10-1973

Jimenez v. Weinberger

Lewis F. Powell Jr.

JDO '88 10-11-73 **DISCUSS**

Hold for Berry v Weinberger, 73-521 (jurisd. noted Sept 20 by SG, but not yet circulated)

New case, involving a const. attack on provisions of Social Security Act which excluded certain illegitimates from benefits, is in square conflict with Berry v Weinberger. Hold, then vote both cases.

PRELIMINARY MEMORANDUM

November 30, 1973
~~October 19, 1973~~

Appeal from 3 J USDC (N.D. Ill.)

List 2, Sheet 1

(Memo Op: Austin, Decker, DJs; Fairchild, CA 7 CJ, dissenting)

No. 72-6609

JIMINEZ, et al

Federal civil

v.

WEINBERGER (Sec., HEW)

Timely

Note. Hold for #73-521, which will be upcoming in about a month. That case should also be noted. The 2 cases should then be consolidated for argument. owens

Appellants are illegitimate children. Their disabled father, who supports them, sought to collect social security disability benefits on their behalf. This request was denied, although the father would have been able to collect the benefits had appellants been legitimate or had appellants been in certain other

classes of illegitimate children. Appellants' constitutional attack on the relevant social security act provision, based on equal protection principles incorporated into the Due Process Clause of the Fifth Amendment, was rejected 2-1 by a 3 J USDC (ND Ill.) in a memo opinion and order. Appellants have brought a direct appeal to this Court.

1. **FACTS.** Although appellants are illegitimate, it is undisputed that they live with and are supported by their natural father. Appellants' father has received social security disability payments for himself and for qualifying dependents (one of whom is also illegitimate) since 1963. Appellants were born after the onset of their father's disability and they reside in a state where they are not entitled to inherit their father's personal property under the state law of intestate succession. Thus, due to the operation of statutory provisions described below, appellee has refused to treat appellants as qualifying dependents and has refused to allow their father to receive social security benefits on their behalf.

Social security benefits may be obtained on behalf of the children of an insured individual entitled to disability or death benefits under the Act. 42 U.S.C. 402(d). In determining whether an applicant is the child of an insured, 42 U.S.C. 416(h) establishes three independent tests. First, an applicant is the child of an insured if he can inherit the insured's personal property under the law of intestate succession of the state of the insured's domicile. 42 U.S.C. 416(h)(2)(A). This provision means that all dependent illegitimates whose fathers are domiciled

in states that include illegitimates in the line of intestate succession from a father (apparently about one-half the states) also qualify whether born before or after the onset of disability. Second, an applicant is the child of an insured if his parents went through a purported, but technically invalid, marriage. 42 U.S.C.(h)(2)(B). The third statutory definition of child encompasses those of the insured's issue who do not come within the above two provisions. Those illegitimates qualify (subject to certain acknowledgment or equivalent child support, dependancy requirements) only if they were children of the insured when his disability began. 42 U.S.C. 416(h)(3)(B). This is the provision under attack in this case.

The scheme just described creates at least two classifications relevant to this case. One, it draws a line between legitimates and a subset of illegitimates (those born after the onset of disability and not in the line of intestate succession from their father under the controlling state law). Two, it draws a line between subsets of illegitimates -- those born in states which include illegitimates in the line of intestate succession of a father and those born in other states. Appellants fall into a class defined by the date of their birth and the domicile of their father. Because of those two criteria, 42 U.S.C. 416(h)(3)(B) conclusively excludes them from social security disability benefits although they are indisputably capable of proving that they are supported by their disabled father.

2. 3 J USDC OPINION. Granting summary judgment for the government, the 3 J USDC by a 2 to 1 vote rejected appellants due process/equal protection attack on 42 U.S.C. 416(h)(3)(B). The majority held that upper tier equal

Illegitimacy - not a suspect classification

protection scrutiny was not appropriate, because this Court has refused to apply that standard of review with regard to public welfare benefits, e.g. Dandridge v. Williams, 397 U.S. 471 (1970). Jefferson v. Hackney, 406 U.S. 535 (1972), and has not held illegitimacy to be a suspect classification, e.g., Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972). Under lower tier analysis, the court found that 42 U.S.C. 416(h)(3)(B) has a rational basis -- the prevention of spurious acknowledgments of paternity. The majority believed that appellee would have difficulty policing the spurious acknowledgment problem, absent a flat rule. The requirement that illegitimate children in appellants' class be born before the onset of disability "is based on the very simple, self-evident assumption that a person with nothing to gain from a spurious acknowledgment of paternity is not as likely to do so as one who could thereby increase his monthly income by one-half." That there were alternative means by which Congress could deal with spurious acknowledgment was irrelevant under lower tier analysis.

CA 7 J. Fairchild dissented. He could not conclude that a conclusive exclusion of an entire class of illegitimates was a reasonable means for dealing with the spurious acknowledgment problem.

