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Bell v. New Jersey

461 U.S. 773 (1983)

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

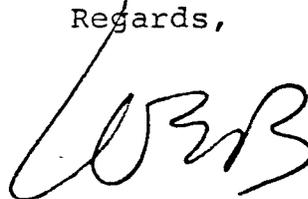
May 25, 1983

Re: No. 81-2125, Bell v. New Jersey and Pennsylvania

Dear Sandra:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'O'Connor', written over the typed word 'Regards,'.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 18, 1983

Re: No. 81-2125

Bell v. New Jersey & Pennsylvania

Dear Sandra,

I agree.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1983

Re: 81-2125 - Bell v. New Jersey and Pennsylvania

Dear Sandra,

I join you and may write a few words on the side.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

From: **Justice White**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2125

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER v. NEW JERSEY AND PENNSYLVANIA

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

[May —, 1983]

JUSTICE WHITE, concurring.

The Court holds that the "plain language" of § 207(a)(1) of the Elementary and Secondary Education Act, Pub. L. 89-10, 79 Stat. 27, 32 (1965), and its successor provision, § 415 of the General Education Provisions Act, 20 U. S. C. § 1226a-1 (Supp. V 1976), expressly grants the Secretary of Education 1) the right to require States to repay misspent Title I funds, and 2) the right to make an administrative adjudication of the question whether funds have in fact been misspent, with the result of such adjudication being subject to judicial review only on a limited, "substantial evidence" basis. *Ante*, at 8, 17. The Secretary will no doubt be pleased with today's holding, but I note that he must have thought the authorizing language of this provision was not so "plain," since his lawyers deemed it worthy of no more than passing mention in his brief. See Brief for Petitioner 7, 20.

I join the Court's opinion, although I would have preferred to decide the case on a different basis, one that has been thoroughly briefed. Specifically, I would have held that the 1978 amendments, see 20 U. S. C. §§ 1234, 2835(b) (Supp. V 1976), which unequivocally state that the Secretary may administratively recoup misspent Title I funds, should be applied retroactively. A federal court or administrative agency must "apply the law in effect at the the time it ren-

To: The Chief Justice
Justice Brennan
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice Souter
Justice Ginsburg

8.2

From: [unclear]

SUPREME COURT OF THE UNITED STATES dated: _____

No. 81-2125

Recirculated: _____

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER v. NEW JERSEY AND PENNSYLVANIA

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

[May 31, 1983]

JUSTICE WHITE, concurring.

The Court holds that the "plain language" of § 207(a)(1) of the Elementary and Secondary Education Act, Pub. L. 89-10, 79 Stat. 27, 32 (1965), and its successor provision, § 415 of the General Education Provisions Act, 20 U. S. C. § 1226a-1 (Supp. V 1976), expressly grants the Secretary of Education 1) the right to require States to repay misspent Title I funds, and 2) the right to make an administrative adjudication of the question whether funds have in fact been misspent, with the result of such adjudication being subject to judicial review only on a limited, "substantial evidence" basis. *Ante*, at 8, 17. The Secretary will no doubt be pleased with today's holding, but I note that he must have thought the authorizing language of this provision was not so "plain," since his lawyers deemed it worthy of no more than passing mention in his brief. See Brief for Petitioner 7, 20.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1983

Re: No. 81-2125-Bell v. New Jersey and Pennsylvania

Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1983

Re: No. 81-2125 - Bell and New Jersey and Pennsylvania

Dear Sandra:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 18, 1983

81-2125 Bell v. New Jersey

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1983

Re: No. 81-2125 Bell v. New Jersey

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1983

Re: 81-2125 - Bell v. New Jersey and
Pennsylvania

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2125

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER *v.* NEW JERSEY AND PENNSYLVANIA

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

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider both the rights of the Federal Government when a State misuses funds advanced as part of a federal grant-in-aid program under Title I of the Elementary and Secondary Education Act and the manner in which the Government may assert those rights. We hold that the Federal Government may recover misused funds, that the Department of Education may determine administratively the amount of the debt, and that the State may seek judicial review of the agency's determination.

I

The respondents, New Jersey and Pennsylvania, received grants from the Federal Government under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), Pub. 89-10, 79 Stat. 27, as amended, 20 U. S. C. § 2701 *et seq.* (1976 ed. Supp. V). Title I created a program designed to improve the educational opportunities available to disadvantaged children. § 102, 20 U. S. C. § 2701 (1976 ed. Supp. V). Local educational agencies obtain federal grants through state educational agencies, which in turn obtain grants from the Department of Education¹ upon providing

¹The Department of Education was not created until 1980. Pub. 96-88,

Stic Changes Throughout

P. 8, 10, 12, 18, 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2125

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER *v.* NEW JERSEY AND PENNSYLVANIA

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

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Stylistic Changes Throughout

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

From: Justice O'Connor

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Recirculated: MAY 27

SUPREME COURT OF THE UNITED STATES

No. 81-2125

TERREL H. BELL, SECRETARY OF EDUCATION, PETITIONER *v.* NEW JERSEY AND PENNSYLVANIA

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

[May 31, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider both the rights of the Federal Government when a State misuses funds advanced as part of a federal grant-in-aid program under Title I of the Elementary and Secondary Education Act and the manner in which the Government may assert those rights. We hold that the Federal Government may recover misused funds, that the Department of Education may determine administratively the amount of the debt, and that the State may seek judicial review of the agency's determination.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for No. 81-2125, Bell v. New Jersey
No. 82-583 Hettleman et al. v. Block et al.

This case involves the regulation promulgated by the Secretary of Agriculture making States strictly liable for food coupons lost or stolen while in their possession. 7 CFR §271.7(c). The statute authorized the Secretary to

"by regulation prescribe appropriate procedures for the delivery of coupons to coupon vendors and for the custody, care, control, and storage of coupons in the hands of coupon vendors in order to secure such coupons against theft, embezzlement, misuse, loss or destruction." 7 U.S.C. §2015(c)(1).

Also, the statute authorizes the Secretary to

"issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c).

Since our rationale in Bell v. New Jersey depended on the specific provisions governing the grant program, it does not control this case. Nonetheless, the general analysis of the Court of Appeals here is consistent with our approach in Bell, for the court looked for authority in the provisions of the statute. Further, the statute has since been amended to provide explicitly for strict liability. Consequently, I recommend the petition be denied.

Sincerely,

Sandra