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Federal Jurisdiction: Supreme Court Strains to Provide a Federal Forum for Challenges to State Administration of Welfare Programs

Petitioner, a recipient of public assistance under the federal-state Aid to Families with Dependent Children program, challenged a provision of the New York Code of Rules and Regulations which provided for recoupment by the state of advance welfare grants made to enable recipients to avoid eviction for non-payment of rent. In order to recoup an advance grant, the state simply deducted from subsequent disbursements a percentage of the grant. Petitioner alleged that the state regulation was in conflict with both the equal protection clause of the Constitution and certain provisions of the Social Security Act of 1935.

1. The federal government contributes a specified percentage of the total welfare funds distributed by the state, 42 U.S.C. § 603 (1970), as amended, 42 U.S.C. § 603 (Supp. II, 1972), provided that the state complies with certain federal regulations. Id. § 602.

2. 18 N.Y.C.R.R. § 352.7 (g) (7) provided in pertinent part:

   (g) Payment for services and supplies already received. Assistance grants shall be made to meet only current needs. Under the following specified circumstances payment for services or supplies already received is deemed a current need:

   (7) For a recipient of public assistance who is being evicted for nonpayment of rent for which a grant has previously issued, an advance grant may be provided to prevent such eviction or rehouse the family; and such advance shall be deducted from subsequent grants in equal amounts over not more than the next six months. . . .

   Hagans v. Lavine, 415 U.S. 528, 531 & n.2 (1974). The regulation has since been amended.


4. 42 U.S.C. § 602(a) (1970) provides in part:

   A State plan for aid and services to needy families with children must . . . (7) . . . provide that the [administering] State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such
Jurisdiction to hear the equal protection claim was based on 28 U.S.C. § 1343(3) (1970), while the statutory claim was considered under a theory of pendent jurisdiction. The district court assumed jurisdiction of the case and decided the statutory claim in favor of the plaintiff without convening a three-judge court. The court of appeals remanded with instructions to dismiss for want of jurisdiction, holding that the plaintiff had failed to present a constitutional claim sufficiently substantial to confer jurisdiction on the district court under section 1343(3). Reversing the court of appeals, the Supreme Court held that (1) the petitioner had presented a substantial constitutional question, (2) the district court had correctly exercised its discretion to assert jurisdiction over the pendent statutory claim, and (3) the single-judge district court was the appropriate forum for the statutory claim. *Hagans v. Lavine*, 415 U.S. 528 (1974).

The number of cases challenging state categorical assistance programs on a combination of fourteenth amendment and statutory grounds has increased dramatically in recent years. *Hagans* exemplified the problems that had frequently been encountered in such cases. In the wake of the Supreme Court decisions

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5. Although generally characterized as "statutory claims," such challenges are of course ultimately based on the supremacy clause of the Constitution. U.S. Const. art. VI, cl. 2. Under the supremacy clause, all state laws conflicting with federal welfare law are void to the extent of the inconsistency. See, e.g., Townsend v. Swank, 404 U.S. 282 (1971).

6. Pendent jurisdiction is a judge-made doctrine that allows federal courts to hear two closely related claims, one of which would otherwise fail to satisfy federal jurisdictional requirements, in a single federal proceeding. See notes 51-64 infra and accompanying text.

7. 28 U.S.C. § 2281 (1970) requires that a three-judge panel be convened to hear any claim that requests an injunction on the ground that a state statute is in conflict with a provision of the federal Constitution. See note 81 infra.


9. Federal courts are required to dismiss for want of subject-matter jurisdiction those claims that are so weak as to be considered "fictitious" or those similar to a claim that a higher court has previously found to be without merit. See text accompanying notes 24-25 infra.

in *Dandridge v. Williams*11 and *Jefferson v. Hackney,*12 which gave the states great latitude in allocating welfare funds to the needy;13 equal protection claims against state welfare assistance programs enjoyed little chance of success on the merits and were vulnerable to dismissal for failure to state a substantial constitutional question.14 On the other hand, the statutory claims frequently were successful on the merits,15 but did not appear to satisfy federal jurisdictional requirements. Such claims apparently involved neither deprivation of "equal rights" within the meaning of section 1343(3),16 nor violation of protected "civil rights" within the meaning of section 1343(4).17 Although they did "arise under" federal law as specified in the general federal question provision, rarely would they meet the $10,000 amount in controversy requirement.18 As in *Hagans,* therefore, these

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13. State welfare regulations challenged on equal protection grounds must be upheld under *Dandridge* and *Jefferson* if they are rationally based and free from invidious discrimination. See note 28 infra. See generally Recent Case, Equal Protection—A Judicial Cease Fire in the War on Poverty, 36 Mo. L. Rev. 117 (1971).
14. See text accompanying notes 24-29 infra.
   To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

The Supreme Court in *Hagans* expressly reserved the question of the applicability of section 1343(3) to statutory claims in the context of welfare administration, 415 U.S. at 533 n.5, and several commentators have stated that the statute can be construed to embrace such claims. See, e.g., Herzer, Federal Jurisdiction Over Statutorily-Based Welfare Claims, 6 HARv. Crtv. RIGiws-Crv. Lm. L. Rev. 1 (1970); Note, Federal Jurisdiction Over Challenges to State Welfare Programs, 72 COLum. L. Rev. 1404, 1421-28 (1972).
   To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.
18. The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

claims were most frequently tried under a theory of pendent jurisdiction.19 Pendent claims, however, must be appended to a substantial federal question which independently invokes jurisdiction,20 and after Dandridge and Jefferson, constitutional challenges to state welfare regulations were generally not strong enough to satisfy the substantiality requirement. Consequently, courts hearing such cases were somewhat vulnerable to the criticism that they were allowing welfare plaintiffs to impose upon them cases which belonged in state courts.21 The final problem encountered in these cases prior to Hagans arose from the requirement that pendent statutory claims be heard by three judges along with constitutional claims,22 even though nonpendent statutory claims did not by themselves require a three-judge court.23 Trial of these pendent claims by a three-judge court seemed to add unnecessarily to the already enormous burden which those courts placed on the federal judiciary.

The Hagans decision diminished the opportunity for substantiality dismissals, clarified the relationship between the doctrines of substantiality and pendent jurisdiction, and expanded the power of the single-judge court in the three-judge court context, thus virtually assuring that pendent statutory challenges to state welfare schemes will be heard in federal court by a single judge.

1. The Substantiality Ruling

The substantiality doctrine originated in an 1875 enactment which required district courts to dismiss claims that did not "really and substantially involve a dispute or controversy properly within the jurisdiction of [the] district court."24 Substantiality was obviously a vague standard, however, and a judicial gloss soon accumulated. District courts were directed to dismiss only those claims which were "obviously without merit" or those

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   [R]ecognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's efforts to impose upon it what is in effect only a state law case. Once it appears that a state claim constitutes the real body of the case, to which the federal claim is only an appendage, the state claim may fairly be dismissed. Id. at 727.
22. See text accompanying notes 86-88 infra.
whose "unsoundness so clearly result[ed] from the previous decisions of this court as to foreclose the subject . . . "

Despite these nominally stringent limitations upon the use of the substantiality dismissal, the Supreme Court in practice allowed the lower courts to use the dismissal quite freely. The Court frequently announced a decision in terms of general constitutional principles which subsequently could be applied broadly by lower courts to similar factual or legal patterns. Such patterns could be deemed sufficiently analogous to allow a court to dismiss a claim for want of a substantial federal question even though the precise issue had not previously been decided. If the tenor and logic of prior Supreme Court decisions dealing with similar issues indicated that a claim was futile, the court could dismiss it. Equal protection claims were particularly susceptible to such dismissals, since the Supreme Court made it clear that in most cases, including those involving social welfare programs, legislative judgments were to be upheld against equal protection challenges if any rational basis could be found to sustain them.

26. For an excellent discussion on interpreting prior cases for their maximum and minimum stare decisis value in deciding analogous claims, see F. Llewellyn, The Bramble Bush 66-69 (1960).
27. See, for example, Ex parte Poresky, 290 U.S. 30 (1933), wherein the Court affirmed a substantiality dismissal which depended upon this type of reasoning by general analogy. Even though the precise issue had never before been considered, the district court's dismissal was deemed proper "in view of the decisions of this Court bearing upon the constitutional authority of the State, acting in the interest of public safety, to enact the statute assailed." Id. at 32.
28. See, e.g., Jefferson v. Hackney, 406 U.S. 535, 546 (1972): So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. See also Dandridge v. Williams, 397 U.S. 471 (1970).
29. This is the so-called "minimum rationality" standard. Recent Supreme Court decisions, however, indicate that the Court will no longer accept assertions of a clearly "hypothetical" rationale in defense of a state statute. Compare Jefferson v. Hackney, 406 U.S. 535 (1972), with Goseaert v. Cleary, 335 U.S. 464 (1949). Even if the case is not one involving "suspect classifications" or "fundamental interests," see Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065 (1969), the Court now apparently requires that the classifications and interests asserted must be "legitimate and nonillusory." McGinnis v. Royster, 410 U.S. 263, 276 (1973). It has been suggested that the degree of scrutiny that the Court applies to a particular equal protection claim depends on the "constitutional and societal importance of the interest adversely affected." San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 99 (1973) (Marshall, J., dissenting); Gunther, The Supreme Court, 1971 Term, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. 1, 17-48 (1972).
Consequently, the court of appeals in *Hagans* held that the constitutional claim was insubstantial,\(^{30}\) and found the challenged recoupment provision to be rational on its face because it prevented one impoverished family from receiving a larger portion of a necessarily limited state welfare fund than another equally poor family,\(^{31}\) and also encouraged proper money management by those depending on the state for support.\(^{32}\) The Supreme Court disagreed, citing *Goosby v. Osser*.\(^{33}\) In *Goosby*, the first indication that the substantiality dismissal might be falling into disfavor, the Court had reiterated with greater conviction the traditionally nominal restrictions on such dismissals:

