

The Burger Court Opinion Writing Database

Maher v. Gagne

448 U.S. 122 (1980)

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

JUN 1

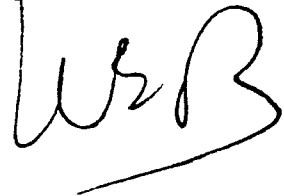
JUN 19 1980

RE: 78-1888 - Maher v. Gagne

Dear Lewis:

I join your June 18 concurring opinion.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 27, 1980

RE: No. 78-1888 Maher v. Gagne, etc.

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 28, 1980

Re: No. 78-1888, Maher v. Gagne

Dear John,

I am glad to join your opinion for
the Court.

Sincerely yours,

? S.
- /

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 28, 1980

Re: 78-1888 - Maher v. Gagne

Dear John,

Please join me.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 28, 1980

Re: No. 78-1888 - Maher v. Gagne

Dear John:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1980

Re: No. 78-1338 - Maher v. Gagne

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1980

78-1888 Maher v. Gagne

Dear John:

In light of my dissenting position in Thiboutot (in which I am writing a dissenting opinion), I certainly will not be able to join your opinion in this case.

I will write something here after I complete my Thiboutot dissent. At most I may concur in your judgment, but am not sure of this.

As you know, I am more than a little troubled by the vast expansion of federal causes of action, and the corresponding denigration of state courts, that will result from Thiboutot.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

June 16, 1980

78-1888 Maher v. Gaone

Dear Bill:

As we were also together in the above case, I enclose a draft of a brief opinion that I will circulate simultaneously with Thiboutot.

I hope to circulate these opinions fairly soon, but would like to have your views first.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

lfp/ss 6/16/80

¹⁰ See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

No. 78-1888, Maher v. Gagne

MR. JUSTICE POWELL, concurring in the judgment, and
in Part II of the Court's opinion:

Respondent's complaint presented claims under both the Social Security Act and the Fourteenth Amendment.

Following a settlement between the parties, the District Court ruled that respondent is a "prevailing party" under 42 U.S.C. § 1988, and that she alleged "substantial" constitutional claims as defined in Hagans v. Levine, 415 U.S. 528 (1974). In this situation, the District Court and the Court of Appeals for the Second Circuit both concluded that the award of fees under § 1988 does not require an adjudication on the merits of the constitutional claims. I agree with this conclusion. Consequently, I see no reason to reach out, as the Court does in Part I of its opinion, to apply today's ruling in Maine v. Thiboutot, ___ U.S. (No. 79-838, 1979). See ante, at 6. That decision holds that plaintiffs may win attorney's fees under § 1988 when they bring an action under 42 U.S.C. § 1983 without any

6/17/80

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

From: Mr. Justice Powell

Circulated: JUN 17 1980

Recirculated: _____

FIRST DRAFT

No. 78-1888, Maher v. Gagne

MR. JUSTICE POWELL, concurring in the judgment, and in Part II of the Court's opinion:

Respondent's complaint presented claims under both the Social Security Act and the Fourteenth Amendment. Following a settlement between the parties, the District Court ruled that respondent is a "prevailing party" under 42 U.S.C. § 1988, and that she alleged "substantial" constitutional claims as defined in Hagans v. Lavine, 415 U.S. 528 (1974).

In this situation, the District Court and the Court of Appeals for the Second Circuit both found, the award of attorney's fees under § 1988 does not require an adjudication on the merits of the constitutional claims. I agree with this conclusion. Consequently, I see no reason to reach out, as the Court does in Part I of its opinion, to apply today's ruling in Maine v. Thiboutot, ____ U.S. ____ (No. 79-838, 1979). See ante, at 6. That

To: The Chief _____
 Mr. Justice ~~Rehnquist~~
 Mr. Justice ~~Powell~~
 Mr. Justice ~~White~~
 Mr. Justice ~~Marshall~~
 Mr. Justice ~~Brennan~~
 Mr. Justice ~~Sandra Day O'Connor~~
 Mr. Justice ~~Souter~~
 Mr. Justice ~~Ginsburg~~

From: Mr. _____

Circulated: _____

Recirculated: _____

6-18-80

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1888

Edward W. Maher, etc.,
 Petitioner,
 v.
 Virginia Gagne, etc. } On Writ of Certiorari to the United
 States Court of Appeals for the
 Second Circuit.