3. CA 5's DECISION IN BEATY v. WEINBERGER. Several months after the USDC opinion in this case, CA 5 (Tuttle, Wisdom; Simpson, dissenting) created a square split by deciding the identical issue against the government. Beaty v. Weinberger, April 23, 1973. CA 5 applied a rational basis test.

The majority cited Judge Fairchild's dissenting opinion in this case.

The SG filed its jurisdictional statement in Beaty on September 20, 1973. The case will be designated No. 73-521. The Clerk's office does not expect to circulate materials in Beaty until some time in November. In its Beaty J.S., the SG points out that indistinguishable social security act provisions have been upheld in Perry v. Richardson, 440 F. 2d 677 (CA 6 1971) but overturned in Severance v. Weinberger, DDC (July 2, 1973; 3 J USDC), and Howard v. Weinberger, D. Minn. (August 9, 1973). The victors in Severance, supra, appear amicus in this case (with consent of all parties), arguing on behalf of appellants.

4. CONTENTIONS. Appellants and amicus argue that upper tier review is applicable. Under that analysis, the challenged provision is invalid because it fails to further a compelling government interest or it fails to do so via the least intrusive means. In the alternative, the provision is invalid under lower tier scrutiny. Total exclusion is not rationally linked to prevention of spurious acknowledgment. Particular emphasis is placed on the fact that illegitimates born in states that include them in the relevant line of intestate succession are not subject to the onset of disability requirement. The spurious acknowledgment problem is equally present in the case of those illegitimates, yet they may qualify even if born after the onset of their father's disability.

The SG's arguments are not fully developed in his motion to affirm. Rather,

he cross-references his J.S. in the upcoming Beaty case, No. 73-521. Therein, the SG relies on the spurious acknowledgment argument as a rational basis for the challenged provision. The SG argues that the Congressional purpose was to extend disability benefits only to those children who lost support when their fathers became disabled. According to the SG, this could only mean those children born prior to the onset of disability.

5. DISCUSSION. This case has all the earmarks of a note of probable jurisdiction. However, as the SG suggests, it would probably be appropriate to defer consideration of this case until the Court addresses the upcoming Beaty case, No. 73-521.

October 11, 1973

There is a motion to affirm and an amicus submission consented to by the parties.

USDC (ND Ill.) Op in J.S. App.

CA 5 Beaty op in Amicus app.

Owens

---

* It should be noted that the parties have not addressed the relevancy of Vlandis v. Kline, 93 S. Ct. 2230 (June 11, 1973). The treatment of appellants in this case resembles the issue in Vlandis. Appellants can prove actual dependency on their disabled father, yet they are conclusively precluded from benefits.

Conference 10-19-73

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

Argued ....., 19... Assigned ....., 19... No. 72-6609

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

DISCUSS

JIMENEZ

vs.

WEINBERGER

Noted on 11/30

Held for Beatty v Weinberger 73-521 (in direct conflict)

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

Conference 11-30-73

Court ....
Argued ....., 19...
Submitted ....., 19...

Voted on... ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 72-6609

JIMENEZ

vs.

WEINBERGER

RELIST

Noted

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

lfp/ss 3/14/74

No. 72-6609 Jiminez v. Weinberger

This case presents the question whether the Social Security Act's classification of dependent children is valid insofar as it excludes illegitimates living with their father but born after his disability - the disability being the fact which entitles him to benefits.

A majority of a three-judge court, relying on the opportunity for "spurious acknowledgment" of children as illegitimate for the purpose enlarging of benefits, sustained the validity of the classification.

We have a similar case in Beaty v. Weinberger, 73-521.

These cases present a difficult and close issue. I will need some careful thinking, based on legislative history, intent of Congress, and the rationality of the means employed by Congress to attain what I believe probably was a legitimate end. If time permits, I would like one of our "bobtail" bench memos before I have to vote.

L.F.P., Jr.

ss

lfp/ss 3/14/74

No. 72-6609 Jiminez v. Weinberger

This case presents the question whether the Social Security Act's classification of dependent children is valid insofar as it excludes illegitimates living with their father but born after his disability - the disability being the fact which entitles him to benefits.

A majority of a three-judge court, relying on the opportunity for "spurious acknowledgment" of children as illegitimate for the purpose of enlarging benefits, sustained the validity of the classification.

We have a similar case in Beaty v. Weinberger, 73-521.

These cases present a difficult and close issue. I will need some careful thinking, based on legislative history, intent of Congress, and the rationality of the means employed by Congress to attain what I believe probably was a legitimate end. If time permits, I would like one of our "bobtail" bench memos before I have to vote.

L.F.P., Jr.

ss

No. 72-6609 JIMENEZ v. WEINBERGER Argued 3/18/74

Social Security benefits (not Welfare, AFDC benefits) — arising from disability, retirement or death.