> In the context of the effect of prior decisions upon the substantiality of constitutional claims... claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial...\(^{34}\)

In a sense, the *Hagans* decision extended the *Goosby* rationale: the equal protection claim in *Goosby* required careful review under the "strict scrutiny" standard used in cases involving "fundamental rights,"\(^{35}\) whereas equal protection challenges to


\(^{31}\) 471 F.2d at 349-50.

\(^{32}\) *Id.* at 350. The court reached the same result as two other courts which had previously relied on *Dandridge* in the dismissal of equal protection challenges to welfare programs for lack of a substantial question. Money v. Swank, 432 F.2d 1140 (7th Cir. 1970); Waier v. Schmidt, 318 F. Supp. 22 (E.D. Wis. 1970). Those cases since *Dandridge* which have found a substantial equal protection question in a challenge to a state welfare law frequently have done so without discussion of the substantiality issue, instead moving immediately to adjudication of the pendent claim. *See, e.g.*, Doe v. Lavine, 347 F. Supp. 397 (S.D.N.Y. 1972).

\(^{33}\) 409 U.S. 512 (1973) (announced after the court of appeals decision in *Hagans*).

\(^{34}\) *Id.* at 518. *See note 25 supra* and accompanying text.

\(^{35}\) The *Goosby* Court emphasized the fact that the claim in question involved total denial of voting rights and was appropriately reviewed under a standard of strict scrutiny. *Cf.* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966). The voting cases upon which the court of appeals had relied in granting the substantiality dismissal, however, concerned claims reviewed under a standard of minimum rationality because of different alleged facts. *See* McDonald v. Board of Election Comm’rs, 394 U.S. 802, 807-08 (1969) (prisoners challenging denial of absentee ballots did not allege that they were also denied all other alternative means of voting).
welfare programs as in *Hagans* have traditionally been measured against the mild demands of minimum rationality. Yet, even though mere "minimum rationality" was required to sustain the state regulation, the Court stated:

We are unaware of any cases in this Court specifically dealing with this or any similar regulation and settling the matter one way or the other. Nor is it immediately obvious to us from the face of the complaint that recouping emergency rent payments . . . was so *patently* rational as to require no meaningful consideration.

By thus requiring either "specific" prior decisions rejecting the claim or "patent" rationality of the regulation, the Court set a standard far higher than that which the regulation would be required to satisfy at trial.

The *Hagans* majority suggested that its decision was consistent with previous application of the substantiality doctrine. Justice Rehnquist disagreed. Protesting that "[u]nder today's rationale it appears sufficient for jurisdiction that a plaintiff is able to plead his claim with a straight face," he insisted that under established standards insubstantiality "could [have been] evident [to the district judge] from recent decisions of this Court rejecting claims with a similar thesis or laying down rules which would clearly require dismissal on the merits." Nevertheless, even if Justice Rehnquist's version of the substantiality doctrine was correct, several justifications can be enumerated for discouraging the practice of dismissing complaints for lack of substantiality. The substantiality doctrine has been justifiably characterized as "a maxim more ancient than analytically sound." Prior to 1938, it may have served an important purpose by providing lower federal courts, obligated to follow the procedural law of the states in which they sat, a uniform method of dismissing very weak causes of action with minimum delay. Since the promulgation of the Federal Rules of Civil Procedure, however, this justification has disappeared. The Court has recognized that substantiality dismissals, though characterized as "jurisdictional," in effect constitute dismissals on the merits.
Consideration of the merits of a case has no place in jurisdictional decisions, except for a few necessary factual determinations such as citizenship of the parties or the existence of the federal statute pleaded. Because federal rule 12(b)(6), which empowers federal courts to dismiss for "failure to state a claim upon which relief can be granted," now provides a uniform mechanism for pretrial dismissals on the merits, the substantiality doctrine should be abandoned as a procedural anachronism.

