

The Burger Court Opinion Writing Database

Heckler v. Community Health Services of Crawford County, Inc.

467 U.S. 51 (1984)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1984

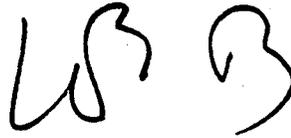
84 MAY 17 19:28

No. 83-56 - Heckler v. Community Health Services of
Crawford County, Inc.

Dear Bill:

Please show me as joining your limited concurrence.

Regards,

Handwritten signature of Justice Rehnquist, consisting of the letters 'LR' followed by a stylized 'B'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 11, 1984

No. 83-56

Heckler v. Community
Health Services of Crawford
County, Inc., et al.

Dear John,

I agree.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 4, 1984

Re: 83-56 - Heckler v. Community Health
Services of Crawford County

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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20543

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 27, 1984

Re: No. 83-56-Heckler v. Community Health Services

Dear John:

Please join me.

Sincerely,

TM
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 14, 1984

Re: No. 83-56 - Heckler v. Community Health Services

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

94 MAY 14 10 55

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 3, 1984

83-56 Heckler v. Community Health Services

Dear John:

Please join me in your opinion for the Court.

Sincerely,

Lewis

Justice Stevens

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 10, 1984

Re: No. 83-56 Heckler v. Community Health Services

Dear John:

I think that your proposed opinion in this case has language in several places which tends to undermine what I understood to be established doctrine -- that there may be circumstances where the government would be estopped by the affirmative misconduct of its agents, but it cannot otherwise be estopped. I agree that the Conference discussion intended to leave open the possibility of estoppel where there is affirmative misconduct, but I did not understand it to suggest that the government might be estopped in other circumstances. Rather than join your draft as it now stands, I will write separately concurring in the judgment.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 11, 1984

Re: No. 83-56 Heckler v. Community Health Services

Dear John:

I fully agree with each of the three principles stated in the first paragraph of your letter of April 10th about this case, and I think both (a) and (c) are forcefully brought home by your opinion. I am doubtful as to whether (b) is brought home by the opinion in similar fashion.

You do state on page 8 that "it is well-settled that the Government may not be estopped on the same terms as any other litigant." But in the carry-over sentence on the same page you suggest there are some cases in which "the public interest in ensuring that the Government can enforce the law" may be outweighed by the countervailing "right of citizens to expect some minimum standard of decency, honor and reliability in their dealings with their government.*/" As the text for the footnote at the end of this sentence, you cite the dissenting opinion in St. Regis Paper Co., 368 U.S. 208, 229 (1961) and the dissenting opinion in Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 387-388 (1947). These dissenting opinions contained similar rhetoric about "decency, honor and reliability," but they were nonetheless dissenting opinions, and it seems to me that this sentence suggests a much more expansive view of governmental estoppel than our prior cases permit.

The final three sentences in the full paragraph beginning on page 9 read as follows:

"Rights by their very nature are what is most precious in our system of law--these are the guarantees that Government must respect. Hence the need for fair dealing is greatest when rights are at stake. Here respondent lost no rights but

merely was induced to do something which could be corrected at a later time."

I am perfectly willing to subscribe to the argument that this respondent's claim for estoppel was quite weak, for the exact reason that you state--it was induced to do something which could be corrected at a later time. But the negative implication is that if one dealing with the government had sustained a greater injury, or lost a "right" (however that may simply be defined) the situation would be quite different. But I think the pullout of the government naturalization agents from the Philippines in Hibi, 414 U.S. 5, and the erroneous representation of the Social Security employee in Hansen, 450 U.S. 785, come much closer to frustrating the assertion of what might be called a "right" than does the government conduct in this case. I therefore think the last two sentences of the language quoted suggest a distinction which is extremely vague and perhaps inconsistent with some of our earlier cases.

Finally, on page 14, you say:

"It cannot be said that the detriment respondent faces is so severe or has been imposed in such an unfair way that petitioner ought to be estopped from enforcing the law."

