

The Burger Court Opinion Writing Database

Bowen v. Owens

476 U.S. 340 (1986)

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





CHAMBERS OF
THE CHIEF JUSTICE

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

April 8, 1986

84-1905 - Bowen v. Owens

Dear Lewis:

I join.

Regards,

Justice Lewis Powell

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 11, 1986

No. 84-1905

Bowen v. Owens

Dear Thurgood and Harry,

We three are in dissent in the
above. Would you, Thurgood, be willing
to take on the dissent?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 2, 1986

No. 84-1905

Bowen v. Owens, et al.

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference



CHAMBERS OF
JUSTICE BYRON R. WHITE

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

April 4, 1986

84-1905 - Bowen v. Owens

Dear Lewis,

Join me, please.

Sincerely yours,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

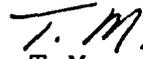
April 3, 1986

Re: No. 84-1905-Bowen v. Owens

Dear Lewis:

In due course I will circulate a dissent in
this one.

Sincerely,


T.M.

Justice Powell

cc: The Conference

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

From: **Justice Marshall**

Circulated: MAY 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1905

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES, APPELLANT *v.*
BUENTA M. OWENS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[May —, 1986]

JUSTICE MARSHALL, dissenting.

The Court demonstrates an enviable ability to discern rationality where there is none. But the majority's efforts to imagine plausible legislative scenarios cannot obscure the simple truth: there is absolutely no evidence that Congress had any rational basis for deciding in 1977 that surviving divorced spouses who remarried could not receive the same survivor's benefits allowed to remarried widowed spouses. Because I believe that such a distinction between two groups treated similarly in other respects cannot survive the scrutiny required by the equal protection component of the Fifth Amendment's Due Process Clause, I dissent.

I

In 1977, a report of the House Committee on Ways and Means noted one drawback of the benefits scheme then in force:

"Present law provides, in general, that the marriage (or remarriage) of a worker's divorced or surviving spouse, parent, or child prevents or terminates entitlement to benefits based on the worker's social security earnings record. For example, a widow who remarries before age 60 cannot get benefits based on her first husband's earnings as long as she is married. If she remar-

STYLISTIC CHANGES THROUGHOUT

f P. j

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

From: **Justice Marshall**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1905

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES, APPELLANT *v.*
BUENTA M. OWENS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[May —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

The Court demonstrates an enviable ability to discern rationality where there is none. But the majority's efforts to imagine plausible legislative scenarios cannot obscure the simple truth: there is absolutely no evidence that Congress had any rational basis for deciding in 1977 that surviving divorced spouses who remarried could not receive the same survivor's benefits allowed to remarried widowed spouses. Because I believe that such a distinction between two groups treated similarly in other respects cannot survive the scrutiny required by the equal protection component of the Fifth Amendment's Due Process Clause, I dissent.

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

From: **Justice Blackmun**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1905

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES, APPELLANT *v.*
BUENTA M. OWENS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[May —, 1986]

JUSTICE BLACKMUN, dissenting.

I agree with JUSTICE MARSHALL that the Court has failed to identify a rational basis for Congress' decision to treat widowed spouses and surviving divorced spouses differently upon their remarriage. If anything, persons in these two categories are *more* similarly situated after remarriage than they were before, since they all then belong to family units unconnected to the primary wage earner whose earnings provide the basis for their secondary social security benefits. Cf. *Califano v. Jobst*, 434 U. S. 47, 53 (1977) ("marriage is an event which normally marks an important change in economic status" and "not only creates a new family . . . but also modifies . . . pre-existing relationships").

04/03

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

From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1905

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES, APPELLANT *v.*
BUENTA M. OWENS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[April —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

Certain provisions of the Social Security Act in effect between 1979 and 1983 authorized payment of survivor's benefits from a wage earner's account to a widowed spouse who remarried after age 60, but not to a similarly situated divorced widowed spouse. The question in this case is whether those provisions violated the equal protection component of the Due Process Clause of the Fifth Amendment.

I

The Social Security Act (the Act) originally provided only primary benefits to qualified wage earners. Congress later provided secondary benefits to wives, widows, dependent children, and surviving parents of the wage earner. At that time, widows and other secondary beneficiaries would lose their entitlement to survivor's benefits upon a subsequent marriage. In 1950, Congress extended secondary benefits to dependent husbands and widowers, subject to the same restriction. In 1958, Congress created an exception to this remarriage rule so that if a widow or widower married an individual who received benefits under the Act, neither would forfeit survivor's benefits.

Until 1965, divorced wives, including those who had outlived their former spouse ("divorced widows"), were not eligi-

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new fnb

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

From: **Justice Powell**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1905

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES, APPELLANT *v.*
BUENTA M. OWENS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[May —, 1986]

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The Social Security Act (the Act) originally provided only primary benefits to qualified wage earners. Congress later provided secondary benefits to wives, widows, dependent children, and surviving parents of the wage earner. At that time, widows and other secondary beneficiaries would lose their entitlement to survivor's benefits upon a subsequent marriage. In 1950, Congress extended secondary benefits to dependent husbands and widowers, subject to the same restriction. In 1958, Congress created an exception to this remarriage rule so that if a widow or widower married an individual who received benefits under the Act, neither would forfeit survivor's benefits.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1986

Re: Case held for Bowen v. Owens, No. 84-1905

MEMORANDUM TO THE CONFERENCE

Remand
Owens v. Bowen, No. 85-31, is the cross-appeal of the appellees in 84-1905. In the cross-appeal, cross-appellants contend that the DC erred in restricting class membership and in denying their motion for attorneys' fees. Because of our disposition of the appeal in No. 84-1905, the issues of class certification and attorneys' fees have become moot. For that reason, I believe the proper disposition of this cross-appeal is to vacate the DC's orders certifying a class and denying attorneys' fees and remand with instructions to dismiss the complaint. See United States v. Munsingwear, 340 U.S. 36, 39 (1950) ("The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.")

Sincerely,

L. F. P.
L. F. P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1986

Re: Case held for Bowen v. Owens, No. 84-1905

MEMORANDUM TO THE CONFERENCE
(Revised draft)

*remand
dismiss*

Owens v. Bowen, No. 85-31, is the cross-appeal of the appellees in 84-1905. In the cross-appeal, cross-appellants contend that the DC erred in restricting class membership and in denying their motion for attorneys' fees. The DC denied the attorneys' fees motion without prejudice, pending disposition of the appeal. Because of our disposition of the appeal in No. 84-1905, the issues of class certification and attorneys' fees have become moot. For that reason, I believe the proper disposition of this cross-appeal is to vacate the DC's orders certifying a class and denying attorneys' fees and remand with instructions to dismiss the complaint. See United States v. Munsingwear, 340 U.S. 36, 39 (1950) ("The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.")

Sincerely,

L. F. P.
L. F. P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 7, 1986

Re: No. 84-1905 Bowen v. Owens

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 7, 1986

Re: 84-1905 - Bowen v. Owens

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 3, 1986

No. 84-1905 Bowen v. Owens

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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