Admittedly, there may be no reason to believe that the shift to federal rule 12(b)(6) will render summary applications of prior precedent any more logical or predictable. If the substantiality doctrine is allowed to persist in some form in modern federal practice despite the evolution of federal procedure, its application should be severely limited. The doctrine is extremely vague, for what is "fictitious" or "obviously without merit" to one judge has not always been equally so to another. Unless cases can be found directly on point, it is therefore preferable to insist on more carefully considered application of precedent and to confine jurisdictional issues to basic factual considerations such as citizenship.

Alternatively, the Hagans substantiality ruling may be narrowly interpreted as an attempt to encourage lower courts to give more careful consideration to equal protection claims and to read somewhat more warily the sweeping language of older equal protection opinions. Such an interpretation would be consistent with recent Supreme Court decisions that have apparently increased the stringency of standards used in equal protection review, and with the Court's statement in Hagans that its decision was consistent with the prior law of substantiality dismissals. Lower courts, however, have apparently read Hagans as a directive to engage less readily in substantiality dismissals in all areas of the law. The Hagans rationale has already been followed by a court considering the substantiality of a claim involving commercial freedom of speech, as well as by numerous

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45. See id. 41(b).
47. See note 29 supra.
48. 415 U.S. at 538.
49. Holiday Magic, Inc. v. Warren, 497 F.2d 687, 696 & n.3 (7th Cir. 1974).
courts hearing welfare cases. Thus, another Supreme Court opinion may be required to clarify the limits of the new substantiality doctrine.

2. The Pendent Jurisdiction Ruling

Originally developed to allow federal courts to decide issues of state law which were closely related to federal claims, the doctrine of pendent jurisdiction is a judge-made exception to the rule that federal jurisdiction is determined by the Constitution and by acts of Congress. The doctrine was first expounded in Osborn v. Bank of the United States, wherein the Court recognized federal jurisdiction over state law issues whose resolution was necessary to the determination of federal claims. In Siler v. Louisville & Nashville Railroad Co., the doctrine was expanded to allow federal courts to try a state law claim which provided an alternative ground of relief to the constitutional claim presented. This result was justified largely on the rationale of avoiding unnecessary constitutional decisions. In Hurn v. Oursler, the Court allowed federal adjudication of a pendant claim that provided relief in addition to that provided by the federal claim, so long as the two claims were simply "two distinct grounds in support of a single cause of action." Hurn was justified explicitly by the argument that a single cause of action constituted only one "case" in the constitutional sense, and implicitly by the desire to avoid piecemeal litigation and to conserve the resources of both the court and the litigants.

50. See, e.g., Taylor v. Lavine, 497 F.2d 1208, 1214 (2d Cir. 1974); J.A. v. Riti, 377 F. Supp. 1046 (D.N.J. 1974). "The [Hagans] test is a stringent one and calls for the exercise of federal jurisdiction whenever some colorable doubt concerning the validity of the claim may be entertained . . . ." Id. at 1049.


52. U.S. CONST. art. III, § 2; Ex parte McCordle, 74 U.S. (7 Wall.) 506 (1869); Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850).

53. 22 U.S. (9 Wheat.) 738 (1824).

54. 213 U.S. 175 (1909).

55. Id. at 193. See also Ashwander v. TVA, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring).

56. 299 U.S. 238 (1936).

57. Id. at 246.

58. See Note, The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts, 62 COLUM. L. REV. 1018, 1022 (1962). By thus allowing relief in addition to the federal relief requested, Hurn marked the point at which the Court turned away from the earlier view expressed in Osborn that pendent jurisdiction was intended to serve only the necessities and interests of the federal courts.
The implicit policy of *Hurn* was eventually made explicit in the leading modern case, *United Mine Workers v. Gibbs,* the holding of which was based squarely upon "judicial economy, convenience, and fairness to litigants." In *Gibbs,* the plaintiff sought recovery under a provision of the National Labor Relations Act of 1947 and under the common law of Tennessee for incidents arising out of an interunion conflict and a mine shutdown. The Supreme Court sustained jurisdiction over the common-law claim because it shared a "common nucleus of operative fact" with the "substantial" federal question presented under the National Labor Relations Act. The Court cautioned, however, that this jurisdiction was discretionary, to be exercised only when actually dictated by considerations of judicial economy, convenience, and fairness to litigants. The Court further enumerated several corollary rules which were to serve as safeguards against attempts to impose upon the federal court cases that belonged in state courts. First, of course, the pendent claim was required to be appended to a "substantial" federal claim. Second, if the federal claim was dismissed before trial, the pendent claim was also to be dismissed. Third, if the pendent claim predominated over the federal claim, the pendent claim was to be dismissed without prejudice. Fourth, if a separate trial would be required for the pendent claim it ordinarily was to be dismissed. If the pendent claim involved important matters of federal policy, however, federal adjudication was to be more seriously considered.

Citing *Gibbs,* the dissenting Justices in *Hagans* argued that the Court's decision would bring within the cognizance of the

60. *Id.* at 726.
62. 383 U.S. at 725. During the years between *Hurn* and *Gibbs,* the promulgation of the Federal Rules of Civil Procedure had resulted in substitution of the term "claim" for the term "cause of action," see FED. R. CIV. P. 8(a)(2); thus the *Hurn* rule, see text accompanying note 57 *supra,* had been rendered obsolete.
63. After *Gibbs,* the lower courts were in conflict as to the degree of substantiality required to sustain the pendent claim. Although there would be no jurisdiction over even the federal claim if it were not in some sense "substantial," some courts believed it should be still more "substantial" to justify the addition of a pendent claim. Compare Shaw-Henderson, Inc. v. Schneider, 335 F. Supp. 1203, 1217 (W.D. Mich.), aff'd, 453 F.2d 746 (6th Cir. 1971) (higher degree of substantiality required of federal claim to support jurisdiction over a pendent claim), with *United States ex rel. M.G. Astleford Co. v. S.J. Groves & Sons Co.,* 53 F.R.D. 656, 660 (D. Minn. 1971) (standards for substantiality identical regardless of whether issue is federal question or pendent jurisdiction).
64. 383 U.S. at 725–27.
federal courts many claims appended to very weak federal claims that prior to *Hagans* would have been dismissed.\(^5\) The allegation of a very weak federal claim indicated, in their opinion, that the plaintiff in truth expected recovery under the pendent claim, and was likely to concentrate his time and resources on it.\(^6\) Thus, consideration of such claims was contrary to the directive of *Gibbs* that pendent claims were to be dismissed whenever they dominated the litigation. They also argued that, in sustaining a claim appended to "a federal constitutional claim as marginal as the one at issue here,"\(^8\) the majority had infringed upon the congressional prerogative to leave "to state courts not only those claims involving state law, but also those claims involving federal law which it felt did not merit the time of federal courts."\(^9\)

In further support of the dissenters' views, it should be noted that the Court's additional holding that pendent claims arising in a three-judge court context should be tried first in a single-judge court\(^6\) effectively vitiated another of the *Gibbs* directives: that the pendent claim was to be dismissed if the federal claim, even though not insubstantial in the jurisdictional sense, was dismissed before trial.\(^7\) Although constitutional claims as weak as the one in *Hagans* are vulnerable to dismissal under federal rule 12(b)(6) for failure to state a claim upon which relief can be granted, such a dismissal would be on the merits\(^7\) and therefore beyond the limited powers of the single-judge court.\(^7\) Thus, by

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\(^5\) 415 U.S. at 558-61 (Rehnquist, J., dissenting). Since the dissenting Justices found the constitutional claim to be insubstantial, they believed that the Court lacked power to hear the whole case, much less the pendent claim. See text accompanying note 63 supra. To them, the new stringent limitations on the substantiality doctrine threatened an increase in the number of marginal federal questions capable of supporting pendent claims.

\(^6\) 415 U.S. at 558-61 (Rehnquist, J., dissenting).

\(^7\) See text accompanying notes 63-64 supra. Said Justice Rehnquist:

> Whether the equal protection claim pleaded in this case meets the threshold of substantiality for jurisdiction in the federal courts, the claim surely should not convince a district court that its main purpose was anything other than to secure jurisdiction for the more promising Supremacy Clause claim.

\(^8\) 415 U.S. at 564-65.

\(^9\) Id. at 551 (Powell, J., dissenting).

\(^7\) Id. at 559 (Rehnquist, J., dissenting).

\(^6\) See text accompanying notes 93-96 infra.


\(^7\) 497 F.2d 726 (2d Cir. 1974). See note 81 infra. See also P. BATOR, P. MISKIN, D. SHAPIRO & H. WECHSLER, *Hart and Wechsler's The Federal*
prescribing prior and separate trial of the pendent claim before a single judge, the Hagans Court has effectively denied the defendant any opportunity to preliminarily challenge the weak constitutional claim on the merits, and thereby to challenge retention of the pendent claim under the Gibbs directive. Consequently, the potential for abuse of pendent jurisdiction is materially increased.

The majority, however, focused on certain factors which, despite the weakness of the constitutional claim, dictated federal adjudication of the pendent statutory claim. Since the pendent claim was potentially dispositive of the entire case, one such factor was the policy in favor of avoiding unnecessary constitutional decisions.\textsuperscript{73} An extensive effort to avoid a constitutional question would appear rewarding, however, only if the question thus avoided were difficult or novel. Since the constitutional challenge in Hagans was so weak that its failure was virtually a foregone conclusion, the avoidance argument is not persuasive.

More significantly, the Court found that the predominantly federal nature of pendent statutory claims involving welfare issues provided a compelling reason to prefer federal adjudication.\textsuperscript{74} While the Court did not fully elucidate this argument, there are several reasons why the federal courts should be available to hear such issues: (1) the validity of state categorical assistance programs frequently turns on federal law, which federal courts are likely to implement more uniformly and expertly;\textsuperscript{75} (2) the magnitude of federal expenditures for categorical assistance programs dictates a federal forum to protect federal fiscal interests; (3) federal courts are more likely to afford sympathetic treatment to federal welfare statutes and relevant decisions of the Supreme Court;\textsuperscript{76} (4) discrimination against minorities, who comprise a large percentage of those receiving welfare funds, is less likely in federal than in state courts; and (5) federal courts tend to have greater regard than do state courts for the constitutional liberties of welfare recipients. Consideration of such fac-

\textsuperscript{73} FEDERAL COURTS \textit{AND THE FEDERAL SYSTEM} 972 (2d ed. 1972) [hereinafter cited as FEDERAL COURTS \textit{AND THE FEDERAL SYSTEM}].
\textsuperscript{74} 415 U.S. at 547 n.12, 549. See notes 54–55 supra and accompanying text.
\textsuperscript{75} 415 U.S. at 548–50. The importance of welfare programs to society as a whole may also have dictated federal adjudication of such claims. See Goldberg v. Kelly, 397 U.S. 254, 256 (1970).
tors is clearly consistent with the *Gibbs* decision, which itself re-
lied heavily on the federal interest in the issues presented by
the pendent claim. The *Hagans* majority thus did not ignore
the weakness of the constitutional claim but found that, balanced
against it, the importance of welfare programs to society and the
federal nature of the statutory issue provided sufficient justifica-
tion for federal adjudication of the pendent claim.

The Court failed, however, to describe explicitly the balanc-
ing process by which the strength of the federal interest in the
pendent claim offset the weakness of the constitutional claim.
The Court's bald statement that "given advantages of economy
and convenience, and no unfairness to litigants," the doctrine of
pendent jurisdiction contemplates that such claims be heard, the
taken either in isolation or in light of the substantiality ruling, could
indeed "broaden federal question jurisdiction to encompass
matters of state law whenever an imaginative litigant can think
up a federal claim . . . ." It would thus seem best to inter-
pret *Hagans* narrowly as a decision that involved specific federal
policies dictating that a particular type of claim be heard in fed-
eral court. In other cases the weakness of the federal claim
might not be offset by considerations as weighty as those sur-
rounding the pendent claim in *Hagans*; in such situations the
pendent claim should be dismissed.

Perhaps the most unfortunate aspect of the *Hagans* decision
on pendent jurisdiction is simply that judicial action was re-
quired to resolve the problem. Congress has been remiss in not
creating federal jurisdiction over statutory challenges to state
welfare regulations without regard to the amount in controversy.

3. The Three-Judge Court Ruling

The three-judge court provisions were originally enacted
in response to a controversial series of cases in which single-judge
courts enjoined state economic measures on the now discredited

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77. 383 U.S. at 727.
78. 415 U.S. at 546.
79. See text accompanying notes 24-50 supra.
80. 415 U.S. at 551 (Powell, J., dissenting).
   An interlocutory or permanent injunction restraining the en-
forcement, operation or execution of any State statute by re-
straining the action of any officer of such State . . . shall not
be granted by any district court or judge thereof upon the
ground of the unconstitutionality of such statute unless the ap-
lication therefor is heard and determined by a district court of
three judges . . . .
ground of economic due process. Although more radical restraints on the federal judiciary had also been proposed, the special dignity of the three-judge court, its ability to prevent a single biased judge from obstructing an entire state program, and the provision for direct appeal to the Supreme Court all suggested that the three-judge court would be an adequate compromise between state sovereignty and federal constitutional supremacy.

The general increase in the scope of pendent jurisdiction over the last forty years has naturally led to an increase in the number of claims appended to constitutional claims requiring a three-judge court. In Florida Lime & Avocado Growers v. Jacobsen, the Court responded to an argument that the three-judge court was not the appropriate forum for such a pendent claim:

Section 2281 . . . seems clearly to require that when, in any action to enjoin enforcement of a state statute, the injunctive decree may issue on the ground of federal unconstitutionality of the state statute, the convening of a three-judge court is necessary . . . .

