# The Burger Court Opinion Writing Database

## *Trimble v. Gordon*

430 U.S. 762 (1977)

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




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

CHAMBERS OF
THE CHIEF JUSTICE

February 10, 1977

RE: 75-5952 - Trimble v. Gordon

Dear Bill:

I will await your dissent.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

Re: 75-5952 Trimble v. Gordon

Dear Lewis:

Please show me as dissenting. Possibly I may join some later writing in dissent.

Regards,

WEB

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 14, 1977

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Rehnquist

Re: 75-5952 Trimble v. Gordon

Unless someone feels otherwise, I suggest the Court's opinion recite at the close, "The Chief Justice, Mr. Justice Stewart, Mr. Justice Blackmun, and Mr. Justice Rehnquist dissent and would affirm the judge of the Illinois Supreme Court."

What would they do if WHR dissent?

Regards,

WEB

P.S. Bill's "cat-of-nine-tails" almost converted me!

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 10, 1976

RE: No. 75-5952 Trimble v. Gordon

Dear Chief:

Lewis is willing to take the opinion in the above and I have therefore assigned it to him.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 18, 1977

RE: No. 75-5952 Trimble v. Gordon

Dear Lewis:

The only suggestion I have, as I told you yesterday, is in note 14. Would you consider a revision reading something like the following?

> 14. We would have a different case if the statute were closely tailored to eliminate imprecise and unduly burdensome avenues of establishing paternity. However, in cases where accurate and efficient methods are available, such as a prior state court adjudication, a formal acknowledgment, or informal but reliable evidence of paternity, the States' legitimate interest in providing for the orderly disposition of property cannot justify unjust discriminations directed at illegitimate children.

I suggest it because I am somewhat fearful that, as presently written, your clear distinction between adjudicated or formally-acknowledged illegitimates on the one hand, and informally acknowledged children on the other, may be read as an open invitation for Illinois to reformulate its intestate laws so as to exclude children who can only establish paternity informally, even if their evidence would not inflict undue burdens upon state proceedings (for example, if paternity is not seriously contested).

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 25, 1977

RE: No. 75-5952 Trimble v. Gordon

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 25, 1977

Re: No. 75-5952, Trimble v. Gordon

Dear Lewis,

I should appreciate your adding the following at the foot of your opinion in this case.

> Mr. Justice Stewart dissents. Like the Supreme Court of Illinois, he finds this case constitutionally indistinguishable from Labine v. Vincent, 401 U.S. 572. He would, therefore affirm the judgment.

Sincerely yours,

P.S.
P.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 25, 1977

Re: No. 75-5952 - Trimble v. Gordon

Dear Lewis:

Please join me.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 25, 1977

Re: No. 75-5952, Trimble v. Gordon

Dear Lewis:

Please join me.

Sincerely,

T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 27, 1977

Re: No. 75-5952 - Trimble v. Gordon

Dear Lewis:

Will you please also include my name in Potter's dissenting remarks at the foot of your opinion.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

January 13, 1977

No. 75-5952 Trimble v. Gordon

Dear Bill:

Here is the first draft of a proposed opinion for the Court.

As you were good enough to assign this case to me, I would particularly appreciate your reviewing the draft prior to circulation. I would welcome your comments.

Sincerely,

Mr. Justice Brennan

lfp/ss

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

From: Mr. Justice Powell

Circulated: JAN 24 1977

Recirculated: _____

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-5952

Deta Mona Trimble and Jessie Trimble, Appellants, *v.* Joseph Roosevelt Gordon et al. } On Appeal from the Supreme Court of Illinois.

[January —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

At issue in this case is the constitutionality of § 12 of the Illinois Probate Act[1] which allows illegitimate children to inherit by intestate succession only from their mothers. Under Illinois law, legitimate children are allowed to inherit by intestate succession from both their mothers and their fathers.[2]

## I

Appellant Deta Mona Trimble is the illegitimate daughter of appellant Jessie Trimble[3] and Sherman Gordon. Trimble and Gordon lived in Chicago with Deta Mona from 1970

[1] Ill. Rev. Stat. c. 3, § 12 (1961). Effective January 1, 1976, § 12 and the rest of the Probate Act of which it was a part were repealed and replaced by the Probate Act of 1975. Public Act 79-328. Section 12 has been replaced by Ill. Rev. Stat. c. 3, § 2-2 (1976-1977 Supp.). Although § 2-2 of the Probate Act of 1975 differs in some respects from the old § 12, that part of § 12 that is at issue here was recodified without change in § 2-2. As the opinions below and the briefs refer to the disputed statutory provision as § 12, we will continue to refer to it that way.

[2] Ill. Rev. Stat. c. 3, § 2-1 (b) (1976-1977 Supp.).

[3] There is some dispute over the status of Jessie Trimble in this litigation. It has been argued that Trimble is in the case only as the next friend of her daughter. As the question is relevant only to the claim of sex discrimination against the mothers of illegitimate children, an issue we do not reach, we need not resolve the dispute.

8, 15

Stylistic Changes Throughout.

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: JAN 28 1977

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-5952

Deta Mona Trimble and Jessie Trimble, Appellants, *v.* Joseph Roosevelt Gordon et al. } On Appeal from the Supreme Court of Illinois.

[January —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

At issue in this case is the constitutionality of § 12 of the Illinois Probate Act[1] which allows illegitimate children to inherit by intestate succession only from their mothers. Under Illinois law, legitimate children are allowed to inherit by intestate succession from both their mothers and their fathers.[2]

## I

Appellant Deta Mona Trimble is the illegitimate daughter of appellant Jessie Trimble[3] and Sherman Gordon. Trimble and Gordon lived in Chicago with Deta Mona from 1970

[1] Ill. Rev. Stat. c. 3, § 12 (1961). Effective January 1, 1976, § 12 and the rest of the Probate Act of which it was a part were repealed and replaced by the Probate Act of 1975. Public Act 79-328. Section 12 has been replaced by Ill. Rev. Stat. c. 3, § 2-2 (1976-1977 Supp.). Although § 2-2 of the Probate Act of 1975 differs in some respects from the old § 12, that part of § 12 that is at issue here was recodified without material change in § 2-2. As the opinions below and the briefs refer to the disputed statutory provision as § 12, we will continue to refer to it that way.

[2] Ill. Rev. Stat. c. 3, § 2-1 (b) (1976-1977 Supp.).

[3] There is some dispute over the status of Jessie Trimble in this litigation. It has been argued that Trimble is in the case only as the next friend of her daughter. As the question is relevant only to the claim of sex discrimination against the mothers of illegitimate children, an issue we do not reach, we need not resolve the dispute.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 3, 1977

MEMORANDUM TO THE CONFERENCE:

Re: Cases Held for Trimble v. Gordon, 75-5952.

(1) No. 75-1148 Lalli v. Lalli (Administratrix).

New York allows an illegitimate child to inherit generally from its mother, but from its father only

> "if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child." N.Y. Estates, Powers, and Trusts Law §4-1.2(a).

Appellant is the natural but illegitimate son of Mario Lalli. He instituted this suit, seeking status as an intestate distributee of his father's estate. The N.Y. Ct. App. rejected his equal protection challenge to the statute despite the fact that his father had supported him financially and, incident to the requirement of parental consent to appellant's 1969 marriage, had sworn in a notarized writing that appellant was his natural son.

I believe that the notarized acknowledgement falls in the category of evidence of paternity that does not compromise the State's interests. Trimble v. Gordon, Slip Op., at 10 n.14 Accordingly, I will vote to vacate and remand in light of Trimb

* * * *

(2) No. 75-1610 Pendleton v. Pendleton.

Kentucky law provides that a "bastard shall inherit only from his mother's kindred," but "[i]f a man who has had a child by a woman afterward marries her, the child or its descendants, if recognized before or after marriage, shall be deemed legitimate." Ky. Rev. Stat. §§391.090(2), (3). Appellant was born

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 25, 1977

Re: No. 75-5952 - Trimble v. Gordon

Dear Lewis:

Would you include my name along with Potter's in the language at the foot of your opinion in this case which he describes in his letter of January 25th. I also anticipate writing a separate dissent, which I will try to put together with all deliberate speed.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

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

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-5952

Deta Mona Trimble and Jessie Trimble, Appellants, *v.* Joseph Roosevelt Gordon et al. } On Appeal from the Supreme Court of Illinois.

[April —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

The Fourteenth Amendment's prohibition against "any state deny[ing] to any person . . . the equal protection of the laws" is undoubtedly one of the majestic generalities of the Constitution. If, during the period of more than a century since its adoption, this Court had developed a consistent body of doctrine which could reasonably be said to expound the intent of those who drafted and adopted that Clause of the Amendment, there would be no cause for judicial complaint, however unwise or incapable of effective administration one might find those intentions. If, on the other hand, recognizing that those who drafted and adopted this language had rather imprecise notions about what it meant, the Court had evolved a body of doctrine which was both consistent and served some arguably useful purpose, there would likewise be little cause for great dissatisfaction with the existing state of the law.

Unfortunately, more than a century of decisions under this Clause of the Fourteenth Amendment have produced neither of these results. They have instead produced a syndrome wherein this Court seems to regard the Equal Protection Clause as a cat-of-nine-tails to be kept in the judicial closet as a threat to legislatures which may, in the view of the judiciary, get out of hand and pass "arbitrary," "illogical," or "unreasonable" laws. Except in the area of the law in which the Framers obviously meant it to apply—classifications based on

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 25, 1977

Re: 75-5952 - Trimble v. Gordon

Dear Lewis:

Please join me.

Respectfully,

John

Mr. Justice Powell

Copies to the Conference