

The Burger Court Opinion Writing Database

Califano v. Westcott

443 U.S. 76 (1979)

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

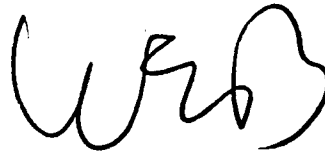
June 15, 1979

Re: 78-437 - Califano v. Westcott, et al.
78-689 - Sharp, etc. v. Westcott, et al.

Dear Lewis:

Please join me in your opinion concurring
in part and dissenting in part.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized script.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1979

RE: Nos. 78-437 & 689 Califano v. Westcott &
Pratt v. Westcott

Dear Harry:

Please join me.

Sincerely,

Biel

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 11, 1979

Re: 78-437 - Califano v. Westcott
78-689 - Pratt v. Westcott

Dear Lewis:

Please add my name to your separate opinion.

Sincerely yours,

PS,
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE


June 4, 1979

Re: Nos. 78-437 & 78-689 - Califano & Pratt v.
Westcott

Dear Harry,

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1979

Re: Nos. 78-437 & 689 - Califano v. Westcott &
Pratt v. Westcott

Dear Harry:

Please join me.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 1 JUN 1979

Recirculated: _____

No. 78-437 - Califano v. Westcott
No. 78-689 - Pratt v. Westcott

Mr. JUSTICE BLACKMUN delivered the opinion of the Court.

Section 407 of the Social Security Act, 42 U.S.C. § 607, part of the Aid to Families with Dependent Children program, provides benefits to families whose dependent children have been deprived of parental support because of the unemployment of the father, but does not provide such benefits when the mother becomes unemployed. The United States District Court for the District of Massachusetts held that this distinction violates the Due Process Clause of the Fifth Amendment, and ordered that benefits be paid to families deprived of support because of the unemployment of the mother to the same extent they are paid to families deprived of support because of the

10. The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Received: 6 JUN 1979

Printed
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-437 AND 78-689

Joseph A. Califano, Secretary of
 Health, Education, and
 Welfare, Appellant,
 78-437 v.
 Cindy Westcott et al.
 John D. Pratt, Etc., Appellant,
 78-689 v.
 Cindy Westcott et al.

On Appeals from the United
 States District Court for
 the District of Massachu-
 setts.

[June —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Section 407 of the Social Security Act, 42 U. S. C. § 607, part of the Aid to Families with Dependent Children program, provides benefits to families whose dependent children have been deprived of parental support because of the unemployment of the father, but does not provide such benefits when the mother becomes unemployed. The United States District Court for the District of Massachusetts held that this distinction violates the Due Process Clause of the Fifth Amendment, and ordered that benefits be paid to families deprived of support because of the unemployment of the mother to the same extent they are paid to families deprived of support because of the unemployment of the father. 460 F. Supp. 737 (1978). In these appeals, the Secretary of the Department of Health, Education, and Welfare (HEW), in No. 78-437, challenges the holding on the constitutionality of § 407, but does not question the relief ordered by the District Court; the Commissioner of the Massachusetts Department of Public Welfare

STYLISTIC CHANGES

4 pp. 6, 7, 8, 9, 12

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 12/15/79

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-437 AND 78-689

Joseph A. Califano, Secretary of
 Health, Education, and
 Welfare, Appellant,
 78-437 v.
 Cindy Westcott et al.

John D. Pratt, Etc., Appellant,
 78-689 v.
 Cindy Westcott et al.

On Appeals from the United
 States District Court for
 the District of Massachu-
 setts.

[June —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Section 407 of the Social Security Act, 42 U. S. C. § 607, part of the Aid to Families with Dependent Children program, provides benefits to families whose dependent children have been deprived of parental support because of the unemployment of the father, but does not provide such benefits when the mother becomes unemployed. The United States District Court for the District of Massachusetts held that this distinction violates the Due Process Clause of the Fifth Amendment, and ordered that benefits be paid to families deprived of support because of the unemployment of the mother to the same extent they are paid to families deprived of support because of the unemployment of the father. 460 F. Supp. 737 (1978). In these appeals, the Secretary of the Department of Health, Education, and Welfare (HEW), in No. 78-437, challenges the holding on the constitutionality of § 407, but does not question the relief ordered by the District Court; the Commissioner of the Massachusetts Department of Public Welfare

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1979

[Corrected Copy]

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-437 - Califano v. Westcott
No. 78-689 - Pratt v. Westcott

Two cases are being held for Westcott: No. 78-449, Califano v. Stevens (appeal from ND Ohio), and No. 78-603, Califano v. Browne, (appeal from ED Pa). Both DCs, like the DC in Westcott, held 42 U.S.C. § 607 unconstitutional insofar as it embodies a discrimination based on gender. Both DCs, like the DC in Westcott, held that the proper remedy was extension of the AFDC-UF program to all needy families where either parent is unemployed within the meaning of the Act. The SG in each case challenges the holding as to the constitutionality of § 607; no party in either case challenges the remedy.