The Court rested its decision primarily on its perception of congressional intent.

The first indication that Florida Lime Growers might no longer be good law appeared in Rosado v. Wyman, wherein a state welfare regulation was challenged on constitutional and statutory grounds. A three-judge court was convened and the arguments heard, but the court was dissolved prior to decision when the constitutional claim became moot. The Supreme Court, deciding that a single-judge district court could nonetheless subsequently rule on the pendent claim, suggested in dictum that "[e]ven had the constitutional claim not been declared moot, the

82. See, e.g., Ex parte Young, 209 U.S. 123 (1908); R. Jackson, The Struggle for Judicial Supremacy 50 (1941).
84. Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an . . . injunction in any civil action . . . required . . . to be heard and determined by a district court of three judges.
85. See text accompanying notes 51-60 supra.
87. Id. at 80.
88. Id. at 81.
most appropriate course may well have been to remand to the
single district judge for findings and the determination of the
statutory claim . . . .”91 But this suggestion, explicitly based on
considerations of judicial economy and convenience to litigants,
was only dictum; and the peculiar procedural posture of the case
cast some doubt on its significance.92 The courts which dealt
with this issue after Rosado reached varying results. While some
heard the pendent statutory claim without convening a three-
judge court,93 others convened a three-judge court, which
promptly remanded the case to the single judge to hear the pendent
claim.94 Most courts simply continued to try the pendent
claim in the three-judge court proceeding.95

_Hagans_ clarified the propriety of separate proceedings for
pendent statutory claims, reaffirming that such claims should be
heard first if potentially dispositive, and holding that, contrary
to _Florida Lime Growers_, they need not be decided by three
judges:

> [T]he coincidence of a constitutional and statutory claim should
not automatically require a single-judge district court to defer
to a three-judge panel, which, in view of what we said in _Rosado
v. Wyman_ . . . could then merely pass the statutory claim back
to the single judge.96

_Hagans_ in this respect is consistent with “the recent evolution
of three-judge court jurisprudence,”97 which seems to be essen-
tially an attempt to reduce the number of cases required to
be heard by three-judge courts,98 since such courts are a tremen-

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91. _Id._ at 403.
92. _Rosado_ did not require the overruling of _Florida Lime Growers_,
inasmuch as the outcome of _Rosado_ could be explained solely on the
basis of considerations of pendent jurisdiction. Since substantial judicial
resources had already been invested in hearing the pendent claim, which
had originally been properly before the court, _Rosado_ best furthered the
policies of judicial economy and convenience to litigants by completing
consideration of the pendent claim.
93. _E.g._, Bryant v. Carleson, 444 F.2d 353 (3d Cir. 1971).
94. _E.g._, Weintraub v. Hanrahan, 435 F.2d 461 (7th Cir. 1970).
96. 415 U.S. at 544.
97. _Id._
98. _See, e.g._, Bailey v. Patterson, 369 U.S. 31 (1962) (single-judge
court can enjoin a statute which is so clearly unconstitutional on its face
that there is no “substantial” constitutional question); Idlewild Liquor
Corp. v. Epstein, 370 U.S. 713 (1961) (court of appeals has jurisdiction
to review decision of single-judge court to dismiss a claim for lack of
a substantial constitutional question without impaneling a requested
three-judge court). _See generally_ Currie, _Appellate Review of the Deci-
sion Whether or Not to Empanel a Three-Judge Federal Court_, 37 U. Cmr.
dous burden on the federal judiciary. In Swift & Co. v. Wickham the Court, resting its decision solely on the ground of judicial economy, had already held that an independent statutory claim did not by itself actuate the three-judge court mechanism. Hagans merely extended the Swift result by removing pendent statutory claims from the cognizance of three-judge courts.

This element of Hagans can be questioned on two grounds, neither of which is mentioned in any of the opinions. First, it contravenes the doctrine of pendent jurisdiction, which usually realizes the goals of judicial economy and fairness and convenience to litigants through the practice of trying separate but related claims in a single proceeding. It is said that the power to hear such related claims exists only if the "plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding," and that any contingency making separate trials of the federal and pendent claims necessary should ordinarily lead to dismissal of the latter. Therefore, to the extent that the Hagans decision allows a separate proceeding to hear the pendent claim, it is inconsistent with the achievement of judicial economy and convenience to litigants. By thus undermining the policy of pendent jurisdiction, the Court weakens the arguments supporting the constitutionality of that doctrine.

