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DISCUSS

Hold for Beaty V Weinberger, 73-521 (Junion, Maleuri felled Sept 20 by 56-but not yet circulated)

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

(Memo Op: Austin, Decker, DJs; <u>Fairchild</u>, CA 7 CJ.

dissenting)

Federal civil

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PRELIMINARY MEMORANDUM

November 30, 1973 October 19 , 1978

List 2, Sheet l

473_521, No. 72-6609

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WEINBERGER (Sec., HEW)

also be notest. disableck Appellants are illegitimate children. Their father, who supports them, The R cases

Should they sought to collect social security disability benefits on their behalf. This

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dated for request was denied, although the father would have been able to collect the argument.

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 III.) 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, appelled 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 lests. 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 illegimates whose fathers are domiciled

3 Tals

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 iflegitimates in the line of intestate succession of a father and those born in elber 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. Granging 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

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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 tower tier

the court found trust
analysis, 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
tikely 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. WFINBERGER. 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 teast intrusive means. In the atternative, 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.

Strange

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 II, 1973

There is a motion to affirm and an <u>amicus</u> submission consented to by the parties.

USDC (ND III.) 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 Vlaudis 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 condusively precluded from benefits.

Conference 10-19473

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Court	Voted on	9
Argued	Assigned	No. 72-6609
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DISCUSS

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Hold for Beaty v Weenberger 73-521 (in direct conflict)

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JIMENEZ

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RELIST

WEINBERGER

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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 of purpose 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.

J., F. P., Jr.

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1. F. P. Jr.

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poor support are alegible.

Lekelhood of support is not relevant.

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.
- 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 legitlmate. They cannot be legitlmated 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 reremony 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 by an indicated and the second 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 <u>Weber</u> 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 <u>Weber</u> and <u>Rodriguez</u>, but I would answer that by saying that you should follow the case most clearly in point. That case is <u>Weber</u>. And under <u>Weber</u>, the

y ---

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

JBQ.

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Douglas, J. Revenue

Brown, I Haverer.

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Stewart, J. Reverse

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Basis for good's position

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Vudy - - I would join. This is a pretty good opinion, and it courses you no difficulties under your weter a setur

1st DRAFT

Tor No. Justice Tearlast Mr. Justica birorah **Mr.** Justice Stembri Mr. Jostice White Mr. Justice Marshali Mr. Justice Blackman Mr. Jostine Powell .

Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED SPATES Chic

No. 72 46600

Circulated:

Rectroulates:

Esgenie and Alicia Jimenes. Etc., Appellants.

tion and Welfare,

Caspar W. Weinberger, Seereturn of Health, EducaOn Appeal from the United States Distract Court for the Northern Dastrict of Illingis.

(June 4-, 1974)

Mr. Cours Justice Burgen delivered the ophicus 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 provoles that certain Elegitimate rhabitra, who cannot qualify for benefits under any other provision of the Act, may obtain benefits only if the disabled wage earner perent contributed to the child's support or lived with han prior to the parent's disphility.1 The District Court held that the statute's classification is rationally related to the legitimate governmental interest in avoiding sparious claims. Johnnes v. Richardson, 353 F. Supp. 1356. 1361 (ND III, 1973). We noted probable presolution. 414 U.S. 1061.

The relevant facts are not in dispate. Ramon lineary. a wage carner covered ander the Social Security Act, hecame doubled in April 1963, and became entitled in disanality benefits to Ortober 1963. Some years prior to that true, the champar separated from his wife and began living with Elizabeth Herigadez, whom he never agar-

¹⁴² P. S. C. & 46 (9) (6).

cied. Three children were horn to them, Magdalera, horn August 13, 1963. Eugemo, born January 18, 1965, and Alima, 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 too them, since their large, and has been their sole can taker since their mother left the household late to 1968. Since the parents never married appellants are classified as diogitimate under Himois law and are unable to inhere from their father herance they are near logitimated allegiturate children. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon Jiminez, as the father, filed an application for child's insurance benefits on behalf of these three children. Magdal has was found to be entitled to child's insurance benefits under the started because the half been conceived before Jimmez became disabled and no issue is presented with respect to her entitlement to broefits. The claims of Rugemo and Alicia were denied however on the grounds that they did not meet the requirements of 42 U.S. C. § 416 (h) (3) show wither child's paternity had been acknowledged to affirmed through evidence of domestic and support before the moset of their father's disability. In all other re-

