10-1982

Pickett v. Brown

Lewis F. Powell, Jr.

Note

Presents Q as to validity of a two year limitation on paternity ~~suits~~ suits.
We did not reach Miranda in the Texas case last Term

PRELIMINARY MEMORANDUM

December 3, 1982 Conference
List 2, Sheet 1

No. 82-5576

PICKETT etc ~~al~~ /ok

v.

BROWN, et al /ok

Appeal from Tenn S.Ct.
(Harbison, Drowota, Pones, Cooper, Brock)

State/Civil Timely

1. SUMMARY: Appts, an illegitimate child and his mother, challenge the constitutionality of the statute of limitations for paternity actions.

2. FACTS AND DECISIONS BELOW: The appts filed this suit to establish paternity on May 24, 1978. The child was born

Note - JOB
- I would give the case full consideration.

on November 1, 1968. The Tennessee statute of limitations for paternity suits runs two years after the birth of the child, unless the father has acknowledged the child or provided support, although a suit may be brought on behalf of a child who is likely to become a public charge any time during his minority. In general, the Tennessee statutes of limitation are tolled during the minority of the person "entitled to commence an action."

The defendant moved to dismiss, invoking the statute of limitations. The appts challenged the constitutionality of the statute, and the state AG intervened to defend it. The trial judge (Turner) denied the motion, holding that the statute of limitations was unconstitutional. On interlocutory appeal, the Tenn. S.Ct. reversed. It reasoned that Mills v. Habluetzel, 50 USLW 4372 (Apr.5, 1982), holding unconstitutional the Texas one-year limitations period, did not foreclose a limitations period that ran before the end of the child's minority. As long as the period is long enough that suits brought after that amount of time "present a real threat of loss or diminution of evidence, or an increased vulnerability to fraudulent claims," id. at 4373-74, it was permissible. Two years is long enough for women to recover physically and emotionally from childbirth and to make a rational decision as to whether to file suit. The legislature could rationally conclude that a period of two years would unreasonably increase the problems of proof for the defendant. The exceptions from the statute are carefully tuned to prevent hardship in predictable groups of cases. The Tenn. court also stated that the child was not entitled to bring the action himself, but that the

amendment to include him as a plaintiff was harmless error, given the disposition of the case.

3. CONTENTIONS: First, appts note the division in the state courts over two-year limitations periods. Compare Cessna v. Montgomery, 344 NE 2d 447 (Ill. 1976) (upholding two-year period); State v. Witkowski, 256 N.W. 2d 216 (Ia. 1977)(same); and Thompson v. Thompson, 404 A.2d 269 (Md. 1979) (same) with State v. Wilson, 634 P. 2d 172 (Mont. 1981) (3-year period unconstitutional); Stringer v. Dudoich, 583 P.2d 462 (N.M. 1978) (2-year period unconstitutional); State v. West, 378 So.2d 1220 (Fla. 1979) (4-year period unconstitutional) and County of Lenoir v. Johnson, 264 SE2d 816 (3-year period unconstitutional).

Appts contend that the statute denies equal protection in three ways. First, it discriminates against illegitimate children, since, once over the age of two, it denies them the right to obtain child support from their natural fathers, a right that all legitimate children have. Second, it is the only statute of limitations applicable to civil actions on behalf of children that does not toll during the minority of the child. Third, the statute of limitations only applies to children who have not received state aid.

Further, appts contend that the state's justification -- the prevention of stale and fraudulent claims -- is inadequate. The child is entitled to support throughout its minority, so the claim cannot be stale during its minority. Nor is there, according to appts, any reason to believe that passage of time has any

relation to the truth of the claim asserted. At any rate, the Court has frequently held that blanket exclusion of illegitimates is not reasonably related to the prevention of spurious claims. Jiminez v. Weinberger, 417 US 628 (1974); United States v. Clark, 445 US 23 (1980). Even when the Court upholds differential treatment, it has been on the assumption that illegitimate children could have legally established paternity during the lifetime of the alleged father. Mathews v. Lucas, 427 US 495 (1976). The exception for children who are likely to become public charges makes no sense, for it actually encourages non-welfare recipients to go on welfare in order to legitimate their children. Also, welfare recipients who are forced to reveal the natural father are more likely to lie to protect someone, so those are the claims that are likely to be fraudulent.

Finally, appts contend that the Court has recognized rights in natural fathers. If it permits the Tennessee statute of limitations to stand, those fathers will be able to enjoy the rights without corresponding duties of support.

The intervenor argues that the two-year period is substantially related to the state's interests in avoiding the litigation of stale or fraudulent claims. The exception for children likely to become public charges is rationally related to the interest of the state in reducing the number of people on welfare.

4. DISCUSSION: Mills decided only the constitutionality of a one-year statute of limitations. After the case arose, Texas amended its statute to provide a four-year period. Four

justices (the Chief Justice, Justice O'Connor, Justice Brennan, and Justice Blackmun) concurred in an opinion written by Justice O'Connor, and one (Justice Powell) concurred in the judgment, all expressing concern that the opinion might be read to approve the four-year period. If a four-year period presents a substantial federal question, a two-year period must also. Therefore, I recommend a note. The Court may not want to give this case full plenary consideration, though, since the arguments will be essentially those considered in Mills.

