

The Burger Court Opinion Writing Database

Herweg v. Ray

455 U.S. 265 (1982)

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



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

Circulated: FEB 5 1982

Recirculated: _____

No. 80-60, Herweg v. Ray

CHIEF JUSTICE BURGER, dissenting.

Although the Medicaid program is a morass of bureaucratic complexity, I do not believe it is nearly so difficult to apply the Social Security Act in this case as the Court makes it seem. Iowa is an "SSI state." This means that, under § 1902(a)(10)(A) of the Act, 42 U.S.C. § 1396(a)(10)(A), it must develop a plan "for making medical assistance available to all individuals receiving ... supplemental security income benefits" As part of the plan Iowa developed, a non-institutionalized spouse must contribute toward the care of an institutionalized spouse. This is explicitly authorized by § 1902(a)(17)(D), 42 U.S.C. § 1396a(a)(17)(D), which prohibits a state from reducing the amount of Medicaid assistance to be made available to a recipient because of the financial responsibility of another person, unless the other person is the recipient's spouse or parent. See ante, at 1-2 n.1. What could be more clear in words and purpose? Any doubt vanishes when we look at what Congress spelled out in the legislative history: "The

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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: The Clerk of the Court

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STYLISTIC CHANGES

Printed
1st/DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-60

ELVINA M. HERWEG, BY HER HUSBAND AND NEXT FRIEND, DARRELL E. HERWEG AND DARRELL E. HERWEG, ETC., PETITIONERS *v.* ROBERT D. RAY, GOVERNOR OF IOWA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February 11, 1982]

CHIEF JUSTICE BURGER, dissenting.

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¹As applied to the tragic facts of this case, Iowa's plan required Mr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 2, 1982

RE: No. 80-60 Herweg v. Ray

Dear Bill:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Rehnquist
cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1982

Re: 80-60 - Herweg v. Ray

Dear Bill,

I agree,

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

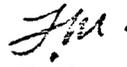
February 18, 1982

Re: No. 80-60 - Herweg v. Ray

Dear Bill:

Please join me.

Sincerely,


T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 3, 1960

Re: No. 80-60 - Herweg v. Ray

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 2, 1982

80-60 Herweg v. Ray

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: FEB 1 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-60

ELVINA M. HERWEG, BY HER HUSBAND AND NEXT
FRIEND, DARRELL E. HERWEG AND DARRELL E.
HERWEG, ETC., PETITIONERS, v. ROBERT D.
RAY, GOVERNOR OF IOWA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Last Term in *Schweiker v. Gray Panthers*, 453 U. S. 1, — (1981), we upheld the validity of federal Medicaid regulations that permit “deeming” of income between spouses in those States that have exercised the so-called “§ 209(b) option” provided for in the Social Security Act, 42 U. S. C. § 1396 *et. seq.* “Deeming,” in the parlance of the Social Security laws and regulations, means that a State determines eligibility by assuming that a portion of the spouse’s income is “available” to the applicant. Because an individual’s eligibility for Medicaid benefits depends in part on the financial resources that are “available” to him, “[d]eeming . . . has the effect of reducing both the number of eligible individuals and the amount of assistance paid to those who qualify.” *Schweiker v. Gray Panthers*, *supra*, at —. We rejected contentions that these regulations were arbitrary or capricious and that the regulations were inconsistent with § 1902(a)(17) of the Social Security Act, 42 U. S. C. § 1396a(a)(17).¹ *Id.*, at —. In the present case, we are

¹Section 1902(a)(17) provides that a state plan for medical assistance must:

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

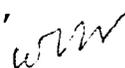
February 8, 1982

Re: No. 80-60 Herweg v. Ray

Dear John:

Thank you for your letter of February 8th, suggesting that I combine and revise two paragraphs on pages 11 and 12 of my presently circulating draft opinion in this case. In the absence of any further explanation for the proposed change than your letter gives, I interpret your suggestions as a desire to down play whatever emphasis I gave to Subsection (17)(D) in the presently circulating version. While I can understand that this would be more consistent with the view you expressed in your dissent in Schweiker v. Gray Panthers last Term, I prefer to make some mention of that Subsection.

