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In the

Supreme Court of the United States

PAUL R. PHILBROOK, etc., Appellant, v. JEAN GLODGETT, et al., Appellees.	No. 73-1820
and CASPAR W. WEINBERGER, Secretary of Health, Education, and Welfare, Appellant, v. JEAN GLODGETT, et al., Appellees.	No. 74-132

Washington, D. C.
March 24, 1975

Pages 1 thru 51

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IN THE SUPREME COURT OF THE UNITED STATES

PAUL R. PHILBROOK, etc., Appellant,	:	
v.	:	No. 73-1820
JEAN GLODGETT, et al., Appellees.	:	
-- and --	:	
CASPAR W. WEINBERGER, Secretary of Health, Education, and Welfare, Appellant,	:	
v.	:	No. 74-132
JEAN GLODGETT, et al., Appellees.	:	

Washington, D. C.,

Monday, March 24, 1975.

The above-entitled matters came on for consolidated argument at 2:32 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 73-1820, Philbrook against Glodgett, and 74-132, Weinberger against Glodgett, consolidated cases.

Mr. Patton, you may proceed whenever you're ready.

ORAL ARGUMENT OF WILLIAM L. PATTON, ESQ.,

ON BEHALF OF APPELLANT WEINBERGER

MR. PATTON: Mr. Chief Justice, and may it please the Court:

These cases are here on direct appeal from the judgment of a three-judge court in the District of Vermont.

The cases involve the relationship between the Aid to Families with Dependent Children, or AFDC, Unemployed Father Program, and Unemployment Compensation benefits.

b)(2)
ii)
sic/

The principal statute involved is Section 607(c)(2)(ii), which I shall refer to in argument as the mandatory bar. That provision appears on page 3 of our brief.

As this Court knows, the AFDC program is a program of cooperative federalism, funded by a system of matching State and federal grants.

The federal statute sets out certain conditions that State plans must satisfy in order to receive federal funding. And the mandatory bar provision provides that State plans must provide for the denial of AFDC benefits with respect to any week for which such child's father receives unemployment

compensation under an Unemployment Compensation law of a State or the United States.

Now, the plaintiffs in this case were all families which were eligible for AFDC benefits but for the fact that in each case the unemployed father received unemployment compensation under State law.

And in each case the amount of unemployment compensation received was considerably less than the AFDC benefits for which the family would have been eligible.

QUESTION: Does the record show whether they are still unemployed, Mr. Patton?

MR. PATTON: Mr. Justice Blackmun, it does not show the status of things as of this moment. We do know that Mr. Sarazin, who is an intervenor, continues to be unemployed and continues to receive unemployment compensation.

At the bottom of page 6 of our brief there is a table which shows the differences in benefit levels, and I want to call the Court's attention to the fact that there is one error in that table. The Derosia family was eligible for #94 a month in AFDC, and rather than $56 in unemployment compensation that figure should be $224.

QUESTION: Sorry, what page is that?

MR. PATTON: Page 6 of our brief. There is a table at the bottom, which shows the difference in benefits.

QUESTION: And would you make the -- tell us the

correction again?

MR. PATTON: Instead of $56 in the righthand column --

QUESTION: Right.

MR. PATTON: -- that should be $224.

QUESTION: Unh-hunh. That's the Derosia family.

MR. PATTON: Yes, sir.

Now, we can't assume that this table is necessarily representative, for a number of reasons. First of all, of course, AFDC benefits depend on a number of variables, the extent of other resources available to the family and primarily on the number of dependents.

Unemployment compensation is generally 50 percent of the previous salary.

QUESTION: In any event, it doesn't have anything to do with how large the family is or --

MR. PATTON: It does not. Well, --

QUESTION: Does it?

MR. PATTON: -- there may be some relation, Mr. Justice Stewart, in that some State Unemployment Programs have higher maximums depending on the number of dependents.

QUESTION: I didn't know that.

MR. PATTON: But to that -- only to that limited extent.

QUESTION: Unh-hunh.

QUESTION: Well, is it likely, in that case, Mr. Patton, that the highest may be as high as the AFDC benefits for the same family?

MR. PATTON: Certainly in the case of low-income people, it is not likely.

QUESTION: Yes.