It may be that cases such as Montana v. Kennedy, 336 U.S. 308, Hibi, and Hansen did not choose the best possible language when they spoke of the possibility of "affirmative misconduct" estopping the government. But at least that is a test that has been established and applied in several of our cases. Your language on page 8 suggests that the test is whether "the public interest in ensuring that the government can enforce the law free from estoppel [is] outweighed by the countervailing right of citizens to expect some minimal standard of decency, honor and reliability in their dealings with their Government." On pages 9-10, the language quoted above suggests that the test will depend on whether a "right" is lost by one relying on a representation of a government agent, as opposed to merely being induced to do something which could be corrected at a later time. On page 14, the language quoted above suggests that the test is whether "the detriment respondent faces is so severe or has

been imposed in such an unfair way that petitioner ought to be estopped from enforcing the law."

Whatever the drawbacks of the "affirmative misconduct" test, at least it only has one head, not three. I don't believe that any of your three tests are superior to the affirmative misconduct language, and I think that all three of them together in the same opinion hold a real potential for confusion rather than clarification.

As you can see, my only difficulty is with three very short passages in the opinion, although I realize they are statements of the principle involved. Is there any chance that we can reach an accommodation?

Sincerely,



Justice Stevens

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: APR 26 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-56

**MARGARET M. HECKLER, SECRETARY OF HEALTH
AND HUMAN SERVICES, PETITIONER v.
COMMUNITY HEALTH SERVICES OF
CRAWFORD COUNTY, INC. ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[April —, 1984]

JUSTICE REHNQUIST, concurring in the judgment.

I entirely agree with the Court that there was no estoppel in favor of respondent by reason of the government's conduct in this case, because even a private party under like circumstances would not have been estopped. I write separately because I think the Court's treatment of our decided cases in this area gives an inaccurate and misleading impression of what those cases have had to say as to the circumstances, if any, under which the government may be estopped to enforce the laws.

Sixty-seven years ago, in *Utah Power & Light Co. v. United States*, 243 U. S. 389 (1917), private parties argued that they had acquired rights in federal lands, contrary to the law, because government employees had acquiesced in their exercise of those rights. In that case the Court laid down the general principle governing claims of estoppel on behalf of private individuals against the government:

“As a general rule, laches or neglect of duty on the part of officers of the Government is no defense to a suit by it to enforce a public right or protect a public interest. (Citations omitted). And, if it be assumed that the rule is subject to exceptions, we find nothing in the cases in hand which fairly can be said to take them out of it as

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: APR 10 '84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-56

MARGARET M. HECKLER, SECRETARY OF HEALTH
AND HUMAN SERVICES, PETITIONER *v.*
COMMUNITY HEALTH SERVICES OF
CRAWFORD COUNTY, INC. ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[April —, 1984]

JUSTICE STEVENS delivered the opinion for the Court.

Under what is recognized for present purposes as an incorrect interpretation of rather complex federal regulations, during 1975, 1976 and 1977 respondent received and expended \$71,480 in federal funds to provide health care services to Medicare beneficiaries to which it was not entitled. The question presented is whether the Government is estopped from recovering those funds because respondent relied on the express authorization of a responsible government agent in making the expenditures.

I

Under the Medicare program, Title XVIII of the Social Security Act, 42 U. S. C. §§ 1395-1395vv (1976 ed. & Supp. V), providers of health care services are reimbursed for the reasonable cost of services rendered to Medicare beneficiaries as determined by petitioner, the Secretary of Health and Human Services. *Id.* § 1395x(v)(1)(A). Providers receive interim payments at least monthly covering the cost of services they have rendered. *Id.* § 1395g(a). Congress recognized, however, that these interim payments would not always correctly reflect the amount of reimbursable costs, and accordingly instructed petitioner to develop mechanisms

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 10, 1984

Re: 83-56 - Heckler v. Community Health
Services

Dear Bill:

Thanks for your note. As you suggest, I did deliberately avoid indicating that "affirmative misconduct"--whatever that may mean--is a useful test for determining whether the Government can be estopped. In my work on the case I came to the conclusion that the "affirmative misconduct" label was not very helpful since even a private party cannot be estopped unless it makes misrepresentations in a way that virtually always can be characterized as "affirmative misconduct" on any common definition of those terms. Thus a requirement that all of the elements of a private estoppel must be established before confronting the question whether the government can be estopped is if anything more useful than the one-element affirmative misconduct concept. It seems to me much more helpful to make it clear that (a) a private party can never assert an estoppel against the Government unless the grounds for an estoppel against another private party are present; (b) that even if that basic threshold is overcome, his burden will be significantly heavier when the claim is asserted against the Government; and (c) in all events, oral statements of government agents should seldom, if ever, provide a basis for an estoppel claim.

I should also add that although my conference notes are characteristically unclear, they are consistent with my recollection that there was a consensus not to decide anything more than is contained in my opinion. In particular, Sandra appeared to be unwilling (I think correctly) to hold that "affirmative misconduct" is the appropriate buzzword. Therefore I avoided saying anything about "affirmative misconduct."

In all events, I will be interested in your approach and, as always, will welcome specific criticisms of the draft.

Respectfully,

A handwritten signature in dark ink, appearing to be "John", written in a cursive style.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 12, 1984

Re: 83-56 - Heckler v. Community Health
Services

Dear Bill:

Thanks for your more recent letter containing specific comments on my circulating draft. Let me try to respond to each of your concerns.

Perhaps I could clarify the second of the three principles with respect to which we seem to be in agreement by changing the first sentence on page 9 to read this way:

"But however heavy the additional burden may be when an estoppel is asserted against the Government, the private party surely cannot prevail without at least demonstrating that the traditional elements of an estoppel are present."

With respect to your concern about the reference to the citizen's right to expect some measure of fair dealing from the Government, I really do not find anything in our prior cases that suggests that that is not a correct description of the countervailing interest. Perhaps it would sound less expansive if I were to eliminate the reference to a "right" and rephrase the sentence to describe the "countervailing interests of the citizenry in expecting some minimum standard" However, I do believe that this is an appropriate characterization of the citizen's interest, whether or not the Court ultimately adopts an "affirmative misconduct" test for estoppel. Unless we are to hold that there are no cases in which the countervailing interests may prevail and the Government may be estopped, I do not see any harm in merely identifying the interests that would have to be present in order to raise a valid estoppel question in such a case.

The next concern is with my proposed distinction between cases involving the loss of a right, on the one hand, and merely the loss of a possible benefit on the other. I think this distinction is quite important and well

worth making. Moreover, I do not think the disposition in any of our prior cases rejects such a distinction. The reason that there was no estoppel in Hibi was that there was no conduct by the Government on which the private party had relied; under my formulation which requires the elements of a private estoppel to be present, the absence of any reliance was clearly sufficient to defeat the claim. Similarly, in Montana v. Kennedy, although the opinion used the term "affirmative misconduct" in dicta, it seems to me that correct analysis would defeat the claim in that case on the basis that there was clearly no reasonable basis for reliance on what the Government agent had said; again, a case in which a private estoppel would not have prevailed. Hansen is, admittedly, a more difficult case but as I would construe the facts there, the private party merely had a contingent right to a benefit which was entirely dependent on complying with the requirement of a written application. Her right never matured. That decision is also consistent with the point in my circulating draft that reliance on oral statements by Government agents is a weak reed on which to predicate any claim of estoppel. In any event, my opinion does not decide that the Government can be estopped if a legal right is present, it merely reserves the question for another day.

Finally, I firmly disagree with your suggestion that it would be preferable to rely on some sort of amorphous single "affirmative misconduct" test, instead of pointing out at least three weaknesses in the claim of estoppel in this case. I remain persuaded that such a test is unhelpful, for the reasons contained in my letter of April 10. I also find no case which holds that "affirmative misconduct" is the correct test. This does not mean, however, that I am adamant about any particular language in the opinion.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: APR 26 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-56

**MARGARET M. HECKLER, SECRETARY OF HEALTH
AND HUMAN SERVICES, PETITIONER v.
COMMUNITY HEALTH SERVICES OF
CRAWFORD COUNTY, INC. ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[April —, 1984]

JUSTICE STEVENS delivered the opinion for the Court.

Under what is recognized for present purposes as an incorrect interpretation of rather complex federal regulations, during 1975, 1976 and 1977 respondent received and expended \$71,480 in federal funds to provide health care services to Medicare beneficiaries to which it was not entitled. The question presented is whether the Government is estopped from recovering those funds because respondent relied on the express authorization of a responsible government agent in making the expenditures.

I

Under the Medicare program, Title XVIII of the Social Security Act, 42 U. S. C. §§ 1395-1395vv (1976 ed. & Supp. V), providers of health care services are reimbursed for the reasonable cost of services rendered to Medicare beneficiaries as determined by petitioner, the Secretary of Health and Human Services. *Id.* § 1395x(v)(1)(A). Providers receive interim payments at least monthly covering the cost of services they have rendered. *Id.* § 1395g(a). Congress recognized, however, that these interim payments would not always correctly reflect the amount of reimbursable costs, and accordingly instructed petitioner to develop mechanisms

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 2 1984

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-56

**MARGARET M. HECKLER, SECRETARY OF HEALTH
AND HUMAN SERVICES, PETITIONER v.
COMMUNITY HEALTH SERVICES OF
CRAWFORD COUNTY, INC., ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[April —, 1984]

JUSTICE STEVENS delivered the opinion for the Court.

Under what is recognized for present purposes as an incorrect interpretation of rather complex federal regulations, during 1975, 1976 and 1977 respondent received and expended \$71,480 in federal funds to provide health care services to Medicare beneficiaries to which it was not entitled. The question presented is whether the Government is estopped from recovering those funds because respondent relied on the express authorization of a responsible government agent in making the expenditures.

I

Under the Medicare program, Title XVIII of the Social Security Act, 42 U. S. C. §§ 1395-1395vv (1976 ed. & Supp. V), providers of health care services are reimbursed for the reasonable cost of services rendered to Medicare beneficiaries as determined by petitioner, the Secretary of Health and Human Services. *Id.* § 1395x(v)(1)(A). Providers receive interim payments at least monthly covering the cost of services they have rendered. *Id.* § 1395g(a). Congress recognized, however, that these interim payments would not always correctly reflect the amount of reimbursable costs, and accordingly instructed petitioner to develop mechanisms

HAB

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 83-56, Heckler v. Community Health Service

There are two holds for Community Health Services.

83-277 -- Walters v. Home Savings and Loan Association of Lawton, Oklahoma. In 1971 Percy and Zelma Durham obtained a \$34,000 mortgage on their home from the Oklahoma Mortgage Co. The loan was guaranteed by the Veterans' Administration. When the Durhams defaulted on the mortgage, respondent, to whom the mortgage had been assigned, foreclosed and bought the property for \$30,000 at the foreclosure sale, which was the amount of money that the VA had authorized it to bid under its regulations governing foreclosures. Respondent then exercised its option under the regulations to convey the property to the VA for the same price. About the same time, the VA learned from Oklahoma Mortgage that Zelma's signatures on the original note and mortgage were forged. The VA then refused to pay off the remaining amount due on the guaranty, since under its regulations forgery is a defense to an action on a guarantee. Respondent then brought this suit on the guarantee. After a trial the District Court entered judgment for respondent, and the Court of Appeals affirmed.

The Court of Appeals held that because at the time of the foreclosure sale the VA knew that the mortgage was forged but did not disclose that to respondent, it should be estopped to assert its forgery defense. Had the VA disclosed the forgery to respondent, it would not have conveyed the property to the Government. Judge McKay dissented, arguing that the VA had engaged in no misleading conduct.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 2, 1984

No. 83-56 Heckler v. Community Health
Services of Crawford Co., Inc.

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference