

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 15, 1980

MEMORANDUM TO THE CONFERENCE

RE: CASES HELD FOR NO. 78-1779, OWEN V. CITY OF INDEPENDENCE

No. 79-593 - Blum v. Gayle McQuoid Holley, etc. et al.  
No. 79-594 - Russo v. Gayle McQuoid Holley, etc. et al.

The petitions in these cases raise nearly identical objections to the Second Circuit's decision upholding an award of retroactive welfare benefits against a County Commissioner of Social Services. Respondent, an "illegal" alien who had nevertheless received permission to remain in this country with her six children (who are all American citizens), successfully contested petitioners' failure to grant her AFDC benefits. In a ruling that is not challenged here, the Court of Appeals invalidated that provision of the New York Social Services Law which denied her the benefits because it conflicted with governing federal law. Although it ruled that the Eleventh Amendment barred an award against the State defendant (petitioner in No. 79-593), the Court held that the County defendant (petitioner in No. 79-594) should not be treated as "an arm of the State" for Eleventh Amendment purposes. In reaching its decision, the court relied not only on language from Edelman v. Jordan, Mt. Healthy City Board of Educ. v. Doyle, and Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, to the effect that the Eleventh Amendment does not extend to political subdivisions such as counties and municipalities, but also examined in some depth the nature and structure of the New York Social Services system and concluded that the County agency was an independent political entity with the "ultimate responsibility" for public assistance payments, even if some portion of those payments are eventually reimbursed by state funds.

In addition, the Court of Appeals rejected the County defendant's contention that it was immune from liability based on its good-faith reliance on the invalidated provision of the Social Services Law. The court concluded that the rationale underlying the Wood v. Strickland qualified immunity was simply inapplicable to a claim for AFDC benefits that had been wrongfully withheld.

The decision below is wholly consistent with Owen. I recommend that the petitions be denied.

*g v r*  
No. 79-620 - Sala v. County of Suffolk

Petitioner in this case sued the County, its sheriff, and an individual corrections officer under § 1983, alleging a deprivation of her civil rights resulting from the county's policy of "strip searching" female prisoners. The District Court granted injunctive relief and attorney's fees, but directed a verdict for the individual defendants and the County because of the absence of any proof of a lack of good faith. Petitioner appealed from the dismissal of her action for damages and the Court of Appeals affirmed, holding that the municipality was entitled to a qualified immunity.

I recommend that we grant the petition for certiorari, vacate the judgment of the Court of Appeals, and remand for reconsideration in light of Owen.

W.J.B. Jr.