10-1983

Kirkpatrick v. Christian Home of Abilene

Lewis F. Powell Jr.

Deny or Hold for Lehr 81-1756

Another "~~[illegible]~~" "renewed" father case

PRELIMINARY MEMORANDUM

January 7, 1983 Conference
List 1, Sheet 2

No. 82-647

KIRKPATRICK — Cert to Tex.Civ.App. (Brown)

v.

CHRISTIAN HOMES OF ABILENE, INC., et al. — State/Civil — Timely

ok

1. SUMMARY: Petr challenges the refusal of the Texas courts to legitimate his child.

2. FACTS AND DECISIONS BELOW: Under Texas law, the relationship between a parent and a legitimate or legitimated

Hold for Lehr, 81-1756, or deny. I have no objection to calling for the record, but I'm not sure this is cert-worthy.

child cannot be terminated without a showing of parental unfitness. Tex. Fam. Code §15.02. An unwed father can petition a court to legitimate his child, and, if he establishes paternity and obtains the consent of the mother or the managing conservator, the court will legitimate the child. If the mother or conservator denies consent, the court can legitimate the child if it is in the best interests of the child.

Resp, Christian Homes, sought to terminate the parent-child relationship between Baby Girl S and her natural mother. The natural father filed a cross-action seeking to legitimate the child and gain custody. The TC terminated the parent-child relationship between the child and her mother and denied the father's petition to legitimate, permitting the resp to place the child for adoption. Tex.Civ.App. affirmed, and the Tex.S.Ct. denied review.

At the time of the hearing, the mother was 16 and the father 25. They had had a relationship for at least a year and a half before the child was conceived but had not lived together. The child was born in a home for unwed mothers run by resp. The mother's parents disapproved of the father and refused to allow a marriage. The mother, herself an adopted child "aware of the stigma under which an illegitimate child suffers," and wanting her child "reared in a two-parent Christian home," decided to relinquish her rights and give the child up for adoption. The father wanted custody of the child, although resp asserts that he was not consistent in that desire. He planned to raise her in the town in which his relationship with the mother had taken

place and planned to enlist the assistance of his mother and sister. When he learned that the mother was pregnant, he asked to marry her. He also offered to pay the expenses of the child's birth, and he deposited money in court for the child's support, but he had never had a family relationship with the child. He suffered from epilepsy that was controlled by medication.

The Tex.Civ.App. held that the gender-based distinction in the statute was justified because it was substantially related to the goal of protecting the best interests of illegitimate children. The court also held that the TC had properly applied Texas law and that the statute did not violate the state Equal Rights Amendment.

3. CONTENTIONS: Petr contends that this Court has never established the substantive standard that the state must meet before it terminates a parent-child relationship. Texas permits involuntary termination of that relationship on the judge's subjective conclusion that the continuation of the relationship is not in the best interests of the child, rather than requiring a showing that the parent is unfit.

Petr also contends that the best interests standard is unconstitutionally vague. When the state seeks to intrude on a protected relationship like this one, where the parent has gone to great lengths to assume his parental responsibilities, it must define the substantive standard precisely. This standard does not give the putative father sufficient notice of what he must do to persuade the court that he should be allowed to keep his child.

Further, the standard invites discriminatory and arbitrary application of the law. Finally, the vagueness of the standard is analogous to excessive delegation by the legislature, transferring the power to enunciate policy governing termination of the parent-child relationship from the legislature to the judiciary.

Next, petr contends that the decision below conflicts wiht Caban v. Mohammed, 441 US 380 (1979), where the Court invalidated a NY statute permitting the unwed mother to veto the adoption of the child but denying the father similar rights. The Texas courts have upheld the law, see In re T.E.T., 602 SW2d 793, cert. denied, 450 US 1025 (1981) (Brennan, Marshall, White, JJ., dissenting) on the theory that unwed fathers can legitimate their children and then they too have the right to block adoption. But the mother can block legitimation proceedings by the father unless he can establish that legitimation will serve the best interests of the child, so, according to petr, there is still gender discrimination. Also, the statute makes an irrational distinction between fathers who are the subject of involuntary legitimation proceedings, for they can block adoption absent a showing that they are unfit.

Further, petr asserts that the statute discriminates against illegitimate children by denying them the opportunity to enjoy relationships with their biological fathers.

Finally, petr contends that the statute is inconsistent with Santosky v. Kramer, 71 L.Ed.2d 599 (1982), because it places the burden on the illegitimate father to prove that it would advance

the best interests of the child to grant his petition for legitimation.

Resp contends that any distinctions created by the statutory scheme are related to the state's interest in protecting the welfare of the child. Requiring the putative father to establish his relationship by showing that legitimation would be in the best interests of the child is reasonable because "[o]therwise, we would recognize a sperm donor, a rapist, a hit and run lover, an adulterer and the like in the same legal status as a father who had accepted the legal and moral commitment to his family." Further, the state should not have to take on the burden of showing by clear and convincing evidence that the unwed father was unfit in every case -- often, the father has done nothing to show any concern for his child.

Resp also argues that petr lacks standing to challenge any discrimination against illegitimate children and that he failed to raise his constitutional challenges to the vagueness of the standard, the burden of proof, or to the substantive standard (best interests or parental unfitness) below.

Finally, resp asserts that Santosky is inapplicable because it mandates that the burden be on the state to prove neglect by clear and convincing evidence only when there is a family relationship to be terminated.

4. DISCUSSION: The opinion below merely states that the petr challenged the statute under the due process clause and the equal protection clause, so it is impossible to tell whether

the petr raised the specific aspects of the scheme that he raises now. A call for the record should clarify that point.

Petr does not have standing to challenge discrimination against illegitimate children.

Assuming that it was raised below, I think that petr has raised an important question concerning the limitations, if any, on the substantive standard for denial of parental rights. Santosky suggested that some showing of unfitness is required before the state can break up a family. See slip op. at 13 n.10, citing Quilloin v. Walcott, 434 U.S. 246, 255 (1978); cf. Caban v. Mohammed, 441 US 380, 394 n.16 (1979) (reserving question). Presumably that showing is not necessary to terminate the rights of an unwed father who has never shown any interest in his children, see Caban v. Mohammed, 441 US, at 392 & n.13; Quilloin, supra. But, to my knowledge, the Court has not decided a case dealing with the right of the father to legitimate his child when there is no pre-existing family relationship because of the recent birth of the child.

The burden of proof issue, again assuming that it was raised below, also seems to me to be important. Quilloin approved the best interest standard in the case of a father who had never attempted to take responsibility for his child, presumably on the theory that he had had an opportunity to do so. When the father attempts to take responsibility for his newborn child, he may be entitled to the same protections that Santosky gives a father who has taken responsibility for an older child -- the placement of the burden of proof on the state. Lehr v. Roberston, No. 81-1756

(to be argued Dec. 7) raises a similar issue: what steps must a putative father take to become entitled to the procedural protections of notice and an opportunity to be heard in adoption proceedings?

I recommend calling for the record to determine whether these issues were raised below and, if the burden of proof question was raised, holding for Lehr.

There is a response.

December 3, 1982 Smalley opn in petn

No conflict as alleged.

MM

January 7, 1983

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

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

No. 82-647

KIRKPATRICK

vs.

CHRISTIAN HOMES

D

Relist
for BRW

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.			✓				or Hold for		Lehr				
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.			✓				(wire DIG Lehr)						
Rehnquist, J.			✓										
Stevens, J.			✓										
O'Connor, J.			✓										
.....													

inclined to Still Deny - but BRW makes a good argument

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

JAN 11 1983

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

DONALD J. KIRKPATRICK *v.* CHRISTIAN HOMES OF ABILENE, INC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, ELEVENTH SUPREME JUDICIAL DISTRICT

No. 82-647. Decided January ——, 1983

JUSTICE WHITE, dissenting.

This case concerns the constitutionality of a Texas statutory scheme which, in effect, allows the State to sever the parent-child relationship between a concerned and competent father and his out-of-wedlock infant daughter solely because the father has failed to persuade a judge that continuation of the relationship would be in the child's "best interest." The petitioning father raises important Equal Protection and Due Process challenges to these laws that this Court should consider.

This controversy began when the mother placed the daughter, at birth, with respondent, a licensed child placement service. When respondent moved in court to confirm the mother's relinquishment for adoption, petitioner cross-moved for an order of voluntary legitimation, in order to obtain custody of the child for himself.

In essence, under Texas law, the rights of a "parent" can be involuntarily terminated only if the state can prove unfitness.[1] An unwed mother is always deemed a "parent" of the child, but an unwed father is not.[2] The father is recognized as a "parent" only if the mother consents, or if he proves, in a legitimation proceeding, that it would be in the best interest of the child to award him such status.[3] In the present case, since the mother did not give her consent, and since, in the

An unwed father was denied custody of child even tho the Mother had surrendered child to Resp., & the father was not found unfit.

[1] Tex. Fam. Code Ann. § 15.02 (Supp. 1982).
[2] *Id.* § 11.01(3).
[3] *Id.* § 13.21(c).

Still Deny. Not an issue to rush to decide, & there is no conflict.

mm

opinion of the courts below, it would not serve the child's best interest to be raised by petitioner, respondent was appointed managing conservator of the child for the purpose of placing her for adoption.

This Court has recognized the "fundamental liberty interest of natural parents in the care, custody, and management of their child[ren]." *Santosky* v. *Kramer*, —— U. S. ——, —— (1982). See *Stanley* v. *Illinois*, 405 U. S. 545 (1972). On two previous occasions, the Court has indicated in dicta that there is "little doubt" that a State cannot, without offending the Due Process Clause, terminate a natural parent's rights without a showing of parental unfitness. *Santosky*, —— U. S., at —— n. 10; *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978). In both *Santosky* and *Quilloin*, the Court indicated agreement with Justice Stewart's statement in his concurring opinion in *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 862–863 (1977), that "[i]f a State were to attempt to force the breakup of a natural family . . . without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on the 'private realm of family life which the state cannot enter.' *Prince* v. *Massachusetts*, 321 U. S. 158, 166." However, in *Caban* v. *Mohammed*, 441 U. S. 380, 414–415 (1979), four Members of the Court suggested that the term "family" should only refer to a two-parent family. *Id.*, at 414–415, 414 n. 27 (dissenting opinion). The *Caban* majority expressly reserved the question. *Id.*, at 394 n. 16.

In the present case, the Texas courts have broken up the natural father-daughter "family" without any proof that the petitioner is unfit to be a parent. In fact, although no findings were made on the point, the evidence appears to suggest that petitioner is perfectly fit to raise his daughter.[4] There-

[4] The mother testified that petitioner is "a wonderful man . . . a good man, a hard worker." Tr. 63. She indicated that she was withholding her consent to the child's legitimation by the father largely because she wanted the child adopted by "two Christian parents." Tr. 54–55.

fore, certiorari should be granted so that we may definitively affirm, disavow, or otherwise clarify the dicta in *Santosky* and *Quilloin* and finally decide the unsettled question posed by this case.[5]

In addition to the serious Due Process issue raised by this case, there is a weighty Equal Protection claim. There is an obvious gender-based distinction in these Texas laws: the mother-child relationship can be terminated only for unfitness, while the father can lose all parental rights under a "best interest" standard. In order to survive scrutiny under the Equal Protection Clause, the Texas scheme must be closely and substantially related to the achievement of an important governmental objective. *Caban* v. *Mohammed*, *supra*, 441 U. S., at 388; *Craig* v. *Boren*, 429 U. S. 190 (1976). Petitioner contends that the challenged laws are based simply on the sexual stereotype that women can be more trusted with children than men, and his argument is not without force. At the least, there is sufficient doubt to merit this Court's attention.

The importance of these issues to many unwed fathers and their children can hardly be overstated. I dissent from the Court's refusal to consider them.

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[5] Respondent incorrectly asserts that we held a "best interest" standard to be constitutionally permissible in a situation such as this in *Quilloin* v. *Walcott*, 434 U. S. 246 (1978). The *Quilloin* Court was careful to note that it was not deciding "a case in which the unwed father at any time had, *or sought*, actual or legal custody of his child." *Id.*, at 255 (emphasis added). In the present case, petitioner seeks legal custody.

January 14, 1983

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

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

No. 82-647

KIRKPATRICK

vs.

CHRISTIAN HOMES

Grant

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

lfp/ss 03/02/82

MEMORANDUM

TO: Mark DATE: March 2, 1983

FROM: Lewis F. Powell, Jr.

81-2057 Daggett

In view of my conviction that Kirkpatrick's "slide rule precision" requirement is little short of ridiculous, I may write if this case comes out the way I expect it will.

It would be interesting to have some comparisons between the 1970 and 1980 census that might illustrate the extent to which population shifts occur fairly rapidly, resulting in the mathematical exactitude of any given date being unrealistic often within a matter of a few years.

As I am not familiar with the extent to which the census figures are broken down in a way that may be helpful, perhaps you could brief someone in the library (Sara Sonet, for example) to look into this. The comparisons are available, of course, as to the loss and gain in congressional districts, and this may be significant. In those cases district lines have to be redrawn. It would be interesting, if the information is available, as to how frequently lines within a state have been redrawn without any increase or decrease in the total number of districts.

L.F.P., Jr.

ss

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 7, 1983

No. 82-647 Kirkpatrick v. Christian Home of Abilene

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1983

Re: No. 82-647 - Kirkpatrick v. Christian Homes of Abilene

Dear Harry:

Please join me.

Respectfully,

Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: MAR 7 1983

Recirculated: _____

No. 82-647, Kirkpatrick v. Christian Homes of Abilene

JUSTICE BLACKMUN, dissenting from denial of motion for expedited consideration.

Baby Girl S was born on January 11, 1981. Her teenaged mother immediately gave her up for adoption, and her custody has been in dispute ever since. Petitioner, her natural father, hopes to legitimate the little girl and to obtain custody. Respondent, a child placement service, seeks to terminate petitioner's parental rights and place Baby Girl S for adoption. On January 17, 1983, a week after the child's second birthday, this Court granted certiorari to consider the constitutionality of a Texas statute that denies parental rights to an unmarried father unless he can prove that legitimation would be in his child's best interests.

Pursuant to Rule 37.2 of the rules of this Court, petitioner has moved for expedited consideration of the case. Respondent does not oppose the motion. If the case goes over to the next Term, then, in accordance with our normal scheduling practices, a decision will be rendered some time between November 1983 and July 1984. Baby Girl S will be nearly three years old by November; by the following July, she will be three and a half. Until this case is decided, she will have no permanent home and will not know who her family will be. All parties agree that the child may suffer serious harm from the continuing uncertainty about who will raise

her. If we grant the motion to expedite, a decision will be rendered by July 1983 and Baby Girl S can begin her life with a family of her own much sooner.

Although the briefs will be filed in ample time to permit this case to be placed on our April calendar, the Court, inexplicably, in my view, has voted to deny the motion to expedite. Yet if the grant of certiorari had been only a few weeks earlier, the case would have been placed on the April calendar as a matter of course. The order in which cases are calendared here, while usually based on chronological readiness, always has involved elements of convenience and discretion. A cases may be advanced or postponed in light of factors so trivial as the convenience of counsel or the availability of a printed appendix. Clearly, the parties in the cases we otherwise would hear in April, many of which embrace less of the human equation than this one, have no claim to a decision at any particular time. I find it hard to believe that the cost in human terms of delaying one of those cases until next Fall would outweigh the harm to Baby Girl S caused by additional months of uncertainty.

If each case on our April calendar were simply too pressing to be postponed, it would be possible, of course, for us to add this as an extra case. Surely our workload, while heavy, is not so overwhelming or our docket so inflexible that we must acquiesce in inflicting possibly unalterable damage to this little girl's life.

I would grant the motion to expedite.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 7, 1983

Re: No. 82-647 - Kirkpatrick v. Christian Home of Abilene

Dear Chief:

If, by chance, this circulation should command five votes, I would hope that an order could be issued forthwith rather than being delayed until March 21. Of course, if it does not command five votes, perhaps not much is to be lost by the delay.

Sincerely,

HAB.

I've advised CJ that I vote to expedite

The Chief Justice

cc: The Conference

This now has four votes — HAB, WJB, JPS, SOC. Apparently TM, who might be expected to join these Justices is inclined not to expedite.

I recommend that you vote to expedite. I think the reasons given are compelling. Certainly the Court does not want to set a precedent for itself that would lead to constant rearrangings of cases. But this is sufficiently unique, &

March 8, 1983

82-647 Kirkpatrick v. Christian Home

Dear Chief:

I am persuaded by Harry's opinion to vote to expedite, provided a place can be made for it by carrying over a case now scheduled for April.

There do seem to be circumstances here that justify our granting this motion.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 9, 1983

No. 82-647 Kirkpatrick v. Christian Home of Abilene

Dear Harry:

This will confirm that I join in your dissent from denial of the motion to expedite in this case. As there now seem to be five to grant the motion, I suggest we issue it expeditiously.

Sincerely,

WJB, Jr.

Justice Blackmun

The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 9, 1983

Mr. Alexander L. Stevas
Clerk of the Court

Dear Al:

Re: No. 82-647, Kirkpatrick v. Christian Homes of Abilene

In this case, there is pending a motion to expedite and have the case placed on the April calendar. There are now five votes to grant that motion. It has been suggested that, rather than wait for the order list of March 21, a special order be issued so that counsel may be made aware of the disposition of the motion.

May I leave to you the decision as to just how this should be accomplished? You may wish to take it up with the Chief Justice.

Sincerely,

H. A. B.

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 10, 1983

No. 82-647 - Kirkpatrick v. Christian Homes of Abilene

MEMORANDUM TO THE CONFERENCE:

There are now five votes to grant expedited hearing in this case, and it is suggested we give the parties notice promptly.

I have not voted to grant expedited consideration, but I will not be shown on the public record. If any of the non-voters wish to be on the public record, please advise the Clerk promptly so that he is free to advise counsel in this case as to a date.

Regards,

WEB

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

1 argued

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 4, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 82-647, Kirkpatrick v. Christian Homes of Abilene

This case is scheduled for argument on Tuesday, April 26. The questions presented concern the constitutionality of the Texas voluntary legitimation statute, Texas Family Code §§13.21-13.24 ("Subchapter B"). Subchapter B permits an unmarried father to legitimate his relationship with his biological child only upon a showing that legitimation would be in the child's best interests. Petitioner contends that this statute violates his rights to due process and equal protection.

The Attorney General of Texas, who did not participate actively in this litigation below, now has filed a respondent's brief making an argument that casts some doubt on the propriety of our grant of certiorari. Texas contends that a separate portion of the Texas Family Code, §§13.01-13.09 ("Subchapter A"), has "effectively negated the Texas voluntary legitimation statute as applied to petitioner." Brief for Respondent Texas 8. Texas suggests that petitioner may bring a paternity action under Subchapter A, and, merely upon a showing of biological paternity, may acquire all the rights and duties inuring to legitimate parents including the right not to have parental status terminated absent a showing of unfitness. Texas suggests further, perhaps somewhat questionably, that Subchapter A supersedes Subchapter B and its "best interests" standard.

If the Attorney General's interpretation of the statutory scheme is correct, Texas law clearly would be within constitutional bounds. This interpretation was not the one applied below, however, and it is not inescapable. See, e.g., Mills v. Habluetzel, 456 U.S. 91, 94 (1982) (describing Subchapter A as governing "[t]he rights of illegitimate children to obtain support from their biological fathers"); Brief for National Committee for Adoption, Inc., as Amicus Curiae, 4-5, n. 5; Sampson, Determination of Paternity, 13 Tex. Tech. L. Rev. 897, 905 (1982). On prior occasions, we have sent cases back to state courts to examine previously unexplored state law issues that could affect the exercise of our jurisdiction. E.g., Paschall v. Christie-Stewart, 414 U.S. 100 (1973) (vacating and remanding); Dresner v. City of Tallahassee, 375 U.S. 136 (1963) (certifying questions); Musser v. Utah, 333 U.S. 95 (1948) (vacating and remanding to Supreme Court of Utah); cf. Estelle v. Bullard, No. 81-1774 (Jan. 17, 1983) (vacating and remanding to CA5). Since Texas has no certification procedure, we could follow a

course similar to the one adopted in Paschall, and remand the case for a determination whether a putative father may obtain full parental rights under Subchapter A upon a showing of biological fatherhood.

We should hear from petitioner before taking any action, but petitioner's reply brief is not due until April 19. I therefore suggest that the Clerk by telephone ask petitioner to respond within five days to the question "whether, in light of the representations in the brief filed by the State of Texas, the writ of certiorari should be dismissed as improvidently granted or the case should be remanded to the Supreme Court of Texas for enlightenment as to the Texas law." Unless petitioner is able to demonstrate that Subchapter A would not be applicable to this case, there may be little reason to hear oral argument on the constitutional issue before obtaining clarification from the Supreme Court of Texas. At that time we could issue an order along these lines:

> "The representations of the State of Texas in its brief before this Court bring to light a question of state law not passed upon or relied upon below. The resolution of this question may establish that petitioner is entitled to the relief he seeks as a matter of Texas statutory law. If this is so, a decision of the constitutional question on which we granted certiorari would be unnecessary. See Paschall v. Christie-Stewart, 414 U.S. 100 (1973); Musser v. Utah, 333 U.S. 95 (1948). Accordingly, the judgment of the Supreme Court of Texas is vacated and the case is remanded to that Court for further proceedings to determine whether, under Texas law, petitioner could have obtained and may still obtain a decree designating him as the father of his child pursuant to the provisions of Texas Family Code §§13.01-13.09"

As I pointed out in my prior writing when we considered petitioner's motion to expedite, there are strong reasons to avoid undue delay in this case. The sooner we resolve this troublesome problem, the better.

Of course, you may prefer to defer all this until the oral argument has taken place.

Harry

April 4, 1983

82-647 Kirkpatrick v. Christian Homes of Abilene

Dear Harry:

Thank you for alerting us to the contents of the Texas Attorney General's brief.

I approve of your suggestions.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 4, 1983

Re: 82-647 -

Kirkpatrick v. Christian Homes of Abilene

Dear Harry,

I don't object to your suggestion. Neither would I mind hearing the case but asking petitioner to address the new issue in his reply brief and oral argument.

Sincerely yours,

Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 4, 1983

Re: No. 82-647 - Kirkpatrick v. Christian Homes of Abilene

Dear Harry:

I have no objection to your suggested procedures.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

April 5, 1983

Memorandum to the Chief Justice

Re: Kirkpatrick v. Christian Homes of Abilene, No. 82-647

In the above case scheduled for argument on April 26, 1983, I telephoned counsel for petitioner and requested a written response to the following question:

> "whether, in light of the representations in the brief filed by the State of Texas, the writ of certiorari should be dismissed as improvidently granted or the case should be remanded to the Supreme Court of Texas for enlightenment as to the Texas law."

Counsel has this date informed me that her typewritten response will be in my hands by noon Friday, April 8, 1983. She indicates she will oppose a remand and will urge the Court to proceed with the scheduled argument. Basically, her position is that Subchapter A is used in those cases where paternity is denied by the man and Subchapter B is used in the situation presented by her case. Both sections have recently been re-enacted and in her view the statute makes no sense unless interpreted as she suggests. To do otherwise would render Subchapter B meaningless. Her arguments will be more fully set out in her forthcoming memorandum.

Respectfully submitted,

Alexander L. Stevas
Clerk

Sally – Have I written CJ about this

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 8, 1983

No. 82-647 Kirkpatrick v. Christian Homes of Abilene

Dear Chief,

Upon reading the petitioner's response, I agree we should remove this case from the April calendar and issue an order remanding for a determination of the question as suggested by Harry.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 8, 1983

Re: 82-647 -
Kirkpatrick v. Christian Homes of Abilene

Dear Chief,

Re your memo of April 8, you have my proxy.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

cpm

April 11, 1983

82-647 Kirkpatrick v. Christian Homes

Dear Chief:

I agree that we should hand down Harry's order and substitute another case.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Sally Have I written CJ about this?

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 11, 1983

Re: No. 82-647

Kirkpatrick v. Christian Homes of Abilene

Dear Chief,

I agree that we should hand down Harry's order. I also think that we should substitute another case.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

82-647 KIRKPATRICK v. CHRISTIAN HOMES Argued 4/26/83

No. 82-647, Kirkpatrick v. Christian Homes Conf. 4/29/83

The Chief Justice

Justice Brennan

Justice White

Justice Marshall

Justice Blackmun

Justice Powell

Justice Rehnquist

Justice Stevens

Justice O'Connor