There is a motion to dismiss or affirm.

November 20, 1982 Smalley opn in juris stmt

December 3, 1982

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

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

No. 82-5576

PICKETT

vs.

BROWN

No Ke

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

Dissent Memo changed vote

Helpful memo - included to agree

drk 04/26/83

To: Mr. Justice Powell

From: Rives

Re: No. 82-5576, Pickett v. Brown

As you mentioned, this case presents only a minor variation on last term's decision in Mills v. Habluetzel, ___ U.S. ___ (1982). In Mills, the question was whether the State of Texas could impose a 1-year statute of limitations on an illegitimate minor's right to recover support from his natural father. The Court noted that Gomez v. Perez, 409 U.S. 535 (1973), had held that the State may not deny illegitimate children rights that it extends to legitimate children. The Court determined, however, that Gomez did not require that illegitimates be given the identical time period to recover that legitimate children have. The Mills Court recognized that:

> "in support suits by illegitimate children more than in support suits by legitimate children, the State has an interest in preventing the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the latter. Such restrictions will survive equal protection scrutiny to the extent they are susbstantially related to a legitimate state interest."

The Court determined that a State's interest in avoiding litigation of stale claims would justify limitation periods "that are sufficiently long to present a real threat of loss or diminuition of evidence, or an increased vulnerablility to fraudulent claims."

After reviewing Texas' reluctant course to extend the right of child support to illegitimates, the Court concluded that Texas' 1-year statute of limitations effectively prevented an illegitimate child from exercising that right.

In this case, Tennessee imposes a 2-year statute of limitations on such actions. The Tennessee Supreme Court considered at length both the Mills opinion and those of other state supreme courts and noted that a "substantially related" test was applicable. But when it analyzed its own statute it did so solely in terms of a "mere rationality" standard. See App. 37 ("we cannot say as a matter of law that the Legislature could not rationally have determined that such a possibility [that the mother may be prohibited from bringing a paternity suit] became outweighed by the state's interest in prohibiting litigation of stale and fraudulent claims").

In upholding the statute, the court noted that the Tennessee statute differed from that in Texas' because it contained an "exception" for actions against men who have acknowledged their children "in writing or by supporting them." The court also recognized that Tennessee tolls all actions during a child's minority except paternity suits brought by illegitimate children, but found that this factor alone did not require a holding that the statute was unconstitutional. Finally, it noted but did not consider one other feature of Tennessee law. While an illegitimate child only has two years in which to bring an action to establish paternity, the state statute provides "that the department of human services ... shall be empowered to bring a suit in behalf of any

child under the age of eighteen (18) who is, or is liable to become a public charge." Tenn. Code Ann. §36-224(2).

The question in this case is whether the statute enacted by Tennessee is substantially related to its interest in ensuring that putative fathers are not subject to stale claims. Tennessee's other statutory provisions clearly call into question any sort of substantial fit between the State's asserted interests and the classification drawn. The state legislature has determined that the state department of human services may bring a claim to establish paternity for up to 18 years after the child's birth. The State might argue that this shows that the State's interest in preventing a drain on the public fisc outweighs its interest in protecting putative father's from stale claims. This argument is not without force, but it does not seem that a child's interest in recovering support payments from his putative father is any less than the State's. And if the child could recover payments directly from the father, there would be no need for the State either to pay out welfare or to institute its own paternity action. At the least, allowing the State 18 years to establish the paternity of an illegitimate child suggests that Tennessee has determined that two years does not "present a real threat of loss or dimunition of evidence." Mills, supra.

The state statutes also provide that all other actions will be tolled during a child's minority. The Tennessee Supreme Court did not find that there was a greater danger of the evidence becoming stale in paternity suits than there is in any other type of action. Because Tennessee's other statutory provisions indicate

that the classification at issue here is not substantially related to the State's interest in protecting against stale claims, I would recommend reversing the judgment below.

Rivers

82-5576 PICKETT v. BROWN Argued 4/27/83

Tenn. statute - 2 yr. limitation on paternity suits by illegitimates.

Horne (Appellant) / Facts in

In addition to Miller, Tenn

Dept of Welfare may sue in behalf of illegitimate until he or she is 18 where child is on welfare.

Thus, concern about ~~state~~ stale claim cannot be too serious

Tenn. has a general tolling statute for minors - only exception is for illegitimates.

Mr. Short (appellee - Asst AG - Tenn)

Relies on Miller

→ Concede claim are ~~just~~ just as "stale" after 2 yrs as after 18 yrs

Action for support - under Tenn law - lies with the Mother on behalf of child.

No. 82-5576, Pickett v. Brown 9-0 Conf. 4/29/83

The Chief Justice Rev

Mills invalidated one yr. limitation.

Here we have two yr. limit.

Suit for support involves substantial state interest, as well as interest of mother & child.

Justice Brennan Rev.

On several grounds:

Can't discrim. vs illegitimate children

State does have interest in preventing state claims — but:

This statute discriminates bet. welfare & non-welfare children, & bet. paternity & all other actions.

Mills controls.

Justice White Rev.

For one or more of W & B's reasons

Justice Marshall Rev,

Justice Blackmun Rev.

Mills rationale controls

~~Utah~~

Willing ~~no~~ to hold no different limitation bet. illegitimate & legitimate

Justice Powell Rev.

Could go all way, as HAB suggests

Justice Rehnquist Rev.

But on narrow grounds.
The interest ~~so~~ - c.e. the "cause of action" is the mother. (But as BRW noted the mother sued on behalf of child)

Justice Stevens Rev.

Altho mother brought suit, it was for child

go all way

Justice O'Connor Rev

go all way

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

LFP

From: **Justice Brennan**

Circulated: MAY 26 1983

Recirculated: _____

Renewed

Relies on my opinion in Weber & Trimble

Join

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5576

JEFFREY LEE PICKETT, ETC. ET AL., APPELLANTS *v.* BRAXTON BROWN ET AL.

APPEAL FROM THE SUPREME COURT OF TENNESSEE, WESTERN DIVISION

[May —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to decide the constitutionality of a provision of a Tennessee statute[1] that imposes a two-year limitations period on paternity and child support actions brought on behalf of certain illegitimate children.

I

Under Tennessee law both fathers and mothers are responsible for the support of their minor children. See Tenn. Code Ann. §34–101 (1977); *Rose Funeral Home, Inc.* v. *Julian*, 176 Tenn. 534, 539, 144 S. W. 2d 755, 757 (1940); *Brooks* v. *Brooks*, 166 Tenn. 255, 257, 61 S. W. 2d 654 (1933). This duty of support is enforceable throughout the child's minority. See *Blackburn* v. *Blackburn*, 526 S.W. 2d 463, 466

[1] Tennessee Code Ann. §36–224(2) (1977) reads as follows:

"(2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the department of human services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge."

I do not see any problems with this. I recommend a join.

RK

Agree LFP

(Tenn. 1975); *Whitt* v. *Whitt*, 490 S. W. 2d 159, 160 (Tenn. 1973). See also Tenn. Code Ann. §§ 36–820, 36–828 (1977). Tennessee law also makes the father of a child born out of wedlock responsible for "the necessary support and education of the child." § 36–223. See also *Brown* v. *Thomas*, 221 Tenn. 319, 323, 426 S. W. 2d 496, 498 (1968). Enforcement of this obligation depends on the establishment of paternity. Tennessee Code Ann. § 36–224(1) (1977)[2] provides for the filing of a petition which can lead both to the establishment of paternity and to enforcement of the father's duty of support. With a few exceptions, however, the petition must be filed within two years of the child's birth. See § 36–224(2); n. 1, *supra*.

In May 1978, Frances Annette Pickett filed an action pursuant to § 36–224(1) seeking to establish that Braxton Brown was the father of her son, Jeffrey Lee Pickett, who was born on November 1, 1968. App. 3. Frances Pickett also sought an order from the court requiring Brown to contribute to the support and maintenance of the child. *Ibid.* Brown denied that he was the father of the child and alleged that he had never acknowledged the child as his own or contributed to the child's support. *Id.*, at 13. Brown moved to dismiss the suit on the ground that it was barred by the two-year limitations period established by § 36–224(2). Frances Pickett re-

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[2] Tennessee Code Ann. § 36–224(1) (1977) reads as follows:

"(1) A petition to establish paternity of a child, to change the name of the child if it is desired, and to compel the father to furnish support and education for the child in accordance with this chapter may be filed by the mother, or her personal representative, or, if the child is likely to become a public charge by the state department of human services or by any person. Said petition may be filed in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside this state shall not be a bar to filing a petition against the putative father. After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend."

sponded with a motion challenging the constitutionality of the limitations period. App. 5–7, 13.[3]

The Juvenile Court held that the two-year limitations period violated the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution and certain provisions of the Tennessee Constitution. *Id.*, at 14. The court based its conclusion on the fact that the limitations period governing paternity actions imposed a restriction on the support rights of some illegitimate children that was not imposed on the identical rights of legitimate children. *Ibid.* Without articulating any clear standard of review, the court rejected the State's argument that the two-year limitations period was justified by the State's interest in preventing the litigation of "stale or spurious" claims. *Id.*, at 15. In the court's view, this argument was undermined by the exception to the limitations period established for illegitimate children who are, or are likely to become, public charges, for "the possibilities of fraud, perjury, or litigation of stale claims [are] no more inherent in a case brought [for] a child who is not receiving public assistance than [in] a case brought for a child who is a public charge." *Ibid.*[4]

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[3] Frances Pickett challenged the statute on equal protection and due process grounds under both the Federal and State Constitutions. App. 6–7. She also alleged that the statute amounted to cruel and unusual punishment under both the Federal and State Constitutions. *Ibid.* The Juvenile Court did not address this claim. The Tennessee Supreme Court later noted that she did not seriously press it before that court. *Pickett* v. *Brown*, 638 S. W. 2d 369, 371 (Tenn. 1982). She also does not advance it before this Court.

Pickett also sought permission to amend her complaint to bring the paternity suit in the name of her child. App. 6.

After Pickett filed her motion challenging the constitutionality of the statute the State Attorney General was notified and he intervened to defend the statute. See App. 13; 638 S. W. 2d, at 371.

[4] The court also found that the statute discriminated between "children born out of wedlock who are receiving public assistance and such children whose mothers are not receiving public assistance." App. 15–16. In this

On appeal,[5] the Tennessee Supreme Court reversed the judgment of the Juvenile Court and upheld the constitutionality of the two-year limitations period. *Pickett* v. *Brown*, 638 S. W. 2d 369 (Tenn. 1982). In addressing Frances Pickett's equal protection and due process challenges to the statute, the court first reviewed our decision in *Mills* v. *Habluetzel*, 456 U. S. 91 (1982), and several decisions from other state courts. Based on this review, the court stated that the inquiry with respect to both claims was "essentially the same: whether the state's policy as reflected in the statute affords a fair and reasonable opportunity for the mother to decide in a rational way whether or not the child's best interest would be served by her bringing a paternity suit." 638 S. W. 2d, at 376. The court concluded that "[t]he Legislature could rationally determine that two years is long enough for most women to have recovered physically and emotionally, and to be able to assess their and their children's situations logically and realistically." *Id.*, at 379.

The court also found that the two-year statute of limitations was substantially related to the State's valid interest in preventing the litigation of stale or fraudulent claims. *Id.*, at 380. The court justified the longer limitations period for illegitimates who are, or are likely to become, public charges, on the ground that "[t]he state's countervailing interest in doing justice and reducing the number of people on welfare is served by allowing the state a longer time during which to sue." *Ibid.* The court also suggested that "the Tennessee statute is 'carefully tuned' to avoid hardship in predictable

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regard, the court pointed out that a mother's fulfillment of her obligation to support her child does not relieve the father of his duty of support. *Id.*, at 16.

The court granted Pickett permission to amend her complaint to bring the suit in the name of her child. *Ibid.*

[5] The Juvenile Court "allowed an interlocutory appeal by certifying that the constitutionality of [Tenn. Code Ann.] § 36–224(2) was the sole determinative question of law in the proceedings." 638 S. W. 2d, at 371.

groups of cases, since it contains an exception for actions against men who have acknowledged their children in writing or by supporting them, and it has been held that . . . regular or substantial payments are not required in order to constitute 'support.'" *Id.*, at 379. Finally, the court found that the uniqueness of the limitations period in not being tolled during the plaintiff's minority did not "alone requir[e] a holding of unconstitutionality of a two-year period, as opposed to any other period which can end during the plaintiff's minority." *Id.*, at 380.[6]

We noted probable jurisdiction. —— U. S. —— (1982). We reverse.

II

We have considered on several occasions during the past 15 years the constitutional validity of statutory classifications based on illegitimacy. See, *e. g.*, *Mills* v. *Habluetzel*, *supra*; *United States* v. *Clark*, 445 U. S. 23 (1980); *Lalli* v. *Lalli*, 439 U. S. 259 (1978); *Trimble* v. *Gordon*, 430 U. S. 762 (1977); *Mathews* v. *Lucas*, 427 U. S. 495 (1976); *Jiminez* v. *Weinberger*, 417 U. S. 628 (1974); *New Jersey Welfare Rights Org.* v. *Cahill*, 411 U. S. 619 (1973); *Gomez* v. *Perez*, 409 U. S. 535 (1973); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972); *Glona* v. *American Guarantee Co.*, 391 U. S. 73 (1968); *Levy* v. *Louisiana*, 391 U. S. 68 (1968). In several of these cases, we have held the classifications invalid. See, *e. g.*, *Mills* v. *Habluetzel*, *supra*; *Trimble* v. *Gordon*, *supra*; *Jiminez* v. *Weinberger*, *supra*; *New Jersey*

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[6] The court also rejected the due process challenge to the statute. 638 S. W. 2d, at 376, 380.

In addition, the court found that the Juvenile Court had committed a harmless error, from which Brown and the State did not appeal, in allowing Pickett "to amend her complaint to add the name of the child, by the mother as next friend, as a plaintiff." *Id.*, at 380. The court stated that § 36–224(1) "does not permit an action to be brought by the child except in case of death or disability of the mother." *Ibid.*

Welfare Rights Org. v. *Cahill*, *supra*; *Gomez* v. *Perez*, *supra*; *Weber* v. *Aetna Casualty & Surety Co.*, *supra*; *Glona* v. *American Guarantee Co.*, *supra*; *Levy* v. *Louisiana*, *supra*. Our consideration of these cases has been animated by a special concern for discrimination against illegitimate children. As the Court stated in *Weber*:

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

In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny. Although we have held that classifications based on illegitimacy are not "suspect," or subject to "our most exacting scrutiny," *Trimble* v. *Gordon*, 430 U. S., at 767; *Mathews* v. *Lucas*, 427 U. S., at 506, the scrutiny applied to them "is not a toothless one. . . ." *Id.*, at 510. In *United States* v. *Clark*, *supra*, we stated that "a classification based on illegitimacy is unconstitutional unless it bears 'an evident and substantial relation to the particular . . . interests [the] statute is designed to serve.'" 445 U. S., at 27. See also

Lalli v. *Lalli*, 439 U. S., at 265 (plurality opinion) ("classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests"). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills* v. *Habluetzel*, 456 U. S. 91 (1982). We stated that restrictions on support suits by illegitimate children "will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest." *Id.*, at 99.

Our decisions in *Gomez* and *Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered "whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children." 409 U. S., at 535. We stated that "a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally," *id.*, at 538, and 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." *Ibid.* The Court acknowledged the "lurking problems with respect to proof of paternity," *id.*, and suggested that they could not "be lightly brushed aside." *Ibid.* But those problems could not be used to form "an impenetrable barrier that works to shield otherwise invidious discrimination." *Ibid.*

In *Mills* we considered the sufficiency of Texas' response to our decision in *Gomez*. In particular, we considered the constitutionality of a one-year statute of limitations governing suits to identify the natural fathers of illegitimate children. 456 U. S., at 92. The equal protection analysis focused on two related requirements: the period for obtaining paternal support has to be long enough to provide a reason-

able opportunity for those with an interest in illegitimate children to bring suit on their behalf; and, any time limit on that opportunity has to be substantially related to the State's interest in preventing the litigation of stale or fraudulent claims. *Id.*, at 99–100.

The Texas statute failed to satisfy either requirement. The one-year period for bringing a paternity suit did not provide illegitimate children with an adequate opportunity to obtain paternal support. *Id.*, at 100. The Court cited a variety of factors that make it unreasonable to require that a paternity suit be brought within a year of a child's birth. *Ibid.*[7] In addition, the Court found that the one-year limitations period was not "substantially related to the State's interest in preventing the prosecution of stale or fraudulent claims." *Id.*, at 101. The problems of proof surrounding paternity suits do not "justify a period of limitation which so restricts [support rights] as effectively to extinguish them." *Ibid.* The Court could "conceive of no evidence essential to paternity suits that invariably will be lost in only one year, nor is it evident that the passage of 12 months will appreciably increase the likelihood of fraudulent claims." *Ibid.* (footnote omitted).[8]

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[7] The Court suggested that "[f]inancial difficulties caused by childbirth expenses or a birth-related loss of income, continuing affection for the child's father, a desire to avoid disapproval of family and community, or the emotional strain and confusion that often attend the birth of an illegitimate child all encumber a mother's filing of a paternity suit within 12 months of birth." *Mills* v. *Habluetzel*, 456 U. S. 91, 100 (1982). The Court also pointed out that "[e]ven if the mother seeks public financial assistance and assigns the child's support claim to the State, it is not improbable that 12 months would elapse without the filing of a claim." *Ibid.* In this regard, the Court noted that "[s]everal months could pass before a mother finds the need to seek such assistance, takes steps to obtain it, and is willing to join the State in litigation against the natural father." *Ibid.* (footnote omitted).

[8] The Court found no need to reach a due process challenge to the statute. *Mills* v. *Habluetzel*, 456 U. S., at 97.

In a concurring opinion, JUSTICE O'CONNOR, joined by four other Members of the Court,[9] suggested that longer limitations periods also might be unconstitutional. *Id.*, at 106.[10] JUSTICE O'CONNOR pointed out that the strength of the State's interest in preventing the prosecution of stale or fraudulent claims was "undercut by the countervailing state interest in ensuring that genuine claims for child support are satisfied." *Id.*, at 103. This interest "stems not only from a desire to see that 'justice is done,' but also from a desire to reduce the number of individuals forced to enter the welfare rolls." *Ibid.* (footnote omitted). JUSTICE O'CONNOR also suggested that the State's concern about stale or fraudulent claims "is substantially alleviated by recent scientific developments in blood testing dramatically reducing the possibility that a defendant will be falsely accused of being the illegitimate child's father." *Id.*, at 104, n. 2. Moreover, JUSTICE O'CONNOR found it significant that a paternity suit was "one of the few Texas causes of action not tolled during the minority of the plaintiff." *Id.*, at 104 (footnote omitted). She stated:

> "Of all the difficult proof problems that may arise in civil actions generally, paternity, an issue unique to illegitimate children, is singled out for special treatment. When this observation is coupled with the Texas Legislature's efforts to deny illegitmate children any significant opportunity to prove paternity and thus obtain child support, it is fair to question whether the burden placed on

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[9] THE CHIEF JUSTICE, JUSTICE BRENNAN, and JUSTICE BLACKMUN joined JUSTICE O'CONNOR's concurring opinion. *Mills* v. *Habluetzel*, 456 U. S., at 102. JUSTICE POWELL joined Part I of JUSTICE O'CONNOR's concurring opinion, but did not join the Court's opinion. *Id.*, at 106 (POWELL, J., concurring in the judgment).

[10] JUSTICE O'CONNOR wrote separately because she feared that the Court's opinion might "be misinterpreted as approving the 4-year statute of limitation now used in Texas." *Mills* v. *Habluetzel*, 456 U. S., at 102 (O'CONNOR, J., concurring).

illegitimates is designed to advance permissible state interests." *Id.*, at 104–105.

Finally, JUSTICE O'CONNOR suggested that "practical obstacles to filing suit within one year of birth could as easily exist several years after the birth of the illegitimate child." *Id.*, at 105. In view of all these factors, JUSTICE O'CONNOR concluded that there was "nothing special about the first year following birth" that compelled the decision in the case. *Id.*, at 106.

Against this background, we turn to an assessment of the constitutionality of the two-year statute of limitations at issue here.

III

Much of what was said in the opinions in *Mills* is relevant here, and the principles discussed in *Mills* require us to invalidate this limitations period on equal protection grounds.[11]

Although Tennessee grants illegitimate children a right to paternal support, Tenn. Code Ann. § 36–223, and provides a mechanism for enforcing that right, § 36–224(1), the imposition of a two-year period within which a paternity suit must be brought, § 36–224(2), restricts the right of certain illegitimate children to paternal support in a way that the identical right of legitimate children is not restricted. In this respect, some illegitimate children in Tennessee are treated differently from, and less favorably than, legitimate children.

Under *Mills*, the first question is whether the two-year limitations period is sufficiently long to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit on their behalf. 456 U. S., at 99. In this regard, it is noteworthy that § 36–224(2) addresses some of the practical obstacles to bringing suit within a short time after the child's birth that were described in the opinions in *Mills*.

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[11] In this light, we need not reach Pickett's due process challenge to the statute.

See 456 U. S., at 100; *id.*, at 105–106 (O'CONNOR, J., concurring). The statute creates exceptions to the limitations period if the father has provided support for the child or has acknowledged his paternity in writing. The statute also allows suit to be brought by the State or by any person at any time prior to a child's eighteenth birthday if the child is, or is liable to become, a public charge. See n. 1, *supra*. This addresses JUSTICE O'CONNOR's point in *Mills* that a State has a strong interest in preventing increases in its welfare rolls. 456 U. S., at 103–104 (concurring opinion). For the illegimate child whose claim is not covered by one of the exceptions in the statute, however, the two-year limitations period severely restricts his right to paternal support. The obstacles to filing a paternity and child support suit within a year after the child's birth, which the Court discussed in *Mills*, see *id.*, at 100; n. 7, *supra*, are likely to persist during the child's second year as well. The mother may experience financial difficulties caused not only by the child's birth, but also by a loss of income attributable to the need to care for the child. Moreover, "continuing affection for the child's father, a desire to avoid disapproval of family and community, or the emotional strain and confusion that often attend the birth of an illegitimate child," 456 U. S., at 100, may inhibit a mother from filing a paternity suit on behalf of the child within two years after the child's birth. JUSTICE O'CONNOR suggested in *Mills* that the emotional strain experienced by a mother and her desire to avoid family or community disapproval "may continue years after the child is born." *Id.*, at 105, n. 4 (concurring opinion).[12] These considerations compel

[12] Problems stemming from a mother's emotional well-being are of particular concern in assessing the validity of Tennessee's limitations period because § 36–224(1), see n. 2, *supra*, permits suit to be filed only by the mother or by her personal representative if the child is not likely to become a public charge. As the Tennesssee Supreme Court stated, § 36–224(1) "does not permit an action to be brought by the child except in case of death or disability of the mother." 638 S. W. 2d, at 380. The Texas stat-

a conclusion that the two-year limitations period does not provide illegitimate children with "an adequate opportunity to obtain support." *Id.*, at 100.

The second inquiry under *Mills* is whether the time limitation placed on an illegitimate child's right to obtain support is substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims. *Id.*, at 99–100. In this case, it is clear that the two-year limitations period governing paternity and support suits brought on behalf of certain illegitimate children does not satisfy this test.

First, a two-year limitations period is only a small improvement in degree over the one-year period at issue in *Mills*. It, too, amounts to a restriction effectively extinguishing the support rights of illegitimate children that cannot be justified by the problems of proof surrounding paternity actions. As was the case in *Mills*, "[w]e can conceive of no evidence essential to paternity suits that will be lost in only [two years], nor is it evident that the passage of [24] months will appreciably increase the likelihood of fraudulent claims." *Id.*, at 101 (footnote omitted).

Second, the provisions of § 36–224(2) undermine the State's argument that the limitations period is substantially related to its interest in avoiding the litigation of stale or fraudulent claims. As noted, see *supra*, at ——, § 36–224(2) establishes an exception to the statute of limitations for illegitimate children who are, or are likely to become, public charges. Paternity and support suits may be brought on behalf of these children by the State or by any person at any time prior to the child's eighteenth birthday. The State argues that this distinction between illegitimate children receiving public assistance and those who are not is justified by the State's in-

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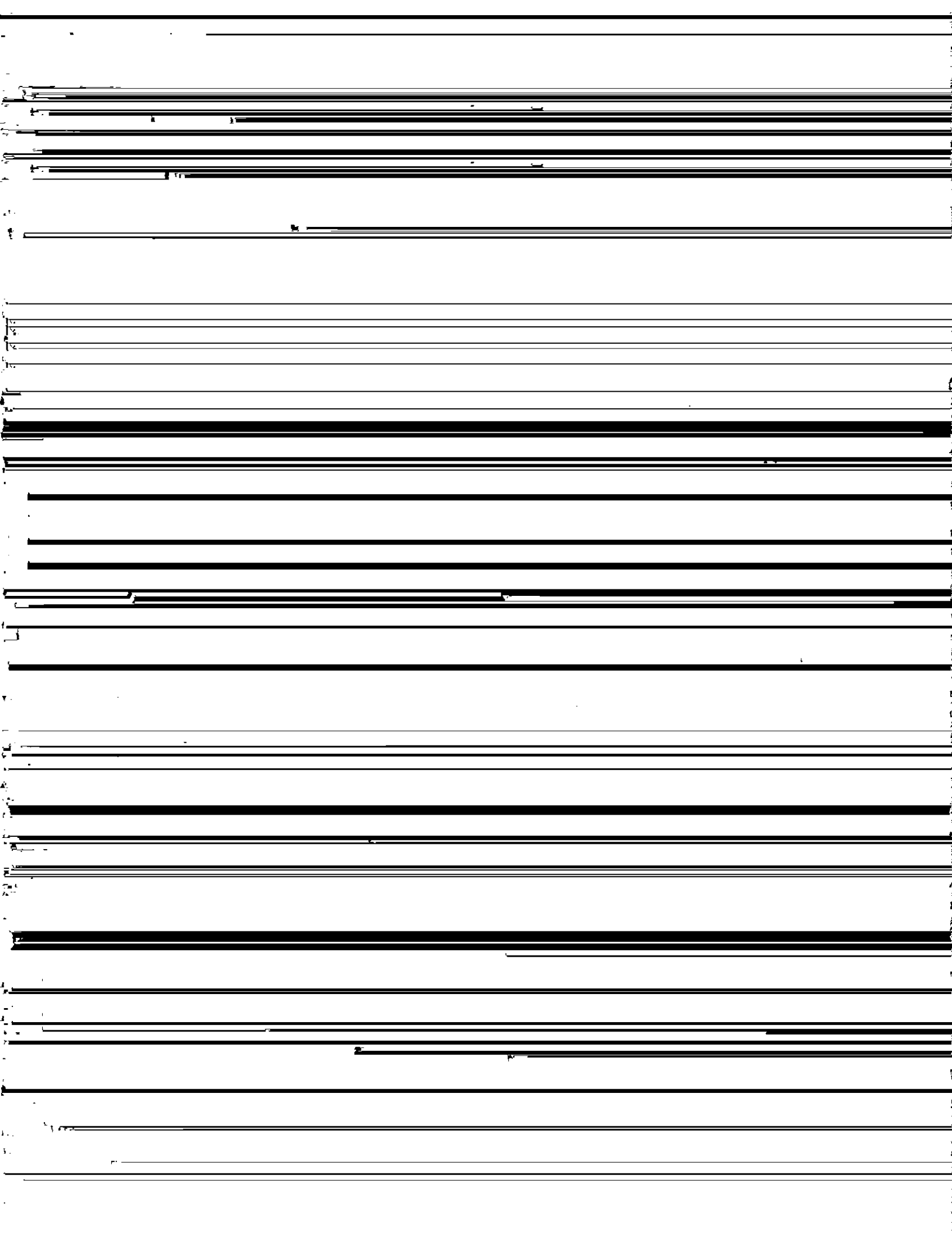
ute involved in *Mills* permitted suit to be brought by " 'any person with an interest in the child'. . . ." *Mills* v. *Habluetzel*, 456 U. S., at 100. See also Tr. of Oral Arg. 31–33.

terest in protecting public revenue. See Brief for Appellee 26–30. Putting aside the question of whether this interest can justify such radically different treatment of two groups of illegitimate children,[13] the State's argument does not address the different treatment accorded illegitimate children who are not receiving public assistance and legitimate children. This difference in treatment is allegedly justified by the State's interest in preventing the litigation of stale or fraudulent claims. But as the exception for children receiving public assistance demonstrates, the State perceives no prohibitive problem in litigating paternity claims throughout a child's minority. There is no apparent reason why claims filed on behalf of illegitimate children who are receiving public assistance when they are more than two years old would not be just as stale, or as vulnerable to fraud, as claims filed on behalf of illegitimate children who are not public charges at the same age. The exception in the statute, therefore, seriously undermines the State's argument that the different treatment accorded legitimate and illegitimate children is substantially related to the legitimate state interest in pre-

[13] The State unquestionably has a legitimate interest in protecting public revenue. As JUSTICE O'CONNOR pointed out in *Mills*, however, the State also has an interest in seeing that "'justice is done'" by "ensuring that genuine claims for child support are satisfied." 456 U. S., at 103 (concurring opinion). Moreover, an illegitimate child has an interest not only in obtaining paternal support, but also in establishing a relationship to his father. As the Juvenile Court suggested in this case, these interests are not satisfied merely because the mother is providing the child with sufficient support to keep the child off the welfare rolls. App. 16. See n. 4, *supra*. The father's duty of support persists even under these circumstances. App. 16. See also *Rose Funeral Home, Inc.* v. *Julian*, 176 Tenn. 534, 539, 144 S. W. 2d 755, 757 (1940); *Brooks* v. *Brooks*, 166 Tenn. 255, 257, 61 S. W. 2d 654 (1933). In any event, we need not resolve this tension in this case. As we discuss *infra*, the State's interest in protecting the public revenue does not make paternity claims any more or less stale or vulnerable to fraud.



tion with others already discussed, may lead one "to question whether the burden placed on illegitimates is designed to advance permissible state interests." 456 U. S., at 105 (O'CONNOR, J., concurring). See also *id.*, at 106 (POWELL, J., concurring in the judgment).[15]

Finally, the relationship between a statute of limitations and the State's interest in preventing the litigation of stale or fraudulent paternity claims has become more attenuated as scientific advances in blood testing have alleviated the problems of proof surrounding paternity actions. As JUSTICE O'CONNOR pointed out in *Mills*, these advances have "dramatically reduc[ed] the possibility that a defendant will be falsely accused of being the illegitimate child's father." *Id.*, at 104, n. 2 (concurring opinion). See *supra*, at ——. See also *Little* v. *Streater*, 452 U. S. 1, 6–8, 12, 14 (1981). Although Tennessee permits the introduction of blood test results only in cases "where definite exclusion [of paternity] is established," Tenn. Code Ann. § 36–228 (1977); see also

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[15] There is some confusion about the relationship between § 28–1–106 and § 36–224. Compare Brief for Appellant 18; Tr. of Oral Arg. 10, 13 with Brief for Appellee 13–14, 18; Tr. of Oral Arg. 30–31, 37–38. Even assuming that the limitations period in § 36–224(2) is tolled during the mother's minority, the important point is that it is not tolled during the minority of the child. As noted, see *supra*, at ——, and n. 14, statutes of limitations generally are tolled during a child's minority. This certainly undermines the State's argument that the different treatment accorded legitimate and illegitimate children is justified by its interest in preventing the litigation of stale or fraudulent claims.

It is not critical to this argument that the the right to file a paternity action generally is given to the mother. It is the child's interests that are at stake. The father's duty of support is owed to the child, not to the mother. See Tenn. Code Ann. § 36–223 (1977). Moreover, it is the child who has an interest in establishing a relationship to his father. This reality is reflected in the provision of § 36–224(1) that allows the child to bring suit if the mother is dead or disabled. Cf. S. Rep. No. 93–1356, p. 52 (1974) ("[T]he interest primarily at stake in [a] paternity action [is] that of the child"). Restrictive periods of limitation, therefore, necessarily affect the interests of the child and their validity must be assessed in that light.

§ 24–7-112 (1980), it is noteworthy that blood tests currently can achieve a "mean probability of exclusion [of] at least . . . 90 percent. . . ." Miale, Jennings, Rettberg, Sell & Krause, Joint AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage, 10 Family L. Q. 247, 256 (1976).[16] In *Mills*, the Court rejected the argument that recent advances in blood testing negated the State's interest in avoiding the prosecution of stale or fraudulent claims. 456 U. S., at 98, n. 4. It is not inconsistent with this view, however, to suggest that advances in blood testing render more attenuated the relationship between a statute of limitations and the State's interest in preventing the prosecution of stale or fraudulent paternity claims. This is an appropriate consideration in determining whether a period of limitations governing paternity actions brought on behalf of illegitimate children is substantially related to a legitimate state interest.

IV

The two-year limitations period established by Tenn. Code Ann. § 36–224(2) does not provide certain illegitimate children with an adequate opportunity to obtain support and is not substantially related to the legitimate state interest in preventing the litigation of stale or fraudulent claims. It therefore denies certain illegitimate children the equal protection of the laws guaranteed by the Fourteenth Amendment. Accordingly, the judgment of the Tennessee Su-

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[16] See also Stroud, Bundrant, and Galindo, Paternity Testing: A Current Approach, 16 Trial 46 (Sept. 1980) ("Recent advances in scientific technology now enable the properly equipped laboratory to routinely provide attorneys and their clients with a 95–98 percent probability of excluding a man falsely accused of paternity"); Terasaki, Resolution By HLA Testing of 1000 Paternity Cases Not Excluded By ABO Testing, 16 J. Family L. 543 (1978). See generally Ellman and Kaye, Probabilities and Proof: Can HLA and Blood Group Testing Prove Paternity?, 54 N. Y. U. L. Rev. 1131 (1979).

preme Court is reversed and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1983

Re: 82-5576 - Pickett v. Brown

Dear Bill,

Please join me.

Sincerely yours,

Byron

Justice Brennan

cc: The Conference

cpm

May 29, 1983

82-5576 Pickett v. Brown

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1983

Re: No. 82-5576-Pickett v. Brown

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1983

Re: 82-5576 - Pickett v. Brown

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1983

Re: No. 82-5576 Pickett v. Brown

Dear Bill:

Please join me.

Sincerely,

WHR

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

No. 82-5576 Pickett v. Brown

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1983

Re: No. 82-5576, Pickett v. Brown

Dear Bill:

I join.

Regards,

WEB

Justice Brennan

Copies to the Conference

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
	5/2/83							
Join WJB 6/1/83	1st draft 5/26/83	Join WJB 5/27/83	Join WJB 5/31/83	Join WJB 5/31/83	Join WJB 5/28/83	Join WJB 5/31/83	Join WJB 5/31/83	Join WJB 5/31/83
				82-5576 Pickett v. Brown				