MR. PATTON: However, there is one additional factor and that is that Vermont, like most States, has a general assistant program. And the record does not show the extent of benefits that were received in this case, but we do know that at least the Percy family received general assistance.

As I understand the Vermont general assistance program, it is basically an item-by-item need program. If the family finds that it can't pay its rent, for example, it can apply for general assistance for the amount of the rent.

QUESTION: Is this administered through the counties?

MR. PATTON: In Vermont, I believe it's administered on a Statewide basis. But in many States it is administered through counties.

QUESTION: Unh-hunh. And it's --

MR. PATTON: And it's wholly State funded.

QUESTION: Unh-hunh.

QUESTION: Mr. Patton, may I be clear? Of the AFDC figures in this column on page 6, your position is what, as respects how much of that they lose if the father receives

unemployment compensation?

MR. PATTON: They lose all of it, Mr. Justice Brennan.

QUESTION: All of it?

QUESTION: Unh-hunh.

QUESTION: And I gather that what's happened here is they waived their unemployment compensation, is that right? And the question is whether the word "receives" in the statute, section (ii) --

QUESTION: That's what it comes down to as a matter of statutory language.

QUESTION: -- "for which such child's father receives unemployment compensation" means actual receipt?

MR. PATTON: Yes, sir, that's the statutory question.

QUESTION: And he waives it, then he doesn't actually receive it?

MR. PATTON: That's correct. The district court -- originally the statute was challenged on constitutional grounds. The district court decided it could avoid the question by holding that fathers have an option: they can turn down unemployment compensation.

Now, Mr. --

QUESTION: But that's another way of putting the question, isn'tit? That whether they have an option to take

whichever is the higher?

MR. PATTON: Yes, sir. That's -- we believe that --

QUESTION: They pay -- the unemployment scheme is something for which they pay, isn't it?

MR. PATTON: Well, private employers make contributions to the unemployment compensation scheme. I'm not sure -- I believe that employees do make contributions.

QUESTION: Oh, yes.

MR. PATTON: The district court construction, we believe, is contrary to the legislative history and structure of the Act and administrative construction, and those sources will be discussed in more detail by Mr. Kalib for the State of Vermont.

QUESTION: In other words, you would -- this is the result of congressional carelessness, the statute?

MR. PATTON: Well, Mr. Justice Blackmun, I'm not sure -- we do know that in 1960- -- perhaps if I just went into briefly the history of the unemployed father program, we can see how this provision came into the law.

Up until 1961, AFDC did not extend to families with an unemployed father, and in that year it was so extended on an experimental basis.

Now, at that time the law provided that States had an option, they could deny AFDC if the father received unemployment compensation, or not. Some States did deny. I think

only three. The other States supplemented.

Now, in '67 and '68, when the unemployed father program was made permanent, the Senate wanted to continue that optional system, but the House bill provided for the mandatory bar.

The difficulty with giving fathers an option is really threefold.

First of all, it makes the mandatory bar a nullity. There would simply be no reason to have a provision requiring a termination if it could be circumvented by an option.

And secondly, it operates on an assumption that Congress wanted to encourage the unemployed to turn down unemployment benefits.

And finally, in operation, it shifts significant costs from the Unemployment Compensation Program that is funded by private employers to AFDC, which is of course funded by State and general revenues.

QUESTION: Mr. Patton, --

MR. PATTON: Yes, sir?

QUESTION: -- the three-judge district court didn't decide this case on a constitutional basis, did it?

MR. PATTON: It did not.

QUESTION: Are you sure that the appeal should come here rather than to the Court of Appeals?

MR. PATTON: Well, it did enter an injunction --

QUESTION: But it didn't --

MR. PATTON: It construed the statute and then ordered the Secretary of HEW to approve the plan in accordance with its decision.

Now, perhaps I -- as I read Hagans v. Lavine, the three-judge court was convened here because of the constitutional challenge, and we don't think it can be said that the constitutional claim was fictitious or frivolous on the face of the complaint. And having jurisdiction, it could then consider the statutory claim.

QUESTION: It certainly had jurisdiction, but then the question is: Who has jurisdiction over the appeal, if it decides it only on the statutory claim?

QUESTION: Right. Suppose a single judge, when the complaint had been filed, had said to counsel: Well, I'm supposed to hear the -- the statutory issue is supposed to be heard first, and that's just a single-judge issue. It's not required to be heard by a three-judge court. Therefore, I'm going to hear it.

