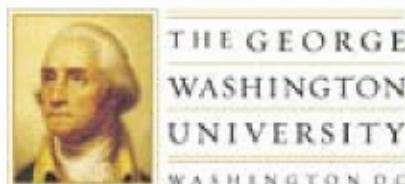


The Burger Court Opinion Writing Database

Califano v. Boles

443 U.S. 282 (1979)

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

April 27, 1979

Re: 78-808 - Califano v. Boles

MEMORANDUM TO THE CONFERENCE:

At Conference I expressed my view, echoing Brandeis, that it was more important to settle this issue with a uniform standard nationwide than to be "right." I have now concluded that no cases, including Jimenez, either compel or point toward an affirmance. If the case is to be as close as it now appears, I conclude that I will vote to reverse.

Dove red

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

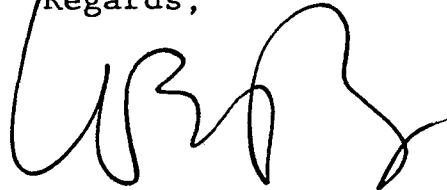
June 18, 1979

Dear Bill:

Re: 78-808 Califano v. Boles

I join.

Regards,



Mr. Justice Rehnquist
cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 1, 1979

RE: No. 78-808 Califano v. Boles

Dear Thurgood:

Byron, Harry, you and I are in dissent in
the above. Would you care to take on the dissent?

Sincerely,

Bill

Mr. Justice Marshall

cc: Mr. Justice White
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 20, 1979

RE: No. 78-808 Califano v. Boles

Dear Thurgood:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1979

Re: 78-808 - Califano v. Boles

Dear Bill:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1979

Re: No. 78-808, Califano v. Boles

Dear Bill,

I agree with Harry that it would be a good idea to append a footnote reference to the Yamasaki case somewhere in the course of your discussion of the nationwide class action issue.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill,

I shall await the dissent.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1979

Re: No. 78-808 - Califano v. Boles

Dear Thurgood,

With the change that I have suggested to you,

I join your dissenting opinion in this case.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill:

Working on a dissent,

Sincerely,

J.M.
T.M.

Mr. Justice Rehnquist

cc: The Conference

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

No. 78-808

Califano v. Boles

From: Mr. Justice Marshall

Circulated: 19 JUN 1979

Recirculated: _____

MR. JUSTICE MARSHALL, dissenting.

The critical question in this dispute is whether §202(g) of the Social Security Act, 42 U.S.C. §402(g), discriminates against unmarried parents or against illegitimate children.

The Court determines that the intended beneficiaries of §202(g) are dependent spouses, and that the statute therefore distinguishes between categories of parents. Having thus characterized the statute, the Court concludes that the use of marital status as an index of dependency on a deceased wage earner is permissible under Califano v. Jobst, 434 U.S. 47, 50 (1977), and Mathews v. De Castro, 429 U.S. 181, 185-186 (1976). If, however, as the District Court found, the statute benefits children, then its distinction based on legitimacy

1, 4, 6, 9, 10

22 JUN 1979

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-808

[June —, 1979]

MR. JUSTICE MARSHALL, dissenting.

The critical question in this dispute is whether § 202 (g) of the Social Security Act, 42 U. S. C. § 402 (g), discriminates against unmarried parents or against illegitimate children. The Court determines that the intended beneficiaries of § 202 (g) are dependent spouses, and that the statute therefore distinguishes between categories of parents. Having thus characterized the statute, the Court concludes that the use of marital status as an index of dependency on a deceased wage earner is permissible under *Califano v. Jobst*, 434 U. S. 47, 50 (1977), and *Mathews v. De Castro*, 429 U. S. 181, 185-186 (1976). If, however, as the District Court found, the statute benefits children, then it incorporates a distinction based on legitimacy which must be tested under the more rigorous standards of *Jimenez v. Weinberger*, 417 U. S. 628 (1974), and *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972).

Determining the proper classification for purposes of equal protection analysis is, to be sure, not "an exact science." *Ante*, at 12. But neither is it an exercise in statutory revision. And only by disregarding the clear legislative history, structure, and effect of the Mother's Insurance Benefits Program can the Court characterize dependent spouses, rather than children, as the intended beneficiaries of § 202 (g). Just four Terms ago, a unanimous Court concluded that the clear

pp 1, 2, 4, 9

footnotes renumbered

26 JUN 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-808

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Appellant, <i>v.</i> Norman J. Boles et al.	On Appeal from the United States District Court for the Western District of Texas.
---	---

[June —, 1979]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN join, dissenting.

The critical question in this dispute is whether § 202 (g) of the Social Security Act, 42 U. S. C. § 402 (g), discriminates against unmarried parents or against illegitimate children. The Court determines that the intended beneficiaries of § 202 (g) are dependent spouses, and that the statute therefore distinguishes between categories of parents. Having thus characterized the statute, the Court concludes that the use of marital status as an index of dependency on a deceased wage earner is permissible under *Califano v. Jobst*, 434 U. S. 47, 50 (1977), and *Mathews v. De Castro*, 429 U. S. 181, 185–186 (1976). If, however, as the District Court found, the statute benefits children, then it incorporates a distinction based on legitimacy which must be tested under the more rigorous standards of *Jimenez v. Weinberger*, 417 U. S. 628 (1974), and *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972).

Determining the proper classification for purposes of equal protection analysis is, to be sure, not “an exact science.” *Ante*, at 12. But neither is it an exercise in statutory revision. And only by disregarding the clear legislative history, structure, and effect of the Mother’s Insurance Benefits Program can the Court characterize dependent spouses, rather than children, as the intended beneficiaries of § 202 (g). Just

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill:

I am awaiting the dissent, of course. I wonder, however, whether the first full paragraph on page 15, with its reference to a nationwide class, fully comports with the decision in No. 77-1511, Califano v. Yamasaki. Perhaps a footnote reference, or something like it, to Yamasaki is indicated.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1979

Re: No. 78-808 - Califano v. Boles

Dear Bill:

It was the possible impression of "ships passing in the night" that prompted my earlier letter of today. I, of course, do not mean to suggest that you should pass on the propriety of a nationwide class in Boles.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1979

Re: No. 78-808 - Califano v. Boles

Dear Thurgood:

By separate letter, I am joining your dissent. I would be pleased, however, if you would at least consider eliminating footnote 2 and the rather specific reliance on Trimble v. Gordon, beginning at the bottom of page 9 and extending to the middle of page 10. I was in dissent in Trimble, and all the others in dissent there are among the majority in Boles.

Sincerely,



Mr. Justice Marshall

cc: Mr. Justice Brennan
Mr. Justice White

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1979

Re: No. 78-808 - Califano v. Boles

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 28, 1979

78-808 Califano v. Boles

Dear Chief:

Postponed
I passed at the Conference yesterday. On the basis
of further consideration, I now vote to reverse.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1979

78-808 Califano v. Boles

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Mr. Justice Rehnquist

Circulated: 1 JUN 1979

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 78-808

Joseph A. Califano, Jr., Secretary
of Health, Education, and
Welfare, Appellant,
v.
Norman J. Boles et al. } On Appeal from the United
States District Court for
the Western District of
Texas.

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Since the Depression of the 1930's, the Government has taken increasingly upon itself the task of insulating the economy at large and the individual from the buffeting of economic fortune. The federal old-age, survivors, and disability insurance provisions of the Social Security Act (SSA) are possibly the pre-eminent examples: attempts to obviate, through a program of forced savings, the economic dislocations that may otherwise accompany old age, disability or the death of a breadwinner. As an exercise in governmental administration, the social security system is of unprecedented dimension; in Fiscal Year 1977 nearly 150 million claims were filed.¹

Given this magnitude, the number of times these SSA claims have reached this Court warrants little surprise.² Our

¹ Social Security Administration's Office of Management and Administration, *The Year in Review: The Administration of Social Security Programs 1977*, at ii (July 1978).

