

# The Burger Court Opinion Writing Database

*United States v. Clark*  
445 U.S. 23 (1980)

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 1, 1980

RE: No. 78-1513 - U. S. v. Clark

Dear Thurgood:

I can join your opinion if you add a cite to Catholic Bishop, 440 U.S. 490 (1979), which in turn relied on Machinists, 367 U.S. 740 (1961), which you do cite.

•  
Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 18, 1980

Re: 78-1513 - United States v. Clark

Dear Lewis:

I have concluded to join your concurring opinion.

Regards,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1980

RE: No. 78-1513 United States v. Clark

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall  
cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 24, 1980

Re: No. 78-1513, United States v. Clark

Dear Thurgood,

I shall await Bill Rehnquist's dissenting opinion.

Sincerely yours,

P. S.  
P.

Mr. Justice Marshall

Copies to the Conference

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 31, 1980

Re: No. 78-1513, United States v. Clark

Dear Bill,

Please add my name to your dissenting opinion.

Sincerely yours,

P.S.  
P.J.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 21, 1980

Re: No. 78-1513 - United States v. Clark

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Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall  
Copies to the Conference  
cmc

21 JAN 1980

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1513

United States, Appellant,  
v.  
Patricia Ilene Clark, Guardian for Shawn D. Clark and Tricia D. Clark. } On Appeal from the United States Court of Claims.

[February —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether illegitimate children of a federal civil service employee are entitled to survivors' benefits under the Civil Service Retirement Act when the children once lived with the employee in a familial relationship, but were not living with the employee at the time of his death.

I

George Isaacson and the appellee Patricia Clark lived together from 1965 through 1971 without benefit of matrimony. They had two children, Shawn and Tricia Clark, born in 1968 and 1971, respectively, and the four lived together as a family. After the appellee and Isaacson separated, the appellee filed a state-court action in Montana seeking a determination of the paternity of the children. In June 1972, the Montana court issued a decree determining that Isaacson was the natural father of the children and ordering him to contribute to their support. Isaacson provided monthly support payments up to the time of his death in 1974.

At the time of death, Isaacson was a federal employee covered by the Civil Service Retirement Act, 5 U. S. C. § 8331 *et seq.* The Act provides that each surviving child of a

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 5, 1980

Re: No. 78-1513 - United States v. Clark

Dear Chief:

I am sorry, but I would prefer not to cite NLRB v. Catholic Bishop of Chicago, No. 77-752 (March 21, 1979).

My opinion in the present case would hold that, because the Civil Service Retirement Act may fairly be construed to allow recovery to the appellee's children, we need not address their equal protection claim. This approach is in no way inconsistent with Catholic Bishop, which simply developed an even stronger standard for avoiding sensitive First Amendment issues. Furthermore, in the more recent decision of Califano v. Yamasaki, No. 77-1511 (June 20, 1979), slip opinion at 9, we stated the test as follows:

"[I]f 'a construction of the statute is fairly possible by which [a serious doubt of constitutionality] may be avoided,' Crowell v. Benson, 285 U.S. 22, 62 (1932), a court should adopt that construction."

Yamasaki, which involved a due process challenge to a provision of the Social Security Act, also did not cite Catholic Bishop.

In short, when we can fairly construe a statute to allow recovery to claimants, I do not believe we must cite the stronger test relied on in Catholic Bishop.

Sincerely,

*JM.*

T.M.

The Chief Justice

cc: The Conference

Citation corrections  
pp. 3, 4, 5, 7, 8,  
9, 10.

15 FEB 1980

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1513

United States, Appellant,  
v.  
Patricia Ilene Clark, Guardian for Shawn D. Clark and Tricia D. Clark. | On Appeal from the United States Court of Claims.

[February —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether illegitimate children of a federal civil service employee are entitled to survivors' benefits under the Civil Service Retirement Act when the children once lived with the employee in a familial relationship, but were not living with the employee at the time of his death.

I.

George Isaacson and the appellee Patricia Clark lived together from 1965 through 1971 without benefit of matrimony. They had two children, Shawn and Tricia Clark, born in 1968 and 1971, respectively, and the four lived together as a family. After the appellee and Isaacson separated, the appellee filed a state-court action in Montana seeking a determination of the paternity of the children. In June 1972, the Montana court issued a decree determining that Isaacson was the natural father of the children and ordering him to contribute to their support. Isaacson provided monthly support payments up to the time of his death in 1974.

At the time of death, Isaacson was a federal employee covered by the Civil Service Retirement Act, 5 U. S. C. § 8331 *et seq.* The Act provides that each surviving child of a

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 22, 1980

Re: No. 78-1513 - United States v. Clark

Dear Thurgood:

Please join me.

Sincerely,

*H. A. B.*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 12, 1980

78-1513 U.S. v. Clark

Dear Thurgood:

For the reasons stated in my concurring opinion, I am not able to join your opinion for the Court.

I do, however, concur in the judgment.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

2-11-80

Circulated: FEB 12 1980

1st DRAFT

Recirculated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

No. 78-1513

United States, Appellant,

v.

Patricia Ilene Clark, Guardian  
 for Shawn D. Clark and  
 Tricia D. Clark.

On Appeal from the United  
 States Court of Claims.

[February —, 1980]

MR. JUSTICE POWELL, concurring.