Mr. Stevens

If the children were illegitimate they would be receiving benefits.

Henry asked: "If all children born after disability were excluded, would you be here"? She answered "yes" but in a slightly different tone.

24 states allow illegitimates to inherit. Thus they must be able to deal with "fraud" as to paternity. Moreover, the illegitimates are eligible to Social Security. The Federal program allows benefits depending upon state law & which father is held child. Thus, there has been no determination by state of issue of paternity.

Mrs. Stevens (cont.)

Gov't's principal argument is prevention of fraud – but this is not a legitimate basis for discrimination.

Relies on U.S. v. Murray (last Term) "irrebuttable presumption" rationale. Pts. are barred regardless of facts.

I don't buy this

Argues that illegitimacy is a "suspect class". (Potter noted that illegitimates may be legitimated – these are not "immutable" or unchangeable as in case of "race" or "sex"). Mrs Stevens answered (well, I thought) that child cannot change its status.

(But there is a legitimate state interest to discourage illegitimacy – as Lewis as I noted in Weber there are limits to this argument)

Illegitimates have no "political power" – but as Thurgood noted legit. kids have no such power either.

Boggs (SG)

Statutory scheme enacted by Pelea. Its purpose:

To replace loss of support resulting from death, disability or retirement

Statutory scheme:

1965 Amend - if before disability the child was acknowledged, was living with parent, or was adopted.

Children who marry or are adopted by others are excluded on theory that they are not likely to lose support.

Since Petra had were not being supported prior to disability

Basic argument of argument

The discrimination in this case is not bet. illeg. & leg. kids but is only bet. those entitled to inherit and those who are not. Pun is based on purpose of S/S Benefits to provide continuation of support to those entitled under state law for support.

Prevention of fraud is not the purpose of this classification. Gov't argument is g/ct emphasized this, but Mr. Boggs thinks this is peripheral argument at most

Boggs (cont)

Right to support is not determinative factor. Immaterial that father may have supported or may by state law been compelled to support

Mrs. Stevens

Illegitimate kids who have had no prior support are eligible.

Likelihood of support is not relevant.

jo/ss

MEMORANDUM

TO: Mr. Justice Powell DATE: March 19, 1974

FROM: Jack B. Owens

No. 72-6609 Jimenez v. Weinberger

Judging by the brief snatches of conversation we have had about this case, I think the most helpful thing for me to do would be to try to outline the classification at issue. The important thing to keep in mind is that you are dealing with a subset of the class of illegitimate children born after the event (age, disability, death) that triggers social security benefits. Perhaps this can be seen most easily by reviewing the categories of children who entitle their parents to increased benefits, in order to isolate the category at issue here.

First, there are the categories of children who qualify without regard to the date of their birth. These include:

(1) Legitimate children.

(2) Legitimated children.

(3) Illegitimate children who are in the line of intestate succession of their domiciliary state and who can show dependency at the time of application.

(4) Children who are the product of a ceremonial marriage invalid for non-obvious defects.

These categories qualify regardless whether birth occurred prior to the event that triggered social security benefits.

Second, there are the categories of illegitimate children who do not qualify under the above but who may nevertheless qualify if born before the critical event and if before that event the wage earner:

(1) Acknowledged paternity in writing.

(2) Was determined in a court decree to be the father.

(3) Was ordered by court decree to contribute to support because of paternity.

(4) Was living with the child and contributing to the child's support.

The children at issue here cannot meet any of the criteria set forth in the first set of categories. They are not legitimate. They cannot be legitimated because their father has not divorced his first wife. They do not live in a state where illegitimates may inherit (apparently the states split down the middle on this). And, obviously there is no marriage ceremony for them to rely on.

The children can meet criterion # 4 of the second set of categories - actual dependency on and residency with their father. But since they were born after the onset of disability, they are precluded entirely from this set of categories.

In sum, the children are subject to two principal classifications. As among all children, they are excluded because they are illegitimate. As among all illegitimate children, they are excluded solely because they were born after the onset of disability. Although they are in fact dependent on their natural

father, they are excluded because of the date of their birth.

Two arguments have been advanced in support of this classification. The District Court chose to rely on, but the SG has now apparently abandoned, administrative convenience - prevention of an undefined % of spurious claims on behalf of after-born illegitimates by excluding all such children in cases where they do not intend. This ground appears to me to be foreclosed by the "problems of proof" paragraph of your Weber opinion, 406 U.S. 174-175. This may explain the SG's decision not to rely on this argument.