Sincerely,



Justice Stevens

Copies to the Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

pp. 2-3,5-8,10,12

STYLISTIC CHANGES MADE

Justice Rehnquist

Revised: _____

Revised: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-60

ELVINA M. HERWEG, BY HER HUSBAND AND NEXT FRIEND, DARRELL E. HERWEG AND DARRELL E. HERWEG, ETC., PETITIONERS, v. ROBERT D. RAY, GOVERNOR OF IOWA, ET AL.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 8, 1982

Re: No. 80-60, Herweg v. Ray

Dear Bill:

This suggestion is not terribly important, but if you could see fit to change one portion of your opinion, I would be happy to join it. Could you compress two paragraphs, the first of which begins near the bottom of page 11, into one somewhat less categorical paragraph? The new paragraph might read as follows:

We note that the Secretary's regulations do not impose an across-the-board limitation on the States' ability to implement their spousal responsibility policies. The challenged regulation applies only to those SSI States that have decided to extend Medicaid benefits to the optional categorically needy, and prohibits deeming only after the spouses have ceased to live together for prescribed periods of time. Moreover, within those periods of time, such States are required to deem the income and resources of spouses living in the same household. 42 C.F.R. § 435.723(b). Similarly, States exercising the § 209(b) option are required to deem income to the extent required in SSI States and may deem to the full extent they did before 1972. 42 C.F.R. § 435.734. See Schweiker v. Gray Panthers, 453 U.S., at .13/

Respectfully,

Justice Rehnquist
Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: FEB 17 '82

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80-60 - Herweg v. Ray

JUSTICE STEVENS, concurring in part.

The Court speculates that subsection 17(D) might well be superfluous if subsection 17(B) were read to permit the Secretary to foreclose entirely the States' ability to consider the income of the spouse of an institutionalized applicant. Ante, at 11-12. This speculation apparently is predicated on the belief that subsection 17(D) requires the States to deem certain income of an applicant's spouse to be available to the applicant.¹ The Court's observation is both unnecessary and misleading.² Subsection 17(D), like subsection 17(B), places a limit on the

¹In Schweiker v. Gray Panthers, 453 U.S. 1, ____, the Court noted that subsection 17(D) might be superfluous if the statute were not read to permit certain deeming, see also id., at ____ (STEVENS, J., dissenting); the Court did not suggest that any amount of deeming was required by the statute.

²As THE CHIEF JUSTICE notes in his dissenting opinion, it also is more consistent with his analysis of the case than with the Court's. See post, at 2 n. 2.

To: The Chief Justice
Justice Brennan
Justice Burger
Justice Douglas
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice Stevens

Circulated: _____

Recirculated: FEB 17 1982

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SUPREME COURT OF THE UNITED STATES

No. 80-60

ELVINA M. HERWEG, BY HER HUSBAND AND NEXT
FRIEND, DARRELL E. HERWEG AND DARRELL E.
HERWEG, ETC., PETITIONERS, *v.* ROBERT
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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¹ In *Schweiker v. Gray Panthers*, 453 U. S. 1, —, the Court noted that subsection 17(D) might be superfluous if the statute were not read to *permit* certain deeming, see also *id.*, at — (STEVENS, J., dissenting); the Court did not suggest that any amount of deeming was required by the statute.

² As THE CHIEF JUSTICE notes in his dissenting opinion, it also is more consistent with his analysis of the case than with the Court's. See *post*, at 2, n. 2.

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

February 8, 1982

No. 80-60 Herweg v. Ray

Dear Bill,

Please join me in your opinion.

Sincerely,



Sandra D. O'Connor

Justice Rehnquist

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