The question in this case is whether the illegitimate children of a federal employee, who lived with his children after their birth and had a legal obligation to contribute to their support until his death, are eligible to receive survivors' benefits under the Civil Service Retirement Act, 5 U. S. C. § 8331 *et seq.* The statutory definition of "child" under that Act includes a "recognized natural child who lived with the employee . . . in a regular parent-child relationship." 5 U. S. C. § 8341 (a)(3) (A)(iii). Because I agree that these children satisfy the statutory definition, I concur in the judgment of the Court. I write separately because I do not believe that the Court's broad construction of the "lived with" requirement is compatible with congressional intent or necessary to avoid constitutional difficulties.

The Court recognizes that the "lived with" requirement could serve the governmental purposes by providing proof of either paternity or dependence. The Court concludes that the "lived with" requirement is not designed to prove paternity because the statute separately requires that an eligible illegitimate be a "recognized natural child." *Ante*, at 7-8. I agree.

I cannot accept so easily the Court's further conclusion that the live-with requirement was not designed to prove dependency. Although the 1966 amendment demonstrates that the "lived with" requirement cannot be interpreted to demand

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

From: Mr. Justice [redacted]

2-20-80

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: **FEB 20**

## SUPREME COURT OF THE UNITED STATES

No. 78-1513

United States, Appellant.

v.

Patricia Ilene Clark, Guardian  
for Shawn D. Clark and  
Tricia D. Clark.

On Appeal from the United  
States Court of Claims.

[February —, 1980]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins,  
concurring.

The question in this case is whether the illegitimate children of a federal employee, who lived with his children after their birth and had a legal obligation to contribute to their support until his death, are eligible to receive survivors' benefits under the Civil Service Retirement Act, 5 U. S. C. § 8331 *et seq.* The statutory definition of "child" under that Act includes a "recognized natural child who lived with the employee . . . in a regular parent-child relationship." 5 U. S. C. § 8341 (a)(3) (A)(iii). Because I agree that these children satisfy the statutory definition, I concur in the judgment of the Court. I write separately because I do not believe that the Court's broad construction of the "lived with" requirement is compatible with congressional intent or necessary to avoid constitutional difficulties.

The Court recognizes that the "lived with" requirement could serve governmental purposes by providing proof of either paternity or dependence. The Court concludes that the "lived with" requirement is not designed to prove paternity because the statute separately requires that an eligible illegitimate be a "recognized natural child." *Ante*, at 7-8. I agree.

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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

2-22-80

Circulated: \_\_\_\_\_

3rd DRAFT

Recirculated: FEB 22 1980

**SUPREME COURT OF THE UNITED STATES**

**No. 78-1513**

United States, Appellant,  
 v.  
 Patricia Ilene Clark, Guardian for Shawn D. Clark and Tricia D. Clark. | On Appeal from the United States Court of Claims.

[February —, 1980]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, concurring in the judgment.

The question in this case is whether the illegitimate children of a federal employee, who lived with his children after their birth and had a legal obligation to contribute to their support until his death, are eligible to receive survivors' benefits under the Civil Service Retirement Act, 5 U. S. C. § 8331 *et seq.* The statutory definition of "child" under that Act includes a "recognized natural child who lived with the employee . . . in a regular parent-child relationship." 5 U. S. C. § 8341(a)(3)(A)(iii). Because I agree that these children satisfy the statutory definition, I concur in the judgment of the Court. I write separately because I do not believe that the Court's broad construction of the "lived with" requirement is compatible with congressional intent or necessary to avoid constitutional difficulties.

The Court recognizes that the "lived with" requirement could serve governmental purposes by providing proof of either paternity or dependence. The Court concludes that the "lived with" requirement is not designed to prove paternity because the statute separately requires that an eligible illegitimate be a "recognized natural child." *Ante*, at 7-8. I agree.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 24, 1980

Re: 78-1513 - United States v. Clark

Dear Thurgood:

In due course, I will circulate a very short dissent to your opinion.

Sincerely,

*W. H. Rehnquist*

Mr. Justice Marshall

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  
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 31 JAN 15

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1513

United States, Appellant,  
 v.  
 Patricia Ilene Clark, Guardian for Shawn D. Clark and Tricia D. Clark. } On Appeal from the United States Court of Claims.

[February —, 1980]

MR. JUSTICE REHNQUIST, dissenting.

I am in full agreement with the Court that the statutory question should have been resolved in this case prior to any application of the constitutional issue decided by the Court of Claims in *Gentry v. United States*, 212 Ct. Cl. 1, 546 F. 2d 343 (1976). Nor do I disagree with the Court's construction of the statute in issue. I dissent, however, because I believe that the Court should remand the case to the Court of Claims for consideration of the statutory claim in the first instance.

Federal courts should not, of course, resolve cases on the basis of constitutional questions when a nonconstitutional ground might be available. A federal court also may not award relief on the basis of a constitutional decision absent jurisdiction conferred by Congress. When a federal court violates either of these prudential or jurisdictional limitations, our standard practice is to remand the case for consideration of the statutory question. In *Youakim v. Miller*, 425 U. S. 231 (1976), this Court found that a constitutional holding of a lower court might possibly be avoided by the construction of statutory requirements. The Court remanded, finding that the statutory issue might be dispositive, "but that claim should be aired first in the District Court. Vacating the judgment and remanding the case for this purpose will require the District Court first to decide the statutory issue, . . . and

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 21, 1980

Re: 78-1513 - United States v. Clark

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference