The Burger Court Opinion Writing Database

Bowen v. Roy
476 U.S. 693 (1986)

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

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

From: **The Chief Justice**

Circulated: MAR 10 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[March ——, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented is whether the Free Exercise Clause of the First Amendment compels the government to accommodate a religiously-based objection to the statutory requirement that a Social Security number be provided by an applicant seeking to receive certain welfare benefits.

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained in 42 U. S. C. § 602(a)(25)[1] and 7 U. S. C. § 2025(e), that participants in these programs furnish their state welfare agencies with the social security numbers of the members of their household as a condition of receiving benefits. They contended that obtaining a social security number for their three-year-old daughter, Little Bird of the Snow, would vio-

[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Section 1137(a)(1) of the Social Security Act, 98 Stat. 1147.

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

From: **The Chief Justice**

Circulated: _____

Recirculated: MAR 11 1986

STYLISTIC CHANGES THROUGHOUT

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

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[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Deficit Reduction Act of 1984, Pub. L. No. 98–369, § 2651(a), 98 Stat. 494, 1147.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1986

RE: No. 84-780 -- Bowen v. Roy

Dear Lewis:

Thank you for your memo on this case. I believe I am in general accord with your views that denial of government benefits may sometimes constitute an infringement of religious liberty. I have added language in the revised draft to make this view explicit. See page 8.

The reason for discussing the fact that this is a benefits case, not a criminal sanctions case, is to focus the opinion narrowly on the precise question presented. I am concerned that removing that limitation might unduly expand the holding, to the ultimate detriment of Free Exercise claimants. In other words, the facially neutral nature of the provisions at issue here combined with the fact that this is a benefits case, produce the result. I do not intend to suggest that one without the other would "necessarily answer the case," and I think the opinion is clear on this point. I have, however, added discussion concerning the Bob Jones University case, which I hope will satisfy your concern that the opinion creates some kind of new "benefits v. prohibition" "test". See p. 8. I have also added modifying language to statements that might appear to discuss benefits alone. See p. 6.

Since I think we are in general agreement on the issues here, I hope you will join. I will, as always, be happy to entertain any further suggestions that you might have.

Regards,

Justice Powell

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

From: **The Chief Justice**

Circulated: _____

Recirculated: MAR 29 1986

CHANGES THROUGHOUT

6, 3 13

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[March ——, 1986]

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I

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[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Deficit Reduction Act of 1984, Pub. L. No. 98–369, § 2651(a), 98 Stat. 494, 1147.

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

From: **The Chief Justice**

Circulated: _____

Recirculated: APR 10 1986

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[March ——, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented is whether the Free Exercise Clause of the First Amendment compels the government to accommodate a religiously-based objection to the statutory requirement that a Social Security number be provided by an applicant seeking to receive certain welfare benefits.

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained in 42 U. S. C. § 602(a)(25)[1] and 7 U. S. C. § 2025(e), that participants in these programs furnish their state welfare agencies with the social security numbers of the members of their household as a condition of receiving benefits. They contended that obtaining a social security number for their two-year-old daughter, Little Bird of the Snow, would violate

[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Deficit Reduction Act of 1984, Pub. L. No. 98–369, § 2651(a), 98 Stat. 494, 1147.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 8, 1986

MEMORANDUM TO THE CONFERENCE

Re: 84-780 -- Bowen v. Roy

I have reworked the opinion, borrowing some thoughts from the separate opinions of others. My intent has been to make Part II acceptable to all. If it gets any "salutes" fine; if not, I'll go back to the earlier draft.

Regards,

WEB

STYLISTIC CHANGES THROUGHOUT

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

From: **The Chief Justice**

Circulated: _____

Recirculated: MAY 9 1986

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented is whether the Free Exercise Clause of the First Amendment compels the government to accommodate a religiously-based objection to the statutory requirements that a Social Security number be provided by an applicant seeking to receive certain welfare benefits and that the States use these numbers in administering the benefit programs.

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained in 42 U. S. C. § 602(a)(25)[1] and 7 U. S. C. § 2025(e), that participants in these programs furnish their state welfare agencies with the social security numbers of the members of their household as a condition of receiving benefits. They con-

[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Deficit Reduction Act of 1984, Pub. L. No. 98–369, § 2651(a), 98 Stat. 494, 1147.

