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Hold

PRELIMINARY MEMO

Summer List 15, Sheet 1

No. 75-88

MATTHEWS, Secretary, HEW

v.

LUCAS, ET AL., Social Security Claimants

Appeal from D. R.I. (Pettine, C.J.) Federal/Civil

Timely (by extension)

1. SUMMARY: This appeal presents the same issue as that raised in Norton v. Matthews, No. 74-6212, question of jurisd. postponed, June 30, 1975. Unlike Norton, however, the single-judge court in this case found the Social Security scheme governing eligibility of illegitimate children for insurance benefits unconstitutional.

Hold for Norton.

CRS

2. FACTS: Appellees applied for child's insurance benefits under 42 U.S.C. § 402(d). They are the illegitimate children of one Robert Curfee, the deceased insured. Curfee lived with appellees' mother from 1948 to 1966. They never married. The two minor appellees were born of this union. Curfee never acknowledged his paternity in writing, nor had his paternity or support obligations ever been the subject of a judicial proceeding. As a result, the appellees failed the eligibility requirements of 42 U.S.C. § 416(h)(3)(C)(i), under which their entitlemen to Social Security benefits, upon the father's death, would have been automatic.

Appellees' eligibility under the statutory scheme therefore depended upon whether they were living with or were being supported by the decedent at the time of his death. 42 U.S.C. § 402(d)(3), § 416(h)(3)(C)(ii). The appellees were unable to show dependency.

Appellees then mounted a constitutional attack against the scheme. They claimed that the statute violated due process by requiring certain classes of illegitimate offspring to prove dependency, whereas dependency was assumed as to legitimate children and specified classes of illegitimates. A three-judge court was convened, but was dissolved when appellees abandoned their earlier request for an injunction against enforcement of the statutory requirement.

A single judge then considered the case on cross-motions for summary judgment. The court held that under Flemming v. Nestor, 363 U.S. 603, a three-judge court was not necessary when the complaining party sought only individual relief, even though the constitutionality of the statute was drawn into question. The court then held that differential treatment of certain illegitimates constituted invidious discrimination, since some but not all minor claimants had to prove dependency.

3. CONTENTIONS: The SG says that this is a hold for Norton v. Matthews. The identical constitutional issue is presented in that case. He notes that the Court in Norton has postponed consideration of the question of jurisdiction until the hearing on the merits. Noting of probable jurisdiction may therefore be in order in this case, because the jurisdictional question posed by Norton is apparently not raised in this case.[1/] Appellees are apparently unaware of Norton. They say that the issue is insubstantial, since the district court's holding is a logical extension of this Court's decisions governing discrimination against illegitimates.

4. DISCUSSION: The SG is correct.

There is a motion to affirm, and a motion by appellees for leave to proceed ifp.

Starr Op in jurisd. st.

9/5/75

JA

[1/] A three-judge court was convened in Norton. Under Weinberger v. Salfi, No. 74-214, 43 L.W. 4985, 4989 n. 8, an issue remains as to whether a three-judge court is proper in this setting. This jurisdictional problem does not apply here. Appellees abandoned their request for an injunction and sought only individual relief. Consequently, a single judge heard the case. This Court has direct appellate jurisdiction under 28 U.S.C. § 1252.

yes

Conference 9-29-75

Court USDC, D. R.I.   Voted on ...., 19...   No. 75-88

Argued ...., 19...   Assigned ...., 19...

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

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE, Appellant

vs.

RUBY M. LUCAS, ET AL.

7/14/75 Appeal filed.

Marshall says Norton may go off on a "juris." Q (we postponed). Then if we merely "Hold" this case, the question here might not be reached. The const. issue is same as in Norton.

Note & set in tandem with Norton 74-6212

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

appeal from single judge in Conn.

75-88 MATHEWS v. LUCAS (as 74-6212) Argued 1/13/76

Involves same Q as to validity of Sec 402(d) of S/Security Act denying "dependent child" relief benefits to an illegitimate who was not being supported by father at time of latter's death.

No 3 J/Ct here as no injunction vs. enforcement of Act was sought.

A single DC held § 402(d) invalid, contrary to decision of majority of 3 J/Ct in Norton v Mathews.

Jones (SG)

In this case, counsel here & in Norton (74-6212) will address merits.

The appeal here is from a single judge - no 3 J/Ct. We clearly have juris (direct appeal).

What is appropriate standard of review?

Argues that we have abandoned two-tier analysis. That type of analysis was perhaps necessary as interim measure.

Responding to Stevens' question, Jones stated the standard he advocates

[There must be an "actual and permissible leg. objective", & the this objective must be served, a furthered by the classification.]

~~This statute is valid~~

[Purpose of statute is to provide support for dependents. The presumption here is reasonable in light of this legislative objective

Brown (for appellee)

Argument on merits.

Step & adopted children – like illegitimate children – have to prove support. There is good reason as to step & adopted children as they have "two" fathers. This reason not applicable to illegitimate.

(Blackmun noted that most – if not many – adopted children are illegitimate)

No. 75-88 Mathews v. Lucas Conf. 1/16/76

Reverse 7 - 2

The Chief Justice Reverse

no class action here.

DC misread statute

The benefits here were not to ~~supplant~~ take place of ~~—~~ earnings

~~xxxxxxxx~~ Stevens, J. Affirm

Thinks there is no rational basis for distinction.

Brennan, J. Affirm

See notes on ~~#~~74-6212

Stewart, J. Reverse

~~The~~ Social Security Act is filled with "line drawing" & classifications. If strict scrutiny is applied the entire Act comes unravelled.

Frontiero is relevant if ~~—~~ strict scrutiny applies - but thinks it should not be extended to Social Security Act.

Legitimate children have legal right - an entitlement - to support.

White, J.

Reverse

The presumption in Frontiero was that wives don't support husbands, but there was no justification for going so far.
That presumption is different here.

Marshall, J.

Reverse

Unless father acknowledges paternity, no way the child can have a court order support.

Blackmun, J. Reverse

Agrees with Stewart.

Powell, J. Reverse

See my notes taken in argument
Agree with Potter & Byron

Rehnquist, J. Reverse

Stevens is writing a dissent.

To: The Chief Justice Z7P
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 6/1/76

Recirculated: ______

2nd DRAFT

Received Z7P 6/2/76

SUPREME COURT OF THE UNITED STATES

No. 75-88

Join

F. David Mathews, Secretary of Health, Education and Welfare, Appellant, *v.* Ruby M. Lucas et al.

On Appeal from the United States District Court for the District of Rhode Island.

[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue of the constitutionality, under the Due Process Clause of the Fifth Amendment, of those provisions of the Social Security Act that condition the eligibility of certain illegitimate children for a surviving child's insurance benefits upon a showing that the deceased wage earner was the claimant child's parent and, at the time of his death, was living with the child or was contributing to his support.

I

Robert Cuffee, now deceased, lived with Belmira Lucas during the years 1948 through 1966, but they were never married. Two children were born to them during these years: Ruby M. Lucas, in 1953, and Darin E. Lucas, in 1960. In 1966 Cuffee and Lucas separated. Cuffee died in Providence, Rhode Island, his home, in 1968. He died without ever having acknowledged in writing his paternity of either Ruby or Darin, and it was

never determined in any judicial proceeding during his lifetime that he was the father of either child. After Cuffee's death, Mrs. Lucas filed an application on behalf of Ruby and Darin for surviving children's benefits under § 202 (d)(1) of the Social Security Act, 42 U. S. C. §402 (d)(1), based upon Cuffee's earnings record.

II

In operative terms, the Act provides that an unmarried son or daughter of an individual, who died fully or currently insured under the Act, may apply for and be entitled to a survivor's benefit, if the applicant is under 18 years of age at the time of application (or is a full-time student and under 22 years of age) and was dependent, within the meaning of the statute, at the time of the parent's death.[1] A child is considered dependent

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[1] Section 202 (d)(1) of the Act, 42 U. S. C. § 402 (d)(1) (1970 and Supp. IV, 1974), provides in pertinent part:

"Every child (as defined in section 216(e) of this title) . . . of an individual who dies a fully or currently insured individual, if such child—

"(A) has filed application for child's insurance benefits,

"(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22 .... and

"(C) was dependent upon such individual—

. . . . .

"(ii) if such individual has died, at the time of such death,

. . . . .

"shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits . . . ."

Section 216 (e), 42 U. S. C. § 416 (e) (Supp. IV, 1947), includes, under the definition of child, *inter alia,* "the child . . . of an individual," certain legally adopted children, certain stepchildren, and certain grandchildren and stepgrandchildren. Additionally, § 216 (h)(2)(A) of the Act, 42 U. S. C. § 416 (h)(2)(A), provides:

"In determining whether an applicant is the child . . . of a fully

for this purpose if the insured father was living with or contributing to the child's support at the time of death. Certain children, however, are relieved of the burden of such individualized proof of dependency. Unless the child has been adopted by some other individual, a child who is legitimate, or a child who would be entitled to inherit personal property from the insured parent's estate under the applicable state intestacy law, is considered to have been dependent at the time of the parent's death.[2] Even lacking this relationship under state law, a child, unless adopted by some other individual, is entitled to a presumption of dependency if the decedent, before death, (a) had gone through a marriage ceremony with the other parent, resulting in a purported marriage between them which, but for a nonobvious legal defect, would have been valid, or (b) in writing had acknowledged the child to be his, or (c) had been decreed by a

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or currently insured individual for purposes of this subchapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property . . . by the courts of the State in which [such insured individual] was domiciled at the time of his death . . . . Applicants who according to such law would have the same status relative to taking intestate personal property as a child . . . shall be deemed such."

[2] Section 202 (d)(3) of the Act, 42 U. S. C. § 402 (d)(3), provides in pertinent part:

"A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—

"(A) such child is neither the legitimate nor adopted child of such individual, or

"(B) such child has been adopted by some other individual."

Additionally, any child who qualifies under § 216 (h)(2)(A), see n. 1, *supra*, is considered legitimate for § 202 (d)(3) purposes, and thus dependent.

court to be the child's father, or (d) had been ordered by a court to support the child because the child was his.[3]

An Examiner of the Social Security Administration,

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[3] Section 202 (d)(3) provides in pertinent part that "a child deemed to be a child of a fully or currently insured individual pursuant to section 216 (h)(2)(B) or section 216 (h)(3) . . . shall be deemed to be the legitimate child of such individual," and therefore presumptively dependent. Section 216 (h)(2)(B) provides:

"If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under § 216 (h)(2)(A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother and father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage."

The specified last sentence of § 216 (h)(1)(B), in turn, refers only to

"an impediment (i) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (ii) resulting in a defect in the procedure followed in connection with such purported marriage."

Section 216 (h)(3) provides:

"An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under § 216 (h)(2) shall nevertheless be deemed to be the child of such insured individual if:

. . . . .

"(C) In the case of a deceased individual—

"(i) such insured individual—

"(I) had acknowledged in writing that the appliacnt is his son or daughter,

"(II) had been decreed by a court to be the father of the applicant, or

"(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,

"and such acknowledgment, court decree, or court order was made before the death of such individual, or

"(ii) such insured individual is shown by evidence satisfactory to

after hearings, determined that while Cuffee's paternity was established, the children had failed to demonstrate their dependency by proof that Cuffee either lived with them or was contributing to their support at the time of his death, or by any of the statutory presumptions of dependency, and thus that they were not entitled to survivorship benefits under the Act. The Appeals Council of the Social Security Administration affirmed these rulings, and they became the final decision of the Secretary of Health, Education, and Welfare. Lucas then timely filed this action, pursuant to § 205 (g) of the Act, 42 U. S. C. § 405 (g), in the United States District Court for the District of Rhode Island on behalf of the two children (hereinafter called the appellees) for review of the Secretary's decision.

The District Court ultimately affirmed each of the factual findings of the administrative agency: that Robert Cuffee was the children's father; that he never acknowledged his paternity in writing; that his paternity or support obligations had not been the subject of a judicial proceeding during his lifetime; that no common-law marriage had ever been contracted between Cuffee and Lucas, so that the children could not inherit Cuffee's personal property under the intestacy law of Rhode Island; and that, at the time of his death, he was neither living with the children nor contributing to their support. 390 F. Supp. 1310, 1312–1314 (1975). None of these factual matters is at issue here.[4]

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the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died."

[4] Upon the original petition for review under § 205 (g), the District Court affirmed the administrative findings that had then been made, but remanded the case to the Secretary for him to determine the common-law status of the relationship between the children's parents, a question left unconsidered in the first adminis-

A motion for summary judgment, filed by the appellees, relied on *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974). It was urged that denial of benefits in this case, where paternity was clear, violated the Fifth Amendment's Due Process Clause, as that provision comprehends the principle of equal protection of the laws,[5] because other children, including all legitimate children, are statutorily entitled, as the Lucas children are not, to survivorship benefits regardless of actual dependency. Addressing this issue, the District Court ruled that the statutory classifications were constitutionally impermissible.[6] 390 F. Supp., at 1314–1321. Recognizing that the web of statutory provisions regarding presumptive dependency was overinclusive because it entitled some children, who were not actually dependent, to survivorship benefits under the Act—although not underinclusive, since no

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trative proceeding. After an adverse determination on this point and an unsuccessful administrative appeal, Lucas, on behalf of the children, again timely sought review in the District Court, presenting the common-law marriage question and asserting a constitutional challenge to the Act. The District Court affirmed the administrative conclusion of no common-law marriage, and then turned to the constitutional questions that are the subject of this appeal.

[5] See, *e. g.*, *Jimenez* v. *Weinberger*, 417 U. S. 628, 637 (1974); *United States Department of Agriculture* v. *Moreno*, 413 U. S. 528, 533 n. 5 (1973); *Frontiero* v. *Richardson*, 411 U. S. 677, 680 n. 5 (1973).

[6] The District Court affirmed the Secretary's factual findings in a "Memorandum and Order" entered August 30, 1974. Viewing the constitutional claim as one requiring the convention of a three-judge District Court under 28 U. S. C. §§ 2282 and 2284, the single district judge did not reach that issue. A three-judge District Court was convened, but disbanded when appellees' renewed motion for summary judgment omitted their earlier request for injunctive relief. The constitutional claim thus was correctly determined by a single district judge.

otherwise eligible child who could establish actual dependency at the time of death was denied such benefits— the court concluded that the Act was *not* intended merely to replace actual support that a child lost through the death of the insured parent. *Id.*, at 1319–1320. Rather, the court characterized the statute as one designed to replace obligations of support or potential support lost through death, where the obligation was perceived by Congress, on the basis of the responsibility of the relation between the child's parents, to be a valid one. Thus, the Court concluded, the Act

> "conditions eligibility on the basis of Congress' views as to who is entitled to support and reflects society's view that legitimate and 'legitimated' children are more entitled to support by or through a parent than are illegitimate children. But this is *not* a legitimate governmental interest, and thus cannot support the challenged classification. *Gomez* v. *Perez,* [409 U. S. 535 (1973)]." (Emphasis in original.) *Id.*, at 1320.

With this conclusion, the District Court reversed the administrative decision and ordered the Secretary to pay benefits for both children. Juris. Statement 28a.

The Secretary appealed directly to this Court. 28 U. S. C. § 1252. We noted probable jurisdiction and set the case for argument with *Norton* v. *Mathews, post,* p. —. 423 U. S. 819 (1975).

III

The Secretary does not disagree that the Lucas children and others similarly circumstanced are treated differently, as a class, from those children—legitimate and illegitimate—who are relieved by statutory presumption of any requirement of proving actual dependency at the

Consider a difference in treatment

time of death through cohabitation or contribution: for children in the advantaged classes may be statutorily entitled to benefits even if they have never been dependent upon the father through whom they claim.[7] Statutory classifications, of course, are not *per se* unconstitutional; the matter depends upon the character of the discrimination and its relation to legitimate legislative aims. "The essential inquiry . . . is . . . inevitably a dual one: What legitimate [governmental] interest does the classification promote? What fundamental personal rights might the classification endanger?" *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972).

Although the District Court concluded that close judicial scrutiny of the statute's classifications was not necessary to its conclusion invalidating those classifications, it also concluded that legislation treating legitimate and illegitimate offspring differently is constitutionally suspect,[8] 390 F. Supp., at 1318–1319, and requires the judicial scrutiny traditionally devoted in cases involving

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[7] It adds nothing to say that the illegitimate child is also saddled with the procedural burden of proving entitlement on the basis of facts the legitimate child need not prove. The legitimate child is required, like the illegitimate, to prove the facts upon which his statutory entitlement rests.

[8] Appellees do not suggest, nor could they successfully, that strict judicial scrutiny of the statutory classifications is required here because, in regulating entitlement to survivorship benefits, the statute discriminatorily interferes with interests of constitutional fundamentality. *Weinberger* v. *Salfi*, 422 U. S. 749, 768–770 (1975); *Dandridge* v. *Williams*, 397 U. S. 471 (1970).

The Court, of course, has found the privacy of familial relationships to be entitled to procedural due process protections from disruption by the State, whether or not those relationships were legitimized by marriage under state law. *Stanley* v. *Illinois*, 405 U. S. 645 (1972). But the concerns relevant to that context are only tangential to the analysis here, since the statutory scheme does not interfere in any way with familial relations.

discrimination along lines of race[9] or national origin.[10] Appellees echo this approach. We disagree.[11]

It is true, of course, that the legal status of illegitimacy, however defined, is, like race or national origin, a characteristic determined by causes not within the control of the illegitimate individual, and it bears no relation to the individual's ability to participate in and contribute to society. The Court recognized in *Weber* that visiting condemnation upon the child in order to express society's disapproval of the parents' liaisons

> "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." (Footnote omitted.) 406 U. S., at 175.

But where the law is arbitrary in such a way, we have had no difficulty in finding the discrimination impermissible on less demanding standards than those advocated

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[9] See *Loving* v. *Virginia,* 388 U. S. 1, 11 (1967); *Bolling* v. *Sharpe,* 347 U. S. 497 (1954).

[10] See *Oyama* v. *California,* 332 U. S. 633, 644-646 (1948); *Korematsu* v. *United States,* 323 U. S. 214, 216 (1944); *Hirabayashi* v. *United States,* 320 U. S. 81, 100 (1943).

[11] That the statutory classifications challenged here discriminate among illegitimate children does not mean, of course, that they are not also properly described as discriminating between legitimate and illegitimate children, See *Frontiero* v. *Richardson, supra; cf. Weber* v. *Aetna Casualty & Surety Co.,* 406 U. S., at 169, 172. In view of our conclusion regarding the applicable standard of judicial scrutiny, we need not consider how the classes of legitimate and illegitimate children would be constitutionally defined under appellees' approach.

here. *New Jersey Welfare Rights Organization* v. *Cahill,* 411 U. S. 619 (1973); *Richardson* v. *Davis,* 409 U. S. 1069 (1972); *Richardson* v. *Griffin,* 409 U. S. 1069 (1972); *Weber, supra; Levy* v. *Louisiana,* 391 U. S. 68 (1968). And such irrationality in some classifications does not in itself demonstrate that other, possibly rational, distinctions made in part on the basis of legitimacy are inherently untenable. Moreover, while the law has long placed the illegitimate child in an inferior position relative to the legitimate in certain circumstances, particularly in regard to obligations of support or other aspects of family law, see generally, *e. g.,* H. Krause, Illegitimacy: Law and Social Policy 21–42 (1971); Gray & Rudovsky, The Court Acknowledges the Illegitimate: *Levy* v. *Louisiana* and *Glona* v. *American Guarantee & Liability Insurance Co.,* 118 U. Pa. L. Rev. 1, 19–38 (1969), perhaps in part because the roots of the discrimination rest in the conduct of the parents rather than the child,[12] and perhaps in part because illegitimacy does not carry an obvious badge, as race or sex do, this discrimination against illegitimates has never approached the severity or pervasiveness of the historic legal and political discrimination against women and Negroes. See *Frontiero* v. *Richardson,* 411 U. S. 677, 684–686 (1973) (plurality opinion).

We therefore adhere to our earlier view, see *Labine* v. *Vincent,* 401 U. S. 532 (1971), that the Act's discrimination between individuals on the basis of their legitimacy does not "command extraordinary protection from the

[12] The significance of this consideration would seem to be suggested by provisions enabling the parents to legitimate children born illegitimate. Compare *Weber,* 406 U. S., at 170–171, with *Labine* v. *Vincent,* 401 U. S. 532, 539 (1971). Of course, the status of "dependency" as recognized by the statute here is wholly within the control of the parent.

majoritarian political process," which our most exacting scrutiny would entail. *San Antonio Independent School District* v. *Rodriguez,* 411 U. S. 1, 28 (1973); *Massachusetts Board of Retirement* v. *Murgia,* — U. S. —, — (1976).[13] We adhere to the standard, embodied in our previous cases, that the distinctions challenged here, between legitimate and illegitimate children, and among illegitimate children, even though based upon circumstances beyond their power to control, are constitutionally permissible if they exhibit a fair and substantial relation to the legitimate objects of the legislation. *E. g., Stanton* v. *Stanton,* 421 U. S. 7, 14 (1975); *Jimenez,* 417 U. S., at 631-634, 636; *Weber,* 406 U. S., at 173, 175-176.

Correct standard

IV

Relying on *Weber,* the Court, in *Gomez* v. *Perez,* 409 U. S. 535, 538 (1973), held that "once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother." The same principle, which we adhere to now, applies when the judicially enforceable right to needed support lies against the Government rather than a natural father. See *New Jersey Welfare Rights Organization* v. *Cahill, supra.*

Consistent with our decisions, the Secretary explains the design of the statutory scheme assailed here as a program to provide for all children of deceased insureds who

[13] In *Rodriguez* the Court identified a "suspect class" entitled to the protections of strict judicial scrutiny as one

"saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." 411 U. S., at 28.

can demonstrate their "need" in terms of dependency at the times of the insureds' deaths. Cf. *Jimenez,* 417 U. S., at 634. He authenticates this description by reference to the explicit language of the Act specifying that the applicant child's classification as legitimate, or acknowledged, etc., is ultimately relevant only to the determination of dependency, and by reference to legislative history indicating that the statute was not a general welfare provision for legitimate or otherwise "approved" children of deceased insureds, but was intended just "to replace the support lost by a child when his father . . . dies . . . ." S. Rep. No. 404, 89th Cong., 1st Sess., 110 (1965).

Purpose was to replace lost support

Taking this explanation at face value, we think it clear that conditioning entitlement upon dependency at the time of death is not impermissibly discriminatory in providing only for those children for whom the loss of the parent is an immediate source of the need. Cf. *Geduldig* v. *Aiello,* 417 U. S. 484, 492–497 (1974); *Jefferson* v. *Hackney,* 406 U. S. 535 (1972); *Richardson* v. *Belcher,* 404 U. S. 78 (1971). See also *Weber, supra,* 406 U. S., at 174–175.

But appellees contend that the actual design of the statute belies the Secretary's description, and that the statute was intended to provide support for insured decedents' children generally, if they had a "legitimate" claim to support, without regard to actual dependency at death; in any case, they assert, the statute's matrix of classifications bears no adequate relationship to actual dependency at death. Since such dependency does not justify the statute's discriminations, appellees argue, those classifications must fall under *Gomez* v. *Perez, supra.* These assertions are in effect one and the same.[14]

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[14] We are not bound to agree with the Secretary's description of the legislative design if the legislative history and the structure of

The basis for appellees' argument is the obvious fact that each of the presumptions of dependency renders the class of benefit-recipients incrementally overinclusive, in the sense that some children within each class of presumptive dependents are automatically entitled to benefits under the statute although they could not in fact prove their economic dependence upon insured wage earners at the time of death. We conclude that the statutory classifications are permissible, however, because they are reasonably related to the likelihood of dependency at death.

A

Congress' purpose in adopting the statutory presumptions of dependency was obviously to serve adminis-

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the provisions themselves belie it. *Weinberger* v. *Wiesenfeld,* 420 U. S. 636, 648 n. 16 (1975); *Jimenez* v. *Weinberger,* 417 U. S., at 634; see generally *Massachusetts Board of Retirement* v. *Murgia,* — U. S., —, — (slip op., at 10–12) (1975). Appellees are unable, however, to summon any meaningful legislative history to support their position regarding the congressional design. They rely largely upon a section of the House-Senate Conference Committee Report on the 1965 Amendments to the Social Security Act, reproduced at 111 Cong. Rec. 18383, 18387 (1965), partially explaining the addition of § 216 (h)(3), set forth in n. 3, *supra,* to the Act:

"A child would be paid benefits based on his father's earnings without regard to whether he has the status of a child under State inheritance laws if the father was supporting the child or had a legal obligation to do so."

But the clause's reference to legal obligations to support hardly establishes that the statute was designed to replace any potential source of lifetime support; in our view the passage appears only to be a partial description of the actual effect of §§ 416 (h)(3)(C)(i)(II) and (III), set forth in n. 3, *supra,* not an enunciation of the general purpose of the Act.

Thus, appellees, in order to make their case, must ultimately rely upon the asserted failure of the legislative product adequately to fit the purported legitimate aim.

trative convenience. While Congress was unwilling to assume that every child of a deceased insured was dependent at the time of death, by presuming dependency on the basis of relatively readily documented facts, such as legitimate birth, or existence of a support order or paternity decree, which could be relied upon to indicate the likelihood of continued actual dependency, Congress was able to avoid the burden and expense of specific case-by-case determination in the large number of cases where dependency is objectively probable. Such presumptions in aid of administrative functions, though they may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, are permissible under the Fifth Amendment, so long as that lack of precise equivalence does not exceed the bounds of substantiality tolerated by the applicable level of scrutiny. See *Weinberger* v. *Salfi*, 422 U. S., at 772.[15]

In cases of strictest scrutiny, such approximations must be supported at least by a showing that the Government's dollar "lost" to overincluded benefit recipients is returned by a dollar "saved" in administrative expense avoided. *Frontiero* v. *Richardson*, 411 U. S., at 689 (plurality opinion). Under the standard of review appropriate here, however, the materiality of the relation between the statutory classifications and the likelihood of dependency they assertedly reflect need not be "scientifically substantiated." *James* v. *Strange*, 407 U. S. 128, 133 (1972), quoting *Roth* v. *United States*, 354 U. S. 476, 501 (1957) (separate opinion of Harlan, J.). Nor, in any case, do we believe that Congress is required in this realm of less than strictest scrutiny to weigh the burdens of administrative inquiry solely in terms of dol-

[15] That these provisions may thus reflect a "secondary" purpose of Congress is, of course, of no moment. *McGinnis* v. *Royster*, 410 U. S. 263, 274–277 (1973).

lars ultimately "spent," ignoring the relative amounts devoted to administrative rather than welfare uses. Cf. *Weinberger* v. *Salfi*, 422 U. S., at 784. Finally, while the scrutiny by which their showing is to be judged is not a toothless one, *e. g., Jimenez, supra; Frontiero* v. *Richardson*, 411 U. S., at 691 (concurring opinions of MR. JUSTICE STEWART and MR. JUSTICE POWELL); *Reed* v. *Reed,* 404 U. S. 71 (1971), the burden remains upon the appellees to demonstrate the insubstantiality of that relation. See *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 78–79 (1911); cf. *United States* v. *Gainey,* 380 U. S. 63, 67 (1965).

B

Applying these principles, we think that the statutory classifications challenged here are justified as reasonable empirical judgments that are consistent with a design to qualify entitlement to benefits upon a child's dependency at the time of the parent's death. To begin with, we note that the statutory scheme is significantly different from the provisions confronted in cases in which the Court has invalidated legislative discriminations among children on the basis of legitimacy. See *Gomez* v. *Perez, supra; New Jersey Welfare Rights Organization* v. *Cahill, supra; Weber* v. *Aetna Casualty & Surety Co., supra; Levy* v. *Louisiana, supra.* These differences render those cases of little assistance to appellees. It could not have been fairly argued, with respect to any of the statutes struck down in those cases, that the legitimacy of the child was simply taken as an indication of dependency, or of some other valid ground of qualification. Under all but one of the statutes, not only was the legitimate child automatically entitled to benefits, but an illegitimate child was denied benefits solely and finally on the basis of illegitimacy, and regardless of any demonstration of dependency or other legitimate factor.

See also *Griffin* v. *Richardson*, 346 F. Supp. 1226 (Md.), aff'd, 409 U. S. 1069 (1972); *Davis* v. *Richardson*, 342 F. Supp. 588 (Conn.), aff'd, 409 U. S. 1069 (1972). In *Weber* v. *Aetna Casualty and Surety Co.*, *supra*, the sole partial exception, the statutory scheme provided for a child's equal recovery under a workmen's compensation plan in the event of the death of the father, not only if the child was dependent, but *also* only if the dependent child was legitimate. 406 U. S., at 173–174 and n. 12. *Jimenez* v. *Weinberger*, *supra*, invalidating discrimination among afterborn illegitimate children as to entitlement to a child's disability benefits under the Social Security Act, is similarly distinguishable. Under the somewhat related statutory matrix considered there, legitimate children and those capable of inheriting personal property under state intestacy law, and those illegitimate solely on account of a nonobvious defect in their parents' marriage, were eligible for benefits, even if they were born after the onset of the father's disability. Other (illegitimate) afterborn children were conclusively denied any benefits, regardless of any showing of dependency. The Court held the discrimination among illegitimate afterborn children impermissible, rejecting the Secretary's claim that the classification was based upon considerations regarding trustworthy proof of dependency, because it could not accept the assertion that

> "the blanket and conclusive exclusion of appellants' subclass of illegitimates is reasonably related to the prevention of spurious claims [of dependency]. Assuming that the appellants are in fact dependent on the claimant [father], 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" 417 U. S., at 636.

Hence, it was held that

> "to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the due process provision of the Fifth Amendment." *Id.*, at 637.

See also *Weinberger* v. *Wiesenfeld,* 420 U. S. 636, 645 (1975); cf. *Labine* v. *Vincent,* 401 U. S., at 539. But this conclusiveness in denying benefits to some classes of afterborn illegitimate children, which belied the asserted legislative reliance on dependency in *Jimenez,* is absent here, for, as we have noted, any otherwise eligible child may qualify for survivorship benefits by showing contribution to support, or cohabitation, at the time of death. Cf. *Vlandis* v. *Kline,* 412 U. S. 441, 452–453 n. 9 (1973), distinguishing *Starns* v. *Malkerson,* 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U. S. 985 (1971).

It is, of course, not enough simply that any child of a deceased insured is eligible for benefits upon *some* showing of dependency. In *Frontiero* v. *Richardson, supra,* we found it impermissible to qualify the entitlement to dependent's benefits of a married woman in the uniformed services upon an individualized showing of her husband's actual dependence upon her for more than half his income, when no such showing of actual dependency was required of a married man in the uniformed services to obtain dependent's benefits on account of his wife. The invalidity of that gender-based discrimination rested upon the "overbroad" assumption, *Schlesinger* v. *Ballard,* 419 U. S. 498, 508 (1975), underlying the discrimination "that male workers' earnings are vital to the support of their families, while the earnings of female wage earners do not significantly contribute to their families' support." *Weinberger* v. *Wiesenfeld,* 420 U. S., at 643; see *Frontiero,* 411 U. S., at 689 n.

23. Here, by contrast, the statute does not broadly discriminate between legitimates and illegitimates without more, but is carefully tuned to alternative considerations. The presumption of dependency is withheld only in the absence of any significant indication of the likelihood of actual dependency. Moreover, we cannot say that the factors that give rise to a presumption of dependency lack any substantial relation to the likelihood of actual dependency. Rather, we agree with the assessment of the three-judge court as it originally ruled in *Norton* v. *Weinberger,* 364 F. Supp. 1117, 1128 (Md. 1973):[16]

> "[I]t is clearly rational to presume the overwhelming number of legitimate children are actually dependent upon their parents for support. Likewise . . . the children of an invalid marriage . . . would typically live in the wage earner's home or be supported by him . . . . When an order of support is entered by a court, it is reasonable to assume compliance occurred. A paternity decree, while not necessarily ordering support, would almost as strongly suggest support was ultimately obtained. Conceding that a written acknowledgment lacks the imprimatur of a judicial proceeding, it too establishes the basis for a rational presumption. Men do not customarily affirm in writing their responsibility for an illegitimate child unless the child is theirs and a man who has acknowledged a child is more likely to provide it support than one who does not."

Similarly, we think, where state intestacy law provides

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[16] Vacated and remanded for further proceedings in light of *Jimenez,* 418 U. S. 902 (1974); reaffirmed, 390 F. Supp. 1084 (Md. 1975); jurisdiction postponed to the hearing on the merits, 422 U. S. 1054 (1975). See *post,* p. —.

that a child may take personal property from a father's estate, it may reasonably be thought that the child will more likely be dependent during the parent's life and at his death.[17] For in its embodiment of the popular view within the jurisdiction of how a parent would have his property devolve among his children in the event of death, without specific directions, such legislation also reflects to some degree the popular conception within the jurisdiction of the felt parental obligation to such an "illegitimate" child in other circumstances, and thus some-

[17] The Secretary, pointing out that § 202 (d)(3) in specific terms provides only that "a child deemed to be a child of a fully or currently insured individual pursuant to section 216 (h)(2)(B) or section 216 (h)(3) . . . shall be deemed to be the legitimate child of such individual," urges that we misconstrued the statute in *Jimenez,* 417 U. S., at 631, n. 2, in concluding that an applicant qualifying as a child under § 216 (h)(2)(A) is to be considered as a *legitimate* child and therefore dependent under § 202 (d)(3). We have no question, however, as to the correctness of that conclusion. First, it is only through operation of § 216 (h)(2)(A) that the recognition of "legitimacy" by state law under § 202 (d)(3)(A) as giving rise to a presumption of dependency takes on a consistent operational meaning. Second, §§ 216 (h)(2)(B) and (3) specifically exclude any child qualified under § 216 (h)(2)(A); if a § 216 (h)(2)(A) child were not considered legitimate under § 202 (d)(3), this would have the anomalous effect that an illegitimate child who had been acknowledged in a written statement by the insured father, for example, would be deprived of otherwise established eligibility for benefits, see § 216 (h)(3)(C)(i)(I), if under applicable state law such an acknowledgment worked to make the child an intestate heir. Moreover, the legislative history is clear that the Social Security Amendments of 1960, Pub. L. 86-778, 74 Stat. 924, §§ 208 (b) and (d), adding § 216 (h)(2)(B) to the Act and inserting the provision in § 202 (d)(3) specifying that a § 216 (h)(2)(B) child shall be deemed to be a legitimate, and therefore dependent, child for death benefit purposes, were intended to have the effect of deeming *any* § 216 (h)(2) child "legitimate" and thus "dependent." See S. Rep. No. 1856, 86th Cong., 2d Sess., 78-79, 133 (discussing §§ 207 (b) and (d)) (1960); H. R. Rep. No. 1799, 86th Cong., 2d Sess., 91-92, 152 (1960).

thing of the likelihood of actual parental support during, as well as after, life.[18] Accord, *Watts* v. *Veneman,* 155 U. S. App. D. C. 84, 88, 476 F. 2d 529, 533 (1973).

To be sure, none of these statutory criteria compels the extension of a presumption of dependency. But the constitutional question is not whether such a presumption is required, but whether it is permitted. Nor, in ratifying these statutory classifications, is our role to hypothesize independently on the desirability or feasibility of any possible alternative basis for presumption. These matters of practical judgment and empirical calculation are for Congress. Drawing upon its own practical experience, Congress has tailored statutory classifications in accord with its calculations of the likelihood of actual support suggested by a narrow set of objective and apparently reasonable indicators. Our role is simply to determine whether Congress' assumptions are so inconsistent or insubstantial as not to be reasonably supportive of its conclusions that individualized factual inquiry in order to isolate each nondependent child in a given class of cases is unwarranted as an administrative exercise. In the end, the precise accuracy of Congress' calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality. Cf. *United States* v. *Gainey,* 380 U. S., at 67. We cannot say that these expectations are unfounded, or so indiscriminate as to render the statute's classifications baseless. We conclude, in short, that, in failing to extend any presumption of dependency to

[18] Appellees do not suggest, and we are unwilling to assume, that discriminations against children in appellees' class in state intestacy laws is constitutionally prohibited, see *Labine* v. *Vincent, supra,* in which case appellees would be made eligible for benefits under § 216 (h)(2)(A).

appellees and others like them, the Act does not impermissibly discriminate against them as compared with legitimate children or those illegitimate children who are statutorily deemed dependent.

Reversed.
It is so ordered.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 75-88 - Mathews v. Lucas

Dear Harry:

In due course I shall circulate a dissent.

Respectfully,

JPS

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

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

Dear Harry:

I shall await further developments in Murgia before responding to you in these cases.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1976

Re: No. 75-88 - Mathews v. Lucas

Dear Harry:

I join your opinion, with this internal reservation: If you are applying the so-called "minimum rationality" standard to this case, there is some language in the opinion with which I do not fully agree, as I have no doubt indicated ad nauseam in the exchanges of correspondence Bill Brennan, Lewis, and me. I do not intend by joining your opinion, any more than I suppose you do by authoring it, to foreclose a more comprehensive review of the matter either in Murgia or, if it becomes necessary, in the Son of Murgia. Depending on what disposition is finally made of Murgia at the end of this Term, I may write a brief separate opinion in this case which will also join your opinion.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 7, 1976

No. 75-88, Mathews v. Lucas

Dear Harry,

With a disavowal similar to Bill Rehnquist's, I am glad to join your opinion for the Court in this case.

Sincerely yours,

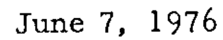
P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN


June 7, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-88 - Mathews v. Lucas

It has been suggested that I drop the citations to Murgia in the proposed opinion that is circulating. I shall do this. These appear in the body of the opinion on page 11 and in footnote 14 on page 13.

Harry

June 8, 1976

No. 75-88 Mathews v. Lucas

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-14-76

Recirculated: ✓

No. 75-88 - Mathews v. Lucas

Mr. Justice White, concurring.

I join the opinion of the Court except insofar as the Court, as on page 16, states that to be constitutional the distinctions challenged must exhibit "a fair and substantial relation to the legitimate objects of the legislation." For purposes of this case, the distinctions should be upheld if they are rationally related to the perceived objects of the legislation. For the reasons stated by the Court, the distinctions satisfy this test and the judgment should be reversed.

We have used this in Royster Guano & other cases.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-88 - Mathews v. Lucas

In view of the neutralization of Murgia and of Dukes, I propose to replace the 13 lines at the top of page 11 with the following:

> majoritian political process," San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28 (1973), which our most exacting scrutiny would entail. See Jimenez, 417 U.S., at 631-634, 636; Weber, 406 U.S., at 173, 175-176.

Perhaps, still in line with my note of June 7, the cites to Murgia in the footnote on page 13 will also be eliminated.

We have "swept" the rest of the proposed opinion in Mathews v. Lucas, but I believe these changes should do the job. Let me know if you disagree.

Harry

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

CHAMBERS OF
THE CHIEF JUSTICE

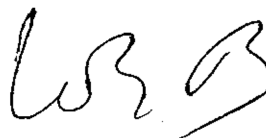
June 23, 1976

Re: 75-88 - Mathews v. Lucas

Dear Harry:

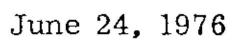
I join your opinion in the above.

Regards,



Mr. Justice Blackmun

Copies to the Conference



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 24, 1976

Re: No. 75-88 -- Mathews v. Lucas

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 24, 1976

RE: No. 75-88 Mathews v. Lucas

Dear John:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Mr. Justice Stevens

cc: The Conference

THE C. J.	~~W. O. D.~~ JPS	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
						1/28/76		
Join HAB 6/23/76	will dissent 6/2/76	Join JPS 6/24/76	Join HAB 6/7/76	~~Join HAB~~ ~~[illegible]~~ ~~75-88~~ ~~[illegible]~~	Join JPS 6/24/76	2nd draft 6/1/76 3rd draft 6/26/76	Join LFP 6/8/76	Join HAB 6/7/76
	typed draft 6/22/76			typed draft concurring opinion 6/14/76				
	1st draft 6/24/76			Join HAB 6/28/76				

75-88 Mathews v. Lucas