

The Burger Court Opinion Writing Database

Green v. Mansour

474 U.S. 64 (1985)

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

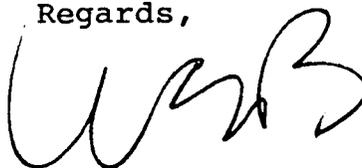
November 5, 1985

Re: No. 84-6270 - Green v. Mansour

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written in a cursive style.

Justice Rehnquist

Copies to the Conference

M

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 21, 1985

No. 84-6270

Green v. Mansour

Dear Thurgood, Harry and John,

We four are in dissent in the
above. I will be glad to take it on.

Sincerely,

Bill

Justice Marshall

Justice Blackmun

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 5, 1985

No. 84-6270

Green, et al., etc. v. Mansour

Dear Bill,

I'll be circulating a dissent in
the above in due course.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

From: Justice Brennan

NOV 18 1985

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICH-
 IGHAN DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE BRENNAN, dissenting

Last Term, in my dissent in *Atascadero State Hospital v. Scanlon*, — U. S. —, —, 105 S. Ct. 3142, 3155 (1985), I explained at length my view that the Court's Eleventh Amendment doctrine "lacks a textual anchor [in the Constitution], a firm historical foundation, or a clear rationale." Today's decision demonstrates that the absence of a stable analytical structure underlying the Court's Eleventh Amendment jurisprudence produces inconsistent decisions.

In *Quern v. Jordan*, 440 U. S. 332 (1979), the State of Illinois contended that the notice relief ordered by the Court of Appeals, which was identical in all significant respects to that requested in the instant case,¹ offended the Eleventh

¹Green asked the District Court to order that notices be sent out to other AFDC recipients advising them of the outcome of the litigation, *i. e.* of the declaratory judgment and telling them that state administrative proceedings might be available to them to obtain retroactive benefits. App. 132. Similarly, the notice approved in *Quern v. Jordan*, 440 U. S. 332, 349 (1979), "inform[ed] class members that their federal suit [was] at an end, that the federal court [could] provide them with no further relief, and that there [were] existing state administrative procedures which they may wish to pursue." The class members were "given no more . . . than what they would have gathered by sitting in the courtroom." *Id.*, at 349, quoting *Jordan v. Trainor*, 563 F. 2d 873, 877-878 (1977). And, of course, what class members would have gathered by sitting in the courtroom was

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 21, 1985

No. 84-6270

Green v. Mansour

Dear Harry,

Please join me in your dissent in
the above.

Sincerely,



Justice Blackmun

Copies to the Conference

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

From: **Justice Brennan**

Circulated: _____

Recirculated: NOV 22 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICHIGAN
 DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

Last Term, in my dissent in *Atascadero State Hospital v. Scanlon*, — U. S. —, —, 105 S. Ct. 3142, 3155 (1985), I explained at length my view that the Court's Eleventh Amendment doctrine "lacks a textual anchor [in the Constitution], a firm historical foundation, or a clear rationale." Today's decision demonstrates that the absence of a stable analytical structure underlying the Court's Eleventh Amendment jurisprudence produces inconsistent decisions.

In *Quern v. Jordan*, 440 U. S. 332 (1979), the State of Illinois contended that the notice relief ordered by the Court of Appeals, which was identical in all significant respects to that requested in the instant case,¹ offended the Eleventh

¹Green asked the District Court to order that notices be sent out to other AFDC recipients advising them of the outcome of the litigation, *i. e.* of the declaratory judgment and telling them that state administrative proceedings might be available to them to obtain retroactive benefits. App. 132. Similarly, the notice approved in *Quern v. Jordan*, 440 U. S. 332, 349 (1979), "inform[ed] class members that their federal suit [was] at an end, that the federal court [could] provide them with no further relief, and that there [were] existing state administrative procedures which they may wish to pursue." The class members were "given no more . . . than what they would have gathered by sitting in the courtroom." *Id.*, at 349, quoting *Jordan v. Trainor*, 563 F. 2d 873, 877-878 (1977). And, of course,

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 26, 1985

No. 84-6270

Green v. Mansour

Dear Thurgood,

Please join me in your dissent in
the above.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1985

Re: 84-6270 - Green v. Mansour

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 5, 1985

Re: No. 84-6270-Green v. Mansour

Dear Bill:

I await the dissent.

Sincerely,

T.M.

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 20, 1985

Re: No. 84-6270-Green v. Mansour

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: **NOV 26 1985**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICH-
 IGAN DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE MARSHALL, dissenting.

I concur in JUSTICE BRENNAN's and JUSTICE BLACKMUN's dissents. I contribute to this proliferation of opinions only to add a few words as to why, even under the view of the Eleventh Amendment accepted by the majority in *Atascadero State Hospital v. Scanlon*, 473 U. S. — (1985), the majority reaches an incorrect result in this case.

