Supreme Court of the United States
Mae WHEELER et al., Appellants,
v.
John MONTGOMERY, Director of the State Department of Social Welfare, et al.
Jack R. GOLDBERG, Commissioner of Social Services of the City of New York, Appellant,
v.
John KELLY et al.

Nos. 14, 62.
March 23, 1970

On Appeal from the United States District Court for the Northern District of California.

On Appeal from the United States District Court for the Southern District of New York.

For majority opinion, see 90 S.Ct. 1011.

***282 **1028** Mr. Chief Justice BURGER, with whom Mr. Justice BLACK joins, dissenting.

Although I agree in large part with Mr. Justice BLACK's views in No. 62, Goldberg v. Kelly, ante, p. 1022, there are additional factors I wish to mention in dissent from today's unwise and precipitous constitutional holdings.

The procedures for review of administrative action in the 'welfare' area are in a relatively early stage of development; HEW has already taken the initiative by promulgating regulations requiring that AFDC payments***283** be continued until a final decision after a 'fair hearing' is held.[FN1] The net effect would be to provide a hearing prior to a termination of benefits. Indeed, the HEW administrative regulations go far beyond the result reached today since they require that recipients be given the right to appointed counsel,[FN2] a position expressly rejected by the majority. As the majority notes, see ante, at 1014 n. 3, these regulations are scheduled to take effect in July 1970. Against this background I am baffled as to why we should engage in 'legislating' via constitutional fiat when an apparently reasonable result has been accomplished administratively.

FN1. 45 CFR s 205.10, 34 Fed.Reg. 1144 (1969).

FN2. 45 CFR s 220.25, 34 Fed.Reg. 1356 (1969). See also HEW Handbook, pt. IV, ss 2300(d)(5), 6200-6400.

That HEW has already adopted such regulations suggests to me that we ought to hold the heavy hand of constitutional adjudication and allow evolutionary processes at various administrative levels to develop, given their flexibility to make adjustments in procedure without long delays. This would permit orderly development of procedural solutions, aided as they would be by expert guidance available within federal agencies which have an overview of the entire problem in the 50 States. I cannot accept-indeed I reject-any notion that a government which pays out billions of dollars to nearly nine million welfare recipients is heartless, insensitive, or indifferent to the legitimate needs of the poor.

The Court's action today seems another manifestation of the now familiar constitutionalizing syndrome: once some presumed flaw is observed, the Court then eagerly accepts the invitation to find a constitutionally 'rooted' remedy. If no provision is explicit on the point, it is then seen as 'implicit' or commanded by the vague and nebulous concept of 'fairness.'

***284** I can share the impatience of all who seek instant solutions; there is a great ****1029** temptation in this area to frame remedies that seem fair and can be mandated forthwith as against administrative or congressional action that calls for careful and extended study. That is thought too slow. But, however cumbersome or glacial, this is the procedure the Constitution contemplated.

I would not suggest that the procedures of administering the Nation's complex welfare programs are beyond the reach of courts, but I would wait until more is known about the problems before fashioning solutions in the rigidity of a constitutional holding.

By allowing the administrators to deal with these

problems we leave room for adjustments if, for example, it is found that a particular hearing process is too costly. The history of the complexity of the administrative process followed by judicial review as we have seen it for the past 30 years should suggest the possibility that new layers of procedural protection may become an intolerable drain on the very funds earmarked for food, clothing, and other living essentials.[FN3]

> FN3. We are told, for example, that Los Angeles County alone employs 12,500 welfare workers to process grants to 500,000 people under various welfare programs. The record does not reveal how many more employees will be required to give this newly discovered 'due process' to every welfare recipient whose payments are terminated for fraud or other factors of ineligibility or those whose initial applications are denied.

Aside from the administrative morass that today's decision could well create, the Court should also be cognizant of the legal precedent it may be setting. The majority holding raises intriguing possibilities concerning the right to a hearing at other stages in the welfare process which affect the total sum of assistance, even though the action taken might fall short of complete termination. For example, does the Court's holding ***285** embrace welfare reductions or denial of increases as opposed to terminations, or decisions concerning initial applications or requests for special assistance? The Court supplies no distinguishable considerations and leaves these crucial questions unanswered.

Mr. Justice STEWART, dissenting.

Although the question is for me a close one, I do not believe that the procedures that New York and California now follow in terminating welfare payments are violative of the United States Constitution. See Cafeteria & Restaurant Workers Union v. McElroy, 367 U .S. 886, 894-897, 81 S.Ct. 1743, 1748-1750, 6 L.Ed.2d 1230.

U.S.,1970
Wheeler v. Montgomery
397 U.S. 280, 90 S.Ct. 1028, 25 L.Ed.2d 307

END OF DOCUMENT