10-1975

Norton v. Mathews

Lewis F. Powell Jr.

SG does not oppose noting probable jurisdiction on the constitutional issue. The issue is important: 13 cases involving it are pending in lower federal courts awaiting disposition of this case.

The SG opposes noting juris. as to the statutory claim — i.e., that the district court erred in sustaining the hearing examiner's finding that appellant's father was neither living with him or contributing to his support. The SG says this claim has no substantial basis in the evidence, and is essentially a factual judgment not warranting this Court's review.

Hold for Salfi.

RC

Hold

Discuss

RC

Preliminary Memo

Conf. of June 12, 1975
List 2, Sheet 1

No. 74-6212

NORTON	Appeal from USDC, D. Md. (Murray, Blair, D.J.J.; Winter, C.J., dis.)	Timely
V.		
WEINBERGER, Secretary of HEW	Federal/Civil	

1. This is a Weinberger v. Salfi hold which has previously been remanded for reconsideration in light of Jimenez v. Weinberger, 417 U.S. 628 (1974). Appellant seeks relief from the provisions of the Social Security Act which require that he have received support from his deceased father. Had appellant lived with his father, were he his father's legitimate child, or were he an illegitimate

child meeting a variety of qualifications, he would not be required to show receipt of support.

2. FACTS: Appellant was born in 1964 to unmarried teenage parents. His father acknowledged responsibility, and at birth contributed $6 and some baby habiliments, but never provided support. The father entered the Army shortly thereafter, and did seek to take out an allotment in appellant's behalf. However, the procedure was incomplete at the time of his death in Vietnam. Appellant then applied for child's insurance benefits, under 42 U.S.C. § 402(d); the application was pursued to the exhaustion of administrative remedies. He thereupon filed suit under 42 U.S.C. § 405(g).

Because he sought to enjoin, on constitutional grounds, the operation of the provisions of the Act which disqualified him, appellant requested a three-judge district court. The single district judge (Blair) obliged, but only after first resolving, adversely, appellant's nonconstitutional claim that he had been sufficiently supported by his father to meet the statute's dependency requirements. Appellant relied chiefly on his father's efforts to take out an allotment; the court concluded that the statute plainly required actual support, not intended support. See § 402(d)(3) (appended to this memo).

The three-judge court (Winter, Murray, Blair) thought it uncertain that the single judge had had jurisdiction over the

nonconstitutional claim, since the case required three judges; it did not reach the issue, however, because it concluded that the single judge had properly disposed of that claim. The court went on to certify the case as a class action, and then turned to the constitutional issue. The latter requires a preliminary description of the relevant statutory provisions.

Section 402(d) provides for benefits for a "dependent" "child" of a deceased or disabled wage earner. Section 402 (d)(3) (appended at the end of this memo) deems a child to be dependent upon his father if he is a legitimate or adopted child, if he was living with his father, or if he is a "child" by virtue of §§ 416(h)(2)(B) or 416(h)(3).*/ The latter two sections provide for certain exceptions to the general requirement that status as a "child" be determined by application of state law governing devolution of intestate property (which excludes illegitimates in many states); the exceptions are for those persons who are illegitimate only because of defective ceremonial marriages, or who have been acknowledged in writing, or who have been the beneficiaries of court paternity or support decrees. Because petr was in none of these categories, he could not be deemed eligible save by a

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*/Section 402(d)(3) also deems a child to be dependent if he was receiving support from the wage earner at the time of death; as has already been noted, appellant failed to establish that he had been. (cont.)

showing of receipt of support -- a showing which the Secretary and lower courts found him to have failed to make.

The court rejected appellant's contention that the statutory classifications should be subjected to strict scrutiny, but did conclude that the "new rational basis approach" of Weber v.

On the Jimenez remand, the majority and dissent engaged in a lengthy and complex discussion of whether a child was also deemed dependent if it was a "child" by virtue of § 416 (h)(2)(A), which provides for determination of that status by application of state intestacy laws. See D. Ct. opn, at 11-16, dissenting opinion, at n. 1. The majority relied on the plain wording of § 402(d)(3), while the dissent relied principally on language in Jimenez, 417 U.S., at 634. That case does indicate that both the Secretary and the Court assumed that an illegitimate entitled to inherit is deemed dependent by virtue of § 416(h)(2)(A). The issue was not essential to Jimenez, however, and § 416(h)(2)(A) on its face does nothing more than establish that such a person is a "child." Section 402(d)(3) deems to be "dependent" a person who is a "child" by operation of certain specific sections, not including § 416(h)(2)(A).

The relevance of this issue turns on the lack of rational relationship between state devolution laws and the likelihood of an illegitimate's having been dependent on his father.

Aetna Casualty Co., 406 U.S. 164 (1972), was appropriate. This approach was thought to be that of determining statutory purpose, and then judging whether the challenged classification rationally served that purpose. The court also thought, however, that social welfare legislation could not be surgically precise, so that some incidental discrimination was permissible. As for the Social Security Act, the court stated that it was based on the dual concepts of parentage and dependency, and that the dependency involved was actual dependency, not potential. The court considered it reasonable for the statute to presume dependency for legitimate children, for any child living with a father, and for illegitimates who had obtained judicial decrees of paternity or support. The presumption of dependency for those who had been acknowledged in writing was somewhat more difficult, but the court thought it reasonable to presume that men are more likely to provide support when they have been willing to accept responsibility in writing. Unlike Labine v. Vincent, 401 U.S. 532 (1971), the statute did not erect an impenetrable barrier against illegitimates -- they had full opportunity to show the critical element of dependency. Moreover, the statute really didn't treat equal dependents unequally, cf., Weber, since all could establish dependency; rather, it merely established simplified formalistic methods of proof for reasonably chosen classes of children. Appellant's

problem was seen as basically that of being outside the class of persons for whom the Act was designed, to wit, those who received actual support from a wage earner.

This Court vacated and remanded in light of Jimenez v. Weinberger, in which was ruled unconstitutional a provision of the Act which barred benefits to illegitimate children born after the onset of their wage earner parent's disability. The majority of the district court concluded that Jimenez had no effect on its earlier decision. Its basic point of distinction was that in Jimenez a particular subclass of illegitimates was prohibited from even showing dependency, despite the Act's basic purpose of providing support for dependents, whereas here appellant is not barred from making such a showing. It noted that Jimenez had not established illegitimacy as a suspect classification, nor had it cast doubt on the court's understanding of the purpose of the Social Security Act. Moreover, the restriction here does not make the statute underinclusive -- while it permits benefits for nondependent children falling in various categories, it does not exclude any child who in fact was dependent.

Judge Winter, dissenting, acknowledged that Jimenez dealt with different restrictions, but thought the case "gave strong and clear indications" that the dependency requirement was also invalid. His principal argument was that various references

in the opinion supported appellant's contention that the purpose of the Act were to replace actual or potential support.*/ This being the purpose, proof of paternity alone was sufficient, and a further showing of support could not be rationally or validly required of subclasses of illegitimates.

3. CONTENTIONS: Appellant contends that the purpose of the Act is to replace actual or potential support, and that the requirement that an illegitimate who establishes paternity must also show actual support is thus irrational and arbitrary. He also contends that there is no rational or legitimate basis for discriminating against illegitimate children (especially since almost as many absent fathers of legitimate children fail to support their children as do absent fathers of illegitimate children), and that the case is analogous to Frontiero v. Richardson, 411 U.S. 677 (1973) (which struck down a requirement that dependency on female military personnel be established). He contends that illegitimacy should be viewed as a suspect classification, since illegitimates have been "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." San Antonio Indep. School Dist v. Rodriquez, 411 U.S. 1, 28 (1973).

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*/He relied, for example, on the Court's citation to a House-Senate Conference Report; there is language in that report, not quoted in Jimenez, which speaks of the purpose of the Act in terms of replacing obligations of support. Judge Winter also focused on the fact that

(cont.)

He also preserves his factual claim that he made an adequate showing of receipt of support from his father.