[June —, 1980]

MR. JUSTICE POWELL, concurring in the judgment, and in Part II of the Court's opinion.

Respondent's complaint presented claims under both the Social Security Act and the Fourteenth Amendment. Following a settlement between the parties, the District Court ruled that respondent is a "prevailing party" under 42 U. S. C. § 1988, and that she alleged "substantial" constitutional claims as defined in *Hagans v. Lavine*, 415 U. S. 528 (1974).

In this situation, the District Court and the Court of Appeals for the Second Circuit both found, the award of attorney's fees under § 1988 does not require an adjudication on the merits of the constitutional claims. I agree with this conclusion. Consequently, I see no reason to reach out, as the Court does in Part I of its opinion, to apply today's ruling in *Maine v. Thiboutot*, — U. S. — (No. 79-838, 1979). See *ante*, at 6. That decision holds that plaintiffs may win attorney's fees under § 1988 when they bring an action under 42 U. S. C. § 1983 without any constitutional claim whatever. For the reasons given in my dissenting opinion in *Thiboutot*, I believe that decision seriously misconceives the congressional purpose behind § 1983. In this case, however, the complaint included a substantial constitutional claim which "remained in the case until the entire dispute was settled by the entry of a consent decree." *Ante*, at 8. Since Congress has made plain its intent that fees be awarded to "prevailing" parties in

Justice
McKean
Secretary
Police
F. G. Hall
F. J. Murphy
F. J. Quinn
J. Stevens

6-18-80

From: Mr. Justice Powell

Circulated:

Recirculated: JUN 18 19

SUPREME COURT OF THE UNITED STATES

No. 78-1888

Edward W. Maher, etc., Petitioner,
v.
Virginia Gagne, etc. } On Writ of Certiorari to the United
States Court of Appeals for the
Second Circuit.

[June —, 1980]

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, concurring in the judgment, and in Part II of the Court's opinion.

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In this situation, the District Court and the Court of Appeals for the Second Circuit both found, the award of attorney's fees under § 1988 does not require an adjudication on the merits of the constitutional claims. I agree with this conclusion. Consequently, I see no reason to reach out, as the Court does in Part I of its opinion, to apply today's ruling in *Maine v. Thiboutot*, — U. S. — (No. 79-838, 1979). See *ante*, at 6. That decision holds that plaintiffs may win attorney's fees under § 1988 when they bring an action under 42 U. S. C. § 1983 without any constitutional claim whatever. For the reasons given in my dissenting opinion in *Thiboutot*, I believe that decision seriously misconceives the congressional purpose behind § 1983. In this case, however, the complaint included a substantial constitutional claim which "remained in the case until the entire dispute was settled by the entry of a consent decree." *Ante*, at 8. Since Congress has made

12

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

6-20-80

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1888

Circulated:

JUN 20 1980

Recirculated:

Edward W. Maher, etc.,
Petitioner,
v.
Virginia Gagne, etc.

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

[June —, 1980]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and
MR. JUSTICE REHNQUIST join, concurring in the judgment,
and in Part II of the Court's opinion.

Respondent's complaint presented claims under both the Social Security Act and the Fourteenth Amendment. Following a settlement between the parties, the District Court ruled that respondent is a "prevailing party" under 42 U. S. C. § 1988, and that she alleged "substantial" constitutional claims as defined in *Hagans v. Lavine*, 415 U. S. 528 (1974).

In this situation, the District Court and the Court of Appeals for the Second Circuit both found, the award of attorney's fees under § 1988 does not require an adjudication on the merits of the constitutional claims. I agree with this conclusion. Consequently, I see no reason to reach out, as the Court does in Part I of its opinion, to apply today's ruling in *Maine v. Thiboutot*, — U. S. — (No. 79-838, 1979). See *ante*, at 6. That decision holds that plaintiffs may win attorney's fees under § 1988 when they bring an action under 42 U. S. C. § 1983 without any constitutional claim whatever. For the reasons given in my dissenting opinion in *Thiboutot*, I believe that decision seriously misconceives the congressional purpose behind § 1983. In this case, however, the complaint included a substantial constitutional claim which "remained in the case until the entire dispute was settled by the entry of a consent decree." *Ante*, at 8. Since Congress has made

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1980

Re: No. 78-1888 Maher v. Gagne

Dear John:

I shall await Lewis's writing in this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 18, 1980

Re: No. 78-1888 Maher v. Gagne

Dear Lewis:

Please join me in your opinion concurring in the judgment and in Part II.

Sincerely,

lpw

Mr. Justice Powell

Copies to 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 Rehnquist

From: Mr. Justice Stevens
 MAY 27 '80
 Circulated: _____

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1888

Edward W. Maher, etc.,
 Petitioner,
 v.
 Virginia Gagne, etc. } On Writ of Certiorari to the United
 States Court of Appeals for the
 Second Circuit.

[June —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In an action brought under 42 U. S. C. § 1983, the court, in its discretion, may allow the prevailing party to recover a reasonable attorney's fee as part of the award of costs.¹ The question presented by this petition is whether fees may be assessed against state officials after a case has been settled by the entry of a consent decree, without any determination that the plaintiff's constitutional rights have been violated.

Petitioner is responsible for the administration of Connecticut's Aid to Families with Dependent Children (AFDC), a federally funded public assistance program.² Respondent is

¹ The Civil Rights Attorney's Fees Award Act of 1976, 90 Stat. 2641, provides:

"In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of the Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees as part of the costs."

This statute is codified in 42 U. S. C. § 1988; in the codification § 1979 of the Revised Statutes has been renumbered to refer to § 1983 of Title 42 of the U. S. Code.

² The action was filed against petitioner's predecessor in office, Nicholas

4, 6, 7, 8, 9, 10

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

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT

JUN 10 '80

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1888

Edward W. Maher, etc.,
 Petitioner,
 v.
 Virginia Gagne, etc. } On Writ of Certiorari to the United
 States Court of Appeals for the
 Second Circuit.

[June —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 23, 1980

MEMORANDUM TO THE CONFERENCE

Cases held for Maher v. Gagne, No. 78-1888

There is one case being held for Maher.

Horn v. Ross, No. 79-297, is a class action brought against the New Jersey Department of Labor alleging that its procedures for processing suspected unemployment fraud cases violated both federal statutes and the Due Process Clause. Shortly after the suit was filed, the State altered its procedures to provide more protection for claimants; those altered regulations were upheld by both the District Court and CA3. Because judgment was ultimately entered against the plaintiff class, the District Court denied attorney's fees under §1988. CA3 reversed on the fee issue, holding that the plaintiff class could still be considered the "prevailing party" if on remand it could show that its suit was the "catalyst" for the adoption of the new procedures.

In its petn, the State does not dispute CA3's holding (which is clearly correct in light of Maher) that the plaintiffs in this case could be considered prevailing parties; rather, it argues that CA3 established an incorrect standard to be applied on remand. The State argues that a plaintiff under these circumstances must prove not only that his lawsuit was the catalyst for the defendant's action, but also that the suit had substantial merit and that that factor (rather than simply the nuisance value of the suit) caused the change. There is no mention of this particular issue in CA3's opinion and there seems to be no reason why the State could not make this argument to the District Court on remand. Also, it should be noted that CA 3 specifically held that the plaintiffs' claims were neither insubstantial nor frivolous.