

The Burger Court Opinion Writing Database

Bennett v. Kentucky Department of Education

470 U.S. 656 (1985)

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



m

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

CHAMBERS OF
THE CHIEF JUSTICE

March 4, 1985

Re: No. 83-1798 - Bell v. Kentucky Department of Education

Dear Sandra,

I join.

Regards,



Justice O'Connor

Copies to the Conference

37 24-7 1111

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

February 15, 1985

No. 83-1798 -- Bell v. Kentucky

Dear Sandra:

Please join me.

I have one question, however, concerning the first sentence on page 13. You define the recoupment inquiry in terms of conditions existing "at the time the grants were made." I generally agree, but believe that the point when the State actually expends the money may also be relevant. Many Government grants are made for the forthcoming year; I can well imagine circumstances in which the Government might be able to adjust or clarify requirements after "the grants were made" but before the funds were actually expended. In light of the number of recoupment cases pending in federal courts, this might be a significant distinction. I'd prefer to keep the standard just a bit more ambiguous. What would you think of revising the sentence to read: "... at the time the grants were made and the funds expended"? If you agree, this might require a comparable revision to the last sentence in Part III.

In any event, I'll be happy to defer to your expertise and decision either way.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1985

83-1798 -

Bell v. Kentucky Department of Education

Dear Sandra,

I join all but Part III of your circulating draft. In light of Part IV, Part III seems unnecessary, and I have some doubts about it besides.

Sincerely yours,



Justice O'Connor

Copies to the Conference

4
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 21, 1985

Re: No. 83-1798-Bell v. Kentucky Dept. of Ed.

Dear Sandra:

Please join me.

Sincerely,

J.M.

T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1985

Re: No. 83-1798, Bell v. Kentucky Dept. of Education

Dear Sandra:

I am where Byron is in this case. I, therefore, join your opinion except for Part III.

Sincerely,



Justice O'Connor

cc: The Conference

.84 MB-2 01/84

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1985

83-1798 Bell v. Kentucky Department of Education

Dear Sandra:

Please add at the end of your opinion that I took no part in the consideration or decision of this case.

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

February 19, 1985

Re: No. 83-1798 Bell v. Kentucky Department of Education

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1985

Re: 83-1798 - Bell v. Kentucky Dept. of Ed.
83-2064 - Bell v. New Jersey

Dear Sandra:

In the Kentucky case you have written a fine opinion which I expect to join. However, since I remain unpersuaded in the New Jersey case and will be writing a dissent, I will not join the Kentucky case until I have completed my dissent in the other case.

Respectfully,



Justice O'Connor

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

7

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 28, 1985

Re: 83-1798 - Bell v. Kentucky Dept. of
Education

Dear Sandra,

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

PR 1, 13, 14

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

From: Justice O'Connor

Circulated: FEB 14 1985

Recirculated: _____

SDD
Please join me
JA

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1798

T. H. BELL, SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, PETITIONER v. KENTUCKY DEPARTMENT OF EDUCATION

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

[February —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case, like *Bell v. New Jersey (Bell II)*, *ante*, concerns an effort by the Federal Government to recover Title I funds that were allegedly misused by a State. There is no contention here that changes in statutory provisions should apply to previous grants. Instead, the dispute is whether the Secretary correctly demanded repayment based on a determination that Kentucky violated requirements that Title I funds be used to supplement, and not to supplant, state and local expenditures for education. Although the Court of Appeals for the Sixth Circuit found that the Secretary's determination was based on a reasonable interpretation of Title I and its implementing regulations, the court nonetheless excused the State from repayment on the grounds that there was no evidence of bad faith and the State's programs complied with a reasonable interpretation of the law. 717 F. 2d 943, 948 (1983). We granted certiorari, 467 U. S. — (1984), and because we disagree with the standard adopted by the Court of Appeals, we reverse.

1
c
1

I

As explained more fully in *Bell II*, *ante*, at 1-3, Title I of the Elementary and Secondary Education Act of 1965, Pub.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

✓

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 15, 1985

No. 83-1798 Bell v. Kentucky

Dear Bill,

I agree that it is desirable to leave somewhat ambiguous the precise time that determines the correct legal standards for evaluating compliance with the requirements of Title I. In this regard, my use of the phrase "when the grants were made" is deliberate. This phrase could refer to the time when the state education agency approved applications submitted by local school districts, received federal funds from the Secretary, or disbursed funds to local education agencies for approved programs. See 20 U.S.C. §241e(a) (1976 ed.) (referring to receipt of grant by local education agency); id. §241g(a)(1) (payment of funds to State); id. §241g(a)(2) (distribution of funds by state education agency to local education agencies for approved applications).

Thus, I believe that the phrase "when the grants were made" would allow the Federal Government to clarify the requirements after a state education agency approved applications but before the state agency actually distributed federal funds to local school districts. Title I funds were to be expended within a two-year period. See 20 U.S.C. §1225(b). I would prefer to avoid the issue whether a State may be found liable where the actual expenditures for a local program conformed to requirements in place when the State approved the application and distributed the funds, but did not satisfy a requirement or clarification adopted after the money was out of the hands of the state education agency. The phrase "when the grants were made," I acknowledge, might suggest a negative answer. On the other hand, addition of the language "and the funds expended" would seem clearly to indicate that the State could be liable. Consequently, I am presently inclined to stick with "when the grants were made."

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

PP. 1, 13, 16

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



From: Justice O'Connor

Circulated: _____

Recirculated: MAR 6 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1798

**WILLIAM J. BENNETT, SECRETARY OF EDUCATION,
UNITED STATES DEPARTMENT OF EDUCATION,
PETITIONER v. KENTUCKY DEPARTMENT OF EDUCATION**

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

[March —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.*

This case, like *Bell v. New Jersey (Bell II)*, ante, p. —, concerns an effort by the Federal Government to recover Title I funds that were allegedly misused by a State. There is no contention here that changes in statutory provisions should apply to previous grants. Instead, the dispute is whether the Secretary correctly demanded repayment based on a determination that Kentucky violated requirements that Title I funds be used to supplement, and not to supplant, state and local expenditures for education. Although the Court of Appeals for the Sixth Circuit found that the Secretary's determination was based on a reasonable interpretation of Title I and its implementing regulations, the court nonetheless excused the State from repayment on the grounds that there was no evidence of bad faith and the State's programs complied with a reasonable interpretation of the law. *Kentucky v. Secretary of Education*, 717 F. 2d 943, 948 (1983). We granted certiorari, 469 U. S. — (1984), and because we disagree with the standard adopted by the Court of Appeals, we reverse.

*JUSTICE WHITE and JUSTICE BLACKMUN join only Parts I, II, and IV of this opinion.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Justice O'Connor

Circulated: _____

Recirculated: _____

MAR 7 1985
3/7/85

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1798

WILLIAM J. BENNETT, SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, PETITIONER v. KENTUCKY DEPARTMENT OF EDUCATION

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

[March —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.*

This case, like *Bennett v. New Jersey*, ante, p. —, concerns an effort by the Federal Government to recover Title I funds that were allegedly misused by a State. There is no contention here that changes in statutory provisions should apply to previous grants. Instead, the dispute is whether the Secretary correctly demanded repayment based on a determination that Kentucky violated requirements that Title I funds be used to supplement, and not to supplant, state and local expenditures for education. Although the Court of Appeals for the Sixth Circuit found that the Secretary's determination was based on a reasonable interpretation of Title I and its implementing regulations, the court nonetheless excused the State from repayment on the grounds that there was no evidence of bad faith and the State's programs complied with a reasonable interpretation of the law. *Kentucky v. Secretary of Education*, 717 F. 2d 943, 948 (1983). We granted certiorari, 469 U. S. — (1984), and because we disagree with the standard adopted by the Court of Appeals, we reverse.

*JUSTICE WHITE and JUSTICE BLACKMUN join only Parts I, II, and IV of this opinion.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS