that are not foreseeable.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

Note from Bill Rehnquist re Brennan

Goldfarb July 75-699

Supreme Court of the United States

Memorandum

Oct, 19 76

Lewis—

after talking to you on the telephone yesterday P.M. I went back & read over only your concurrence in Wiesenfeld, but mine, too. I now see that I will have some eating of words to do - not in this case, but when we ultimately go public on the Murgia issue

Wm

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 2, 1976

Re: No. 75-699 - Mathews v. Goldfarb

Dear Bill:

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

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

1st DRAFT

Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

Circulated: DEC 30 1976

No. 75-699

Recirculated: _____

F. David Mathews, Secretary of Health, Education, and Welfare, Appellant, *v.* Leon Goldfarb.	On Appeal from the United States District Court for the Eastern District of New York.

[January —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

In the light of this Court's recent decisions beginning with *Reed* v. *Reed,* 404 U. S. 71 (1971), one cannot say that there is no support in our cases for the result reached by the Court. One can, however, believe as I do that careful consideration of these cases affords more support for the opposite result than it does for that reached by the Court. Indeed, it seems to me that there are two largely separate principles which may be deduced from these cases which indicate that the Court has reached the wrong result.

The first of these principles is that cases requiring heightened levels of scrutiny for particular classifications under the Equal Protection Clause, which have originated in areas of the law outside of the field of social insurance legislation, will not be uncritically carried over into that field. This does not mean that the word "social insurance" is some sort of magic phrase which automatically mutes the requirements of the Equal Protection component of Fifth Amendment. But it does suggest that in a legislative system which distributes benefit payments among literally millions of people there are at least two characteristics which are not found in many other types of statutes. The first is that the statutory scheme will typically have been expanded by amendment over a period of years so that it is virtually

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 12, 1976

Re: 75-699 - Mathews v. Goldfarb

Dear Chief:

At our conference I voted to affirm. I have since restudied the case and now have substantial doubt about how I will ultimately come out. I would hope, therefore, that you would not assign me the opinion.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 21, 1976

Re: 75-699 - Mathews v. Goldfarb

Dear Bill:

As you know, I have already expressed doubt about my original vote to affirm. Subject to reading your opinion, I am now persuaded that I will vote to reverse. My reason, in brief, is that the discrimination is in the distribution of benefits, rather than in the collection of the tax; that the discrimination is therefore against males rather than females; and that, although prima facie invalid, its justification is sufficient under Kahn v. Shevin. I don't believe this will cause you to lose your majority, but want you to understand my present thinking while your opinion is in process.

changed pocket sheet

Respectfully,

JPS

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 3, 1977

Re: 75-699 - Mathews v. Goldfarb

Dear Bill:

Although I expect to join your dissent, I want to try my hand at a few additional paragraphs to point up the difference between this case and cases like Mathews v. Lucas and Craig v. Boren.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Re: 75-699 - Mathews v. Goldfarb

Dear Bill:

As you will note from the attached opinion, I have finally decided to vote to affirm. As I am sure you realize, I have had a great deal of difficulty with this case and I apologize to everyone for taking so long in making up my mind.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: 2/17/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-699

F. David Mathews, Secretary of Health, Education, and Welfare, Appellant, *v.* Leon Goldfarb. | On Appeal from the United States District Court for the Eastern District of New York.

[February —, 1977]

MR. JUSTICE STEVENS, concurring in the judgment.

Although my conclusion is the same, my appaisal of the relevant discrimination and my reasons for concluding that it is unjustified, are different from the Court's.

First, I agree with MR. JUSTICE REHNQUIST that the constitutional question raised by this plaintiff requires us to focus on his claim for benefits rather than his deceased wife's tax obligation. She had no contractual right to receive benefits or to control their payment; moreover, the payments are not a form of compensation for her services.[1] At the same salary level, all workers must pay the same tax, whether they are male or female, married or single, old or young, the head of a large family or a small one. The benefits which may ultimately become payable to them or to a wide variety of beneficiaries—including their families, their spouses, future spouses, and even their ex-wives—vary enormously, but such variations do not convert a uniform tax obligation into an unequal one. The discrimination against this plaintiff would be the same if the benefits were funded from general revenues. In short, I am persuaded that the relevant discrimination in this case is against surviving male spouses, rather than against deceased female wage earners.

[1] For this reason this case is not controlled by *Frontiero* v. *Richardson*, 411 U. S. 677.

V Pp. 1-2, 4-5, 7-8

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

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT Recirculated: 2/24/77

SUPREME COURT OF THE UNITED STATES

No. 75–699

F. David Mathews, Secretary of Health, Education, and Welfare, Appellant, *v.* Leon Goldfarb. | On Appeal from the United States District Court for the Eastern District of New York.

[February —, 1977]

MR. JUSTICE STEVENS, concurring in the judgment.

Although my conclusion is the same, my appaisal of the relevant discrimination and my reasons for concluding that it is unjustified, are somewhat different from those expressed by MR. JUSTICE BRENNAN.

First, I agree with MR. JUSTICE REHNQUIST that the constitutional question raised by this plaintiff requires us to focus on his claim for benefits rather than his deceased wife's tax obligation. She had no contractual right to receive benefits or to control their payment; moreover, the payments are not a form of compensation for her services.[1] At the same salary level, all workers must pay the same tax, whether they are male or female, married or single, old or young, the head of a large family or a small one. The benefits which may ultimately become payable to them or to a wide variety of beneficiaries—including their families, their spouses, future spouses, and even their ex-wives—vary enormously, but such variations do not convert a uniform tax obligation into an unequal one. The discrimination against this plaintiff would be the same if the benefits were funded from general revenues. In short, I am persuaded that the relevant discrimination in

[1] For this reason this case is not controlled by *Frontiero* v. *Richardson*, 411 U. S. 677.