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

STYLISTIC CHANGES THROUGHOUT
6, 7-8, 15

From: **The Chief Justice**

Circulated: _____

Recirculated: MAY 29 1986

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

CHIEF JUSTICE BURGER announced the judgment of the Court and delivered the opinion of the Court with respect to parts I and II, and an opinion with respect to part III, in which JUSTICE POWELL and JUSTICE REHNQUIST join.

The question presented is whether the Free Exercise Clause of the First Amendment compels the government to accommodate a religiously-based objection to the statutory requirements that a Social Security number be provided by an applicant seeking to receive certain welfare benefits and that the States use these numbers in administering the benefit programs.

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained in 42 U. S. C. § 602(a)(25)[1] and 7 U. S. C. § 2025(e), that participants in these programs furnish their state welfare agen-

[1] We refer to the statutory scheme as it existed at the time appellees filed suit. The scheme has since been amended, although the social security number requirement has been retained in virtually identical form. See Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2651(a), 98 Stat. 494, 1147.

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

STYLISTIC CHANGES THROUGHOUT

P 4

From: The Chief Justic

Circulated: JUN 7 19

Recirculated: _____

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June 11, 1986]

CHIEF JUSTICE BURGER announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II, and an opinion with respect to Part III, in which JUSTICE POWELL and JUSTICE REHNQUIST join.

The question presented is whether the Free Exercise Clause of the First Amendment compels the government to accommodate a religiously-based objection to the statutory requirements that a Social Security number be provided by an applicant seeking to receive certain welfare benefits and that the States use these numbers in administering the benefit programs.

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained in 42 U. S. C. § 602(a)(25)[1] and 7 U. S. C. § 2025(e), that participants in these programs furnish their state welfare agencies with the Social Security numbers of the members of their

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1986

MEMORANDUM TO THE CONFERENCE:

Held for Clayton

Re: Case Held for Bowen v. Roy, No. 84-780.

Snider v. Virginia, No. 84-1724. Appellants, Mr. and Mrs. Snider, concerned that their two children were exposed to "secular humanism" in the public schools, decided to withdrew their children from public school at the beginning of the 1982 school year. Mrs. Snider thereafter taught the children at home, with the aid of a home study course. At that time, §22.1-254 of the Virginia Code required parents to send their school-age children to a public or private school or to "have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent." This obligation was subject to several exceptions, however, including that of §22.1-257(A)(2), which required a school board to "excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school." The term "bona fide religious training or belief" was defined to exclude "essentially political, sociological, or philosophical views or a merely personal moral code." §22.1-257(C). The statute has since been amended to permit a parent to educate a child at home, provided that the parent uses an approved correspondence course or otherwise demonstrates an ability to provide an adequate education.

The local school board determined that appellants' religious beliefs did not prevent them from complying with the law. Thereafter, the Commonwealth brought criminal charges against appellants, alleging a violation of §22.1-254. The Juvenile and Domestic Relations Court of Henrico County found appellants guilty, fined them each $100, and ordered that they enroll their children in school. Appellants appealled to the Henrico County Circuit Court. In a decision delivered from the bench, that court sustained appellants' conviction and rejected their Free Exercise defense. First, the court concluded that the belief motivating appellants' desire to teach their children at home was philosophical, not religious. Second, the court balanced the

State's compelling interest in compulsory education against appellants' desires and concluded that the State has provided the necessary "accommodation," i.e., requiring parents to send their children to private school or having the children taught at home with a qualified tutor. The Virginia Supreme Court refused a petition for appeal, concluding that there was "no reversible error in the judgments complained of."

Appellants appealled to this Court, raising several challenges to the Virginia statutory scheme. They allege that the Virginia law violates the First Amendment Free Exercise Clause, particularly since it permits a local school board to determine the legitimacy of a religious objection. They further argue that differentiation between education inside a school setting and outside a school setting violates the Fourteenth Amendment Equal Protection Clause. Finally, invoking Pierce v. Society of Sisters, 268 U.S. 510 (1925), they contend that Virginia has usurped responsible parental authority and disrupted the family unit.

This appeal appears to raise many of the same issues that are presently before the Court in Ohio Civil Rights Commission v. Dayton Christian School, No. 85-488. A decision affirming the CA6 on the merits in that case might warrant a GVR in this case. Justice Rehnquist has proposed setting Ohio Civil Rights Commission for reargument next Term. In any event, I will vote to hold this appeal for Ohio Civil Rights Commission.

Regards,

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1986

No. 84-780

Bowen v. Roy

Dear Byron, Thurgood and Sandra,

We four are in dissent in the above. Would you be willing, Sandra, to take it on?

Sincerely,

Bill

Justice White

Justice Marshall

Justice O'Connor

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 28, 1986

No. 84-780

Bowen v. Roy, et al.

Dear Sandra,

Please join me in your dissent in the above.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1986

No. 84-780

Bowen v. Roy

Dear Sandra,

I'm still with you.

Sincerely,

Bill

Justice O'Connor

Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 12, 1986

84-780 - Bowen v. Roy

Dear Chief,

I shall await the dissent in this case.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

From: **Justice White**

Circulated: APR 8 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE WHITE, dissenting.

Being of the view that *Thomas* v. *Review Board*, 450 U. S. 707 (1981), and *Sherbert* v. *Verner*, 374 U. S. 398 (1963), control this case, I cannot join the Court's opinion and judgment.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1986

84-780 - Bowen v. Roy

Dear Chief,

I have your note about this case. I doubt that I can join your Part II since it says that the case is not controlled by Thomas, a view I do not share.

Sincerely yours,

Byron

The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1986

Re: No. 84-780-Bowen v. Roy

Dear Chief:

I await the dissent.

Sincerely,

T. M.

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 31, 1986

Re: No. 84-780 - Bowen v. Roy

Dear Sandra:

Please join me in your dissent.

Sincerely,

T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 1, 1986

Re: No. 84-780-Bowen v. Roy

Dear Sandra:

I am still with you.

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

April 11, 1986

Memorandum to the Conference

Re: No. 84-780, Bowen v. Roy

Although John has not yet expressed his final vote, it is evident that we are all over the place in this case. On the assumption that John will follow his conference vote, it may be advisable to have a brief explanatory per curiam, as has been used on other occasions.

The following is suggested for your consideration:

> "The judgment of the District Court is vacated and the case remanded. THE CHIEF JUSTICE, JUSTICE BLACKMUN, JUSTICE POWELL, JUSTICE REHNQUIST, and JUSTICE STEVENS agree that the Government's use, dissemination, and continued possession of the social security number it already possesses for appellees' daughter should not be enjoined, and that the remainder of the relief ordered by the District Court should also be vacated. If, however, it becomes evident at any further hearing that appellees' religious convictions still prevent them from supplying the Government with a social security number for their daughter, JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN and JUSTICE O'CONNOR agree that, on the facts as determined by the District Court, the Government should be enjoined from denying assistance to appellees' daughter for that reason."

Of course, this would have to be modified if it does not reflect John's views.

I trust I am not regarded as being officious in suggesting something of this kind.

HAB

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

From: **Justice Blackmun**

Circulated: APR 11 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE BLACKMUN, concurring in the judgment in part.

In August 1983, appellees Stephen J. Roy and Karen Miller sued to prevent the Government from requiring them to provide a social security number for their two-year-old daughter, Little Bird of the Snow, as a condition for obtaining food stamps and welfare benefits for the child. They object to the social security number requirement because of their sincere religious conviction that the Government's widespread use of a unique numerical identifier for their daughter will deprive her of spiritual power. After it developed at trial that the Government already had a social security number for Little Bird of the Snow, the District Court enjoined the Government not only from denying benefits to her based on her parents' failure to provide a social security number, but also from using or disseminating the number already in the Government's possession until the child's 16th birthday. App. to Juris. Statement 25a.

I agree with THE CHIEF JUSTICE and with JUSTICE O'CONNOR that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. See *ante*, at 14, n. 14; *post*, at 13. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put the social security number into active use if they

pp. 4, 5

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: APR 23 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE BLACKMUN, concurring in the judgment in part.

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I agree with THE CHIEF JUSTICE and with JUSTICE O'CONNOR that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. See *ante*, at 14, n. 14; *post*, at 13. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put the social security number into active use if they

pp. 1, 3

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

From: **Justice Blackmu**

Circulated: _____

Recirculated: MAY 2 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

JUSTICE BLACKMUN, concurring in the judgment in part.