Stevens and Browne are identical to Westcott in all relevant respects. Inasmuch as the Court has voted to affirm Westcott, I shall vote to affirm each of these cases that were held for it.

HAB,

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 3, 1979

78-689 Sharp v. Westcott

Dear Chief:

I will be glad to try a dissent.

At the Conference I agreed with Potter that the DC should not have rewritten the statute. It should have given a declaratory judgment and issued an injunction and left the rewriting to Congress.

The District Court, having undertaken to devise an affirmative remedy, should have focused on "the principal wage earner".

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: Mr. Justice Stewart
Mr. Justice Rehnquist

FIRST DRAFT

Califano v. Westcott, No. 78-437; Pratt v. Westcott, No. 78-689

Mr. Justice Powell, concurring in part and dissenting in part.

I agree with the Court that § 407 violates the equal protection component of the Fifth Amendment. In my view, however, the court below erred when it ordered the extension of benefits to all families in which a mother has become unemployed. This extension reinstates a system of distributing benefits that Congress rejected when it amended § 407 in 1968. Rather than frustrate the clear intent of Congress, the court simply should have enjoined any further payment of benefits under the provision found to be unconstitutional.

As Mr. Justice Harlan observed,

"Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion." Welsh v. United States, 398 U.S. 333, 361 (1970) (concurring opinion).

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

From: Mr. Justice Powell

Circulated: 12 JUN 1979

Printed
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-437 AND 78-689

Joseph A. Califano, Secretary of
 Health, Education, and
 Welfare, Appellant,

78-437 v.

Cindy Westcott et al.

John D. Pratt, Etc., Appellant,

78-689 v.

Cindy Westcott et al.

On Appeals from the United
 States District Court for
 the District of Massachu-
 setts.

[June —, 1979]

MR. JUSTICE POWELL, *with whom Mr. Justice Stewart joins,*
 concurring in part and dissenting in
 part.

I agree with the Court that § 407 violates the equal protection component of the Fifth Amendment. In my view, however, the court below erred when it ordered the extension of benefits to all families in which a mother has become unemployed. This extension reinstates a system of distributing benefits that Congress rejected when it amended § 407 in 1968. Rather than frustrate the clear intent of Congress, the court simply should have enjoined any further payment of benefits under the provision found to be unconstitutional.

As Mr. Justice Harlan observed,

“Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion.” *Welsh v. United States*, 398 U. S. 333, 361 (1970) (concurring opinion).

In choosing between these alternatives, a court should attempt

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

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: 20 JUN 1979

SUPREME COURT OF THE UNITED STATES

Nos. 78-437 AND 78-689

Joseph A. Califano, Secretary of
 Health, Education, and
 Welfare, Appellant,
 78-437 v.

Cindy Westcott et al.

John D. Pratt, Etc., Appellant,
 78-689 v.

Cindy Westcott et al.

On Appeals from the United
 States District Court for
 the District of Massachu-
 setts.

And Mr. Justice
 Rehnquist [June —, 1979]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, and
 MR. JUSTICE STEWART join, concurring in part and dissenting
 in part.

I agree with the Court that § 407 violates the equal protection component of the Fifth Amendment. In my view, however, the court below erred when it ordered the extension of benefits to all families in which a mother has become unemployed. This extension reinstates a system of distributing benefits that Congress rejected when it amended § 407 in 1968. Rather than frustrate the clear intent of Congress, the court simply should have enjoined any further payment of benefits under the provision found to be unconstitutional.

As Mr. Justice Harlan observed,

"Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion." *Welsh v. United States*, 398 U. S. 333, 361 (1970) (concurring opinion).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1979

Re: Nos. 78-437 and 78-689 - Califano v. Wescott; and
Pratt v. Westcott

Dear Lewis:

Please join me in your opinion, concurring in part and
dissenting in part, in this case.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1979

Re: 78-437; 689 - Califano v. Westcott

Dear Harry:

Please join me.

Respectfully,

A handwritten signature in dark ink, appearing to be 'JP Stevens', written in a cursive style.

Mr. Justice Blackmun

Copies to the Conference