



Office of the Attorney General
Washington, D. C. 20530

May 8, 1979

The Honorable Robert C. Byrd
Majority Leader
United States Senate
Washington, D.C.

Re: Rose and Richard Cooper v.
Joseph A. Califano, Jr.
(E.D. Pa., No. 78-594)
and
Harlan Yates v. Joseph A. Califano, Jr.
(W.D. Ky., No. C 77-0323-LB)

Dear Senator Byrd:

Pursuant to Section 13 of Public Law 95-624, I wish to report to the Senate that the Solicitor General yesterday determined that the United States will not appeal the judgments of the district courts in the above-entitled cases.*/ In each of these cases, the district court held that Section 202 of the Social Security Act, 42 U.S.C. 402, which provides certain death and disability benefits for female but not male spouses of wage earners, infringes the equal protection requirement of the Fifth Amendment to the Constitution. In each case, the court ordered the Secretary of Health, Education and Welfare to provide such benefits on an even-handed basis, without discrimination based on gender.

The Solicitor General's reasons for not seeking review of the judgments of the district courts are set forth in greater detail in the memorandum from the Civil Division of the Department of Justice, and the memorandum from the staff of the Office of the Solicitor General, both of which are attached. In brief summary, the issue of gender discrimination that is raised in both of these cases is

*/ Because the Senate has not yet appointed legal counsel to review such determinations, this letter will also provide the notification to the Senate required by Section 712(b) of Public Law 95-521.

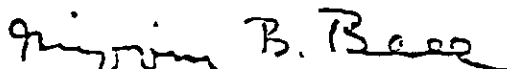
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substantially identical to the issue decided in Weinberger v. Wiesenfeld, 420 U.S. 636 (1975). In that case, the Supreme Court unanimously determined that discrimination based on gender in the provision of benefits to spouses of wage earners caring for dependent children under Section 202 of the Social Security Act is unconstitutional. The Solicitor General has concluded that the United States can make no arguments in favor of the gender-based discrimination involved in the present cases that were not made and rejected in the Wiesenfeld decision. Accordingly, appeal to the Supreme Court would serve no useful purpose.

The Department of Justice is, of course, fully mindful of its duty to support the laws enacted by Congress. Here, however, the Department has determined, after careful study and deliberation, that reasonable arguments cannot be advanced to defend the gender-based discrimination at issue.

If the Department can be of further assistance to you in explicating the reasons for declining to appeal these judgments, or if you or your staff believe it would be helpful to discuss the options that the Senate may wish to pursue, Deputy Solicitor General Frank H. Easterbrook will be pleased to discuss the matter further. He can be reached at 633-2203. Should the Senate wish to seek Supreme Court review in these cases pursuant to Section 706 of Public Law 95-521, prompt action would be essential. The deadlines for filing jurisdictional statements in the Supreme Court are May 24 and May 25, 1979.

Sincerely,


Griffin B. Bell
Attorney General

Attachments