In August 1983, appellees Stephen J. Roy and Karen Miller sued to prevent the Government from requiring them to provide a social security number for their two-year-old daughter, Little Bird of the Snow, as a condition for obtaining food stamps and welfare benefits for the child. They object to the social security number requirement because of their sincere religious conviction that the Government's widespread use of a unique numerical identifier for their daughter will deprive her of spiritual power. After it developed at trial that the Government already had a social security number for Little Bird of the Snow, the District Court enjoined the Government not only from denying benefits to her based on her parents' failure to provide a social security number, but also from using or disseminating the number already in the Government's possession until the child's 16th birthday. App. to Juris. Statement 25a.

I agree with THE CHIEF JUSTICE and with JUSTICE STEVENS and JUSTICE O'CONNOR that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put the social security number into active use if they

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1986

Re: No. 84-780, Bowen v. Roy

Dear Chief:

The revisions you have made in your fifth draft makes it necessary for me to recast my separate concurring opinion.

Would you give consideration to the elimination, near the bottom of page 6 of your last draft, of the clause "and, indeed, the meaning of the Free Exercise Clause of the First Amendment as well"? If you will do this, I am in a position to join Parts I and II of your opinion.

Sincerely,

HAB

The Chief Justice

cc: The Conference

pp 1, 2, 3, 4

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

From: **Justice Blackmun**

Circulated: MAY 24 1986

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

JUSTICE BLACKMUN, concurring in part.

I join only Parts I and II of the opinion written by THE CHIEF JUSTICE.

In August 1983, appellees Stephen J. Roy and Karen Miller sued to prevent the Government from requiring them to provide a social security number for their two-year-old daughter, Little Bird of the Snow, as a condition for obtaining food stamps and welfare benefits for the child. They object to the social security number requirement because of their sincere religious conviction that the Government's widespread use of a unique numerical identifier for their daughter will deprive her of spiritual power. After it developed at trial that the Government already had a social security number for Little Bird of the Snow, the District Court enjoined the Government not only from denying benefits to her based on her parents' failure to provide a social security number, but also from using or disseminating the number already in the Government's possession until the child's 16th birthday. App. to Juris. Statement 25a.

I agree with the Court that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put

pp. 3, 4

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

From: Justice Blackmun

Circulated: _____

Recirculated: MAY 30 19[illegible]

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June ——, 1986]

JUSTICE BLACKMUN, concurring in part.

I join only Parts I and II of the opinion written by THE CHIEF JUSTICE.

In August 1983, appellees Stephen J. Roy and Karen Miller sued to prevent the Government from requiring them to provide a social security number for their two-year-old daughter, Little Bird of the Snow, as a condition for obtaining food stamps and welfare benefits for the child. They object to the social security number requirement because of their sincere religious conviction that the Government's widespread use of a unique numerical identifier for their daughter will deprive her of spiritual power. After it developed at trial that the Government already had a social security number for Little Bird of the Snow, the District Court enjoined the Government not only from denying benefits to her based on her parents' failure to provide a social security number, but also from using or disseminating the number already in the Government's possession until the child's 16th birthday. App. to Juris. Statement 25a.

I agree with the Court that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put

March 17, 1986

84-780 Bowen v. Roy

Dear Chief:

I have now had the opportunity to review your draft in this case. I am in agreement with your basic position, but have concerns that I share with you privately.

The draft identifies several grounds for reversing the District Court. It does emphasize a "facially neutral, uniformly applicable" test, first articulated on page 5. As you later point out on page 9, a neutral and uniformly applicable statute may be enforced if it represents a reasonable means of promoting a legitimate public interest. I am in agreement. This test provides the Court with a standard that protects religious freedom without hamstringing the government in the face of the proliferation of religious sects and the increasingly great number of perceived "intrusions" into religious freedom.

I would not state alternate tests. Reliance on the wholly neutral nature of the Social Security number resolves this case. The "benefits vs. prohibition" test mentioned on pages 6-8 is unnecessary, and also raises questions for me. It may well be that a "denial of governmental benefits" sometimes could constitute an "infringement of religious liberty." Moreover, although it may be true that denial of benefits is less intrusive than affirmative compulsion or prohibition, I do not think that necessarily answers the question in this case.

I agree generally with your discussion of Yoder, Thomas, and Sherbert, and with your emphasis on pages 10-12 of the Social Security numbers' importance in the computer-assisted administration of a large and complex program.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 3, 1986

84-780 Bowen v. Roy

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1986

84-780 Bowen v. Roy

Dear Chief:

This refers to your revised Fifth Draft of an opinion for the Court. I am still with you.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1986

Re: No. 84-780 Bowen v. Roy

Dear Chief,

Please join me.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1986

Re: No. 84-780 Bowen v. Roy

Dear Chief,

I am still with you.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1986

MEMORANDUM TO THE CONFERENCE

Re: 84-780 - Bowen v. Roy

In response to Harry's memorandum, I have no hesitation in confirming the fact that my Conference vote represents my final vote in the case. I may end up joining the Chief's opinion, but since my views are not exactly the same as his, I may write separately in any event.

