

The Burger Court Opinion Writing Database

Weber v. Aetna Casualty & Surety Co.
406 U.S. 164 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



W

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

CHAMBERS OF
THE CHIEF JUSTICE



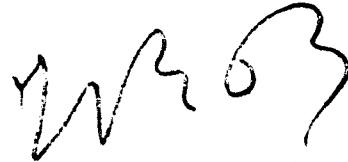
April 20, 1972

Re: No. 70-5112 - Weber v. Aetna Casualty & Surety Co.

Dear Lewis:

Please join me in your opinion in the above.

Regards,



Mr. Justice Powell

Copies to the Conference

B
M

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

March 23, 1972

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

Dear Lewis:

In No. 70-5112 - Weber v.

Aetna Casualty, please join me in your
opinion.

W. O. D.

Mr. Justice Powell

cc: Conference

3
L
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 23, 1972

RE: No. 70-5112 - Weber v. Aetna Casualty
& Surety Company

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 23, 1972

70-5112 - Weber v. Aetna
Casualty & Surety

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

B
M

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 24, 1972

Re: No. 70-5112 - Weber v. Aetna
Casualty & Surety Co.

Dear Lewis:

Please join me in your fine
opinion in this case.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

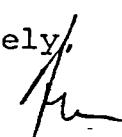
March 23, 1972

Re: No. 70-5112 - Weber v. Aetna Casualty

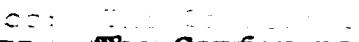
Dear Lewis:

Please join me in your opinion.

Sincerely,


T.M.

Mr. Justice Powell

cc: 
cc: The Conference

202
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1972

Re: No. 70-5112 - Weber v. Aetna Casualty
and Surety Co.

Dear Lewis:

I can't resist asking what the linotyper (or
someone else) had in his mind to make the last line
on page 3 of your opinion come out the way it did.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

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M

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

To: Blackmun, J.

No. 70-5112

Circulated: 3/27/72

Recirculated: _____

Willie Mae Weber, Petitioner,
 v.
 Aetna Casualty & Surety
 Company et al. } On Writ of Certiorari to
 Louisiana.

[April —, 1972]

MR. JUSTICE BLACKMUN, concurring in the result.

For me, La. Civ. Code Art. 204 is the provision in the State's workmen's compensation statutory structure that proves fatal for this case under the focus of constitutional measurement. This statute denied Henry Stokes the ability even to acknowledge his illegitimate so that they might qualify as children within the definition provided by La. Rev. Stat. 23:1021 (3). This is so because the decedent (inasmuch as he was then married to Adlay Jones Stokes and remained married to her the rest of his life) and the mother were incapable of contracting marriage at the time of conception and thereafter. This bar, indeed, denied equal protection to the illegitimate. Cf. *Labine v. Vincent*, 401 U. S. 532, 539 (1971).

I thus give primary emphasis to the presence of § 204 and, I believe, far more emphasis than does the Court. If that statute did not exist or were inapplicable, the case might be a different one. While the Court refers to § 204, and to a degree relies upon it, *ante*, p. 7, it seems to me that it does so only secondarily. I read the opinion as flatly granting dependent unacknowledged illegitimate children full equality with dependent legitimate children and therefore as striking down the Louisiana statutory scheme even for the situation where the father has the power to acknowledge his illegitimate but refrains from doing so. In other words, the Court

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

2nd DRAFT

From: Blackmun, J.

~~STRIKES~~ Circulated:

Recirculated: 4/12/72

SUPREME COURT OF THE UNITED STATES From: Bla

No. 70-5112

[April —, 1972]

MR. JUSTICE BLACKMUN, concurring in the result.

For me, La. Civ. Code Art. 204 is the provision in the State's statutory structure that proves fatal for this workmen's compensation case under the focus of constitutional measurement. The Article operated to deny Henry Stokes the ability even to acknowledge his illegitimate so that they might qualify as children within the definition provided by La. Rev. Stat. 23:1021 (3). This is so because the decedent (inasmuch as he was then married to Adlay Jones Stokes and remained married to her the rest of his life) and the mother were incapable of contracting marriage at the time of conception and thereafter. This bar, indeed, under the Court's decided cases, denied equal protection to the illegitimate. Cf. *Labine v. Vincent*, 401 U. S. 532, 539 (1971).

I thus give primary emphasis to the presence of Art. 204 and, I believe, far more emphasis than does the Court. If that statute did not exist or were inapplicable, the case might be a different one. While the Court refers to Art. 204, and to a degree relies upon it, *ante*, p. 7, it seems to me that it does so only secondarily. I read the opinion as flatly granting dependent unacknowledged illegitimate children full equality with dependent legitimate children and therefore as striking down the Louisiana statutory scheme even for the situation where the father has the power to acknowledge his illegitimate

GD

Please sign me

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5112

From: Powell, J.

