

The Burger Court Opinion Writing Database

Hagans v. Levine

415 U.S. 528 (1974)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

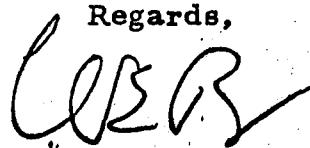
March 14, 1974

Re: 72-6476 - Hagans v. Lavine

Dear Bill:

Please join me in your dissent.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1974

Re: 72-6476 - Hagans v. Lavine

Dear Bill:

Please join me in your dissent.

Regards,

CEB

Mr. Justice Rehnquist

Copies to the Conference

P. S. (for WHR) -- On page 8, lines 4-5, the
"of minimum financial stature" seems a bit
opaque (as Harland would put it).

all right

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ON WAR, REVOLUTION AND PEACE



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

CHAMBERS OF
THE CHIEF JUSTICE

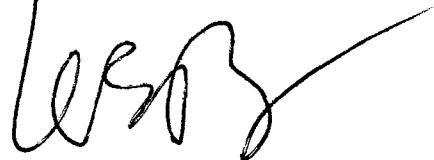
March 25, 1974

Re: 72-6476 - Hagans v. Lavine

Dear Lewis:

I was remiss in not sending my "join" of
your dissent in the above. Please include me in
the final record.

Regards,



Mr. Justice Powell

~~Copies to the Conference~~

P.S. We will amend Slip Opinion

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 30, 1974

Dear Byron:

Please join me in your opinion for
the Court in 72-6476, Hagans, et al. v.
Lavine.

WD
William O. Douglas

Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 30, 1974

RE: No. 72-6476 Hagans v. Lavine

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 31, 1974

72-6467 - Hagans v. Lavine

Dear Byron,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

P.S.
1/

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Douglas
 Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

circulated: 1-28-79

Recirculated: _____

No. 72-6476

Cynthia Hagans et al.,

Petitioners,

v.

Abe Lavine, Commissioner
of New York State De-
partment of Social
Services, et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

Petitioners, recipients of public assistance under the cooperative federal-state Aid to Families With Dependent Children (AFDC) program,¹ brought this action in

¹ AFDC is one of several major categorical public assistance programs established by the Social Security Act of 1935, and as we described in *King v. Smith*, 392 U. S. 309, 316-317 (1968), it is founded on a scheme of cooperative federalism:

"It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education, and Welfare (HEW). 49 Stat. 627, 42 U. S. C. §§ 601, 602, 603, and 604. See [U. S. Advisory Commission Report on Intergovernmental Relations, Statutory and Administrative Controls Associated with Federal Grants for Public Assistance 21-23 (1964)]. The plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. 49 Stat. 627, as amended, 42

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

38 3.5.8.10, 1d.
14. 15

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 72-6476

Recirculated: 1-19-74

J. White
Cynthia Hagans et al.,
Petitioners.

v.

Abe Lavine, Commissioner
of New York State De-
partment of Social
Services, et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the
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"It is financed largely by the Federal Government, on a matching
fund basis, and is administered by the States. States are not re-
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advantage of the substantial federal funds available for distribution
to needy children are required to submit an AFDC plan for the
approval of the Secretary of Health, Education, and Welfare (HEW).
49 Stat. 627, 42 U. S. C. §§ 601, 602, 603, and 604. See [U. S.
Advisory Commission Report on Intergovernmental Relations, Statis-
tory and Administrative Controls Associated with Federal Grants
for Public Assistance 21-23 (1964)]. The plan must conform with
several requirements of the Social Security Act and with rules and
regulations promulgated by HEW. 49 Stat. 627, as amended, 42

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: White, J.

Circulated: _____

Recirculated: 3-13-74

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6476

Cynthia Hagans et al.,
 Petitioners,
 v.
 Abe Levine, Commissioner
 of New York State De-
 partment of Social
 Services, et al. | On Writ of Certiorari to the
 United States Court of
 Appeals for the Second
 Circuit.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

Petitioners, recipients of public assistance under the cooperative federal-state Aid to Families With Dependent Children (AFDC) program,¹ brought this action in

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Part III is new (p. 16)

pp 15-16, 21

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: White, J.