With respect to Harry's proposed per curiam, I definitely do not think it appropriate to enter any kind of an order stating what the Court would do if something happens "at any further hearing." I would simply follow our normal procedure of having the judgment announced by the author of the opinion that both supports the judgment and commands the most votes which, in this case, will presumably be the Chief Justice.

Respectfully,

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

From: **Justice Stevens**

Circulated: APR 22 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE STEVENS, concurring in the result.

Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths.[1] Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

I agree with JUSTICE BLACKMUN that the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Government's method of record-keeping. The second claim, I submit, is either moot or not ripe for decision.

---

[1] The First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ."

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 5

From: **Justice Stevens**

Circulated: _____

Recirculated: APR 25 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE STEVENS, concurring in the result.

Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths.[1] Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

It is perfectly clear that the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Government's method of recordkeeping. The second claim, I submit, is either moot or not ripe for decision.

---

[1] The First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . ."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 9, 1986

Re: 84-780 - Bowen v. Roy

Dear Chief:

With respect to your reworking of Part II, I will not only "salute" you; I will join you. With respect to Part III, however, I remain unpersuaded that the remaining issue--what the government can require when it already has the social security number it seeks--is ripe for review. Perhaps the answer to the hypothetical question that the record does not present is so easy that it is appropriate to go ahead and discuss it, but I am inclined to think that when there is a significant disagreement within the Court on such an issue--even when the answer appears obvious to the respective disputants--the better practice is to avoid the unnecessary discussion of constitutional issues. I shall therefore recast the second part of my separate writing and merely join your Parts I and II.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

1, 2, 4, 5, 7, 8

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 13 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

JUSTICE STEVENS, concurring in part and concurring in the result.

Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths.[1] Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

As the Court holds in Part II of its opinion, which I join, the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Govern-

[1] The First Amendment provides:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . ."

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

4, 5

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 27 1986

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

JUSTICE STEVENS, concurring in part and concurring in the result.

Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths.[1] Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

As the Court holds in Part II of its opinion, which I join, the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Govern-

[1] The First Amendment provides:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . ."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1986

Re: 84-780 - Bowen v. Roy

Dear Sandra:

In response to your latest circulation, I am adding the following footnote at the end of my opinion:

> Although both THE CHIEF JUSTICE and JUSTICE O'CONNOR explain why they believe the case is not moot, neither explains why it is ripe. JUSTICE O'CONNOR also incorrectly states that I believe the case should be remanded. JUSTICE O'CONNOR's error may reflect the difficulties that inhere when one Justice takes it upon herself or himself to explain the views of the Justices who have not joined the writer's opinion. Cf. California v. Sierra Club, 451 U.S. 287, 301, n. 5 (1981) (STEVENS, J., concurring) ("'it is hardly necessary to state that only a majority can speak for the Court' or give an authoritative explanation of the meaning of its judgments").

Respectfully,

Justice O'Connor

Copies to the Conference

8

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

From: Justice Stevens

Circulated: _____

Recirculated: 6/7/86

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June 11, 1986]

JUSTICE STEVENS, concurring in part and concurring in the result.

Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths.[1] Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

As the Court holds in Part II of its opinion, which I join, the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Govern-

[1] The First Amendment provides:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . ."

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 27, 1986

No. 84-780 Bowen v. Roy

Dear Bill,

I will be glad to try to prepare a dissent in this case.

Sincerely,

Sandra

Justice Brennan

cc: Justice White
Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 14, 1986

No. 84-780 Bowen v. Roy

Dear Chief,

I plan to write a dissent in this case and will circulate something within two or three weeks if all goes well.

Sincerely,

Sandra

The Chief Justice

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

MAR 25 1986

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[March ——, 1986]

JUSTICE O'CONNOR, dissenting.

Appellee Stephen J. Roy, a Native American, is a member of the Abenaki Indian Tribe. He and his wife, Karen Miller, have two daughters, Renee, age 6, and Little Bird of the Snow, age 5. During a traditional Native American naming ceremony for a newborn child, a small goshawk appeared to emerge from the snow, and Little Bird of the Snow received her name. Juris. St. 3a. That name protects Little Bird of the Snow from evil. J. A. 80.