And suppose he had done that and he had decided against you? Now, you would have gone to the Court of Appeals, wouldn't you?

MR. PATTON: I believe we would have, on that.

QUESTION: Well, then, why can you come here now, because it's not an issue that's required to be heard by a

three-judge court.

QUESTION: Even if a three-judge court decided it.

MR. PATTON: It's not an issue that's required to be heard by a three-judge court, but the three-judge court can hear it if --

QUESTION: Well, but -- how does that make it appealable here? Merely because the three-judge court hears it, if it's not a constitutional issue,

QUESTION: Don't you have to argue, in response to Mr. Justice Brennan, that the supremacy clause determination is a constitutional determination for purposes of our appellate jurisdiction?

QUESTION: But we've rejected that.

MR. PATTON: Well, it may have been rejected, but then in Hagans v. Lavine, I thought that it was again reconsidered, though not adopted.

Now, at least --

QUESTION: I thought Hagans v. Lavine looked just the other direction.

QUESTION: Did you read all seven pages, from 536 to 543? They added up to that?

MR. PATTON: No, no. I don't suggest that Hagans v. Lavine resolves the question.

QUESTION: Well, we've got to decide in this case, don't we, whether you're properly here?

MR. PATTON: You do, Mr. Justice Brennan, and I -- if it --

QUESTION: And I gather the same applies, doesn't it, to the State of Vermont's appeal in the other case?

QUESTION: It's no different, is it, in that respect?

MR. PATTON: Well, there is a jurisdictional question with respect to the United STates, which is quite a bit different from the one with respect to the State.

QUESTION: Well, that's with respect to 1343.

MR. PATTON: That's right.

QUESTION: No, but I mean on this question of whether this is a proper direct appeal. I gather Vermont came here from the same judgment, didn't they?

MR. PATTON: They did.

QUESTION: Yes. And so whether that's a proper appeal here is the same question in that case as it is in this one, isn't it?

MR. PATTON: It would be the same question, yes, sir.

QUESTION: Yes.

QUESTION: Except that Vermont might be able to rely on the supremacy clause as a constitutional basis, but certainly the federal government in no event can rely on the supremacy clause, since you're talking about the construction of a federal statute.

MR. PATTON: That's correct. We're not concerned

with the conflict, the supremacy issue.

Now, assuming that -- if we assume that there is jurisdiction for the appeal, and frankly it's something that, if the Court is concerned, we'd like to submit a supplemental brief on, and I think our opponent would concur in that.

QUESTION: You mean on this issue of the right to appeal?

MR. PATTON: On the issue of the appealability of the order.

Now, assuming for the moment that the case is properly here, and assuming that the Court agrees with our construction of the statute, there then is a further question concerning the constitutional challenge. I don't know there's any doubt but that the Court can reach the constitutional question in this case if it wishes to. But it need not. And we have suggested that it be remanded. And one of the reasons we've suggested that it be remanded is because the AFDC program is so complex that we thought the Court might benefit from the district court's decision of the issue in light of correct instruction of the statute.

And it's also true that the record could be supplemented, particularly concerning general assistance benefits. But we do not contend that it's absolutely necessary to remand. There is sufficient material in the record to consider the constitutional question.

And as to the constitutional claim, appellees' claim is basically that the mandatory bar operates to exclude children solely on the ground that their father receives unemployment compensation, even though they may be in need.

And it does operate that way, but implicit in appellees' claim is the assumption that the AFDC program is in fact a comprehensive public assistance program, or that it is constitutionally required to be, and we think either assumption is correct.

Need is the primary goal of the AFDC program, but Congress is operating within a framework of the limited amount of funds. And given that context, it has chosen to provide assistance to those who are least able to change their circumstances.

And fathers -- unemployment compensation may be less than AFDC benefits, but it may be supplemented by general assistance.

States may be stimulated to upgrade their programs, and there's some indication that that is in fact occurring.

In addition, the unemployment compensation benefits promote an attachment to the work force. It's a weekly benefit. Vermont recipients are required to go down to the Public Employment Office to get their checks and fill out certain forms.