4. DISCUSSION: The case is a hold for Salfi, both on the merits and jurisdictionally. The jurisdictional issues affect the propriety of class-wide relief and, more importantly, this Court's appellate jurisdiction. Note 8 of Justice Rehnquist's draft opinion in Salfi leaves open the issue of whether a § 405(g) court can grant injunctive relief. If the jurisdictional portion of the draft is adopted, the present appeal forces that issue -- if § 405(g) does not authorize injunctive relief, the three-judge court was improperly convened and the requirements for § 1253 appeals are not met (unlike Salfi, § 1252 jurisdiction is also lacking, since the decision below was in favor of the statute's validity).

The arguments based on the intent of the Social Security Act strike me as exceedingly strange. They would strike down the support requirement because of its perceived inconsistency with an overall statutory purpose which has been divined in total disregard of the challenged section -- which section makes abundantly clear Congress' interest in focusing on actual

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the applicant in Jimenez was precluded from benefits because he in fact could not show that he had ever been supported by his father (since the father was disabled when he was born) -- which is precisely the problem which appellant faces.

support. To my mind, the only appropriate frame of analysis looks strictly to whether Congress had a rational basis for presuming wage earner support as to all classes of children, legitimate and illegitimate, save for that to which appellant belongs (unless, of course, the Court treats illegitimacy as a suspect criterion).

Frame of analysis

There is no response.

6/5/75 Jacobs All opns in petn app.

42 U.S.C. § 402(d)(3):

> A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—
>
> (A) such child is neither the legitimate nor adopted child of such individual, or
>
> (B) such child has been adopted by some other individual.
>
> For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

Gail - Next. Ct.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Postpone Juris

June - this is related to Salfi. Will you look at it?

June 12, 1975

DISCUSS

MEMORANDUM TO THE CONFERENCE

Re: No. 74-6212 - Norton v. Weinberger

I have taken the liberty of asking Mike Rodak to relist this case for me at our next Conference, even though there were five votes to note probable jurisdiction limited to the constitutional question at today's Conference. My reason for doing so is that the presently circulating draft opinion in Salfi contains a reservation as to the question of whether a District Court exercising jurisdiction under § 205(g) of the Social Security Act may issue an injunction. If that circulation does become a Court opinion, there will be presented on the appeal in Norton the issue as to whether this Court has jurisdiction under 28 U.S.C. § 1253, since that section limits our appellate jurisdiction to an action required to be heard by a three-judge court, and 28 U.S.C. § 2282 requires a three-judge court only when application is made for an interlocutory or permanent injunction restraining the enforcement of . . . "any Act of Congress for repugnance to the Constitution of the United States . . .". This question is presented in Norton though not in Salfi because in the latter case we have jurisdiction under 28 U.S.C. § 1252 because the District Court there held an Act of Congress unconstitutional. In Norton the ruling of the three-judge District Court was in favor of constitutionality, and therefore jurisdiction depends on 28 U.S.C. § 1253.

If there is thought to be substance to my view, I think jurisdiction ought to be postponed in the case, rather than simply noted.

Sincerely,

WM

Conferen[illegible] 6-12-75

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 74-6212

Submitted ....., 19... *Announced* ....., 19...

Norton

vs.

Weinberger

DISCUSS

Brennan, Stewart & Blackmun think we must note their case - notwithstanding Solfi.

Hall dis
Solfi

Noted
limited to
Const. Q

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Conference 6-19-75

Court ..... *Voted on*....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 74-6212

Submitted ....., 19... *Announced* ....., 19...

Norton

VS.

Weinberger relist

Postponing Justice, order not to come down until Salfi comes down. Then cite Salfi & note thereon

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
.....														
Rehnquist, J.														
Powell, J.														
Blackmun, J.														
Marshall, J.														
White, J.														
Stewart, J.														
Brennan, J.														
Douglas, J.														
Burger, Ch. J.														

74-6212 NORTON v. MATHEWS appeal from Argued 1/13/76
3 Jdct Md (Winter, dissenting)

Appellant is an illegitimate child who was never supported by his father, who was killed in Vietnam.

Appellant, who unsuccessfully sought "dependent child" benefits under Social Security Act, attacked – on E/P grounds – the validity of Act (after exhausting adm. remedies, so there is no Salfi issue).

Sec 402(d) "deems" a child to be "dependent" if (i) he is legitimate or adopted, (ii) he was in fact living with & being supported by his father, (iii) he has been acknowledged in writing by his father, or (iv) he is illegitimate only because of defective marriage ceremony.

Pett., who came within none of these categories, contends no rational basis for discriminating vs illegitimate children when many legitimate children are not supported.

Majority of 3J/Ct found rational basis for the presumption that leg. fathers are more likely to support their illegit. fathers. Moreover, the illegitimate child is not foreclosed: he wins benefits if he proves he was being supported. Purpose of benefits is to replace support lost when parent dies.

We remanded Weinberger v. Wiesenfeld, 420 U.S. 636 – where a provision of Act that barred benefits to illegitimate child born after husband's death.

Brown (for appellant)

Counsel in this & Lucas cases (both involving § 202(d)(3) & 216(h)(3) of Social S/Act) have agreed to argue Juris. issue in this case & merits in Lucas - issues are said to be same in both

This Court has no juris unless 3J/Ct was properly convened & had auth. to issue injunctive relief.

No case in point under S/Security Act holding that injunctive relief is proper.

Brown concedes there is no explicit leg. history & no express statutory authorization. Argues that injunctive relief is necessary to ~~provide the relief~~ accomplish purposes of Act.

W/out injunctive relief, some claimants cannot be made whole.

Jones (SG) (These notes are confined to the Juris. Issue)

Five reasons why this Court lacks juris.

1. Appellants individual claims could be adjudicated by a single judge (w/out 3 J/Ct)

Must distinguish bet. ind. claims & class claims.

205(h) governs — it provides that review of Sec. actions may be made only under 205(g).

§ 205(g) authorizes a DC only to affirm, reverse or modify decision of Sec. This doesn't authorize an injunction.

(Stewart & White ask whether a "reversal" on ground of Const. invalidity is not functional equivalent of an injunction. I would think not for purposes of 3 J/Ct juris. Moreover, a Declaratory Judg. — perhaps also equivalent to injunction — doesn't require 3 J/Ct)

Stewart further noted that other cases require that 3 J/Ct juris be narrowly construed.

In any event, an individual claimant never requires an injunction. Reversal of denial of benefits would afford complete relief

Jones (cont)

Only if class action was appropriate, is there any basis for S M/Ct Juris.

A DC may entertain class actions only if there is subject matter juris. of the claims of class. See pp 13-18 of SG's Brief as showing no sub. matter juris. Saltz is controlling.

Only source of sub. matter juris is 205(q), but terms of this § do not apply to a class.

Here, as in Saltz, designation of class is fatal. No allegation that members of class have filed applications with Sec.

x x x

Appellant argues (apparently) that the class may be redefined on a remand. Rule 23(a)(1) requires class to be so numerous as to make separate suits impractical. This class may be only 1 appellant 23(a)(3) requires claim of named party must be typical. Not is not likely to be true, as facts will vary.

Even if a class were certified, it would be small & a single DC could dispose of them by reversal w/out requiring an injunction

The Chief Justice Vacate + Remand

Juris: Brought as a class action + but not valid class. Judge to pay money is not an "injunction".

No 3 J/Ct juris

xxxxxxxx Stevens, J.

Jurisdiction

In Jimenez we assumed jurisdiction.

Salfi doesn't apply.

Words of 405(g) not used in normal sense. Secretary is a party not a lower judge.

Where issue is constitutionality in issue, the policy favors 3 J/Ct.

Merits:

Brennan, J. Reverse

Order of Sec. may be "affirmed, modified or reversed" [405(g)]. This should not be read to preclude "injunction" where action is found to be unconstitutional.

Case is therefore properly here.

As to merits, strict scrutiny applies. Frontiero controls - presumption is analogous.

Stewart, J. Vacate + Remand

Jurisdiction - Will defer to Rehnquist, but "until he speaks I think 3 J/Ct did not have juris". *

Thus 3 J/Ct was not properly constituted. Single judge should decide case, + appeal should then go to CA.

* Salfi controls, ~~but~~ on principle, although Q was left open in a note

~~Note to Salfi~~

Byron relies on Secy II as supporting jurisdiction. (Stewart noted that there is no 405(g) in Interstate Commerce Act)

There we do have juris.

As to merits

Affirm (on merits)

There is jurisdiction.

On merits, statute is OK.

Blackmun, J. Vacate & Remand

No juris.

Powell, J. Vacate & Remand

1. Jurisdiction. §405(g) authorizes DC to affirm, reverse or modify decision of Secretary. No reference to reviewing an injunction.

Under Salfi, there was no valid class action here. Absent a class, an individual claimant can obtain full relief by a "reversal". Thus, no injunction would be proper; any legal relief is adequate.

Accordingly, 3d/Ct had no juris.

2. Merits - Do not reach in this case.

Rehnquist, J. Vacate & Remand

405(g) provides for narrow review.

Can have a declaratory judgment by a single judge.

74-6212

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1976

Dear Lewis:

No. 75-649, Mathews v. Mattern, in December was marked as a hold for No. 74-204, Mathews v. Eldridge, which has now come down, and for No. 74-6212, Norton v. Mathews. I have written Norton. It is at the Printer, but I propose to hold it until the companion case is ready. In any event, I doubt very much that Norton will bear on Mattern.

No. 75-1234, Mathews v. Elliott, at Saturday's conference was relisted for May 20. I asked that it be relisted with the Mattern case. My thought is that both bear upon your Eldridge opinion and that we can get rid of both cases (perhaps remand for reconsideration in the light of Eldridge) rather than have them drag on for Norton.

I shall value your comments as to this suggestion. Would you be able to do this for next Thursday's conference?

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Want until Norton is circulated

Delivered LFP
5/19 — Print
to Circulation

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6212

Jorie

Gregory Norton, Jr., etc., Appellant, v. F. David Mathews, Secretary of Health, Education, and Welfare.	On Appeal from the United States District Court for the District of Maryland.

[May —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

On the merits, this case raises the same question as to the constitutionality of §§ 202 (d)(3) and 216 (h)(3)(C)(ii) of the Social Security Act, 42 U. S. C. §§ 402 (d)(3) and 416 (h)(3)(C)(ii), as was presented in *Mathews* v. *Lucas*, *ante*, p. —. The present litigation, however, also raises certain jurisdictional issues. It now has become apparent that the simultaneous submission of *Lucas* to the Court, and our decision in that case today, make it necessary for us specifically to decide the jurisdictional questions.

I

Appellant Gregory Norton, Jr., was born out of wedlock in February 1964. Both his father and his mother then were high school students, aged, respectively, 16 and 14, who lived separately at home with their parents. The two never married and, indeed, never lived together. Appellant always has resided with his maternal grandmother and has been cared for by her. When Gregory was born, his father contributed six dollars and some clothing and other habiliments for the baby, but, being

so young and unemployed, he never assumed appellant's actual support.

In February 1965 the father entered military service. He was killed in Vietnam on May 19, 1966, at age 19. Before his death, the father apparently took some initial steps (the procurement of a birth certificate and other items) necessary for the processing of a dependent child's military allotment. The father failed, however, to complete the required procedures before he was killed.

In September 1969 appellant's maternal grandmother filed on his behalf an application for a surviving child's benefits under § 202 (d)(1) of the Act, 42 U. S. C. § 402 (d)(1), based on the father's earnings record. An administrative hearing followed. The Hearing Examiner concluded that appellant was not entitled to benefits as a dependent child because his father, at the time of his death, was neither living with appellant nor contributing to appellant's support.[1] App. 13–19. The subsequent administrative appeal was no more successful. *Id.*, 20–21.

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[1] Section 202 (d)(1) provides survivorship benefits only to a child who was "dependent" upon the deceased insured parent at the time of the parent's death. A legitimate child, a child entitled under the intestacy laws of the insured parent's domicile to inherit personal property from the parent, a child whose illegitimacy results from a formal defect in his parents' purported marriage ceremony, and a child acknowledged in writing by the insured father as his son or daughter or judicially decreed (during the father's lifetime) to be such, are all deemed under the Act to be dependent, and thus are relieved of otherwise proving actual dependency. Sections 202 (d)(1), 202 (d)(3), 216 (e), 216 (h)(2), and 216 (h)(3)(C), 42 U. S. C. §§ 402 (d)(1), 402 (d)(3), 416 (e), 416 (h)(2), and 416 (h)(3)(C). Since appellant did not come within any of these categories, he could establish his status as a dependent child under the Act only by showing that his father lived with him or contributed to his support at the time of his death. Sections 202 (d)(3) and 216 (h)(3)(C)(ii), 42 U. S. C. §§ 402 (d)(3) and 416 (h)(3)(C)(ii). See generally *Mathews* v. *Lucas*, *ante*, p. —.

The present action was then instituted on behalf of appellant against the Secretary of Health, Education, and Welfare. By the complaint, relief was sought alternatively on statutory and constitutional grounds. First, it was asserted that, by his attempt to secure a military allotment for appellant, the father, at the time of his death, in fact was contributing to appellant's support, within the meaning of § 216 (h)(3)(C)(ii) of the Act, and that appellant therefore was a dependent of the father, under §§ 202 (d)(1) and (3), and entitled to benefits. Second, it was asserted that, by creating a presumption of dependency, and consequent qualification for benefits, for legitimate children generally, and for illegitimate children under certain circumstances, see n. 1, but denying the presumption to appellant and others similarly situated, the Act discriminated against appellant's class, in violation of the guaranty of equal protection implicit in the Due Process Clause of the Fifth Amendment.

Appellant's statutory claim was initially considered and rejected by a single district judge. *Norton* v. *Richardson*, 352 F. Supp. 596 (Md. 1972). In view of the complaint's request for certification of a class pursuant to Fed. Rule Civ. Proc. 23 (c)(1), and for class-wide injunctive relief against the alleged unconstitutional operation of the Act's presumptions of dependency, a three-judge court was convened under 28 U. S. C. §§ 2282 and 2284 to pass upon the constitutional claim. The three-judge court first agreed with, and reaffirmed, the single judge's rejection of appellant's statutory claim. *Norton* v. *Weinberger*, 364 F. Supp. 1117, 1120 (Md. 1973). The court went on to identify the plaintiff class, *id.*, at 1120–1121,[2] but on the merits of the constitutional claim it ruled in

[2] The definition of the class, however, does not appear to have been formalized in the three-judge court's judgment. App. 59.

favor of the Secretary and granted summary judgment in his favor. *Id.*, at 1121–1131.

Appellant, taking the position that the 3-judge court had denied his request for an order enjoining enforcement of provisions of the Act, lodged a direct appeal here pursuant to 28 U. S. C. § 1253. While his jurisdictional statement was pending, *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974), was decided. This Court thereafter vacated the 3-judge court's judgment and remanded the case for further consideration in the light of *Jimenez*. 418 U. S. 902 (1974).

On the remand, the same 3-judge court, with one judge now dissenting (adhered to its earlier conclusion in favor of constitutionality. *Norton* v. *Weinberger*, 390 F. Supp. 1084 (Md. 1975). Appellant has again appealed. We postponed the question of jurisdiction to the hearing of the case on the merits, 422 U. S. 1054 (1975), and, in doing so, cited *Weinberger* v. *Salfi*, 422 U. S. 749, 763 n. 8 (1975), which just then had been decided. Subsequently, we set the case for oral argument with *Mathews* v. *Lucas*, *ante*. 423 U. S. 819 (1975).

II

The question whether the 3-judge court was properly convened upon appellant's demand for injunctive relief is relevant, of course, to our appellate jurisdiction. If the court was not empowered to enjoin the operation of a federal statute, then three judges were not required to hear the case under 28 U. S. C. § 2282, and this Court has no jurisdiction under 28 U. S. C. § 1253. Accordingly, appellant and the Secretary have debated whether the District Court possessed injunctive power under § 205 (g) of the Act,[1] 42 U. S. C. § 405 (g), and whether, in

[1] Section 205 (b) reads in pertinent part:

"Any individual, after any final decision of the Secretary made

the light of § 205 (h),[4] 42 U. S. C. § 405 (h), relief was available under the mandamus statute, 28 U. S. C. § 1361,[5] or under the Administrative Procedure Act, 5 U. S. C. § 701 *et seq.*[6]

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after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action . . . . Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides . . . . As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing."

[4] Section 205 (h) reads in pertinent part:

"The findings and decisions of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employer thereof shall be brought under [§ 1331 and other specified sections] of Title 28 to recover on any claim arising under this subchapter" [subchapter II of the Social Security Act].

See *Weinberger* v. *Salfi*, 422 U. S. 749, 756 n. 3 (1975).

[5] The initiating judge observed that jurisdiction for his court was asserted under the general federal question provision of 28 U. S. C. § 1331, and under 28 U. S. C. § 1361, vesting the district courts with jurisdiction "in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." *Norton* v. *Richardson*, 352 F. Supp. 596, 598 n. 2 (Md. 1972).

[6] The Solicitor General contends that the District Court has jurisdiction to review a social security ruling only under § 205 (g) because § 205 (h) specifically excludes any other source of review of such determinations. He then contends that, for two reasons, there was no jurisdiction here to issue an injunction under § 205 (g). First, § 205 (g) in terms specifies that a district court may enter a judgment only "affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing,"

We think it unnecessary, however, to resolve the details of these [difficult and perhaps close] jurisdictional arguments. The substantive questions raised on this appeal now have been determined in *Matthews* v. *Lucas, ante.*[1] This disposition renders the merits in the present case a decided issue and thus one no longer substantial in the jurisdictional sense.

Assuming that the 3-judge court was correctly convened, and that we have jurisdiction over the appeal, the appropriate disposition in the light of *Mathews* v. *Lucas,* plainly would be to affirm the judgment entered in this case in favor of the Secretary. Assuming, on the other hand, that we lack jurisdiction because the 3-judge court was needlessly convened, the appropriate disposition would be to dismiss the appeal. When an appeal to

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but does not say it may enjoin him, and, moreover, in this statutory structure an injunction is out of place. Second, although the suit was made to sound as a class action, the class was not properly certified, inasmuch as there was no allegation that the members had even filed applications for benefits; thus there is no jurisdiction over the class aspects of the case. *Weinberger* v. *Salfi,* 422 U. S. 749 (1975), is cited. Since only the individual claim remains, even if injunctive power were available under § 405 (g), it would not be appropriately exercised in review of a single claimant's case.

The appellant contends in rebuttal that the "affirming, modifying, or reversing" language in § 205 (g) does not withdraw a district court's general and inherent equity powers, including the power to enjoin, and that, in any event, jurisdiction remains under the other cited statutes.

[1] The respective jurisdictional statements for the original appeal and for the present one preserved appellant's statutory claim along with his constitutional contention. The statutory claim, however, was not pressed in appellant's brief in the present case, and at oral argument is explicitly was abandoned. Tr. of Oral Arg. 5–6.

We note, too, that, in contrast to the situation in *Weinberger* v. *Salfi,* 422 U. S. 749, 763 n. 8 (1975), there is no jurisdiction here under 28 U. S. C. § 1252 since the District Court's decision was in favor of the statute's constitutionality.

this Court is sought from an erroneously convened 3-judge District Court, we retain the power "'to make such corrective order as may be appropriate to the enforcement of the limitations'" which 28 U. S. C. § 1253 imposes. *Bailey* v. *Patterson*, 369 U. S. 31, 34 (1962), quoting *Gully* v. *Interstate Natural Gas Co.*, 292 U. S. 16, 18 (1934). What we have done recently, and in most such cases where the jurisdictional issue was previously unsettled—and we do not imply that our doing so is statutorily or otherwise compelled—has been to vacate the District Court judgment and remand the case for the entry of a fresh decree from which an appeal may be taken to the appropriate court of appeals. *Gonzales* v. *Employees Credit Union*, 419 U. S. 90, 101 (1974), is an example. In the present case, however, the decision in *Lucas* has rendered the constitutional issues insubstantial and so much so as not even to support the jurisdiction of a 3-judge District Court to consider their merits on remand. See, e. g., *Hicks* v. *Miranda*, 422 U. S. 332, 343–345 (1975); *Hagans* v. *Lavine*, 415 U. S. 528, 536–538 (1974). Thus, there is no point in remanding to enable the merits to be considered by a court of appeals. See *McLucas* v. *DeChamplain*, 421 U. S. 21 (1975).*

