

The Burger Court Opinion Writing Database

Mills v. Habluetzel

456 U.S. 91 (1982)

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 25, 1982

Re: No. 80-6298 - Mills v. Habluetzel

Dear Bill:

I join your February 12 proposed opinion.

Regards,

Handwritten signature of William Rehnquist, consisting of the letters 'WR' followed by a stylized 'R'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1982

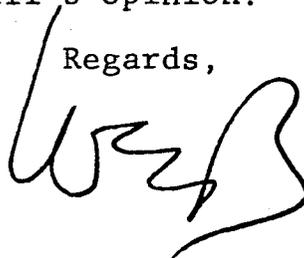
Re: No. 80-6298 - Mills v. Habluetzel

Dear Sandra:

This is a case where a concurrence serves a useful purpose and I join you.

I have already joined Bill's opinion.

Regards,

A handwritten signature in black ink, appearing to be 'W. O'Connor', written over the typed word 'Regards,'.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 11, 1982.

No. 80-6298 -- Mills v. Habluetzel.

Dear Bill,

I have only one minor difficulty with your opinion. In footnote 4, you state categorically, "Blood tests do not prove paternity. They prove nonpaternity" Until recently, I would not have disagreed with this statement, but today's teaching is that more modern "blood testing" techniques, e.g., "HLA testing," can usually predict the paternity of a nonexcluded putative father with over 90 per cent probability. See Terasaki, Resolution by HLA Testing of 1000 Paternity Cases Not Excluded by ABO Testing, 16 J. Family L. 543 (1978). That is to say, traditional, "ABO" tests could exclude some putative fathers -- "prove nonpaternity" -- but could say little about the probability that any particular nonexcluded putative father was the actual father. But we are now instructed that "HLA testing," which depends on the identification of the many different detectable antigens on the surface of a human cell, can predict paternity with high probabilities. Given this scientific development, I am concerned that the unequivocal phrasing of your footnote 4 would improperly deter trial courts around the country from accepting, or giving proper weight to, modern testing techniques. True, the proper legal weight to be given to these techniques is still a matter of academic dispute. See, e.g., Jaffee, Comment on the Judicial Use of HLA Paternity Test Results and Other Statistical Evidence: A Response to Terasaki, 17 J. Family L. 457 (1979). I think that my concern could be allayed by a revision of the footnote to acknowledge the existence of more modern tests and of a dispute over their proper legal significance, without foreclosing the issue as the present phrasing does; none of this proposed change would, in my view, detract at all from your basic point in the footnote, that the State retains a valid "interest in litigating claims of paternity while the ev-

idence is relatively fresh." Aside from this suggestion, I am happy to agree with your opinion.

Sincerely,



W.J.B., Jr.

Justice Rehnquist.

Copies to the Conference.

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 18, 1982

RE: No. 80-6298 Mills v. Habluetzel

Dear Bill:

If I haven't already, this is to formally join
your opinion in the above.

Sincerely,

Bill

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 29, 1982

RE: No. 80-6298 Mills v. Habluetzel

Dear Sandra:

I too join your concurrence in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bud", which is a common nickname for Justice O'Connor.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 16, 1982

Re: 80-6298 - Mills v. Habluetzel

Dear Bill,

I join your latest circulation.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 25, 1982

Re: No. 80-6298 - Mills v. Habluetzel

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 18, 1982

Re: No. 80-6298 - Mills v. Habluetzel

Dear Bill:

I shall wait to see what Sandra has to say in
this case.

Sincerely,
H.A.B.

Justice Rehnquist
cc: The Conference

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

March 26, 1982

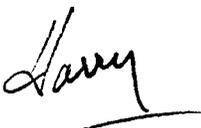
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 80-6298 - Mills v. Habluetzel

Dear Sandra:

Please join me in your separate concurring opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice O'Connor

cc: The Conference

February 11, 1982

80-6298 Mills v. Habluetzel

Dear Bill:

Your opinion emphasizes that a state need not "adopt procedures for illegitimate children that are co-terminus with those accorded legitimate children" because of the state's interest in "avoiding the litigation of stale or fraudulent claims". The suggested standard is that the period for obtaining support for illegitimate children "must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf." (p. 8).

If I were on the Texas Supreme Court, I could well conclude in the pending case that the new four year statute meets this standard, and we would soon be confronted with another appeal. For two reasons, I am reluctant to join your opinion as now written.

First, I do not view the evidentiary difficulties as seriously as you do. Under Texas law the suit for support is against a living defendant who is capable of protecting his own interest. This distinguishes this case from the many illegitimacy cases that have emphasized evidentiary problems and in which the parent necessarily is deceased.* As you suggest, there may well be conflicting testimony from only two witnesses, and yet often there will be - for many years - supportive evidence readily available to the father. Moreover, as your opinion notes, blood tests required by Texas law exclude a high percentage of possible fathers.

*E.g., Lalli v. Lalli; Trimble v. Gordon; Mathews v. Lucas; Labine v. Vincent; Weber v. Aetna Casualty & Surety Co.; Levy v. Louisiana.

Secondly, the interests of the state, the mother and particularly the illegitimate children in obtaining support from the natural father are very strong - if not compelling. In modern society where, in some environments, children born out of wedlock outnumber those blessed by marital vows, there is every reason to compel a father to support children he brings into this world. Otherwise, taxpayers support them - as now so expansively happens. One also can argue that if fathers of illegitimates were made more vulnerable to support their obligations, some at least may take appropriate precautions in their promiscuity. I add that becoming a father is rarely an involuntary act.

In sum, I am not at all persuaded that the asserted state interest in the prevention of "stale or fraudulent claims" is nearly as weighty as the bundle of interests that favor affording a continuing opportunity to make fathers shoulder their responsibilities.

The difficult question for me is whether to hold that the 18-year limitation applies alike to support of legitimates and illegitimates, or to leave open the period for illegitimates. If we do the latter, I would emphasize the interests I have identified and say explicitly that they outweigh concern as to proof.

For the foregoing reasons, I cannot join your opinion in its present form. I am sending this note only to you at this time so that you will understand my reasons for writing separately or awaiting further writing.

Sincerely,

Justice Rehnquist

lfp/ss

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

From: **Justice Powell**

Circulated: MAR 26 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

LOIS MAE MILLS, APPELLANT *v.*
DAN HABLUETZEL

ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
THIRTEENTH SUPREME JUDICIAL DISTRICT

[March 26, 1982]

JUSTICE POWELL, concurring in the judgment.

I join Part I of Justice O'Connor's concurring opinion, but do not join the Court's opinion. I am concerned, for the reasons persuasively stated by Justice O'Connor, that the Court's opinion may be read as prejudging the constitutionality of longer periods of limitations. As she observes, it is significant "that a paternity suit is one of the few Texas causes of action not tolled during the minority of the plaintiff." *Post*, at 3.

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

From: Justice Rehnquist

Circulated: FEB 8 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

LOIS MAE MILLS, APPELLANT *v.*
 DAN HABLUETZEL

ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
 THIRTEENTH SUPREME JUDICIAL DISTRICT

[February —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This Court has held that once a State posits a judicially enforceable right of children to support from their natural fathers, the Equal Protection Clause of the Fourteenth Amendment prohibits the State from denying that same right to illegitimate children. *Gomez v. Perez*, 409 U. S. 535 (1973). In this case we are required to determine the extent to which the right of illegitimate children recognized in *Gomez* may be circumscribed by a State's interest in avoiding the prosecution of stale or fraudulent claims. The Texas Court of Civil Appeals, Thirteenth Judicial District, upheld against federal constitutional challenges the State's one-year statute of limitation for suits to identify the natural fathers of illegitimate children. We noted probable jurisdiction. 451 U. S. 936. We begin by reviewing the history of the statute challenged by appellant.

I

Like all States, Texas imposes upon parents the primary responsibility for support of their legitimate children. See Tex. Fam. Code (Code) §§ 4.02, 12.04(3). That duty extends beyond the dissolution of marriage, Code § 14.05, regardless of whether the parent has custody of the child, *Hooten v. Hooten*, 15 S.W. 2d 141 (Tex. Ct. Civ. App. 1929), and may

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 11, 1982

Re: No. 80-6298 Mills v. Habluetzel

Dear Bill:

I will be happy to comply with the suggestion contained in your letter of February 11th. If you have any language to suggest, please send it along; otherwise I will try to draft the revision myself.

Sincerely,

W

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 12, 1982

Re: No. 80-6298 Mills v. Habluetzel

Dear Bill,

I would propose to meet the suggestion contained in your letter of February 11th by revising the second paragraph of footnote 4 as follows:

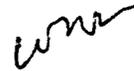
"Traditional blood tests do not prove paternity. They prove nonpaternity, excluding from the case of possible fathers a high percentage of the general male population. Krause, *Illegitimacy: Law and Social Policy* 123-136 (1971). Thus the fact that a certain male is not excluded by these tests does not prove that he is the child's natural father, only that he is a member of the limited class of possible fathers. More recent developments in the field of blood testing have sought to not only "prove nonpaternity" but to predict paternity with a high degree of probability. See Teraski, *Resolution by HLA Testing of 1,000 Paternity Cases Not Excluded by ABO Testing*, 16 *J. Family L.* 543 (1978). The proper evidentiary weight to be given to these techniques is still a matter of academic dispute. See, e.g., Jaffee, *Comment on the Judicial Use of HLA Paternity Test Results and Other Statistical Evidence: Response to Teraski*, 17 *J. Family L.* 457 (1979). Whatever evidentiary rule the courts of a particular state choose to follow, if the blood test evidence does not exclude a certain male, he must thereafter turn to more conventional forms of proof -- evidence of lack of access to the mother, his own testimony, the testimony of others -- to prove that, although not excluded by the blood test, he is not in fact the child's father. As to

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this latter form of proof the state clearly has an interest in litigating claims while the evidence is relatively fresh."

Please let me know if this meets your concern.

Sincerely,

A handwritten signature in cursive script, appearing to be the initials 'WB'.

Justice Brennan

A large handwritten signature in cursive script, appearing to be 'Brennan'.

p-7
~~WHR~~
 WHR
 TB

✓

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

From: Justice Rehnquist

Circulated: _____

Recirculated: FEB 12 1982

2nd
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

**LOIS MAE MILLS, APPELLANT v.
 DAN HABLUETZEL**

**ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
 THIRTEENTH SUPREME JUDICIAL DISTRICT**

[February —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

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I

Like all States, Texas imposes upon parents the primary responsibility for support of their legitimate children. See Tex. Fam. Code (Code) §§ 4.02, 12.04(3). That duty extends beyond the dissolution of marriage, Code § 14.05, regardless of whether the parent has custody of the child, *Hooten v. Hooten*, 15 S.W. 2d 141 (Tex. Ct. Civ. App. 1929), and may

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

80-6298 - Mills v. Habluetzel

From: Justice Stevens

Circulated: FEB 16 '82

Recirculated: _____

JUSTICE STEVENS, concurring.

In G.D. Searle & Co. v. Cohn, ___ U.S. ___ (No. 80-644), the Court upheld a discriminatory statute of limitations against an equal protection challenge. In my dissent in that case, I wrote:

"Because there is a rational basis for some differential treatment, does it automatically follow that any differential treatment is constitutionally permissible? I think not; in my view the Constitution requires a rational basis for the special burden imposed on the disfavored class as well as a reason for treating that class differently." Id., at 1 (dissenting opinion) (emphasis in original).

In Searle the Court simply ignored that question. Today, however, the Court answers it as I did in Searle. I join today's opinion and its implicit rejection of the incomplete and faulty analysis in Searle.

*What nerve!!
See dissent I great!!*

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Stewart
Justice Powell
Justice Rehnquist

From: Justice Stevens

Circulated: _____ FEB 18 '82

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

**LOIS MAE MILLS, APPELLANT v.
DAN HABLUETZEL**

ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
THIRTEENTH SUPREME JUDICIAL DISTRICT

[February —, 1982]

JUSTICE STEVENS, concurring.

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“Because there is a rational basis for *some* differential treatment, does it automatically follow that *any* differential treatment is constitutionally permissible? I think not; in my view the Constitution requires a rational basis for the special burden imposed on the disfavored class as well as a reason for treating that class differently.” *Id.*, at 1 (dissenting opinion) (emphasis in original).

In *Searle* the Court simply ignored that question. Today however, the Court answers it as I did in *Searle*. I join today’s opinion and its implicit rejection of the incomplete and faulty analysis in *Searle*.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 1, 1982

Re: 80-6298 - Mills v. Habluetzel

Dear Bill:

In order to simplify your problem in announcing the disposition in this case, I have decided to withdraw my separate writing.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1982

No. 80-6298 Mills v. Habluetzel

Dear Bill,

I presently plan to concur separately in the judgment in this case and will circulate something in due course.

Sincerely,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: **MAR 25 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

**LOUIS MAE MILLS, APPELLANT v.
 DAN HABLUETZEL**

ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
 THIRTEENTH SUPREME JUDICIAL DISTRICT

[March —, 1982]

JUSTICE O'CONNOR, concurring.

Today, this Court holds that a Texas statute prescribing a one-year statute of limitation for paternity suits violates the Equal Protection Clause of the Fourteenth Amendment. Although I agree with the Court's analysis and result, I write separately because I fear that the opinion may be misinterpreted as approving the four-year statute of limitation now used in Texas. See Tex. Fam. Code Ann. § 13.01 (1981).

I

As the Court notes, the response of the Texas legislature to our opinion in *Gomez v. Perez*, 409 U. S. 535 (1973), was "less than generous." *Ante*, at 3. The one-year statute of limitation for paternity suits, enacted following our decision in *Gomez*, severely restricted the opportunity for illegitimate children to obtain financial support from their natural fathers, an opportunity not denied legitimate children. Although the need for proof of paternity distinguishes legitimate from illegitimate children in their claims for child support, the State's asserted justification is neither sufficiently weighty nor substantially related to the limitation to uphold the statute under the Fourteenth Amendment.

The appellee has set forth a number of "state interests" to justify the one-year statute of limitation, but the Court ac-

pp. 1, 3

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: APR 2 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6298

LOUIS MAE MILLS, APPELLANT, *v.*
 DAN HABLUETZEL

ON APPEAL FROM THE COURT OF CIVIL APPEALS OF TEXAS,
 THIRTEENTH SUPREME JUDICIAL DISTRICT

[March —, 1982]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE, JUSTICE BRENNAN and JUSTICE BLACKMUN join, concurring.

Today, this Court holds that a Texas statute prescribing a one-year statute of limitation for paternity suits violates the Equal Protection Clause of the Fourteenth Amendment. Although I agree with the Court's analysis and result, I write separately because I fear that the opinion may be misinterpreted as approving the four-year statute of limitation now used in Texas. See Tex. Fam. Code Ann. § 13.01 (1981).

I

As the Court notes, the response of the Texas legislature to our opinion in *Gomez v. Perez*, 409 U. S. 535 (1973), was "less than generous." *Ante*, at 3. The one-year statute of limitation for paternity suits, enacted following our decision in *Gomez*, severely restricted the opportunity for illegitimate children to obtain financial support from their natural fathers, an opportunity not denied legitimate children. Although the need for proof of paternity distinguishes legitimate from illegitimate children in their claims for child support, the State's asserted justification is neither sufficiently weighty nor substantially related to the limitation to uphold the statute under the Fourteenth Amendment.

The appellee has set forth a number of "state interests" to