The Burger Court Opinion Writing Database

Moore v. Sims

442 U.S. 415 (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 1, 1979

Re: 78-6 - Moore v. Sims

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 5, 1979

RE: No.78-6 Moore v. Sims

Dear John:

Thurgood, you and I are in dissent in the above. Would you care to undertake the dissent?

Sincerely,

Bill

Mr. Justice Stevens

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 30, 1979

RE: No. 78-6 Moore v. Sims

Dear John:

Please join me in your dissent in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1979

Re: No. 78-6, Moore v. Sims

Dear John,

Please add my name to your dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 27, 1979

Re: No. 78-6 - Moore v. Sims

Dear Bill,

I am not ready to take Younger beyond those instances where the state itself is party to pending proceedings seeking to enforce its criminal law or to implement important aspects of its civil law. There is no need to go farther here; and because your opinion seems to have broader implications, I shall concur in the result if it commands a majority.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1979

Re: No. 78-6 - Moore v. Sims

Dear Bill,

In view of the changes you have made in your circulating draft in this case, I shall not write separately but join your opinion.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 30, 1979

Re: No. 78-6 - Moore v. Sims

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1979

Re: No. 78-6 - Moore v. Sims

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 30, 1979

78-6 Moore v. Sims

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Pp 3, 13

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

From: Mr. Justice Rehnquist

Circulated: 25 APR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-6

Hilmar G. Moore et al., Appellants, v. John Pleasant Sims et al. | On Appeal from the United States District Court for the Southern District of Texas.

[April —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Title 2 of the Texas Family Code was enacted in 1973 and first went into effect on January 1, 1974. It was amended substantially in the following year. The Title defines the contours of the parent-child relationship and the permissible areas and modes of state intervention. This suit presents the first broad constitutional challenge to interrelated parts of that statutory scheme. It raises novel constitutional questions of the correlative rights and duties of parents, children, and the State in suits affecting the parent-child relationship.

This litigation, involving suspected instances of child abuse, was initiated by state authorities in the Texas state courts in 1976. The state proceedings, however, were enjoined by the three-judge District Court below, which went on to find various parts of Title 2 unconstitutional on their face or as applied. We noted probable jurisdiction. 439 U. S. 925 (1978). This appeal first raises the question whether in light of the pending state proceedings, the Federal District Court should have exercised its jurisdiction. We conclude that it should not have done so and accordingly reverse and remand with instructions that the complaint be dismissed.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1979

Re: No. 78-6 Moore v. Sims

Dear John:

Fearing that we will not be completely successful in our efforts to avoid end-of-the-Term crunch at the printers this year any more than we have in past years, I am circulating herewith changes which I propose to make in the first draft of my opinion in the above entitled case in response to your dissenting opinion.

(1) At the end of the first full paragraph on page 6, I will add the following language:

> "The existence of these conditions, or the presence of such other vital concerns as enforcement of contempt proceedings, Juidice v. Vail, 430 U.S. 327 (1977), or the vindication of 'important state policies such as safeguarding the fiscal integrity of [public assistance] programs', Trainor v. Hernandez, 431 U.S. 434, 444 (1977), determines the applicability of Younger-Huffman principles as a bar to the institution of a later federal action. Therefore, contrary to the suggestion of the dissent, post, at 1, we do not remotely suggest 'that every pending proceeding between the state and federal plaintiff justifies abstention unless one of the exceptions to Younger applies."

(2) At the end of footnote 6 on page 8, I intend to add:

> "Therefore, this is not a case like Quern v. Hernandez, ____ F.Supp. ____ (1978), affirmed, No. 78-721 (Mar. 19, 1979) where the three-judge court found, after our remand in Trainor v. Hernandez , 431 U.S. 434 (1977), that the applicable state procedures did not permit the defendant to raise a constitutional challenge."