² *Califano v. Jobst*, 434 U. S. 47 (1977); *Califano v. Webster*, 430 U. S. 313 (1977); *Califano v. Goldfarb*, 430 U. S. 199 (1977); *Matthews v. De Castro*, 429 U. S. 181 (1976); *Norton v. Mathews*, 427 U. S. 524 (1976); *Mathews v. Lucas*, 427 U. S. 495 (1976); *Mathews v. Eldridge*, 424 U. S. 319 (1976); *Weinberger v. Salfi*, 422 U. S. 749 (1975); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Jiminez v. Weinberger*, 417 U. S. 628 (1974); *Richardson v. Wright*, 405 U. S. 208 (1972); *Richardson*,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1979

Re: No. 78-808 - Califano v. Boles

Dear Harry:

Since in this case the Conference vote (by the narrowest of margins) was to decide against the respondents on the merits of their claim that the category of persons entitled to relief was too narrow under the Fifth Amendment, I think that the first full paragraph on page 15 of the opinion correctly declines to reach the government's other arguments, including the claim that the District Court improperly certified a nationwide class action that included individuals who had not met the jurisdictional requirements of § 205(g). However, I joined you in Califano v. Yamasaki; I am not a wild enthusiast of nation-wide class actions, but thought that the cautionary language which you placed in your opinion about the factors which the District Court should weigh before certifying such a class was enough for me (plus the fact that you already had a Court for your opinion when I joined, as I recall!). I also agree that our opinions should not appear to the public as ships passing in the night, and if all your note of June 19th indicates is the desirability of a simple citation to Yamasaki, at an appropriate place on page 15 of Boles, I have no objection if those who have already joined Boles have none. If you mean to suggest that we ought to pass on the propriety of the District Court's certification of a nation-wide class in Boles, notwithstanding the fact that we rule against the respondents on the merits, I do not agree with you.

Sincerely,



Mr. Justice Blackmun
Copies to the Conference

Pp 1-3, 12-15

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

From: Mr. Justice Rehnquist

Circulated: _____

2nd DRAFT

Recirculated: 26 JUN 1979

SUPREME COURT OF THE UNITED STATES

No. 78-808

Joseph A. Califano, Jr., Secretary
of Health, Education, and
Welfare, Appellant,
v.
Norman J. Boles et al.

On Appeal from the United
States District Court for
the Western District of
Texas.

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court. Since the Depression of the 1930's, the Government has taken increasingly upon itself the task of insulating the economy at large and the individual from the buffeting of economic fortune. The federal old-age, survivors, and disability insurance provisions of the Social Security Act (SSA) are possibly the pre-eminent examples: attempts to obviate, through a program of forced savings, the economic dislocations that may otherwise accompany old age, disability or the death of a breadwinner. As an exercise in governmental administration, the social security system is of unprecedented dimension; in Fiscal Year 1977 nearly 150 million claims were filed.¹

Given this magnitude, the number of times these SSA claims have reached this Court warrants little surprise.² Our

¹ Social Security Administration's Office of Management and Administration, The Year in Review: The Administration of Social Security Programs 1977, at ii (July 1978).

² *Califano v. Yamasaki*, No. 77-1511 (June 20, 1979); *Califano v. Jobst*, 434 U. S. 47 (1977); *Califano v. Webster*, 430 U. S. 313 (1977); *Califano v. Goldfarb*, 430 U. S. 199 (1977); *Matthews v. De Castro*, 429 U. S. 181 (1976); *Norton v. Mathews*, 427 U. S. 524 (1976); *Mathews v. Lucas*, 427 U. S. 495 (1976); *Mathews v. Eldridge*, 424 U. S. 319 (1976); *Weinberger v. Salfi*, 422 U. S. 749 (1975); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Jimenez v. Weinberger*, 417 U. S. 628 (1974); *Richardson v.*

6

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1979

Re: 78-808 - Califano v. Boles

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference