



10-1984

Bennett v. New Jersey

Lewis F. Powell Jr.

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/casefiles>



Part of the [Education Law Commons](#)

Recommended Citation

Lewis F. Powell Jr. Papers, box 635/folder 10

This Manuscript Collection is brought to you for free and open access by the Lewis F. Powell Jr. Papers at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Supreme Court Case Files by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

I find this memo confusing but think it makes the right recommendation

Grant
9/22

New Jersey mis-spent funds received in 1972 under the regulations of the Education & Secondary Ed. Act of 1965 that existed at that time.

Changes were made in these standards (regulations) by the 1978 Amendments to the Act.

CA3 ruled that the 1978

PRELIMINARY MEMORANDUM ^{Amend.} applies retroactively to the funds

Sept. 24, 1984 Conference List 23, Sheet 1

would not have been mis-spent under the 1978 standards: thus no

No. 83-2064

BELL (Secretary of Education) Cert to CA3 (Adams, Hunter, Higginbotham)

V. The SG argues that the legality of use of federal funds is determined by law in effect at time the funds were spent

NEW JERSEY

Federal/Civil

Timely

1. SUMMARY: Petr contends CA3 improperly held that the

substantive standards of the Education Amendments of 1978, 20 U.S.C. §2732(a)(1), apply retroactively to determine if funds granted under Title I of the Education and Secondary Education Act of 1965 (ESEA), 20 U.S.C. §241a et seq., were misspent.

Grant. This is an important issue, and it sounds as though CA3 erred.

Lynda

2. FACTS AND DECISIONS BELOW: Federal auditors determined that ^{n.g.} resp had misspent funds it received as grants in 1970-1972 under Title I of ESEA. The funds were allocated to local educational agencies under supervision of resp to meet the special needs of "educationally deprived" children in areas with high concentrations of children from low-income families. Petr's regulations established that a school attendance area met Title I's eligibility requirements if the percentage of low-income children in the area was at least as high as the percentage of such children in the entire school district. As a condition for the receipt of grants, resp gave its assurances that funds would be spent only for programs that satisfied applicable requirements. The federal audit indicated that more than \$1 million of Title I funds had been expended ^{by n.g.} in violation of the regulations. The Education Appeal Board directed resp to repay the misspent funds to the Department of Education.

n.g. violated
Resp appealed and ^{Bell} CA3 held that petr did not have the authority to recover Title I funds allocated before the Education Amendments of 1978, which specifically authorize the recovery of misspent funds. The 1978 amendments also modified the eligibility requirements to permit, under certain circumstances, local educational agencies to declare a school attendance area eligible for Title I funds if at least 25% of the children in that area come from low-income families. 20 U.S.C. §2732(a)(1). In Bell v. New Jersey, No. 81-2125 (May 31, 1983), this Court reversed CA3 and held that petr may recover misspent funds. The Court,

yes

however, specifically ^{we} declined to consider whether the substantive provisions of the 1978 amendments apply retroactively.

On remand, CA3 noted that a federal court or administrative agency must "apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is a statutory direction or legislative history to the contrary." (quoting Bradley v. School Board, 416 U.S. 696, 711 (1974)). CA3 observed that nothing in the 1978 amendments or their legislative history suggests they were not intended to apply retroactively; moreover, there is little to suggest that such application would result in manifest injustice. Because the amendments were designed to correct regulations that frustrated the objectives of Title I, the [✓]legislation is remedial and enjoys a presumption of retroactivity. CA3 also observed that the case involved a public matter of great national concern and not a routine private lawsuit in which retroactive application of law would disadvantage a party who relied on settled law. Although ^{why} applying the 1978 amendments retroactively might make it more difficult for petr to recover misspent funds, CA3 concluded that Congress determined in 1978 that petr's methods for allocating Title I funds thwarted the basic goals of that program. CA3 remanded the case to petr to determine if the 1970-1972 grants were misspent under the eligibility standards of the 1978 amendments.