(3) At the end of the first full sentence in the first full paragraph on page 12, I will add a new footnote reading as follows:

> "The proposition that claims must be cognizable 'as a defense' in the ongoing state proceeding, as our dissenting Brethern contend, post at 3, converts a doctrine which has substantive content into a mere semantical joust. There is no magic in the term 'defense' when used in connection with the Younger doctrine if the word 'defense' is intended to be used as a term of art. We do not here deal with the long past niceties which distinguished among 'defense', 'counterclaims', 'set offs', 'recoupments', and the like. As we stated in Juidice v. Vail, 430 U.S. 327, 337 (1977):
>
> > 'Here it is abundantly clear that appellees had an opportunity to present their federal claims in the state proceedings. No more is required to invoke Younger abstention . . . . Appellees need be accorded only an opportunity to fairly pursue their constitutional claims in the ongoing state proceedings . . . and their failure to avail themselves of such opportunities does not mean that the

> state procedures were inadequate.' (Footnotes omitted)(emphasis in original)."

(4) At the end of the block quote on page 9, I will add the following language:

> "Thus we cannot agree with the dissenters' characterization of the claims raised below as being as unrelated as child abuse and traffic violations. As the District Court properly perceived it, this action is a comprehensive attack on an integrated statutory structure best suited to resolution in one forum. Our disagreement with the District Court is with its choice of forum. Likewise there is little in our case law or sound judicial administration to commend the suggestion that Younger should have been invoked with respect to some of the claims in this case and others should have been left to the federal forum. Post, at 8-9. Given the interrelated nature of the claims, such a bifurcation would result in the duplicative litigation and lack of state court interpretation of an integrated statutory framework that this Court, in Trainor v. Hernandez, 431 U.S. 434, 445 (1977), identified as central concerns underlying the Younger doctrine.
>
> The dissenters additional argument that a constitutional attack on state procedures automatically vitiates the adequacy of those procedures for purposes of the Younger-Huffman line of cases is reiteration of a theme sounded and rejected in prior cases. See Trainor v. Hernandez, 431 U.S. 434, 469-470 (1977)(Stevens, J., dissenting); Juidice v. Vail, 430 U.S. 327, 339-340 (1977) (Stevens, J., concurring in judgment)."

(5) At the end of the final paragraph on page 16 I will add the following footnote:

> "The dissenters' concern that requiring appellees to raise their challenges to the Texas Family Code in the pending proceeding will complicate and delay resolution of the merit's of the State's claims would clearly be misplaced if the dissent were correct in its characterization of the bulk of appellees' claims as analogous to 'a traffic violation' as far as their relation to the pending State proceeding is concerned. Appellees could simply obtain a resolution of the pending proceeding and then file their separate action. Appellees are certainly not required to pursue 'an unwise and impractical course of litigation.' Post, at 5. Nor is there reason to believe that consolidating all of these claims in federal court or litigating simultaneously in two different courts would prove more expeditious, wise, or practical."

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 27, 1979

Re: No. 78-6, Moore v. Sims

Dear Byron:

This is in response to your note of today. I certainly did not intend to extend Younger in my current draft, and I think that intent is expressed on p. 6.

> "As was the case in Huffman, the State here was a party to the state proceedings, and the temporary removal of a child in a child abuse context is, like the public nuisance statute involved in Huffman, 'in aid of and closely related to criminal statutes.'"

I welcome any suggestions as to how I can meet your concern.

Sincerely,

WHR

Mr. Justice White

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

[redacted] CHANGES THROUGHOUT

Footnotes Renumbered
Pp 3, 4, 6, 7, 9-13, 15-18

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 31 MAY 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–6

Hilmar G. Moore et al., Appellants, *v.* John Pleasant Sims et al. | On Appeal from the United States District Court for the Southern District of Texas.

[April —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Title 2 of the Texas Family Code was enacted in 1973 and first went into effect on January 1, 1974. It was amended substantially in the following year. The Title defines the contours of the parent-child relationship and the permissible areas and modes of state intervention. This suit presents the first broad constitutional challenge to interrelated parts of that statutory scheme. It raises novel constitutional questions of the correlative rights and duties of parents, children, and the State in suits affecting the parent-child relationship.

