

Urban Law Annual ; Journal of Urban and Contemporary Law

Volume 7

January 1974

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Recommended Citation

Constitutional Law—Denial of Retroactive State Welfare Payments by Federal Court, 7 URB. L. ANN. 440 (1974)

Available at: https://openscholarship.wustl.edu/law_urbanlaw/vol7/iss1/32

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DENIAL OF RETROACTIVE STATE WELFARE PAYMENTS BY FEDERAL COURT

Federal courts in numerous cases¹ have considered the question of ordering state welfare departments to make retroactive payments to welfare recipients from whom assistance monies were wrongfully withheld. In *Rothstein v. Wyman*,² State welfare recipients brought a class action to enjoin the enforcement of a New York statute³ authorizing a geographic differential in AFDC and AABD⁴ payments between New York City and a seven-county area surrounding it. The Second Circuit affirmed the district court's⁵ finding that the differen-

1. Notable cases awarding retroactive benefits include: *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Like v. Carter*, 448 F.2d 798 (8th Cir.), *cert. denied*, 405 U.S. 1043 (1971); *McDonald v. Department of Pub. Welfare*, 430 F.2d 1268 (5th Cir. 1970); *Alexander v. Weaver*, 345 F. Supp. 666 (N.D. Ill. 1972); *Saddler v. Winstead*, 332 F. Supp. 130 (N.D. Miss. 1971); *Doe v. Hursh*, 337 F. Supp. 614 (D. Minn. 1970); *Boddie v. Wyman*, 323 F. Supp. 1189 (N.D.N.Y. 1970); *Alvarado v. Schmidt*, 317 F. Supp. 1027 (W.D. Wis. 1970); *Baxter v. Birkins*, 311 F. Supp. 222 (D. Colo. 1970); *Brooks v. Yeatman*, 311 F. Supp. 364 (M.D. Tenn. 1970); *Machado v. Hackney*, 299 F. Supp. 644 (W.D. Tex. 1969); *Alvarez v. Hackney*, Civil No. 68-18 SA, (W.D. Tex. Sept. 30, 1969); *Cooley v. Juras*, Civil No. 67-662 (D. Ore., June 27, 1969).

Cases denying retroactive benefits include: *Bryant v. Carleson*, 444 F.2d 353 (9th Cir.), *cert. denied*, 404 U.S. 967 (1971); *Rosado v. Wyman*, 322 F. Supp. 1173 (E.D.N.Y. 1970); *Rodriguez v. Swank*, 318 F. Supp. 289 (N.D. Ill. 1970); *Westberry v. Fisher*, 309 F. Supp. 12 (D. Me. 1970); *Robinson v. Hackney*, 307 F. Supp. 1249 (S.D. Tex. 1969).

2. 467 F.2d 226 (2d Cir. 1972), *cert. denied*, 93 S. Ct. 1552, *rehearing denied*, 93 S. Ct. 2276 (1973).

3. N.Y. Soc. SERV. LAW § 131-a (McKinney 1969).

4. Aid to Families with Dependent Children and Aid to the Aged, Blind and Disabled.

5. 336 F. Supp. 328 (S.D.N.Y. 1970). The case was first tried before a three-judge district court, which granted a preliminary injunction, 303 F. Supp. 339 (S.D.N.Y. 1969). The Supreme Court vacated and remanded, saying that statutory grounds in the complaint should be decided before constitutional grounds, 398 U.S. 275 (1970). The three-judge district court then remanded to a single-judge district court, which found that the differential violated the Social Security Act and regulations issued under it, 42 U.S.C. §§ 602(a)(1) and 1382 (a)(1) (1935). The court enjoined defendants from further enforcement of the statute and ordered them to remit to all aid recipients in the seven-county area the difference between what the recipients had been paid under the statute and what they would have been paid under a schedule equivalent to New York City's.