The second argument is that the social security act is keyed to those classes of persons more likely to have lost support as a result of the event that triggers coverage. But this argument seems to me to fall to account for the fact that after born legitimates automatically qualify. (The SG does not meet this point). If expectation of support is the key, then the rational approach is to exclude all afterborn children. It might be said that it is more likely that fathers would support legitimate rather than illegitimate children. Again, this point seems to me rejected by Weber. See 406 U.S., at 169-170, 173-174, and particularly the last paragraph, pp. 175-176.

I have always thought that Weber was a major contribution to the developing constitutional law governing the treatment of illegitimates. I would not withdraw from it one inch. I recognize the tension between Weber and Rodriguez, but I would answer that by saying that you should follow the case most clearly in point. That case is Weber. And under Weber, the

SG loses. Your vote should be governed by Weber. If you write, there will be time enough to find a line to tread between Weber and Rodriguez.

JBO

No. 72-6609 JIMENEZ v. WEINBERGER Conf. 3/20/74

Reversed on rational basis 8 to 1

The Chief Justice Reverse, but would like to Reverse on second go-around

Douglas, J. Reverse

Brennan, J Reverse
On rational basis test. Need not reach "suspect" classification issue.

Stewart, J. Reverse
Under Weber case even-handed enforcement of govt Qs.
5 G struck down from whole cloth — which Petitioner thinks is strongest basis for Govt's position

White, J. Reverse

Weber persuasive
also Gomez.
Fraud & admin. convenience
not necessarily sound

Marshall, J. Reverse

Weber

Blackmun, J. Reverse

Powell, J. Reverse
These children subject to two classifications: (1) between legitimate & illegitimate children & (2) bet. illegitimates born before & after father's disability
After born illegitimates are not excluded.
Weber very close.

Rehnquist, J. Affirm
Don't agree with Weber or Gomez.
Fraud is rational basis.

Judy -- I would join. This is a pretty good opinion, and it causes you no difficulties with your Weber v Aetna casualty opinion Jack

1st DRAFT

For: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Mr. Chief Justice Burger

MAY 31 1974

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: _____

No. 72-6081

Eugenio and Alicia Jimenez, Etc., Appellants, v. Caspar W. Weinberger, Secretary of Health, Education and Welfare,	On Appeal from the United States District Court for the Northern District of Illinois.

[June —, 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

A three-judge court for the United States District Court in the Northern District of Illinois upheld the constitutionality of a provision of the Social Security Act which provides that certain illegitimate children, who cannot qualify for benefits under any other provision of the Act, may obtain benefits only if the disabled wage earner parent contributed to the child's support or lived with him prior to the parent's disability.[1] The District Court held that the statute's classification is rationally related to the legitimate governmental interest in avoiding spurious claims. *Jimenez v. Richardson*, 353 F. Supp. 1356, 1361 (ND Ill. 1973). We noted probable jurisdiction, 414 U. S. 1061.

The relevant facts are not in dispute. Ramon Jimenez, a wage earner covered under the Social Security Act, became disabled in April 1963 and became entitled to disability benefits in October 1963. Some years prior to that time, the claimant separated from his wife and began living with Elizabeth Hernandez, whom he never mar-

[1] 42 U. S. C. § 416 (h)(3).

ried. Three children were born to them, Magdalena, born August 13, 1963, Eugenio, born January 18, 1965, and Alicia, born February 24, 1968. These children have lived in Illinois with claimant all their lives; he has formally acknowledged them to be his children, has supported and cared for them since their birth, and has been their sole caretaker since their mother left the household late in 1968. Since the parents never married appellants are classified as illegitimate under Illinois law and are unable to inherit from their father because they are nonlegitimated illegitimate children. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon Jimenez, as the father, filed an application for child's insurance benefits on behalf of these three children. Magdalena was found to be entitled to child's insurance benefits under the statute because she had been conceived before Jimenez became disabled and no issue is presented with respect to her entitlement to benefits. The claims of Eugenio and Alicia were denied, however, on the grounds that they did not meet the requirements of 42 U. S. C. § 416 (h)(3), since neither child's paternity had been acknowledged or affirmed through evidence of domicile and support before the onset of their father's disability.[2] In all other re-

[2] The current Social Security scheme provides, in essence, that legitimate or legitimated children (42 U. S. C. § 402), illegitimate children who can inherit their parents' personal property under the intestacy laws of the State of the insured's domicile (42 U. S. C. § 416 (h)(2)(A)), and those children who are illegitimate only because their parents' ceremonial marriage was invalid for nonobvious defects (42 U. S. C. § 416 (h)(2)(B)) are entitled to receive benefits without any further showing of parental support. However, illegitimate children such as Eugenio and Alicia who were born after their father became entitled to disability insurance benefits and who do not fall into one of the foregoing categories are not entitled to receive any benefits. 42 U. S. C. § 416 (h)(3).

spects Eugenio and Alicia are eligible to receive child's insurance benefits and their applications were denied solely because they are prescribed illegitimate children born after the onset of the father's disability.

Appellants urge that the contested Social Security provision is based upon the so-called "suspect classification" of illegitimacy. Like race and national origin, they argue, illegitimacy is a characteristic determined solely by the accident of birth, it is a condition beyond the control of the children; and it is a status that subjects the children to a stigma of inferiority and a badge of opprobrium. We need not reach appellants' argument, however, because in the context of this case it is enough that we note, as we did in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 that:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously no child is responsible for his birth and penalizing the illegitimate child is an ineffectual — as well as an unjust — way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where . . . the classification is justified by no legitimate state interest, compelling or otherwise." 406 U.S. at 175-176.

Conversely, the Secretary urges us to uphold this statutory scheme on the ground that the case is controlled by

the Court's recent ruling *Dandridge* v. *Williams*, 397 U. S. 471, where we noted that:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical it may be, and unscientific.' *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S. 61, 69–70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan* v. *Maryland*, 366 U. S. 420, 426." 397 U. S., at 485.

However, *Dandridge* involved an equal protection attack upon Maryland's Aid to Families with Dependent Children program which provided aid in accordance with the family's standard of need, but limited the maximum grant to $250 per family, regardless of size, thereby reducing the per capita allowance for children of large families. We noted that the AFDC welfare program is a "scheme of cooperative federalism" and that the "starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." 397 U. S., at 478. This special deference to Maryland's statutory approach was necessary because, "[g]iven Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family." 397 U. S., at 479. Here, by contrast, there is no

evidence supporting the contention that to allow illegitimates to receive benefits would significantly impair the federal Social Security trust fund and necessitate a reduction in the scope of persons benefited by the Act. On the contrary, the Secretary has consistently maintained that the purpose of the contested statutory scheme is to provide support for dependents of a wage earner who has lost his earning power and that the provisions excluding some after-born illegitimates from recovery are designed to prevent spurious claims and to restrict only those actually entitled to receive payments. Accepting this view of the relevant provisions of the Act, we cannot conclude that the purpose of the statutory exclusion of some after-born illegitimates is to achieve a necessary allocation of finite resources and, to that extent, *Davidson* is distinguishable and not controlling.

As we have noted, the primary purpose of the contested Social Security scheme is to provide support for dependents of a disabled wage earner.[7] The Secretary maintains that the Act denies benefits to after-born illegitimates who cannot inherit or whose illegitimacy is not solely because of a formal, nonobvious defect in their parents' wedding ceremony or who are not legitimated, because it is "likely" that these illegitimates, as a class, will not possess the requisite economic dependency on the wage earner which would entitle them to recovery under the Act and because eligibility for such benefits to those illegitimates would open the door to spurious claims. Under this view the Act's purpose would be to replace only that support enjoyed prior to the onset of disability: no child would be eligible to receive

[7] See House-Senate Conference Comm. Rep. on 1965 Amendments to Social Security Act, 89 Cong. Record 15687 (July 27, 1965); Report of the Advisory Council on Social Security, The Status of the Social Security Program and Recommendations for Its Improvement, 67 (Washington, D. C. 1965).

benefits unless the child had experienced actual support from the wage earner prior to the disability and no child born after the onset of the wage earner's disability would be allowed to recover. We do not read the statute as supporting that view of its purpose. Under the statute it is clear that illegitimate children born after the wage earner becomes disabled qualify for benefits if state law permits them to inherit from the wage earner, § 416(h)(2)(A); or if their illegitimacy results solely from formal, unobvious defects in their parents' ceremonial marriage, § 416(h)(2)(B); or if the child is legitimated in accordance with state law § 402(d)(3)(A). Similarly, legitimate children born after their wage-earning parent has become disabled and legitimate children born before the onset of disability are entitled to benefits regardless of whether they were living with or being supported by the disabled parent at the onset of the disability §§ 402(d)(1) and (3).

In each of the examples just mentioned, the child is by statute "deemed dependent" upon the parent by virtue of his or her status and no dependency or paternity need be shown for the child to qualify for benefits. However, nonlegitimated illegitimates in appellants' position, who cannot inherit because of state law and whose illegitimacy does not derive solely from a defect in their parents' wedding ceremony, are denied a parallel right to the dependency presumption under the Act. Their dilemma is compounded by the fact that the statute denies them any opportunity to prove dependency in order to establish their 'claim' to support and, hence, their right to eligibility. § 416(h)(3)(B). The Secretary maintains that this absolute bar to disability benefits is necessary to prevent spurious claims because "To the unscrupulous person all that prevents him from realizing . . . gain is the mere formality of a spurious acknowl-

segment of paternity or a collusive paternity suit with the mother of an illegitimate child who is herself desirous or in need of the additional cash." *Jimenez v. Richardson*, 353 F. Supp. 1350, 1361 (ND Ill. 1973).

From what has been said it emerges that after-born illegitimate children are divided into two sub-classifications under this statute. One subclass is made up of those (a) who can inherit under state intestacy laws or (b) who are legitimated under state law, or (c) who are illegitimate only because of some formal defect in their parents' ceremonial marriage. These children are deemed entitled to receive benefits under the Act without any showing that they are in fact dependent upon their disabled parent. The second subclassification of after-born illegitimate children includes those who are conclusively denied benefits because they do not fall within one of the foregoing categories and are not entitled to receive insurance benefits under any other provision of the Act.

We recognize that the prevention of spurious claims is a legitimate governmental interest and that dependency of illegitimates in appellants' subclass as defined under the federal statute, has not been legally established even though as here, paternity has been acknowledged. As we have noted, the Secretary maintains that the possibility that evidence of parentage or support may be fabricated is greater when the child is not born until after the wage earner has become entitled to benefits. It does not follow, however, that the blanket and conclusive exclusion of appellants' subclass of illegitimates is reasonably related to the prevention of spurious claims. Assuming that the appellants are in fact dependent on the claimant it would not serve the purposes of the Act to conclusively deny them an opportunity to establish their dependency and their right to insurance benefits, and it would discriminate between the two subclasses of after-born illegiti-

innate without any basis for the distinction since the potential for spurious claims is exactly the same as to both subclasses.

The Secretary does not contend that it is necessarily or universally true that all illegitimates in appellants' subclass would be unable to establish their dependency and eligibility under the Act if the statute gave them an opportunity to do so. Nor does he suggest a basis for the assumption that all illegitimates who are statutorily deemed entitled to benefits under the Act are in fact dependent upon their disabled parent. Indeed, as we have noted, those illegitimates statutorily deemed dependent are entitled to benefits regardless of whether they were living in, or had ever lived in, a dependent family setting with their disabled parent. Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "more inclusive" in that it benefits some children who are legitimated or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent on their disabled parent. Conversely, the Act is "under inclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both. Hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the law guaranteed by the due process provisions of the Fifth Amendment. *Schneider v. Rusk*, 377 U. S. 163, 168; *Golding v. Sharpe*, 347 U. S. 497, 499.

In the District Court the Secretary, relying on the validity of the statutory exclusion, did not undertake to

challenge the assertion that appellants are the children of the claimant, that they lived with the claimant all their lives, that he has formally acknowledged them to be his children, and that he has supported and cared for them since their birth. Accordingly the case is remanded to provide appellants an opportunity, consistent with this opinion, to establish their claim to eligibility as "children" of the claimant under the Social Security Act.

Remanded.

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

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 31 1974

Recirculated: _____

No. 72-6009

Eugenio and Alicia Jimenez, Etc., Appellants, v. Caspar W. Weinberger, Secretary of Health, Education and Welfare	On Appeal from the United States District Court for the Northern District of Illinois.

Reviewed 6/1 Jose

[June — 1974]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

A three-judge court for the United States District Court in the Northern District of Illinois upheld the constitutionality of a provision of the Social Security Act which provides that certain illegitimate claimants, who cannot qualify for benefits under any other provision of the Act, may obtain benefits only if the disabled wage earner parent contributed to the child's support or lived with him prior to the parent's disability.[1] The District Court held that the statute's classification is rationally related to the legitimate governmental interest in avoiding spurious claims. *Jimenez v. Richardson*, 353 F. Supp. 1350, 1351 (ND Ill. 1973). We noted probable jurisdiction. 414 U. S. 1061.

The relevant facts are not in dispute. Ramon Jimenez, a wage earner covered under the Social Security Act, became disabled in April 1963 and became entitled to disability benefits in October 1963. Some years prior to that time, the claimant separated from his wife and began living with Elizabeth Hernandez, whom he never mar-

[1] 42 U. S. C. § 416 (h)(3).

1962. Three children were born to them, Magdalena, born August 13, 1963, Eugenio, born January 18, 1965, and Alicia, born February 24, 1968. These children have lived in Illinois with claimant all their lives; he has formally acknowledged them to be his children, has supported and cared for them since their birth, and has been their sole caretaker since their mother left the household late in 1968. Since the parents never married, appellants are classified as illegitimate under Illinois law and are unable to inherit from their father because they are not legitimated illegitimate children. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon Jimenez, as the father, filed an application for child's insurance benefits on behalf of these three children. Magdalena was found to be entitled to child's insurance benefits under the statute because she had been conceived before Jimenez became disabled and no issue is presented with respect to her entitlement to benefits. The claims of Eugenio and Alicia were denied, however, on the grounds that they did not meet the requirements of 42 U. S. C. § 416 (h) (3), since neither child's paternity had been acknowledged or affirmed through evidence of domicile and support before the onset of their father's disability.[1] In all other re-

[1] The contested Social Security scheme provides, in essence, that legitimate or legitimated children (42 U. S. C. § 402 (d) (1) (C)), illegitimate children who can inherit their parent's personal property under the intestacy laws of the State of the parent's domicile (42 U. S. C. § 416 (h) (2) (A)), and those children who cannot inherit only because their parent's relationship to a foreign wife invalid for immigration deficiency (42 U. S. C. § 416 (h) (3) (B)), are entitled to receive benefits when the parent is deceased or disabled. Illegitimate children, such as Eugenio and Alicia who were born after their father became entitled to disability or retirement benefits, and who do not fall into one of the foregoing categories, are not entitled to receive any benefits. 42 U. S. C. § 416 (h) (3).

sports Eugenio and Alma are eligible to receive child's insurance benefits and their applications were denied solely because they are prescribed illegitimate children born after the onset of the father's disability.

Appellants urge that the contested Social Security provision is based upon the so-called "suspect classification" of illegitimacy. Like race and national origin they are, appellants say, a characteristic determined solely by the accident of birth, it is a condition beyond the control of the children, and it is a status that subjects the children to a stigma of inferiority and a badge or opprobrium. We need not reach appellants' argument, however, because in the context of this case it is enough that we note, as we did in *Richardson v. Belcher Casualty & Surety Co.*, 404 U.S. 104, that:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where . . . the classification is justified by no legitimate state interest, compelling or otherwise." 406 U.S. at 175–176.

Conversely the Secretary urges us to uphold this statutory selection on the ground that the case is controlled by

the Court's recent ruling *Dandridge* v. *Williams*, 397 U. S. 471 where we stated that,

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S. 61, 69–70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan* v. *Maryland*, 366 U. S. 420, 426." 397 U. S., at 484.

However, *Dandridge* involves an equal protection attack upon Maryland's Aid to Families with Dependent Children program which provided aid in accordance with the family's standard of need, but limited the maximum grant to $250 per family regardless of size, thereby reducing the per capita allowance for children of large families. We noted that the AFDC welfare program is a "scheme of cooperative federalism" and that the "starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds." 397 U. S., at 478. This special deference to Maryland's statutory approach was necessary because "[g]iven Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family." 397 U. S., at 479. Here by contrast, there is no

evidence supporting the contention that to allow illegitimates to receive benefits would significantly impair the federal Social Security trust fund and necessitate a reduction in the scope of persons benefited by the Act. On the contrary, the Secretary has persistently maintained that the purpose of the contested statutory scheme is to provide support for dependents of a wage earner who has lost his earning power and that the provisions excluding some after-born illegitimates from recovery are designed to prevent spurious claims and ensure that only those actually entitled to support receive payments. Accepting this view of the relevant provisions of the Act, we cannot conclude that the purpose of the statutory exclusion of some after-born illegitimates is to achieve a necessary allocation of finite resources and to that extent, *Dandridge* is distinguishable and not controlling.

As we have noted, the primary purpose of the contested Social Security scheme is to provide support for dependents of a disabled wage earner. The Secretary maintains that the Act denies benefits to after-born illegitimates who cannot inherit or whose illegitimacy is not solely because of a formal, nonsubstantive defect in their parents' wedding ceremony, or who are not legitimated, because it is 'likely' that these illegitimates as a class will not possess the requisite economic dependency on the wage earner which would entitle them to recovery under the Act, and because eligibility for such benefits to these illegitimates would open the door to spurious claims. Under this view, the Act's purpose would be to replace only that support enjoyed prior to the onset of disability; no child would be eligible to receive

---

[1] See House Ways and Means Committee Report on 1965 Amendments to Social Security Act, 111 Cong. Record 19387 (July 27, 1965); Report on the Advisory Council on Social Security, The Status of the Social Security Program and Recommendations for Its Improvement, 87 (Washington, D. C., 1965).

benefits unless the child had experienced actual support from the wage earner prior to the disability, and no child born after the onset of the wage earner's disability would be allowed to recover. We do not read the statute as supporting that view of its purpose. Under the statute it is clear that illegitimate children born after the wage earner becomes disabled qualify for benefits if state law permits them to inherit from the wage earner, § 416(h)(2)(A); or if their illegitimacy results solely from formal, nonobvious defects in their parents' nonmarital marriage, § 416(h)(2)(B); or if the child is legitimated in accordance with state law, § 402(d)(3)(A). Similarly, legitimate children born after their wage-earning parent has become disabled and legitimate children born before the onset of disability are entitled to benefits regardless of whether they were living with or being supported by the disabled parent at the onset of the disability, §§ 402(d)(1) and (3).

In each of the examples just mentioned, the child is by statute "deemed dependent" upon the parent by virtue of his or her status and no dependency or paternity need be shown for the child to qualify for benefits. However, unlegitimated illegitimates in appellants' position, who cannot inherit because of state law and whose illegitimacy does not derive solely from a defect in their parents' wedding ceremony, are denied a parallel right to the dependency presumption under the Act. Their dilemma is compounded by the fact that the statute denies them any opportunity to prove dependency in order to establish their 'claim' to support and, hence, their right to eligibility. § 416(h)(3)(B). The Secretary maintains that this absolute bar to disability benefits is necessary to prevent spurious claims because "To the unscrupulous person, all that prevents him from realizing . . . gain is the mere formality of a spurious acknowl-

judgment of paternity or a collusive paternity suit with the mother of an illegitimate child who is herself desirous or in need of the additional cash." *Jimenez v. Richardson*, 353 F. Supp. 1356, 1361 - N.D. Ill. 1973).

From what has been said it emerges that after-born illegitimate children are divided into two subclassifications under this statute. One subclass is made up of those (a) who can inherit under state intestacy laws, or (b) who are legitimated under state law, or (c) who are illegitimate only because of some formal defect in their parents' ceremonial marriage. These children are deemed entitled to receive benefits under the Act without any showing that they are in fact dependent upon their disabled parent. The second subclassification of after-born illegitimate children includes those who are conclusively denied benefits because they do not fall within one of the foregoing categories and are not entitled to receive insurance benefits under any other provision of the Act.

We recognize that the prevention of spurious claims is a legitimate governmental interest and that dependency of illegitimates in appellants' subclass as defined under the federal statute, has not been legally established even though, as here, paternity has been acknowledged. As we have noted, the Secretary maintains that the possibility that evidence of parentage or support may be fabricated is greater when the child is not born until after the wage earner has become entitled to benefits. It does not follow, however, that the blanket and conclusive exclusion of appellants' subclass of illegitimates is reasonably related to the prevention of spurious claims. Assuming that the appellants are in fact dependent on the claimant, it would not serve the purposes of the Act to conclusively deny them an opportunity to establish their dependency and their right to insurance benefits, and it would discriminate between the two subclasses of after-born illegiti-

inquiry without any basis for the distinction since the potential for spurious claims is exactly the same as to both subclasses.

The Secretary does not contend that it is necessarily or universally true that all illegitimates in appellants' subclass would be unable to establish their dependency and eligibility under the Act if the statute gave them an opportunity to do so. Nor does he suggest a basis for the assumption that all illegitimates who are statutorily deemed entitled to benefits under the Act are in fact dependent upon their disabled parent. Indeed, as we have noted, those illegitimates statutorily deemed dependent are entitled to benefits regardless of whether they were living in, or had ever lived in, a dependent family setting with their disabled parent. Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "over-inclusive" in that it benefits some children who are legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent on their disabled parent. Conversely, the Act is "under-inclusive" in that it completely excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both; hence to completely deny one subclass benefits presumptively available to the other denies the former the equal protection of the law guaranteed by the due process provisions of the Fifth Amendment. *Schneider v. Rusk*, 377 U. S. 163, 168; *Bolling v. Sharpe*, 347 U. S. 497, 499.

In the District Court the Secretary, relying on the validity of the statutory exclusion, did not undertake to

plaint the assertion that appellants are the children of the claimant, that they lived with the claimant all their lives, that he has formally acknowledged them to be his children, and that he has supported and cared for them since their birth. Accordingly the case is remanded to provide appellants an opportunity, consistent with this opinion, to establish their claim to eligibility as "children" of the claimant under the Social Security Act.

It is so ordered.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 31, 1974

Dear Chief:

Please join me in your opinion for the Court in 72-6609, Jimenez v. Weinberger.

William O. Douglas

The Chief Justice

cc: The Conference

June 2, 1974

No. 72-6609 Jimenez v. Weinberger

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 3, 1974

Dear Chief:

Re: No. 72-6609 - Jimenez v. Weinberger

Please join me.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1974

Re: No. 72-6609 - Jiminez v. Weinberger

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 3, 1974

Re: 72-6600, Eugenio and Alicia Jimenez v. Weinberger

Dear Chief:

Please join me.

Sincerely,

T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1974

Re: No. 72-6609 - Jimenez v. Weinberger

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 3, 1974

Re: No. 72-6609, Jimenez v. Weinberger

Dear Chief,

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

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

4/1/74

1st draft
5-31-74

2nd draft
6-12-74

join CJ
6-3-74

join CJ
6-3-74

join CJ
6-3-74

join CJ
6-3-74

join CJ
6-3-74

join
CJ
6/3/74

Discuss
6-10-74

72-5609 Jimenez v. Weinberger

July 31, 1975

No. 72-6609 Jimenez v. Weinberger

Dear Chief:

The changes suggested in your memorandum of July 18 are fine with me.

Sincerely,

The Chief Justice

LFP/gg