This litigation, involving suspected instances of child abuse, was initiated by state authorities in the Texas state courts in 1976. The state proceedings, however, were enjoined by the three-judge District Court below, which went on to find various parts of Title 2 unconstitutional on their face or as applied. We noted probable jurisdiction. 439 U. S. 925 (1978). This appeal first raises the question whether in light of the pending state proceedings, the Federal District Court should have exercised its jurisdiction. We conclude that it should not have done so and accordingly reverse and remand with instructions that the complaint be dismissed.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 13, 1979

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 78-6 - Moore v. Sims

There is one case being held for Moore v. Sims: Broken-leg v. Butts, No. 78-25. The petitioner in that case seeks certiorari to the Texas Court of Civil Appeals to review that court's affirmance of an order awarding custody of her nine-year-old child to the child's paternal grandparents. The Texas Court of Civil Appeals affirmed the Texas District Court's determination that such action was in the best interest of the child. The best interest determination was based on the child's expressed preference for her grandparents, and the District Court's findings that the grandparents would provide a more stable home and in fact had taken care of the child for an extended period of time in the past without the help of financial support from petitioner.

In seeking certiorari petitioner argues that the Constitution prohibits the denial of custody to her simply on the finding that an award of custody to a nonparent would be in the child's best interest. She relies on Stanley v. Illinois, 405 U.S. 645 (1972) and Quilloin v. Walcott, 434 U.S. 246 (1978). She further argues that underlying the District Court's finding of fact is a conclusive presumption that life on an Indian reservation poses a threat to the physical and emotional well being of a child. Finally, petitioner argues that the standard

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1979

Re: 78-6 - Moore v. Sims

Dear Bill:

Thanks for inviting me to undertake the dissent. I will be happy to do so.

Respectfully,

John

Mr. Justice Brennan

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 26, 1979

Re: 78-6 - Moore v. Sims

Dear Bill:

In due course I shall circulate a dissent.

Respectfully,

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: MAY 23 '79

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-6

Hilmar G. Moore et al., Appellants, *v.* John Pleasant Sims et al. | On Appeal from the United States District Court for the Southern District of Texas.

[May —, 1979]

MR. JUSTICE STEVENS, dissenting.

Before asking whether any of the recognized exceptions to the doctrine of *Younger* v. *Harris*, 401 U. S. 37, make it appropriate for a federal court to exercise its jurisdiction to pass on the constitutionality of a state statute, the Court should first decide whether there is a legitimate basis for invoking the *Younger* doctrine at all. It has never been suggested that every pending proceeding between a state and a federal plaintiff justifies abstention unless one of the exceptions to *Younger* applies; for example, a pending charge that the federal plaintiff is guilty of a traffic violation will not justify dismissal of a federal attack on the constitutionality of the State's child abuse legislation.

The policy of equitable restraint expressed in *Younger* "is founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights." *Kugler* v. *Helfant*, 421 U. S. 117, 124. Since "no citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts," *Younger* v. *Harris*, *supra*, at 46, there is no justification for intervention by a court of equity to rule on claims which may be raised as a defense to the criminal prosecution and which, if meritorious, will result in adequate relief in that forum. Moreover, in our federal system, intervention by a federal court with respect to the questions at issue

p. 1

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: _____

Recirculated: MAY 31 '79

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-6

Hilmar G. Moore et al., Appellants, v. John Pleasant Sims et al. | On Appeal from the United States District Court for the Southern District of Texas.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL join, dissenting.

Before asking whether any of the recognized exceptions to the doctrine of *Younger* v. *Harris*, 401 U. S. 37, make it appropriate for a federal court to exercise its jurisdiction to pass on the constitutionality of a state statute, the Court should first decide whether there is a legitimate basis for invoking the *Younger* doctrine at all. It has never been suggested that every pending proceeding between a state and a federal plaintiff justifies abstention unless one of the exceptions to *Younger* applies; for example, a pending charge that the federal plaintiff is guilty of a traffic violation will not justify dismissal of a federal attack on the constitutionality of the State's child abuse legislation.

The policy of equitable restraint expressed in *Younger* "is founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights." *Kugler* v. *Helfant*, 421 U. S. 117, 124. Since "no citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts," *Younger* v. *Harris*, *supra*, at 46, there is no justification for intervention by a court of equity to rule on claims which may be raised as a defense to the criminal prosecution and which, if meritorious, will result in adequate relief in that forum. Moreover, in our federal system, inter-