3. CONTENTIONS: Petr contends that [✓] CA3's decision improperly allows resp to avoid conditions agreed to in exchange for Title I funds. Other CAs have applied the terms of statutes

and regulations in effect when expenditures were made to determine whether the expenditures were proper. CA3 ignored the long-standing rule that substantive legislation applies prospectively unless there is a clear legislative intent to the contrary. Although the legislative history indicates that Congress sought to "clarify" existing Title I requirements, nothing suggests that Congress intended the 1978 amendments to affect grants previously made. Bradley does not support retroactive application, because that case did not involve alteration of material substantive rights or affect liability for prelitigation conduct. Moreover, prospective application of the 1978 amendments would promote ESEA's policies because it would permit effective audits and encourage grantees to conform to their voluntarily accepted obligations. Finally, CA3's decision could have a substantial financial impact. Approximately \$68 million in Title I audit claims are in dispute in pending cases, and this case could also affect recovery of misspent funds under other programs.

Resp argues that retroactive application comports with Bradley and other decisions of this Court. The legislative history to the 1978 amendments "discloses no positive statutory directive against their retroactive application." That history, however, does indicate congressional dissatisfaction with petr's interpretation of Title I eligibility standards. There is no "manifest injustice" in applying the 1978 amendments retroactively, because this case involves public entities and matters of "great national concerns." Petr had no vested right in the continued application of a regulation that impedes the basic objective of Title I.

*Petr's
contentious
(Is
this
correct?
- could it
be!)*

CA3's decision does not conflict with other CAs, because they did not address the specific issue involved here.

The Lawyers' Committee for Civil Rights Under Law has submitted an amicus brief in support of the petition.

4. DISCUSSION: CA3 effectively held that later-enacted statutory provisions may defeat recovery of funds not expended in accord with the terms contained in a previous grant-in-aid agreement if the court finds that this result promotes the policy of the grant program and is not foreclosed by legislative history. This approach is troublesome as applied to this case and in its general implications. Because the statutory framework of federal grant programs is frequently amended, the retroactive effect of such changes on the obligations of grant recipients presents an issue of general importance to both the federal government and grantees. ^{Govt's} Petr's argument that the propriety of expenditures should be judged by the standards in effect when they were made, and not by those subsequently enacted for later grants, seems persuasive in the absence of an express legislative directive to the contrary. I recommend a grant.

There is a response.

August 25, 1984

Bales

opn in petn

September 24, 1984

Court
Argued, 19...
Submitted, 19...

Voted on....., 19...
Assigned, 19...
Announced, 19...

No. 83-2064

BELL

vs.

NEW JERSEY

Granted

| | HOLD FOR | CERT. | | JURISDICTIONAL STATEMENT | | | | MERITS | | MOTION | | ABSENT | NOT VOTING |
|---------------------|----------|-------|---|--------------------------|------|-----|-----|--------|-----|--------|---|--------|------------|
| | | G | D | N | POST | DIS | AFF | REV | AFF | G | D | | |
| Burger, Ch. J. | | ✓ | | | | | | | | | | | |
| Brennan, J. | | | ✓ | | | | | | | | | | |
| White, J. | | ✓ | | | | | | | | | | | |
| Marshall, J. | | | | | | | | | | | | | |
| Blackmun, J. | | | | | | | | | | | | | |
| Powell, J. | | ✓ | | | | | | | | | | | |
| Rehnquist, J. | | | ✓ | | | | | | | | | | |
| Stevens, J. | | | ✓ | | | | | | | | | | |
| O'Connor, J. | | ✓ | | | | | | | | | | | |

Join 3

file

December 27, 1984

BELL2 GINA-POW

83-2064 Bell v. State of New Jersey

MEMO TO FILE

As stated by the SG, the question presented is as follows:

"Whether, in reviewing an agency audit of federal grant funds expended in 1970-72, a court should apply substantive requirements included in legislation governing federal grants during the period 1978-83 rather than the substantive requirements of the law under which the grants at issue were awarded."

I have had an opportunity to take only a preliminary look at CA3's long opinion and the SG's brief. When I left for Richmond for Christmas, the state's brief had not been received. Accordingly, this memo will be limited to identifying generally the nature of the case and the question.

The Title I program was reconsidered by Congress in 1978, and reenacted under a different name. In fiscal years 1970 and 1971, the state made expenditures of federal funds that subsequent audits concluded were unauthorized. Apparently it is conceded the funds were improperly spent under the provisions of Title I in effect

in 1970-72. It is also conceded, I believe, that if the 1978 changes in the Act apply, there would be no obligation on the part of the state to repay. The Court of Appeals concluded that the 1978 changes must be applied retroactively to the 1970-72 audits, and accordingly reversed the decision of the Department of Education and its Appeals Board.

The SG's argument proceeds along the following lines. The obligations of a state as grantee of Title I funds were fixed "as of the time of the grant agreement" - namely the two fiscal years in questions 1971 and 1972. Moreover, the SG argues that the 1978 Act, by its terms and as the legislative history makes clear, was intended to be prospective only. Finally, the SG argues that repayment of misspent funds by a state is necessary for the effective enforcement of Title I, and this repayment will not injure the interest of the students whom the program intended to benefit.

I will await the state's brief with interest, though one normally would think that if the funds were misspent under the terms of the grant over the two years 1971-72, the state's obligation to refund should not be affected by

subsequent legislation in the absence of quite specific evidence of congressional intent.

* * *

Note to clerk: This case probably is set back to back with 83-1798 that also involves Title I of the Education Act, and an entirely different question of retroactivity.

LFP, Jr.

83-2064 BELL v. NEW JERSEY

Argued 1/8/85

No. 83-2064 , Bell v. New Jersey

Conf. 1/11/85

The Chief Justice

Justice Brennan

Justice White

Justice Marshall

Justice Blackmun

Justice Powell

Justice Rehnquist

Justice Stevens

Justice O'Connor

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1985

No. 83-2064

Bell v. New Jersey

Dear Sandra,

I agree.

Sincerely,

W. J. Brennan

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1985

83-2064 - Bell v. New Jersey

Dear Sandra,

Please join me in your circulating
proposed opinion for the Court.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1985

Re: No. 83-2064 Bell v. New Jersey

Dear Sandra,

Please join me.

Sincerely,
WHR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1985

Re: No. 83-2064-Bell v. New Jersey

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 28, 1985

No. 83-2064 Bell v. New Jersey

MEMORANDUM TO THE CONFERENCE

I do not plan to circulate further changes in this opinion unless those in the majority advise me that they would like to see some addition in response to the dissent.

Sincerely,



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 28, 1985

Re: No. 83-2064-Bell v. New Jersey

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

March 1, 1985

83-2064 Bell v. New Jersey

Dear Sandra:

Please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

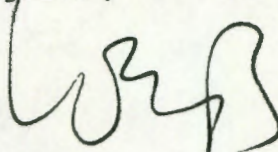
March 4, 1985

Re: No. 83-2064 - Bell v. New Jersey

Dear Sandra,

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WOB', written over the typed word 'Regards,'.

Justice O'Connor

Copies to the Conference

83-2064 Bennett v. New Jersey (Annmarie)

LFP out 3/1/85

SOC for the Court 1/18/85

1st draft 2/14/85

2nd draft 3/5/85

3rd draft 3/7/85

Joined by WJB 2/15/85

WHR 2/19/85

BRW 2/18/85

CJ 3/4/85

JPS dissenting

1st draft 2/27/85

2nd draft 2/28/85

Joined by TM 2/28/85

JPS will dissent 2/15/85

TM awaiting dissent 2/19/85