Circulated: MAR 23

Recirculated: _____

Willie Mae Weber, Petitioner,
v.
Aetna Casualty & Surety
Company et al. } On Writ of Certiorari to
the Supreme Court of
Louisiana.

[March —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us, on writ of certiorari to the Supreme Court of Louisiana,¹ concerns the right of dependent unacknowledged, illegitimate children to recover under Louisiana workmen's compensation laws benefits for the death of their natural father on an equal footing with his dependent legitimate children. We hold that Louisiana's denial of equal recovery rights to dependent unacknowledged illegitimates violates the Equal Protection Clause of the Fourteenth Amendment. *Levy v. Louisiana*, 391 U. S. 68 (1968). *Glona v. American Guarantee and Liability Insurance Company*, 391 U. S. 73 (1968).

On June 22, 1967, Henry Clyde Stokes died in Louisiana of injuries received during the course of his employment the previous day. At the time of his death Stokes resided and maintained a household with one Willie Mae Weber, to whom he was not married. Living in the household were four legitimate minor children, born of the marriage between Stokes and Adlay Jones Stokes who was at the time committed to a mental hospital. Also living in the home was one unacknowledged illegiti-

¹ *Stokes v. Aetna Casualty and Surety Co.*, 257 La. 424, 242 So. 2d 567 (1971).

p. 3, 4, 9, 11, 12

To: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Breyer
Mr. Justice Souter
Mr. Justice Stevens
Mr. Justice Thomas
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

From: Powell, J.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 70-5112

Recirculated: 7/1/1972

APR 21 1972

Willie Mae Weber, Petitioner,
v.
Aetna Casualty & Surety
Company et al. } On Writ of Certiorari to
the Supreme Court of
Louisiana.

[April 24, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us, on writ of certiorari to the Supreme Court of Louisiana,¹ concerns the right of dependent unacknowledged, illegitimate children to recover under Louisiana workmen's compensation laws benefits for the death of their natural father on an equal footing with his dependent legitimate children. We hold that Louisiana's denial of equal recovery rights to dependent unacknowledged illegitimates violates the Equal Protection Clause of the Fourteenth Amendment. *Levy v. Louisiana*, 391 U. S. 68 (1968). *Glona v. American Guarantee and Liability Insurance Company*, 391 U. S. 73 (1968).

On June 22, 1967, Henry Clyde Stokes died in Louisiana of injuries received during the course of his employment the previous day. At the time of his death Stokes resided and maintained a household with one Willie Mae Weber, to whom he was not married. Living in the household were four legitimate minor children, born of the marriage between Stokes and Adlay Jones Stokes who was at the time committed to a mental hospital. Also living in the home was one unacknowledged illegiti-

¹ *Stokes v. Aetna Casualty and Surety Co.*, 257 La. 424, 242 So. 2d 567 (1971).

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5112

From: Rehnquist, J.

Willie Mae Weber, Petitioner,
v.
Aetna Casualty & Surety
Company et al.

Circulated: 4/12/72
On Writ of Certiorari to
the Supreme Court of
Louisiana.

[April —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

This case is distinguishable from *Levy*, and could be decided the other way on the basis of this Court's more recent decision in *Labine v. Vincent*, 401 U. S. 532 (1971). Yet I certainly do not regard the Court's decision as an unreasonable drawing of the line between *Levy* and *Labine*, and would not feel impelled to dissent if I regarded *Levy* as rightly decided. I do not so regard it. I must agree with Mr. Justice Harlan's dissenting opinion, which described *Levy* and its companion case, *Glona v. American Guarantee & Liability Ins. Co.*, 391 U. S. 73 (1968), as "constitutional curiosities," and described the Court's method of reaching the result "a process that can only be described as brute force." 391 U. S., at 76.

The Equal Protection Clause was adopted as a part of the Fourteenth Amendment in 1868. Five years later Mr. Justice Miller delivered this Court's initial construction of that amendment in his classic opinion in *Slaughter-House Cases*, 16 Wall. 36 (1873). After setting forth an account of the adoption of that amendment, he described the account as a "recapitulation of events, almost too recent to be called history, but which are familiar to us all." 16 Wall., at 71. Referring to the Equal Protection Clause, he said:

"We doubt very much whether any action of a State not directed by way of discrimination against the

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2nd DRAFT

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 70-5112

Circulated:

Willie Mae Weber, Petitioner,
 v.
 Aetna Casualty & Surety
 Company et al. } On Writ of Certiorari to
 Recirculated: 4/13/72
 the Supreme Court of
 Louisiana.

[April —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

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Since *Levy* was a constitutional holding, its doctrine is open to later re-examination to a greater extent than if it had decided a question of statutory construction or some other nonconstitutional issue. See *Coleman v. Alabama*, 399 U. S. 1, 22 (1970) (BURGER, C. J., dissenting); *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235, 259 (1970) (Black, J., dissenting); *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 405-410 (1932) (Brandeis, J., dissenting).

The Equal Protection Clause was adopted as a part of the Fourteenth Amendment in 1868. Five years later