Circulated: _____

Recirculated: 3-21-7

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6476

Cynthia Hagans et al., Petitioners, v. Abe Lavine, Commissioner of New York State De- partment of Social Services, et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.
---	--

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

Petitioners, recipients of public assistance under the cooperative federal-state Aid to Families With Dependent Children (AFDC) program,¹ brought this action in

¹ AFDC is one of several major categorical public assistance programs established by the Social Security Act of 1935, and as we described in *King v. Smith*, 392 U. S. 309, 316-317 (1968), it is founded on a scheme of cooperative federalism:

"It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education, and Welfare (HEW). 49 Stat. 627, 42 U. S. C. §§ 601, 602, 603, and 604. See [U. S. Advisory Commission Report on Intergovernmental Relations, Statutory and Administrative Controls Associated with Federal Grants for Public Assistance 21-23 (1964)]. The plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. 49 Stat. 627, as amended, 42

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 30, 1974

Re: No. 72-6476 -- Hagans et al., v. Lavine

Dear Byron:

Please join me in your opinion in this case.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 8, 1974

Dear Byron:

Re: No. 72-6467 - Hagans v. Lavine

Please join me.

Sincerely,

H. A. B.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

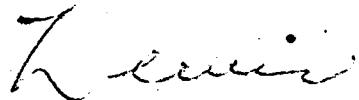
March 7, 1974

No. 72-6476 Hagans v. Lavine

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES Argued Powell, J.

No. 72-6476

Circulated: **MAR 19 1974**

Recirculated: _____

Cynthia Hagans et al.,

Petitioners,

v.

Abe Lavine, Commissioner
of New York State De-
partment of Social
Services, et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[March —, 1974]

MR. JUSTICE POWELL, dissenting.

I join the dissenting opinion of MR. JUSTICE REHNQUIST because I believe he expresses the correct view of the appropriate result when a claim over which a district court has no independent jurisdiction is appended to a constitutional claim that has no hope of success on the merits. A wise exercise of discretion lies at the heart of the doctrine of pendent jurisdiction. *E. g., Rosado v. Wyman*, 397 U. S. 397, 403 (1970); *United Mine Workers of America v. Gibbs*, 383 U. S. 715, 726-727 (1966). Compelling a district court to decide an ancillary claim where the premise for its jurisdiction is a meritless constitutional claim does not impress me as an efficacious performance of a discretionary responsibility.

I write briefly to emphasize my view that the majority has misread the import of the *Gibbs* opinion, *supra*, particularly in the manner in which it links *Gibbs* to *Siler v. Louisville & Nashville R. Co.*, 213 U. S. 175 (1909), and like cases. *Gibbs* involved a state claim that arose out of the same transaction as the federal law claim that conferred federal jurisdiction. The majority apparently reads *Gibbs* and *Siler* together as mandating

For The Chief Justice
For Justice Douglas
For Justice Brennan
For Justice Marshall
For Justice Black
For Justice Harlan
For Justice Stewart
For Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6476

Circulated: 3/6/74

Recirculated: _____

Cynthia Hagans et al.,

Petitioners,

v.

Abe Lavine, Commissioner
of New York State De-
partment of Social
Services, et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[March —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

The Court's decision in this case resolves a legal question and is necessarily and properly cast in legal terms. According to the Court, a federal district court, having acquired jurisdiction over a "not wholly insubstantial" federal claim, has power to decide other related claims which lack an independent jurisdictional basis. Applying this analysis to the present case, the Court finds the equal protection claim pleaded by petitioners sufficient to satisfy this somewhat hazy definition of "substantiality" and appears to approve the District Court's exercise of pendent jurisdiction over a claim alleging conflict between state and federal welfare regulations. But since we have been admonished that we may not shut our eyes as judges to what we know as men, the practical as well as the legal consequences of this decision should be squarely faced.

In the wake of *King v. Smith*, 392 U. S. 309 (1968), and *Rosado v. Wyman*, 397 U. S. 397 (1970), the lower federal courts have been confronted by a massive influx of cases challenging state welfare regulations. The principal claim of plaintiffs in the typical case is that the state

P 4, 7-9

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

From: Rehnquist, J.

Circulated:

Recirculated: 3/18/74

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6476

Cynthia Hagans et al.,
Petitioners,

v.

Abe Lavine, Commissioner
of New York State De-
partment of Social
Services, et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[March —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

✓

March 18, 1974

MEMORANDUM TO ALL CHAMBERS

FROM: H. Bartow Farr, III

Re: Hagins v. Lavine, No. 72-6476 -- Recirculation of March 18, 1974.

In a fit of idiocy I neglected to mark the changes on the recirculation in this case. They are as follows:

p. 4: Footnote 4, except for the citation, is completely new.

p. 7-9: The text beginning at "Of course, a decision"

(six lines from the bottom of the page) was previously footnote 8. On p. 8 the text beginning "The majority rejects" and continuing to the end of the first full paragraph on p. 9 is new.

There are no other changes.

Please excuse my lapse.

✓

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 21, 1974

Re: No. 72-6476 - Hagans v. Lavine

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,

Wm

Mr. Justice Powell

Copies to the Conference