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tial violated the Social Security Act and that injunctive relief was proper, but held that the district court's award of retroactive benefits was an improper exercise of equity jurisdiction. The circuit court's basis for denial of retroactive benefits was that an order of such payments would jeopardize the sensitive federal-state relationship that characterizes the welfare program.⁶ The court said that since states are dependent on federal matching grants to operate their welfare programs and these grants are not made unless the states comply with federal requirements, the states are poorer partners whose pride should not quickly be stepped on by a federal court.⁷

There is no stated congressional or Department of Health, Education and Welfare position on the question of court-ordered retroactive payments for welfare recipients,⁸ and the issue received virtually no judicial attention until the late 1960's. When the issue did surface, it became embroiled in a welter of jurisdictional problems.⁹ Furthermore, the cases that have decided the issue suffer from a lack of detailed explanation of their conclusions.¹⁰ The majority of the cases have ruled in favor of granting retroactive benefits, usually on the uninformative ground that plaintiffs were entitled to the monies wrongfully withheld.¹¹ These decisions apparently relied on the

6. The court also stated that even if an order of retroactive payments would be a proper exercise of equity jurisdiction, this was actually a federal court suit against the state and would be barred by the eleventh amendment. The court based this statement on the fact that the retroactive payments would come not from the pockets of state welfare officials but from the public funds of the state. 467 F.2d at 236.

7. *Id.* at 232.

8. HEW's fair hearing requirement does provide for retroactive payments, but only after an administrative decision. U.S. DEP'T OF H.E.W., HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, Part IV, § 6200(k). The HEW Handbook also provides that the federal government will match state corrective retroactive payments, including those "made in accordance with a court order." *Id.* § 6500.

9. *See, e.g.,* Westberry v. Fisher, 309 F. Supp. 12 (D. Me. 1970), which held that since the purpose of a suit against state welfare administrators in their official capacities is to win a judgment payable out of a state's public monies, it is in reality a suit against the state and therefore a federal court does not have jurisdiction. Two reasons were given by the court: (1) a state is not a "person" subject to a civil rights action under 42 U.S.C. § 1983, and (2) the eleventh amendment prohibits federal court suits against states.

For a discussion of these problems see Levy, *The Aftermath of Victory*, 3 CLEARINGHOUSE REV. 253, 258, 330, 331, 350 (1970).

10. Levy, *supra* note 9, at 258.

11. *See* note 1 *supra*.

general rule, "that judicial precedents in cases of this nature normally have retroactive as well as prospective effect."¹²

The court in *Rothstein* began by discussing the decision in *Rosado v. Wyman*,¹³ and then dealt with what it described as the congressional policy behind welfare legislation. The court reached the conclusion that retroactive benefits were not dictated by *Rosado* or by legislative policy. Retroactive benefits should therefore not be granted, the court reasoned, since to do so would strain the federal-state relationship in the welfare program.¹⁴

In *Rosado*, with virtually the same factual situation as *Rothstein*,¹⁵ the district court refused to utilize its equity powers to order retroactive payments.¹⁶ The court grounded its refusal on the fact that the Supreme Court had stated in remanding that the district court should review any revised program submitted by the State or issue an order restraining the further use of federal funds if no revised program was submitted.¹⁷

The district court in *Rosado* concluded from this statement that retroactive payments were not warranted since: "[C]oncern over the strong implications for federalism . . . undoubtedly motivated the Supreme Court to emphasize that the State was to be given a choice."¹⁸ It seems more likely that the Supreme Court in *Rosado* did not even consider, when remanding, that plaintiffs might subsequently seek retroactive payments. This was admitted by the circuit court in *Rothstein*, which said that the decision in *Rosado* was based on that court's conception "of what constitutes an appropriate exertion of the extraordinary powers of equity in the federal-state welfare context."¹⁹

The circuit court in *Rothstein* did not, therefore, rely on any reasoned analysis that might have been presented in *Rosado*. It merely

12. *McDonald v. Department of Pub. Welfare*, 430 F.2d 1268, 1269 (5th Cir. 1970).

13. 322 F. Supp. 1173 (E.D.N.Y. 1970).

14. 467 F.2d at 235.