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* In *McLucas* a single district judge enjoined the enforcement of Art. 134 of the Uniform Code of Military Justice, 10 U. S. C. § 934, without convening a 3-judge court. He did so because he considered the constitutional infirmity of the Article to be plain. See *Bailey* v. *Patterson*, 369 U. S. 31 (1962). On direct appeal, under 28 U. S. C. § 1252, the propriety of proceeding without a 3-judge court was questioned. We observed that if a 3-judge court was originally required under 28 U. S. C. § 2282, we ordinarily were bound to vacate the judgment and remand for the convening of a 3-judge court. *Flemming* v. *Nestor*, 363 U. S. 603, 607 (1960); *Federal Housing Administration* v. *The Darlington, Inc.*, 352 U. S. 977 (1957). Concluding, however, that no purpose could be served by deciding

It thus is evident that, whichever disposition we undertake, the effect is the same. It follows that there is no need to decide the theoretical question of jurisdiction in this case. In the past, we similarly have reserved difficult questions of our jurisdiction when the case alternatively could be resolved on the merits in favor of the same party. See *Secretary of the Navy* v. *Avrech*, 418 U. S. 676 (1974). The Court has done this even when the original reason for granting certiorari was to resolve the jurisdictional issue. See *United States* v. *Augenblick*, 393 U. S. 348, 349–352 (1969). Although such a disposition would not be desirable under all circumstances, we perceive no reason why we may not so proceed in this case where the merits have been rendered plainly insubstantial. Cf. *McLucas* v. *DeChamplain*, 421 U. S., at 32. Making the asumption, then, without deciding, that our jurisdiction in this cause is established, we affrm the judgment in favor of the Secretary on the basis of our decision in *Mathews* v. *Lucas*, *ante*.

It is so ordered.

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whether a 3-judge court was required originally, because intervening decisions of this Court sustaining the constitutionality of Art. 134 had rendered the merits issue plainly insubstantial by the time the case was before us, we vacated the judgment and remanded the case, directing dismissal. 421 U. S., at 32.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 7, 1976

Re: No. 74-6212, Norton v. Mathews

Dear Harry,

My Conference notes indicate that a majority voted to dismiss this appeal for lack of jurisdiction. Accordingly, I shall await a further expression of views on that subject.

Sincerely yours,

P.S.
1.

Mr. Justice Blackmun

Copies to the Conference

June 8, 1976

No 74-6212 Norton v. Mathews

Dear Harry;

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1976

Re: No. 74-6212 - Norton v. Mathews

Dear Harry:

My recollection of the Conference vote in this case is, like Potter's, that there was a majority to dismiss for want of jurisdiction. If there is no longer a majority which feels that the opinion should be written that way, I will of course join you.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1976

Re: No. 74-6212 - Norton v. Mathews

Dear Harry:

Please state at the foot of your opinion in this case that I join the opinion of the Court with the reservations stated in my concurring statement in No. 75-88, Mathews v. Lucas.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 22, 1976

Re: No. 74-6212, Norton v. Mathews

Dear Harry,

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

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 22, 1976

Re: No. 74-6212 - Norton v. Mathews

Dear Harry:

Please join me.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1976

Re: 74-6212 - Norton v. Mathews

Dear Harry:

I join your June 1 proposed opinion.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 28, 1976

RE: No. 74-6212 Norton v.Mathews

Dear John:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1976

Re: No. 74-6212 - Norton v. Mathews
No. 75-88 - Mathews v. Lucas

Dear Harry:

If I have not before made it clear, I join your opinions in these cases and withdraw any concurring opinions or statements previously circulated.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 28, 1976

Re: No. 74-6212, Norton v. Mathews

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

JPS

THE C. J.	~~W. E. B.~~	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
	dissent					1/28/76		
Join HAB 6/25/76	dissent Legal Supt 6/25/76	Join JPS 6/28/76	await further circulation 6/7/76	Join with reservation stated in Concurring opinion in 75-88 6/14/76 Join HAB 6/28/76	Join JPS 6/28/76	2d Supt 6/1/76 4th Supt 6/28/76	Join HAB 6/8/76	maybe 6/11/76
			Join HAB 6/22/76					Join HAB 6/22/76
					74-6212 Norton v. Mathews			