

5-11-1970

05-11-1970 Justice Harlan, Per Curiam

John Harlan
US Supreme Court Justice

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

From: Kaplan, J.

SUPREME COURT OF THE UNITED STATES MAY 11 1970

No. 896.—OCTOBER TERM, 1969

Recirculated: _____

George K. Wyman, etc., et al., } On Appeal From the
Appellants, } United States District
v. } Court for the Southern
Edna Rothstein et al. } District of New York.

[May —, 1970]

*See John
Blawie...*

PER CURIAM.

Appellees commenced this action in the federal District Court for the Southern District of New York challenging on equal protection and statutory grounds § 131-a of the New York Welfare Law which provides for payments to welfare recipients in Nassau, Suffolk, and other New York State counties in lesser amounts than provided for residents of New York City should the Welfare Administrator determine that adequate cause exists for the differential. A three-judge court was convened and it found that appellees' likelihood of success on their constitutional claim warranted the issuance of a preliminary injunction against what it found to be the payment of welfare in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court found it unnecessary to consider appellees' statutory claims. We noted probable jurisdiction. — U. S. — (1970).

Subsequent to the decision of the District Court this Court rendered its decision in *Rosado v. Wyman*, — U. S. — (1970), wherein we held that a federal court called upon to pass upon the constitutional validity of a State's welfare program should, before reaching the constitutional issues, consider first any pendent statutory claims that are presented, notwithstanding the pendency

of negotiations between the State and the Department of Health, Education, and Welfare.

In light of the foregoing, the judgment of the District Court is vacated and the case is remanded to that court for an opportunity to pass on the propriety of granting interim relief in accordance with conventional equitable principles on the basis of appellees' statutory claims, see *Rosado v. Wyman*, — U. S. — (1970) or, if necessary, continuing the present injunction in light of this Court's decision in *Dandridge v. Williams*, — U. S. — (1970).

It is so ordered.