15. *Rosado* was a challenge by AFDC recipients to the same New York statute involved in *Rothstein*. One of the claims was also identical to that in *Rothstein*: that differentials in payments violated the Social Security Act.

16. Plaintiffs had not asked for retroactive payments until the case reached the district court on remand.

17. *Rosado v. Wyman*, 397 U.S. 397, 421-22 (1970).

18. 322 F. Supp. at 1195-96.

19. 467 F.2d at 233.

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cited *Rosado* as a proper exercise of equity jurisdiction. In comparing the equities of the two cases, however, the court in *Rothstein* did not deal with the fact, noted in the district court's opinion,²⁰ that the financial cost to the State of making retroactive payments was far less than it would have been in *Rosado*.²¹

The Second Circuit's examination of the federal policy embodied in welfare legislation focused on what the court said are the three congressional goals retroactive payments can conceivably help achieve: preventing intentional state violations of federal requirements, meeting the ascertained needs of the poor, and guaranteeing the proper use of federally granted monies.²²

The court dismissed the first goal as not applicable by pointing to the absence of bad faith by defendant state officials.²³ It thereby rejected the decision in *Alvarado v. Schmidt*,²⁴ which held that to deny retroactive payments in this situation would permit the state to "violate . . . federal statutory requirements with financial impunity."²⁵ The district court in *Rothstein* had found that to refuse retroactive benefits would "sanction the defendants' lawless conduct."²⁶ The circuit court, in reversing, ignored the possibility that retroactive benefits could serve as a warning to the state legislature, as well as the welfare department, that it should scrupulously examine the operation of the state welfare program.

In regard to the question of satisfying the needs of the poor with retroactive payments, the Fifth Circuit held in *McDonald v. Department of Public Welfare*²⁷ that a decision invalidating a state's durational residency requirement was retroactive, and that plaintiff was entitled to payment of monies illegally withheld even if the state's welfare program was based on a "current subsistence grant" and plaintiff had subsisted without it.

An even stronger position was taken by an Illinois district court in *Alexander v. Weaver*,²⁸ which was decided shortly before *Rothstein*.

20. 336 F. Supp. at 334.

21. It is not clear from the opinion in *Rosado* how high a cost was involved.

22. 467 F.2d at 235.

23. *Id.*

24. 317 F. Supp. 1027 (W.D. Wis. 1970).

25. *Id.* at 1042.

26. Civil No. 69-2763 (S.D.N.Y., Feb. 25, 1972).

27. 430 F.2d 1268 (5th Cir. 1970).

28. 345 F. Supp. 666 (N.D. Ill. 1972).

The court in *Alexander* held that a decision invalidating an Illinois statute and regulation denying AFDC benefits to needy children between the ages of 18 and 21 who were attending college would be given retroactive application. The court stated that the right to proper aid payments vested at the time of the need, and "cannot now be divested by the argument that we must look at the individuals financial situation *today* or whether the purpose would be accomplished *today*."²⁹ The situation, the court said, is like that of a state employee whose salary was wrongfully withheld, in which case the back pay would be granted without question.³⁰ Finally, the court asserted that the equivalent of a constructive trust was placed on the state regarding these funds, to be released when eligibility was proven.³¹

Rothstein went against these decisions, the court saying that since the needs of the poor change over time, the delay in payment of welfare funds results in the payments being compensatory rather than remedial.³² The court may have misapprehended the nature of retroactive benefits. It has been said that they serve as restitution, not as compensation or remedy.³³ When seen in this perspective, retroactive benefits may be said to fulfill the federal interest in meeting the needs of the poor.

The interest of the federal government in the proper use of its granted funds was also minimized, on the ground that Congress has never suggested that retroactive payments are necessary to protect its interest.³⁴ The court treated the fact that HEW regulations require retroactive payments upon an administrative decision favoring the recipient as not relevant to the question of court-ordered payments.³⁵ No reason was given by the court as to why retroactive payments should be granted in one instance but not in the other. It has been argued that: "[T]he result should not be different merely because he [claimant] chooses to pursue his remedies in a court rather

29. *Id.* at 673.