QUESTION: You suggest that some States are upgrading

their unemployment compensation benefits so that they in fact reach nearly what the AFDC is?

MR. PATTON: Well, I -- Mr. Justice Brennan, I'm not prepared to guarantee that that occurs. They are upgrading them. I know, for example, in -- I understand that when this case started in Vermont the maximum benefit was 50 percent of the previous salary. It's now 60 percent of the previous salary.

In conjunction with minimum wage law, there is some upward movement, but I think it is true that people in the low-income groups are going to have lower benefits.

QUESTION: Yes.

MR. PATTON: Now, since this is a divided argument, I've used up my time and I want to stop, but I want to reiterate one point that we made in our reply brief.

We don't contend that the mandatory bar is the wisest or the most socially desirable policy that could be devised, but we do contend that it is the policy that Congress adopted, and that rejection on constitutional grounds would involve the Court in factors which it has repeatedly rejected as inappropriate for judicial resolution.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Mr. Kalib.

ORAL ARGUMENT OF DAVID L. KALIB, ESQ.,

ON BEHALF OF THE APPELLANT PHILBROOK

MR. KALIB: Mr. Chief Justice, may it please the Court:

My name is David Kalib, and I represent Appellant Philbrook and the State of Vermont in this action.

Vermont's position is that an unemployed father is excluded from receiving public assistance benefits under the Unemployed Father segment of the AFDC program if he's either eligible to receive or is currently receiving unemployment compensation benefits.

And this position is primarily based upon our understanding of congressional intent that was incorporated into the January 1968 amendments to the Social Security Act.

The House Ways and Means Committee in 1967 considered a vast number of amendments to that Act, and they expressed an intent in the Committee Report to cut federal spending by reducing the public assistance rolls.

In addition to cutting the federal spending, they wished to get public assistance recipients back into the labor force.

The 1967 House-Senate Conference Committee also considered the same vast number of amendments to the Social Security Act. They looked at two versions of how to treat unemployment compensation in relationship to public assistance

benefits.

First, there was the Senate version, which retained the option of allowing States to supplement unemployment compensation benefits.

The House version, on the other hand, denied assistance to any unemployed father who was receiving unemployment compensation.

This House-Senate Conference Committee recommended to the Congress the adoption of the version formulated by the House Ways and Means Committee; namely, the version that denied benefits to any unemployed father who was receiving unemployment compensation.

Thus it's pretty clear the intent of Congress was to enact a version to reduce federal spending, and at the same time cut the welfare rolls.

And in addition this Conference Committee report recognized that the word "received" was either equivalent to or equated with the term "qualified to receive".

Since 1968, --

QUESTION: Could this probably be solved by having the State provide in its statute that in no event shall the AFDC benefits exceed the amount of unemployment compensation insurance, or would you run into other problems there?

MR. KALIB: I think you would run into other problems.

It would still go against the mandatory bar in Section 607, if you established that.

And I think we'd be in trouble with federal matching funds, in violation of the AFDC program.

Since 1968, the Department of Health, Education, and Welfare, along with the State of Vermont, -- and I can't speak for any of the other States; but on the best information I have, they've all been interpreting this congressional intent to exclude a father who has not developed and exhausted his unemployment compensation benefits.

In other words, if he is eligible for those unemployment compensation benefits, he must go there first and exhaust those benefits prior to any application for public assistance.

The district court decision, which formulated an option plan of allowing the recipient equally eligible for both programs to reject the lower benefit. I think, in terms of the district court decision, it was phrased that if his AFDC benefit is higher, he can reject the unemployment compensation benefit, and vice versa.

This goes against and completely contrary to the congressional intent of reducing federal spending. It even goes beyond the Senate version of restoring the option of allowing States to supplement.

And the Senate version was ultimately rejected by Congress.

The district court plan also establishes an either-or alternative, and that is the unemployed father can completely reject his unemployment compensation and rely 100 percent on public assistance to meet the needs of his children. And there is nothing that we can find in legislative intent to create that scheme.

We think that Congress would realize that this purpose, the mandatory bar provision, could be accomplished by a joint reading of Section 402 and Section 407 of the Social Security Act.

Section 402 mandates each State to require each applicant for public assistance to develop, utilize and exhaust all his benefits -- excuse me, all his income and resources that are available.

If we start with that premise and say that an individual who is eligible for unemployment compensation must go down and develop and utilize those benefits, and he does so, Section 407 of the Social Security Act precludes him from receipt of any public assistance benefits under the Unemployed Fathers section.

In addition, adoption of the district court option plan, which shifts the burden of providing aid to children of unemployed fathers from the unemployment compensation insurance trust funds, funded totally from the private sector, namely, the employers, to the public treasury, and increase

the public assistance rolls, again contrary to Congress's intent back in 1967.

In effect, what the district court option plan does is legislate an income floor for all unemployed fathers, and that income floor is based upon the State's standard of need.

Therefore, any unemployed father can forego these unemployment compensation benefits and get public assistance up to that State standard of need.

Historically, these programs have been treated as two separate and distinct programs. Unemployment compensation has always been the first line of defense for a temporarily unemployed worker.

This stems back from the initial creation of the Act in 1935, and we think this is true today. We see, just last year, Federal Unemployment Act extended benefits for those unemployed who exhausted their normal State benefits.

On the other hand, public assistance benefits have always been treated as a last resort. You rely on relief after you've exhausted everything else, and I think this Court recognized these two principles in the Java case.

As harsh as this all seems, particularly with respect to the plaintiffs in this case, who have received a substantially less amount of money from unemployment compensation than they have from public -- would have from public assistance, had they been eligible.

Vermont has tried to mitigate or alleviate that hardship to some extent, and that is by supplementing unemployment compensation through its general assistance program.

Now, I have to admit, however, that the supplement is not necessarily going to be equal to the difference between the unemployment compensation benefit and the State standard of need.

This depends on a host of factors. One being the individual's income, within a prior calendar period; another being his need.

The State program is entirely State funded. It's based upon an emergency grant provision, and the individual applicant must have no other resources available. If he does have resources available, he has to exhaust those other resources.

So in some cases the individual will get nothing from general assistance; in some cases he'll get an amount which his total income will be less than the State standard of need; and in other cases he could conceivably get a grant which would make his total total income exceed the State standard of need for a thirty-day period. But it is available to that applicant.

QUESTION: How long does unemployment compensation run in Vermont, 52 weeks?

MR. KALIB: Well, there is an initial benefit

period of 26 weeks. There is a 13-week extension period under Vermont statute, for a total of 39 weeks.

As I understand the program now, under the new Federal Unemployment Act of 1974, there are 13 more weeks additional benefits that an individual can get, and that I understand is totally federally funded, and does not come out of the private trust fund.

QUESTION: Well, in this pending tax program, there's still another 13 weeks, isn't there?

MR. KALIB: That's correct --

QUESTION: It's 65 weeks or something.

MR. KALIB: That's correct, Mr. Justice Brennan. In the Senate version of the new tax bill, the Javits amendment does tag on another 13 weeks to that.

QUESTION: But that's all,you think, fully federally funded?

QUESTION: The final 13 weeks.

MR. KALIB: The final 13 weeks, as provided for under the '74 Federal Unemployment Act, is federally funded. And it does come out of the --

QUESTION: Right.

MR. KALIB: -- the employmenttrust fund.

QUESTION: Yes.

MR. KALIB: As I understand the Senate proposal, it will be another 13 weeks, again federally funded, and not

out of the trust fund.

QUESTION: But so far that's just a --

MR. KALIB: A proposal, as I --

QUESTION: -- Senate bill, and it's going into conference this week.

MR. KALIB: That's correct. As I understand it.

To summarize, our position is very simplistic, with a very complicated program. If you are eligible to receive unemployment compensation, traditionally you have to go and exhaust that benefit before you can come on the welfare rolls. Unemployment has been treated differently than any other available resource, and I think there is specific congressional intent to treat that resource differently.

And we urge this Court to reverse and remand.

We would like to, if there is time, reserve it for tomorrow, Your Honor, for rebuttal.

MR. CHIEF JUSTICE BURGER: We'll have to check your time in the morning, but we'll not take up your case, Mr. Kohn, we will have only one minute now. We'll take you up first thing in the morning.

MR. KOHN: Thank you, Your Honor.

[Whereupon, at 2:59 o'clock, p.m., the Court was recessed, to reconvene at 10:00 o'clock, a.m., Tuesday, March 25, 1975.]