

would be decisive factors in determining which of several pending applications was to be granted.

It is, however, urged upon us that if all matters of administrative discretion remain open for determination on remand after reversal, a succession of single determinations upon single legal issues is possible with resulting delay and hardship to the applicant. It is always easy to conjure up extreme and even oppressive possibilities in the exertion of authority. But courts are not charged with general guardianship against all potential mischief in the complicated tasks of government. The present case makes timely the reminder that "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. Ry. Co. v. May*, 194 U. S. 267, 270. Congress which creates and sustains these agencies must be trusted to correct whatever defects experience may reveal. Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies. Anglo-American courts as we now know them are themselves in no small measure the product of a historic process.

The judgment is reversed, with directions to dissolve the writ of mandamus and to dismiss respondent's petition.

*Reversed.*

MR. JUSTICE McREYNOLDS concurs in the result.

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FLY ET AL. *v.* HEITMEYER.

CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

No. 316. Argued January 11, 1940.—Decided January 29, 1940.

Decided upon the authority of the case last preceding.  
70 App. D. C. 162; 105 F. 2d 41, reversed.

*Solicitor General Jackson*, with whom *Messrs. Warner W. Gardner, Robert M. Cooper, William J. Dempsey, and William C. Koplovitz* were on the brief, for petitioners.

*Mr. Clarence C. Dill*, with whom *Mr. James W. Gum* was on the brief, for respondent.

Citing *Morgan v. United States*, 304 U. S. 1; *In re Sanford Fork & Tool Co.*, 160 U. S. 247, 255; *Federal Laboratories v. Federal Radio Comm'n*, 36 F. 2d 111; *Chicago Federation of Labor v. Federal Radio Comm'n*, 41 F. 2d 422; *Federal Radio Comm'n v. Nelson Bros.*, 289 U. S. 266; *Salzman v. Stromberg Carlson Co.*, 46 F. 2d 612.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

On March 25, 1935, Heitmeyer, respondent here, applied for a permit from the Federal Communications Commission under § 319 of the Communications Act of 1934, c. 652, 48 Stat. 1089, 47 U. S. C. 319, to construct a broadcasting station at Cheyenne, Wyoming. His application and a competing one were heard by an examiner. The Commission, on May 1, 1936, denied respondent's application on the sole ground that he was financially disqualified. He appealed to the United States Court of Appeals for the District of Columbia and the Commission's decision was reversed. *Heitmeyer v. Federal Communications Commission*, 68 App. D. C. 180; 95 F. 2d 91. To proceed in conformity with this opinion, the case was remanded to the Commission.

After Heitmeyer's appeal two other applications for the same facilities were filed with the Commission. Following intermediate litigation, needless here to recount, the Commission directed that respondent's case be reopened in conjunction with the pending rival applica-

tions. Before this hearing could be had, respondent obtained from the Court of Appeals a writ of mandamus directing the Commission to restrict consideration of his application to the record originally before it. *McNinch v. Heitmeyer*, 70 App. D. C. 162; 105 F. 2d 41. Because important questions of administrative law were involved, we granted certiorari. 308 U. S. 540.

This case is controlled by our decision in *Federal Communications Commission v. Pottsville Broadcasting Co.*, *ante*, p. 134.

The only relevant difference between the two cases is that here the Commission proposed on remand not only to reconsider respondent's application on oral argument with subsequently filed rival applications, but to reopen the record and take new evidence on the comparative ability of the various applicants to satisfy "public convenience, interest, or necessity." But the Commission's duty was to apply the statutory standard in deciding which of the applicants was to receive a permit after it fell into legal error as well as before. If, in the Commission's judgment, new evidence was necessary to discharge its duty, the fact of a previously erroneous denial should not, according to the principles enunciated in the *Pottsville* case, *ante*, bar it from access to the necessary evidence for correct judgment.

The judgment is reversed, with directions to dissolve the writ of mandamus and to dismiss respondent's petition.

*Reversed.*

MR. JUSTICE McREYNOLDS concurs in the result.