Appellees' household adheres to the religious beliefs of the Abenaki tribal culture and traditions. As found by the District Court, "Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to 'becoming a holy person.'" Juris. St. 4a. The District Court further found that "Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will 'rob [her] spirit' . . . and will prevent him from fully 'preparing her for greater power' [because the use of the number] is part of a 'great evil' contained in Native American legend. *Ibid.* See also J. A. 85, 87. As a product of these beliefs, appellee Roy believes that no use should be made of Little Bird of the Snow's social security number until she herself can freely choose to do so. Juris. St. 4a.

Stylistic Changes Throughout

pp. 1, 4, 7, 8, 9, 11

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: APR 1 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Appellee Stephen J. Roy, a Native American, is a member of the Abenaki Indian Tribe. He and his wife, Karen Miller, have two daughters, Renee, aged 6, and Little Bird of the Snow, aged 5. During a traditional Native American naming ceremony for a newborn child, a small goshawk appeared to emerge from the snow, and Little Bird of the Snow received her name. Juris. Statement 3a. That name protects Little Bird of the Snow from evil. App. 80.

Appellees' household adheres to the religious beliefs of the Abenaki tribal culture and traditions. As found by the District Court, "Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to 'becoming a holy person.'" Juris. Statement 4a. The District Court further found that "Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will 'rob [her] spirit' . . . and will prevent him from fully 'preparing her for greater power' [because the use of the number] is part of a 'great evil' contained in Native American legend." *Ibid.* See also App. 85, 87. As a product of these beliefs, appellee Roy believes that no use should be made of Little Bird of the Snow's social

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 29, 1986

Re: 84-780 Bowen v. Roy

Dear Bill and Thurgood,

Enclosed is a revised draft of my opinion in this case. It has been changed to reflect that the Chief's opinion is only for a plurality, and to address perhaps more effectively the problem of the injunction and why the case is not moot. I also have added a "road map" to try to explain the lineup of the Court with respect to the several issues. Please let me know if the changes are unacceptable to you.

Sincerely,

Sandra

Justice Brennan

Justice Marshall

Stylistic Changes Throughout & Pp. 13-16

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: 4-29-86

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in the judgment in part and dissenting in part.

Appellee Stephen J. Roy, a Native American, is a member of the Abenaki Indian Tribe. He and his wife, appellee Karen Miller, have two daughters, Renee, aged 6, and Little Bird of the Snow, aged 5. During a traditional Native American naming ceremony for a newborn child, a small goshawk appeared to emerge from the snow, and Little Bird of the Snow received her name. App. A to Juris. Statement 3a. That name protects Little Bird of the Snow from evil. App. 80.

Appellees' household adheres to the religious beliefs of the Abenaki tribal culture and traditions. As found by the District Court, "Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to 'becoming a holy person.'" App. A to Juris. Statement 4a. The District Court further found that "Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will 'rob [her] spirit' . . . and will prevent him from fully 'preparing her for greater power' [because the use of the number] is part of a 'great evil' contained in Native American legend." *Ibid.* See also App. 85, 87. As a product of these beliefs,

Stylistic Changes Throughout

pp. 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: APR 30 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[April ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in the judgment in part and dissenting in part.

Appellee Stephen J. Roy, a Native American, is a member of the Abenaki Indian Tribe. He and his wife, appellee Karen Miller, have two daughters, Renee, aged 6, and Little Bird of the Snow, aged 5. During a traditional Native American naming ceremony for a newborn child, a small goshawk appeared to emerge from the snow, and Little Bird of the Snow received her name. App. A to Juris. Statement 3a. That name protects Little Bird of the Snow from evil. App. 80.

Appellees' household adheres to the religious beliefs of the Abenaki tribal culture and traditions. As found by the District Court, "Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to 'becoming a holy person.'" App. A to Juris. Statement 4a. The District Court further found that "Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will 'rob [her] spirit' . . . and will prevent him from fully 'preparing her for greater power' [because the use of the number] is part of a 'great evil' contained in Native American legend." *Ibid.* See also App. 85, 87. As a product of these beliefs,

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 14, 1986

No. 84-780 Bowen v. Roy

Dear Chief,

You have made a number of changes in your opinion in this case and I intend to make some changes in my opinion as a result. Because I will attend the Sixth Circuit Conference this week in Memphis, I need to have the case held over another week to have time to spend on the changes I want to make.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

Stylistic Changes Throughout

pp. 2, 3 5, 6, 8, 9, 11, 13, 15

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 22 1986

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[May ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in the judgment in part and dissenting in part.

Appellee Stephen J. Roy, a Native American, is a member of the Abenaki Indian Tribe. He and his wife, appellee Karen Miller, have two daughters, Renee, aged 6, and Little Bird of the Snow, aged 5. During a traditional Native American naming ceremony for a newborn child, a small goshawk appeared to emerge from the snow, and Little Bird of the Snow received her name. App. A to Juris. Statement 3a. That name protects Little Bird of the Snow from evil. App. 80.

Appellees' household adheres to the religious beliefs of the Abenaki tribal culture and traditions. As found by the District Court, "Abenaki religious tradition holds that control over one's life is essential to spiritual purity and indispensable to 'becoming a holy person.'" App. A to Juris. Statement 4a. The District Court further found that "Roy sincerely believes that the government's use of the social security number established for Little Bird of the Snow will 'rob [her] spirit' . . . and will prevent him from fully 'preparing her for greater power' [because the use of the number] is part of a 'great evil' contained in Native American legend." *Ibid.* See also App. 85, 87. As a product of these beliefs,

Rewritten and Reorganized
pp. 1-4, 6, 8, 10

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 5 1986

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

I join Parts I and II of THE CHIEF JUSTICE's opinion and I would vacate only a portion of the injunction issued by the District Court.

I

I believe that appellees cannot pursue their free exercise claim based solely on the actions of the Government with respect to the use of a social security number already in its possession, or with respect to any other identification number the Government may wish to assign and use in connection with its administration of its welfare assistance program. Accordingly, I join parts I and II of THE CHIEF JUSTICE's opinion, and I would vacate that portion of the District Court's judgment that enjoins the Government from using or disseminating the social security number already assigned to Little Bird of the Snow.

In all, eight members of the Court believe that the District Court's injunction was overbroad in preventing the Government from using information already in its possession. See *ante*, at 5–7 (opinion of BURGER, C. J., joined by POWELL and REHNQUIST, JJ.); *ante*, at 1–2 (STEVENS, J., concurring in part and concurring in the result); *ante*, at 1–2 (BLACK-

Stylistic Changes Throughout

pp. 2

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 6 1986

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June 11, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

I join Parts I and II of THE CHIEF JUSTICE's opinion and I would vacate only a portion of the injunction issued by the District Court.

I

I believe that appellees cannot pursue their free exercise claim based solely on the actions of the Government with respect to the use of a social security number already in its possession, or with respect to any other identification number the Government may wish to assign and use in connection with its administration of its welfare assistance program. Accordingly, I join parts I and II of THE CHIEF JUSTICE's opinion, and I would vacate that portion of the District Court's judgment that enjoins the Government from using or disseminating the social security number already assigned to Little Bird of the Snow.

In all, eight members of the Court believe that the District Court's injunction was overbroad in preventing the Government from using information already in its possession. See *ante*, at 5–7 (opinion of BURGER, C. J., joined by POWELL and REHNQUIST, JJ.); *ante*, at 1–2 (STEVENS, J., concurring in part and concurring in the result); *ante*, at 1–2 (BLACK-

P. 2

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 7 1986

9

7th ~~6th~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-780

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS *v.* STEPHEN J. ROY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[June 11, 1986]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

I join Parts I and II of THE CHIEF JUSTICE's opinion and I would vacate only a portion of the injunction issued by the District Court.

I

I believe that appellees cannot pursue their free exercise claim based solely on the actions of the Government with respect to the use of a social security number already in its possession, or with respect to any other identification number the Government may wish to assign and use in connection with its administration of its welfare assistance program. Accordingly, I join parts I and II of THE CHIEF JUSTICE's opinion, and I would vacate that portion of the District Court's judgment that enjoins the Government from using or disseminating the social security number already assigned to Little Bird of the Snow.

In all, eight members of the Court believe that the District Court's injunction was overbroad in preventing the Government from using information already in its possession. See *ante*, at 5–7 (opinion of BURGER, C. J., joined by POWELL and REHNQUIST, JJ.); *ante*, at 1–2 (STEVENS, J., concurring in part and concurring in the result); *ante*, at 1–2 (BLACK-