I

JUSTICE BRENNAN's opinion cogently explains how the decision of the majority today repudiates *Quern v. Jordan*, 440 U. S. 332 (1979). The Court in that case did not approve notice relief as a "mere case-management device," *ante*, at 6, nor does the majority suggest how informing class members of state administrative procedures serves a case-management function in federal-court litigation. Rather, the *Quern* Court, explicitly posing the question whether "the modified notice contemplated by the Seventh Circuit constitute[s] permissible prospective relief or a 'retroactive award which requires the payment of funds from the state treasury,'" concluded that "this relief falls on the *Ex parte Young* side of the Eleventh Amendment line rather than on the *Edelman* side." *Quern, supra*, at 346-347.

STYLISTIC CHANGES THROUGHOUT

* P. 1

Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: DEC 1 _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICH-
 IGAN DEPARTMENT OF SOCIAL SERVICES

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

[December —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and
 JUSTICE STEVENS join, dissenting.

I concur in JUSTICE BRENNAN's and JUSTICE BLACKMUN's
 dissents. I contribute to this proliferation of opinions only to
 add a few words as to why, even under the view of the Elev-
 enth Amendment accepted by the majority in *Atascadero*
State Hospital v. Scanlon, 473 U. S. — (1985), the major-
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 nor does the majority suggest how informing class members
 of state administrative procedures serves a case-manage-
 ment function in federal-court litigation. Rather, the *Quern*
 Court, explicitly posing the question whether "the modified
 notice contemplated by the Seventh Circuit constitute[s] per-
 missible prospective relief or a 'retroactive award which re-
 quires the payment of funds from the state treasury,'" con-
 cluded that "this relief falls on the *Ex parte Young* side of the
 Eleventh Amendment line rather than on the *Edelman* side."
Quern, supra, at 346-347.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 6, 1985

Re: No. 84-6270, Green v. Mansour

Dear Bill:

I, too, shall await the dissent in this case.

HAB.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 21, 1985

Re: No. 84-6270, Green v. Mansour

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Blackmun

Circulated: NOV 21 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICHIGAN
 DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE BLACKMUN, dissenting.

I joined JUSTICE BRENNAN's dissent in *Atascadero State Hospital v. Scanlon*, 478 U. S. —, — (1985), and I join his dissent in this case. I fully agree that the Court's Eleventh Amendment approach, as demonstrated by the difference between the result in this case and that in *Quern v. Jordan*, 440 U. S. 332 (1975), is sterile, produces inconsistent decisions, and is in serious need of reconsideration. Cf. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. —, —, — (1985) (slip op. 10, 18).

But I also would reverse the judgment of the Court of Appeals in this case for the additional reason expressed in my dissent (joined by JUSTICES BRENNAN, MARSHALL, and STEVENS) in *Atascadero*, 473 U. S., at —, namely, the waiver by Michigan, "as a willing recipient of federal funds," *id.*, at —, of any Eleventh Amendment barrier that otherwise might exist. The State too easily avoids its responsibilities, and the Court by its decision today allows the State to go its way unimpeded and unburdened with any remedy for those who have been wronged during the period of Michigan's noncompliance with federal law.

STYLISTIC CHANGES

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: NOV 27 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
AGNES MARY MANSOUR, DIRECTOR, MICH-
IGAN DEPARTMENT OF SOCIAL SERVICES

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

[December —, 1985]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, dissenting.

I joined JUSTICE BRENNAN's dissent in *Atascadero State Hospital v. Scanlon*, 473 U. S. —, — (1985), and I join his dissent in this case. I fully agree that the Court's Eleventh Amendment approach, as demonstrated by the difference between the result in this case and that in *Quern v. Jordan*, 440 U. S. 332 (1975), is sterile, produces inconsistent decisions, and is in serious need of reconsideration. Cf. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. —, —, — (1985) (slip op. 10, 18).

But I also would reverse the judgment of the Court of Appeals in this case for the additional reason expressed in my dissent (joined by JUSTICES BRENNAN, MARSHALL, and STEVENS) in *Atascadero*, 473 U. S., at —, namely, the waiver by Michigan, "as a willing recipient of federal funds," *id.*, at —, of any Eleventh Amendment barrier that otherwise might exist. The State too easily avoids its responsibilities, and the Court by its decision today allows the State to go its way unimpeded and unburdened with any remedy for those who have been wronged during the period of Michigan's noncompliance with federal law.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 7, 1985

84-6270 Green v. Mansour

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

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: NDV 4 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

**JOHNNY GREEN, ET AL., ETC., PETITIONERS v.
AGNES MARY MANSOUR, DIRECTOR, MICHIGAN
DEPARTMENT OF SOCIAL SERVICES**

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

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners brought two separate class actions in the United States District Court for the Eastern District of Michigan against respondent Director of the Michigan Department of Social Services, claiming that respondent's calculations of benefits under the federal Aid to Families With Dependent Children (AFDC) program violated certain provisions of that federal law. Before a final determination on the merits of either case could be made, Congress amended the relevant statutory provisions. It is undisputed that respondent's calculations thereafter have conformed to federal law. Notwithstanding this fact, petitioners claim that they were entitled to have the District Court award them both "notice relief" and a declaration that respondent's prior conduct violated federal law. The District Court denied petitioners both forms of relief, and the Court of Appeals for the Sixth Circuit affirmed. We now affirm the judgment of the Court of Appeals, holding that the Eleventh Amendment to the United States Constitution and applicable principles governing the issuance of declaratory judgments forbid the award of either form of relief.

