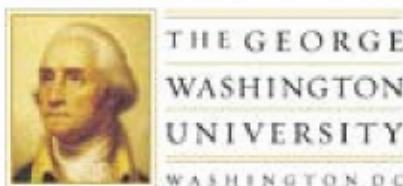


# The Burger Court Opinion Writing Database

*Lavine v. Milne*

424 U.S. 577 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

February 27, 1976

Re: 74-1137 - Lavine v. Milne

Dear Byron:

I join your proposed opinion dated February 20.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
STICE WM. J. BRENNAN, JR.

February 4, 1976

RE: No. 74-1137 Lavine v. Milne

Dear Byron:

I was the other way but if you can find it possible to make two changes I'll be happy to join.

First, I suggest the deletion of the last sentence in the first full paragraph of footnote 9 at page 7. You are familiar with my view of the scrutiny required where fundamental rights are involved. The implication I find in the words "perfectly legitimate and reasonable legislative response" suggest a lesser standard. I don't think the sentence is necessary to the decision.

My second suggestion concerns the discussion at pages 8 and 9 about the state's procedure. As I understand it, an applicant can visit a local agency the very next day after he quits his job and at that early time can have something in the way of a "hearing" in his discussion with a local official as to whether he satisfies eligibility requirements. Could not this fact be weaved into the discussion of the procedure starting at the bottom of page 8? Otherwise, I get the implication that he's not entitled to be heard for at least 75 and maybe more days, and if that were so, the procedure would not I think pass constitutional muster.

Sincerely,

Mr. Justice White

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 26, 1976

RE: No. 74-1137 Lavine v. Milne

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White  
cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

✓

February 9, 1976

No. 74-1137 - Lavine v. Milne

Dear Byron,

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

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice White

Circulated: 1-31-76

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1137

Abe Lavine, etc.,  
Appellant,  
v.  
Ronald Milne et al. } On Appeal from the United States  
District Court for the Southern  
District of New York.

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

A New York welfare statute, N. Y. Soc. Serv. Law § 131 (11) (McKinney Supp. 1975),<sup>1</sup> disqualifies from receipt of welfare for 75 days anyone who voluntarily terminates his employment or reduces his earning capacity for the purpose of qualifying for Home Relief or Aid to Families with Dependent Children. A further provision—that at issue in this case—states that a person who applies for assistance within 75 days after voluntarily terminating his employment or reducing his earning capacity shall be “deemed” to have done so “for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.” The question raised by this appeal from the judgment of a three-judge court is whether this “presumption” violates due process of law.

Appellee Milne and the appellee intervenors are all applicants for New York Home Relief—a residual cate-

<sup>1</sup> This law was formerly numbered N. Y. Soc. Serv. Law § 131 (10) (McKinney Supp. 1973). The law was renumbered without change in language by a 1974 amendment to the New York Social Services Law, N. Y. laws 1974, c. 621, § 2.

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGE: 6

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Rehnquist  
Mr. Justice Powell  
Mr. Justice O'Connor  
Mr. Justice Stevens

From: Mr. Justice White

Circulated:

Recirculated: 2-3-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1137

Abe Lavine, etc.,  
Appellant,  
v.  
Ronald Milne et al. } On Appeal from the United States  
District Court for the Southern  
District of New York.

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

A New York welfare statute, N. Y. Soc. Serv. Law § 131 (11) (McKinney Supp. 1975),<sup>1</sup> disqualifies from receipt of welfare for 75 days anyone who voluntarily terminates his employment or reduces his earning capacity for the purpose of qualifying for Home Relief or Aid to Families with Dependent Children. A further provision—that at issue in this case—states that a person who applies for assistance within 75 days after voluntarily terminating his employment or reducing his earning capacity shall be “deemed” to have done so “for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.” The question raised by this appeal from the judgment of a three-judge court is whether this “presumption” denies due process of law.

Appellee Milne and the appellee intervenors are all applicants for New York Home Relief—a residual cate-

<sup>1</sup> This law was formerly numbered N. Y. Soc. Serv. Law § 131 (10) (McKinney Supp. 1973). The law was renumbered without change in language by a 1974 amendment to the New York Social Services Law, N. Y. laws 1974, c. 621, § 2.

AP 4, 5, 7, 9

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

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 2-20-76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1137

Abe Lavine, etc.,  
Appellant,  
v.  
Ronald Milne et al. } On Appeal from the United States  
District Court for the Southern  
District of New York.

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

A New York welfare statute, N. Y. Soc. Serv. Law § 131 (11) (McKinney Supp. 1975),<sup>1</sup> disqualifies from receipt of welfare for 75 days anyone who voluntarily terminates his employment or reduces his earning capacity for the purpose of qualifying for Home Relief or Aid to Families with Dependent Children. A further provision—that at issue in this case—states that a person who applies for assistance within 75 days after voluntarily terminating his employment or reducing his earning capacity shall be “deemed” to have done so “for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.” The question raised by this appeal from the judgment of a three-judge court is whether this “presumption” denies due process of law.

Appellee Milne and the appellee intervenors are all applicants for New York Home Relief—a residual cate-

<sup>1</sup> This law was formerly numbered N. Y. Soc. Serv. Law § 131 (10) (McKinney Supp. 1973). The law was renumbered without change in language by a 1974 amendment to the New York Social Services Law, N. Y. laws 1974, c. 621, § 2.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 1, 1976

Re: No. 74-1137 -- Abe Lavine v. Ronald Milne

Dear Byron:

Please join me.

Sincerely,

*JM*  
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 17, 1976

Re: No. 74-1137 - Lavine v. Milne

Dear Byron:

Please join me.

Sincerely,

*harry*  
\_\_\_\_

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 6, 1976

No. 74-1137 Lavine v. Milne

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 4, 1976

Re: No. 74-1137 - Lavine v. Milne

Dear Byron:

Please join me.

Sincerely,

✓✓✓

Mr. Justice White

Copies to the Conference