Second, while the Court sought by narrow construction to minimize the adverse impact on the federal judiciary of the three-judge court provisions, it is not clear that the decision will serve that objective. Whenever the pendent claims fail, a three-judge court must still be convened to hear the constitutional questions, with the result that multiple litigation occurs at the trial level. The overall consequence may well be an increase in

100. 382 U.S. 111 (1965).
101. See text accompanying notes 51-64 supra.
103. Id. at 727. See also Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927): "The whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time." Id. at 320, quoting United States v. California & Ore. Land Co., 192 U.S. 355, 358 (1904).
104. See text accompanying notes 51-52, 69-72 supra.
the workload of the federal courts, the very problem which a narrow construction of the three-judge court provisions was intended to ameliorate.

In light of two additional factors, however, the three-judge court ruling may be acceptable. First, in cases like Hagans where the constitutional claims are exceptionally weak, the plaintiff is likely to move for voluntary dismissal if the pendent claim is unsuccessful, rather than waste time and resources litigating a constitutional claim that will almost certainly fail. Second, the Hagans decision will contribute to judicial economy by removing pendent statutory claims from the direct appeals provision of the three-judge court statutes. Under section 1253, three-judge court decisions may be appealed directly to the Supreme Court as of right, regardless of whether the state statute is upheld or struck down; under section 1254, however, if the statute is upheld, the claim can reach the Court only on certiorari, which is granted or denied in the Court's discretion. Twenty percent of the cases heard by the Supreme Court in recent years have come to it by direct appeal from a three-judge court. The Hagans decision, by suggesting that the pendent claims be tried in a separate proceeding, would channel appeal of such decisions through section 1254, thereby reducing the burden on the Court. Furthermore, even if a statute is ruled unconstitutional by the court of appeals, thus rendering the decision appealable to the Supreme Court as of right, whatever discretion the Court in fact exercises in considering such appeals can be more confidently exercised when two lower courts have considered the merits of the claim. Such considerations justify the Court's decision to try the pendent claim in a separate proceeding even though such a

107. 28 U.S.C. § 1254 (1970) provides in pertinent part:
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States...
procedure departs from the consolidated proceeding traditionally associated with an exercise of pendent jurisdiction.

Thus, in order to reduce its workload, the Court has been forced to interpret the three-judge court provisions in a manner inconsistent with the doctrine of pendent jurisdiction. Many judges and commentators have recommended abolition or substantial modification of the three-judge court procedure. The justification for the procedure is much less convincing than it was in the era of economic due process, and the burden which the procedure places on the federal judiciary is much greater. Congress should, as Chief Justice Burger has repeatedly suggested, abolish the three-judge court provisions, or at least greatly narrow their scope. Meanwhile, the Court will continue to construe those provisions narrowly in order to minimize the burden on the federal judiciary.

4. Conclusion

While each of the three individual rulings in Hagans, taken in isolation, is at least partially justifiable in terms of prior doctrine, the interplay among the three created significant anomalies. In simultaneously restricting the effective scope of the substantiality doctrine, ignoring several of the factors which Gibbs indicated should require dismissal of a pendent claim, and approving the practice of trying pendent claims in a separate proceeding, the Court evinced a willingness to accept doctrinal inconsistency to attain the desired goal of federal adjudication of welfare claims under circumstances least burdensome to the federal courts. If the decision is to be criticized, part of the blame must be assigned to Congress, which has not reviewed the jurisdiction of the federal courts in any depth since 1958. The

114. See text accompanying notes 65-72, 101-04 supra.
115. See text accompanying notes 24-50 supra.
116. See text accompanying notes 51-80 supra.
117. See text accompanying notes 81-113 supra.
118. The 1958 amendments merely raised the amount in controversy requirement and prohibited removal of workmen's compensation cases.
federal judiciary, particularly the Supreme Court, is vastly overworked,\textsuperscript{119} spends much of its time considering legal questions irrelevant to federal concerns,\textsuperscript{120} and, as in \textit{Hagans}, must occasionally announce otherwise undesirable decisions in order to hear certain classes of cases which are of great federal import. Prior to \textit{Hagans}, the American Law Institute had proposed that three-judge courts be convened only if requested by the state,\textsuperscript{121} and that the amount in controversy requirement be eliminated for federal claims.\textsuperscript{122} If Congress had acted upon those proposals, the need for both the pendent jurisdiction and three-judge court rulings of \textit{Hagans} would probably have been obviated, and the Court would have been relieved of the necessity of delivering a doctrinally unsatisfying decision.

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\textsuperscript{121} ALI Study on the Division of Jurisdiction Between State and Federal Courts \S\ 1374 (1969).
\textsuperscript{122} Id. \S\ 1311(a).
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