30. *Id.* at 675.

31. *Id.*

32. 467 F.2d at 235.

33. Levy, *supra* note 9, at 351.

34. 467 F.2d at 235.

35. *Id.* at 242 n.11.

than in an administrative hearing.”³⁶ At least one court has followed this reasoning.³⁷

Rothstein's method of dealing with the issue of court-ordered retroactive welfare payments, that is, examining congressional policy, differed from that employed in *Alexander*. The latter case posited three specific criteria for granting retroactive payments.³⁸ The facts in *Rothstein* clearly met the first two: “whether the right to relief had ‘vested,’” and “whether the class is a cohesive and concrete one.”³⁹ The final criterion was “the various situations in other welfare cases where retroactive relief was granted.”⁴⁰ It is not clear, however, what logical relationship exists between the particular nature of the wrong discovered and the granting or denying of retroactive benefits. The vital issue is whether there has been a wrongful withholding of monies from plaintiffs. If it is found that there has been a wrongful withholding, no reason has been shown, other than cost to the state, why retroactive benefits should be denied to plaintiffs who received less aid than welfare recipients in the next county, but granted, for example, to plaintiffs whose claims for assistance were not passed upon within thirty days after their filing.⁴¹

The court in *Rothstein*, after discussing federal welfare policy goals, reached what it described as “the realities of the situation”—the expenditure of state funds—and decided that retroactive benefits were not warranted.⁴² The court cited the scheme of federalism embodied in the welfare program, in which states were to be free to determine how to spend their money, and concluded that the tensions that might result from a federal court ordering the state to expend its funds against its will are not justified, absent a congressional mandate to do so.⁴³ Several other courts have cited financial cost to the state as grounds for denying retroactive payments in welfare class

36. Levy, *supra* note 9, at 258.

37. *Schirripa v. Wisconsin Dep't of Health and Social Serv.*, No. 129-160 (Wis. Cir. Ct., March 19, 1971). See also *Machado v. Hackney*, 299 F. Supp. 644, 647 n.4 (W.D. Tex. 1969).

38. 345 F. Supp. at 677.

39. *Id.*

40. *Id.*

41. *Like v. Carter*, 448 F.2d 798 (8th Cir.), *cert. denied*, 405 U.S. 1043 (1971).

42. 467 F.2d at 235.

43. *Id.*

actions,⁴⁴ although other than *Rosado*, none emphasized the scheme of federalism involved.⁴⁵

The issue might be more realistically framed in terms of dollars and cents than principles of federalism. The cases denying retroactive benefits in class actions apparently involved potential state expenditures in the millions of dollars.⁴⁶ In *Robinson v. Hackney*,⁴⁷ the district court frankly stated that its denial of retroactive benefits was based on the great cost the state would have to bear if the payments were granted.⁴⁸ The cases lead to the conclusion that the question to be answered is not whether retroactive payments are justified, but at what financial cost to the state do they cease to be justifiable.

Rothstein seems to reject this conclusion, holding that it is not within the equity jurisdiction of a federal court to order a state to make retroactive welfare payments. *Rothstein* will probably be more realistically interpreted, however, as merely lowering, behind a screen of federalism, the amount of retroactive welfare payments that federal courts will impose on the states.

Stephen G. Pressman

44. See, e.g., *Bryant v. Carleson*, 444 F.2d 353 (9th Cir.), cert. denied, 404 U.S. 967 (1971); *Robinson v. Hackney*, 307 F. Supp. 1249 (S.D. Tex. 1969).

45. 322 F. Supp. at 1195-96.

46. The \$1.7 million estimate in *Rothstein* is miniscule compared, for example, with the approximately \$90 million in payments the court in *Bryant* refused to order, as well as the payments avoided in *Rosado*.

It is difficult to determine precisely how the estimate in *Rothstein* compares with other cases because most courts have not stated the costs involved.

47. 307 F. Supp. 1249, 1251 (S.D. Tex. 1969).

48. *Id.*