The costest of Secta. Security scheme provides, jacob use, that beginness or signoring the free 182 U.S. C. § 407. In the collection mate explicit where on the fit then provides defined property mate. The fatest or laws of the Section Hambert of the methods defined in 12 U.S. C. § 410. In .2 of the hard there explain materials defined in the begans their property of the methods in a range to extract deformable as a discretific U.S. C. § 416 charks the resemble of to receive benefits without any particle diswing of process as print. There are flog transfer desired to only or index of the decision was a some field in the decision of the total states of the decision of the decisio

specis. Eugenia and Alicia are obgain to receive child's insurance brenefits and their applications were denied solely become they are prescribed illegating to children born after the once; of the father's disability.

Appellants argo that the contested Scent! Scentity provision is based upon the so-called "suspect classification" of diagnithmers. Take take and national origin, they argue, allegithmacy is a characteristic determined solely by the aerodom of birth, it is a condition beyond the control of the children and it is a status that subjects the elsiphent to a stigma of inferiority and a badge or approbrium. We used not reach appellants' argument, however, because in the context of this case it is enough that we must as we did in Weber v. Action Casualty & Sarety Co., 406 U.S. 164 that;

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

Conversely, the Secretary urges as to uphold this statutory scheme on use ground that the case is controlled by the Court's record ruling Dundridge v. Williams, 397 U.S. 471, where we noted that:

The the greg of economics and social welligge, a State does not vintate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis "it does not offered the Constitution simply begapse the objesification his not made with mathematical racety in because in practice it results in some me copsality, ** Lindsby v. Natural Carbone Gas Co., 220 U. S. 61, 78. The problems of government are practical ones and may justify, if they do not requite, rough accommodations, illogical it may be, and unscientific ! Metropolis Theatra Co. v. City of Chirago, 228 U. S. 61, 69–70. "A statutory discrimipaties will not be set aside if any state of facts reasoughly may be conceived to justify it. McGowan Maryland, 366 U. S. 420, 426," 397 U. S., at 485.

However, Dandridge involved an equal protection attack upon Marcland's Aid to Families with Desembert-Children program which provided and in accordance with the family's standard of word, our limited the eggingengrant to \$250 per family, regardless of size, thereby resides ing the per capita allowance for children of large families. We noted that the AFDC welfare program is a "scheme of cooperative federalisms graf that the "starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing 397 U.S., at 478. This special deits available funds. ference to Maryland's statutory approach was in-cessary because, "Ixliven Maryland's finite resources, its choice is extree to support some families adequately and others less adequately, or bot to give sufficient support to any faradly." 397 U.S. at 479. Here, by contrast, there is no

evidence supporting the existenties that to allow allegitimates to receive benefits would significantly impair the federal Social Security trust fand 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 statutely scheme is to provide support for dependents of a wage carrier who has lost has carried power and that the provisions excluding sugar after-both (Regitionates from preovery are designed to prevect spinious claims and restire that only those actually entitled to recover receive payments. Accepting this view of the relevant provisions of the Act, we cannot conclode that the purpose of the statutory exclusion of some after-horn elegitimates is to achieve a necessary allocation of finite resources and, to that extent, Dundealor is distinguishable and not controlling.

As we have coted, the primary purpose of the contested Social Scenarty scheme is to provide support for dependents of a disabled wage cather. The Secretary maintains that the Act decrees benefits to after-bory illegit-inates who care of a formal, nondecions defect in their parents' wedding ceremony or who are not legitimated, because a is "likely" that there illegitimates, as a class, will not possess the requisite economic dependency on the wage eacter which would entitle their to recovery upper the Act and because eligibility for such benefits to those illegionates would open the door to spurious claims. Under this view the Act's purpose would be replace only that support enjoyed prior to the mose of cisability: on child would be eligible to receive

^{*}See Hause-Secure Contenents Comm. Rep. of 1995 Amendments to Social Security Act. 111 Cong. Review 18887 [Pub 97, 1965]; thepopt on the Advisory Content of Social Security The Status of the Social Security Program and Recommendations for the Improvement, 67 (Washington, D. C. 1965).

benefits unless the child had experienced actual support from the wage carner prior to the disability and no clubs born after the orset 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 camer becomes disabled quality for benefits if state key permits them to inherit from the wage earner, $\S416$ (b) (2) (A); or if their illegitimacy results solely from formal, unnobvious defects in their parents' ceremontal marriage, \$416 (b) (2° (B)) or if the child is logitizasted in accordance with state law 3 402 of ((3)) A). Sandarly, legitimate chibbren begu after their wage-carnrog parent has become disabled and legitimate children born before the anset of deability are entitled to benefits regardless of whether they were living with or being supported by the disabled parent at the onset of the d(sability | \$\$ 402 (do (1) au.)} (3) .

In each of the examples just mentioned, the child is by statute "decised dependent" upon the patent by circue of his or her status and no dependency or paternally head be shown for the child to qualify for benefits. However, confeguinated illegitimates in appellants' position, who rannot taherit because of state law and whose illegitimacy does not derive solely from a defect in their parents' welding coronomy, are denied a parallel right to the dependency presumption under the Act. There dilemma is compounded by the fact that the statute decrees them any appartunity to prove dependency to order to establish their telainel to support and hence, their right to eligibility. § 116 (h) (3) (B) The Scenetary togintains that this absolute bar to disability penefits is necessary to provent spurious claims because "To the unscrupulous person all that prevents him from realizing . . . gam is the there formality of a spurious acknowle

eigment of pateracty of a callestvo paternity suit with the masher of an illegitimate child who is herself desirters of in used of the additional cash." Jimeta 2 x. Richardson, 353 F. Supp. 135n 136t (N1) 10, 1973).

From what has been said it concepts that after-born inlegationate children are divided into two sub-classifications to der this statute. One suborlass is teach up of those (a) who can takent under state intestacy laws or (b) who are legitimated orabit state law, or (c) who are illegitimate only because of some formal defect in their parents' ceremonal marriage. These children are dismost 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 illegatimate children includes those who are conclusively denied benefits because they do not fail within one of the foregoing categories and are not carrilled to receive assurance benefits under any other prevision of the Act.

We recognize that the prevention of spurious claims is a legitimate governmental interest and that dependency of allegitabletes in appellants' subclass as defined under the federal statute, has not been legally established even through as here, paternity has been acknowledged. As we have noted, the Secretary majorajus that the possibility that evidence of parentage or support may be fabricated is greater where the child is not porn until after the wage earner has become entitled to henclifts. It does not follow, however, that the blanker and conclusive exchashow of appeilmest subclass of illegitimates is reasonably related to the prevention of spurious claims. Assuming that the appellants are in fact dependent or, the claimant it would not serve the purposes of the Act to conclusively deny there an opportunity to establish their dependency and them right to insurance benefits, and it would discriminate between the two subclasses of after-born illegits imate without any basis for the distinction gince the potential for spurious claims is exactly (he same as to both subclasses.

The Secretary does not recatoud that it is necessarily or universally true that all diagramates in appellants' subclass would be unable to establish their dependency and eligibility or der the Acr if the statute gave them an apportunity to do so. Nor does he suggest a basis for the assumption that all illegitimates who are statutually decaret entitled to hypefits under the Act are in fact dependent upon their disabled parent. Indeed, as we Lave noted, those illegitimates statutorily decoust dependent are entitled to benefits regardless of whether they were living in, or had ever fixed in, a dependent family setting with their disabled parent. Even, if children ought rationally be classified on the basis of whether they are dependent upon their disabled parent the Act's definition of these two subclasses of illegiomates is "neerinclusive his that it benefits some children who are legitinguted or entitled to inherit, or illegatingue solely because of a defect to the marriage of their parents, but who are not dependent on their disables parent. Conversely, the Act is "trader inclusive" in that it enachs sively excludes some illegitimates in concluses, subclass who are, is fact, dependent upon their disabled parent, Thus, for all that is shown in this record, the two subclasses of illegitocates stand on equal footing, and the pute dial for specious claims is the same as to both; Lence to conclusively deny one subclass bearfus presupergively available to the other denies the former the equal protertion of the law guaranteed by the due process provisions of the Fifth Amenginaent — Schooldart v. Rush, 377 U. S. 163 [168] Rolling v. Sharpe, 347 U. S. 497 [490.]

In the District Coast the Secretary, velying on the valuebry of the statistics emission did not undertake to

JUNESUZ & WEINBLRGER

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 confiden, and that he has supported and cared for them since there birth. Accordingly the case is remained to provide appellants an opportunity, consistent with this upinion, to establish their claim to eligibility as "children" of the claimant makes the Social Security Act.

Remanded.

To: Wr. Guarries Couglas Mr. Justice Brennan Mr. Justice Stewart Mr. Justice White Mr. Justice Marchall Mr. Justice Blackmin Kr. Justice Powell . Mr. Justice Reboquist

ist DHAFT

Prom: The Chick Justice SUPREME COURT OF THE UNITED

No. 72-6609

Rectroulated:

Engonio and Aljeja Junenez. Etc., Appellants. iA.

Caspar W. Weinberger, Sec-1 retary of Health, Education and Wellare

On Appeal from the United States District Court for the Northern District of Lianus

[Jase + 1974]

Mr. Chief Justice Busines delivered the operator 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 Coefficients stabilized, who cannot qualify for benefits under any other provision of the Act, may obtain benefits only if the disabled wage carner parent contributed to the enald's support or fixed with him prior to the parent's disability. The District Court held that the starger's classification is rationally related to the legitabate governmental interest in avoiding spuri-60s claims. Jinewicz v. Richardson, 353 V. Supp. 1356. 1361 (XD III, 1973). We noted probable jurisdiction. 414 U.S. 1061.

The relevant facts are not in dispate. Ramon Jimbers, it wage garner covered under the Social Scenrity Act, hecame disabled in April 1963, and became entitled to disability henelits in October 1963. Some years prior to that tane, the clasmant separated from his wife and began Eving with Elizabeth Hernstedez, whom he never marReviewed 6/1 Josei

^{3 82} Pt. 5, Ct. \$ 106 (63) (6),

August 13, 1963. Eugenio born Japanay 18, 1965, and Alicia, born Fobruary 24, 1968. These enithers bave fixed in Illinois with claimant all their lives; he has formally acknowledged them to be his children, has supported and cared for them to be his children, has supported and cared for them since their birth, and has been their side caretaker since their mother left the household lare b. 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 som-legismusted dilegitimate classified. Ill. Ann. Stat., c. 4, § 12.

On August 21, 1968, Ramon diminer, as the father, filed an application for child's insurance benefits on behalf of these three children. Alagdalous was found to be estitled to child's assurance benefits under the starute because she had been conceived before Juneary became disabled and no issue is presented with respect to beyond talement to benefits. The claims of Engeno and Alicia were decicl, however, on the grounds that they did not meet the requirements of 42 U. S. C. § 416 (h) -35, since within child's paternity lind been acknowledged in affirmed through evacence of domicide and support before the maset of their father's disability. In all other respective maset of their father's disability.

The contracted Social Security scheme provides, in assume that legition to or legal mated children (42.11 S. C. § 402 c ii i i)), dilegitionate another what can refer their ranger's personal property mater the antests what can refer their ranger's personal property mater the sharp tree yet the Scheme form a street character to the 112 U.S. C. § 406 (1.10.2). At a, and those of illition who cannot underwoodly becomes their parameters are made a cannot underwoodly becomes defect (44.1 S. C. § 626 (1.115)), are in titled to receive benefits we materially first each as thing on their distributions are formal scheme included as although an absolute material to also distribute as an are formal scheme includes the notice of the open size that a superior can be supported by the parameter and there are not contributed to not the three-gainst scheme are not contributed as received any Jeanths. At T. S. C. § 410 (10.3).

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

Appellants argo that the contested Social Security provision is based upon the so-called "suspect classification" of allogationery. Take race and national origin they argue, degit, many is a characteristic determined society by the accolent of both, it is a condition beyond the control of the children, and it is a status that subjects the children to a stegma of inferiority and a badge or approbrium. We need not reach appellants' argument however, because in Europhean of this case it is enough that we note, as we did in Wilder v. Action Cosmilly & Sweety Co., 406 U.S. 164, that:

"The status of diagrimacy has expressed through the ages secrety's condemnation of presponsible hatsons beyond the bonds of marriage. But visiting this conformation on the head of an infant is illogical and unlast. Moreover, imposing disabilities on the diegitmane child is contrary to the basic concept of our system that legal purcleus should bear some relationship to individual responsibility or wrongdoing. Ohymossiy, no child is responsible for his both and penaltzing the illegitimate child is an ineffectual as well as an anjust sway of deterring the parent. Courts are provedess to prevent the smigh approbrium sustered by these hapless children, but the Equal Protection Clarge does made us to strike down discriminatory laws relating to status of birth where . . . the classification is justified by an legitimate state interest, compelling or otherwise. 408 F. S. at 175, 176.

Conversely, the Surretary arges as to uphold this stattitory scheme on the ground that the case is controlled by the Court's recent ruling Dundridge v. Williams, 397 U.S. 471 where we entire that,

"In the area of economics and social welfare, a State does not violate the Equal Protection Clause occuly because the classifications made by its laws are imperfect. If the classification has some 'reasonable busis," it does not offered the Constitution simply brgaper the classification is not made with mathematic cal macry of boratise of practice it results in some in-– Lindsky v., Natural Carbonic Gas Co., 220 P. S. 61 78. The problems of government gre practical ones and may justify, if they do not require, rough accommodations—illegical, it may be, and ansecutate. Metropolis Theata Co. v. City of 4 horago, 228 U. S. 61, 60, 70. "A statutory discriptination will not be set uside if any state of facts reassorably may be conceived to justify it. Meliogra- Mordand, 366 U. S. 420, 426," 397 U. S., at 455.

However, Involvidge involves, an equal protection attack upon Macyland's Vid to Families with Dependent Christian program which provided signing groundance with the forcely's standard of newl, but limited the maximum grant to \$250 per family, regardless of size, thereby reducing the per cupits allowaters for eliptizer of large formless. We noted that the AFOC welfare program is a "scheme of cooperative federalism" and that the "starting point of the statutory analysis mast be a recognition that the federal law gives each State great language in dispensing its available finds " | 397 U.S., at 478. This special deference to Maryland's statutory approach was necessary because "[g] (ver Maryland's finite resources, its choice is entage to support some (amplies 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 tendence supporting the contention that to allow Hightimates to receive benefits would sign frontly impair the federal Social Security trust fund and more state a reduction at the scope of persons hearfited by the Art. On the contrary, the Secretary has persistently nationalized that the purpose of regionitested statingry scheme is to provide support for dependents of a wage corner who has lost his garaing power and that the provisions exchaling come after-boxic diagramatics from recovery are designed to preverit specious claims and ensure that only those petually entitled to recover necesso payments. Accepting this view of the relevant processing of the Action exampt ronclude that the purpose of the statisfory exclusion of some after-born illegitariates is to arbieve a necessary allocation of finite resources and to that extent, Dandadye is distinguishable and not controlling.

As we have noted, the primary parases of the contested Social Security scheme is to provide support for dependents of a displied wage current. The Secretary maintains that the Act deales benefits to after-born illegit-ingles who cannot inherit or whose illegitariary is not solely belonge of a formal, combying defect in their parents' wedding common, or who are not legitingful, because it is "likely" that these illegitimates as a class, will not possess the equisite common dependency on the wage carner which would entitle them to recovery more the Act and because eligibility for such benefits to those illegaments would open the door to spurious claims. Finder this wave the Act's surpose would be an epiblic only that support enjoyed prior to the onset of disability) no child would be obtained to receive

^{*}See Theory-Source Courtes are Comm. Rep. on 1906 Americhants to Source Sources Act. 412 Court Research 19367 (July 27, 1965). Report on the Advance United in Social Sciencey The States of the Sec II. Sciencey Print on 1904. Recommendations for its Imposes needs, 67 (Washington, D. C. 1965).

benefity galess the objid had experienced actual suppost from the wage earner prior to the disability, and no child hope after the coast of the wage carner's disarabiv, would be allowed to recover. We do not read the statute as supporting that view of its purpose. Finder the starute it is clear that allegates are chaldren born after the wage career becomes distribled qualify for brinefits if state law permits them to inherit from the wage carner, \$446 (h) (2) (A); or if their illegatingary results solids from formal, nonological defects in their parents' coremunial marriage, § 416 (h + 2) (B*) or if the child is legationated in aroundation with state law, $\S 402/(47/3)/A\%$. Similarly, (egitimate rialized born after their wage-earnnig parent has become disabled and legitimate children born before the onset of disability are entitled to benefits. tegardless of whether they were fiving with or bejog supported by the disabled parent at the onset of the GlackSity, \$3,402 of colleged 731.

In each of the examples just mentioned, the child is by star at "deeped dependent" upon the parent by virtue of his or her status and no dependency of patientity need he shown for the child to qualify for benefits. However againgstunated illegitimates in appellants' position, who cannot inhere because of state law and whose illegitimacy does not derive solely from a defect its their percents' wealting container, are depart a parallel of right to the dependency presumption under the Act. 4 Their olderams is compareded by the fact that the Statistic denses there may apportunity to prove dependency in order to establish their behains to support and, house their right to eligibility (§ 416 ch ((3) cB)). The Somefory material s that this absolute bar to disability hopefits is accessory to prevent spurious clauss because "To the unserspulous person, all that prevents him from realizing . . . grin as the more formulate of a spurious acknowledgeness of paternity of a collisive paternity surt with the mention of an illegatimate child who is herself desirates of in and of the satisficing cash.' Innexes v. Richardson, 353 F. Supp. 1356, 1361 (ND III, 1973).

From what has been said it emerges that atter-born Dingitimate children are divided note two subschoolinations under this statute. One subschass is made up of those (a) who can inherit under state intestary laws, or (b) who are logalizated in der state law, or (c) who are illegitimate only because of some formal defect in their parents' represented marriage. These children are decreased mutthed to receive benefits under the Act without any showing that they are in fact dependent apon their disabled parent. The second subclassification of after-born (Aegitumate children includes those who are conclusively decied benefits because they do not fall within one of the foregoing categories and are not cutabed to receive us more benefits under any other provision of the Act

We recognize that the precention of spurious claims is a legitimate governmental interest and that, dependency of illegatimates in appellants' subclass as defined underly the federal statute, has not been legally established even though, as perc. paternity bay here acknowledged. As we have parted, the Secretary again tains that the possibility that evidence of pasertage or support may be fabrieated is greater when the child is not horn until after the wage carner has become obtatiod 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 chimant, at would not serve the purposes of the Act to conclusively deay there an opportunity to establish their dependency and their right to mismaphe benefits, and it would distrinshate between the two subclasses of afterstrom illegits

imple without any basis for the distriction since the potential for spurious chains is exactly the same as to both subclasses.

The Segretary does not contend that it is necessarily or universally true that all illegitimates in ampellants' subclass would be unable to establish their dependency and eligibility under the Art if the statute gave them so opportunity to do so. Nor does he suggest a basis for the assumption that all illegitimates who are statisticily deemed chartled to benefits under the Act are in fact dependent upon their disabled parent. Indeed, as we have noted those Aleganiates standardy deemed deperdent are cataled to heading regardless of whether they were living in, or had ever fixed in, a dependent family setting with their disabled parent. Even if childoes inight rationally be classified on the basis of a bother they are dependent upon their disabled parent, the Act's definition of these two subclasses of ellegitimates is "everinclusive in that it benefits some children who no 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-idebayed on that it conclusively excludes some illegitimates is appellinits' subclass while are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subchases of illegitimates stand on equal footing, and the potential for sportious claims is the same as to both; beace, to corelasively deep one subclass benefits presumprively 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. Bask, 377. U. S. 163, 168; Bolling v. Sharpe 347 P. S. 497, 499.

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

JIMENES -, WEINBURGER

challenge the assertion that appellants are the children of the charmant, that they lived with the charmant all their layer, that he has menually acknowledged them to be his children, and that he has supported and carred for these since their latth. Accordingly the case is remained 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.

Remardel,

Supreme Court of the United States Mashington, D. G. 20343

CHAPPIES OF DOUBLES

May 31, 1974

Dear Chief;

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

William O. Douglas

The Chief Justice

ee: The Conference

No. 72-6609 Jimenez v. Weinberger

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the Anited Sixtre Brohington, D. C. 20543

CHAMBERS OF JUSTICE MANNEY A BLACKMEN

June 3, 1974

Dear Chief:

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

Please join me.

J. a. B.

The Chief Justice

Copies to the Conference

Superior Court of the United States Pashington, D. C. 2001,3

CHARACTERS OF JUSTICE WY I BEN NEAR, 277

June 3, 1974

RE: No. 72-6609 Diminez v. Weinberger

Dear Chief:

I agree.

Sincerely,

Bigg

The Chief Justice

co: The Conference

Supreme Court of the Anited States Washington, P. G. 205949

CHARLES OF CONTRACT SOLUTION

June 3, 1974

Re: 72-5609, Eugenio and Micia Jimenez v. Weinberger

Dear Chief:

Please join me.

Sincerely,

118

т. М.

The Chief Justice

ec: The Conference

Supreme Court of the United States Washington, D. C. 20343

COMMITTEEN AUSTRE BYRON P. WHITE

June 3, 1974

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

Dear Chief:

Please join me.

Sincerely,

Bym

The Chief Justice

Copies to Conference

Supreme Courl 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,

?s.

The Chief Justice

Copies to the Conference

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Weinberger		j	··	. :	1/1/2 6. 10.74	

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