This case began as two distinct class actions brought on behalf of recipients of benefits dispersed under the AFDC program. See 42 U. S. C. §§ 601-615. The AFDC program

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: NOV 6 1985

STYLISTIC CHANGES THROUGHOUT

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICHIGAN
 DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners brought two separate class actions in the United States District Court for the Eastern District of Michigan against respondent Director of the Michigan Department of Social Services, claiming that respondent's calculations of benefits under the federal Aid to Families With Dependent Children (AFDC) program violated certain provisions of that federal law. Before a final determination on the merits of either case could be made, Congress amended the relevant statutory provisions. It is undisputed that respondent's calculations thereafter have conformed to federal law. Notwithstanding this fact, petitioners claim that they were entitled to have the District Court award them both "notice relief" and a declaration that respondent's prior conduct violated federal law. The District Court denied petitioners both forms of relief, and the Court of Appeals for the Sixth Circuit affirmed. We now affirm the judgment of the Court of Appeals, holding that the Eleventh Amendment to the United States Constitution and applicable principles governing the issuance of declaratory judgments forbid the award of either form of relief.

The two class actions involved in this case were brought on behalf of recipients of benefits dispersed under the AFDC program. See 42 U. S. C. §§ 601-615. The AFDC program

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 11/8/85

P.4
 3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICHIGAN DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners brought two separate class actions in the United States District Court for the Eastern District of Michigan against respondent Director of the Michigan Department of Social Services, claiming that respondent's calculations of benefits under the federal Aid to Families With Dependent Children (AFDC) program violated certain provisions of that federal law. Before a final determination on the merits of either case could be made, Congress amended the relevant statutory provisions. It is undisputed that respondent's calculations thereafter have conformed to federal law. Notwithstanding this fact, petitioners claim that they were entitled to have the District Court award them both "notice relief" and a declaration that respondent's prior conduct violated federal law. The District Court denied petitioners both forms of relief, and the Court of Appeals for the Sixth Circuit affirmed. We now affirm the judgment of the Court of Appeals, holding that the Eleventh Amendment to the United States Constitution and applicable principles governing the issuance of declaratory judgments forbid the award of either form of relief.

The two class actions involved in this case were brought on behalf of recipients of benefits dispersed under the AFDC program. See 42 U. S. C. §§ 601-615. The AFDC program

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

Pp 5, 7, 9-10

From: Justice Rehnquist

Circulated: _____

Recirculated: 11/26/85

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6270

JOHNNY GREEN, ET AL., ETC., PETITIONERS *v.*
 AGNES MARY MANSOUR, DIRECTOR, MICHIGAN DEPARTMENT OF SOCIAL SERVICES

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

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners brought two separate class actions in the United States District Court for the Eastern District of Michigan against respondent Director of the Michigan Department of Social Services, claiming that respondent's calculations of benefits under the federal Aid to Families With Dependent Children (AFDC) program violated certain provisions of that federal law. Before a final determination on the merits of either case could be made, Congress amended the relevant statutory provisions. It is undisputed that respondent's calculations thereafter have conformed to federal law. Notwithstanding this fact, petitioners claim that they were entitled to have the District Court award them both "notice relief" and a declaration that respondent's prior conduct violated federal law. The District Court denied petitioners both forms of relief, and the Court of Appeals for the Sixth Circuit affirmed. We now affirm the judgment of the Court of Appeals, holding that the Eleventh Amendment to the United States Constitution and applicable principles governing the issuance of declaratory judgments forbid the award of either form of relief.

The two class actions involved in this case were brought on behalf of recipients of benefits dispersed under the AFDC program. See 42 U. S. C. §§ 601-615. The AFDC program

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 5, 1985

Re: 84-6270 - Green v. Mansour

Dear Bill:

I shall await the dissent in this case.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

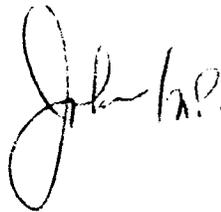
November 19, 1985

Re: 84-6270 - Green v. Mansour

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Justice Brennan

Copies to the Conference

.82 NOV 19 6 3:50

NOV
20 1985

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 22, 1985

Re: 84-6270 - Green v. Mansour

Dear Harry:

Please join me in your separate dissent.

Respectfully,

A handwritten signature in cursive script, appearing to read "J.P.", with a large loop at the end.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 27, 1985

Re: 84-6270 - Green v. Mansour

Dear Thurgood:

Please join me in your separate dissent.

Respectfully,

A handwritten signature in cursive script, appearing to read "John P. Stevens".

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

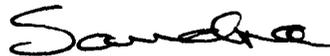
November 7, 1985

No. 84-6270 Green v. Mansour

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference