

# The Burger Court Opinion Writing Database

## *Pickett v. Brown*

462 U.S. 1 (1983)

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

June 1, 1983

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

Dear Bill:

I join.

Regards



Justice Brennan

Copies to the Conference

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

From: **Justice Brennan**

Circulated: **MAY 26 1983**

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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, WEST-  
ERN 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<sup>1</sup> 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

<sup>1</sup>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."

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 31, 1983

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

Dear Harry:

Thank you for your letters today regarding the above.

I have already made the change you suggested on page 2 of the opinion and it will appear in the next circulation.

I share your concern that we avoid a series of decisions concerning the validity of progressively longer statutes of limitations. Short of overruling the reasoning of Mills, I tried to write the opinion as broadly as possible. The first part of the opinion simply holds that a two-year statute of limitations is no better than the one-year statute we invalidated in Mills. The opinion goes on, however, to suggest that the different treatment accorded illegitimate children who are receiving public assistance and those who are not "seriously undermines the State's argument that the different treatment accorded legitimate and illegitimate children is substantially related to the legitimate state interest in preventing the prosecution of stale or fraudulent claims and compels a conclusion that the two-year limitations period is not substantially related to a legitimate state interest." Opinion at 13-14. This provides a much broader ground for invalidating limitations periods governing paternity and support actions brought by illegitimate children. The effect of relying on this ground is likely to be substantial, as a practical matter, in view of requirements imposed on the States by the Federal AFDC program. See, e.g., 42 U.S.C. §§ 602 (a)(26)(27), 603 (h), 651, 654; S. Rep. No. 93-1356, pp. 42-53 (1974); Smith v. Puett, 506 F. Supp. 135, 142-144 (MD Tenn. 1980). Finally, the tolling and blood test arguments provide other potential grounds for invalidating these statutes and I advanced these arguments as far as I could without running afoul of the opinion in Mills or being forced to reach a difficult due process argument lurking in the State's decision to give the cause of action principally to the mother.

In short, I tried to go as far as I could without drawing a response from the "right" or rejecting recent precedent. I hope, and believe, that this opinion will be adequate to prevent a succession of decisions in this area.

Does this take care of your concerns?

Sincerely,

  
WJB, Jr.

Justice Blackmun

2

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

From: **Justice Brennan**

Circulated: 6/2/83

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2nd 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, WEST-  
ERN DIVISION**

[June —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

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

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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

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 82-5576, Pickett v. Brown

No. 82-1481, Astemborski v. Susmarski

This petition for cert. involves a challenge to a Pennsylvania statute of limitations that imposes a six-year limitations period on paternity actions brought on behalf of illegitimate children. The statute does not distinguish between illegitimate children who are receiving public assistance and those who are not. The statute also has exceptions for cases in which the father has voluntarily contributed support or acknowledged his paternity in writing. If a case falls within these exceptions, the action must be commenced within two years of the contribution or acknowledgment.

Following petitioner's application for welfare benefits, and assignment of her child's right to paternal support to the state, a paternity action was filed on behalf of the child. Respondent moved to dismiss the action based on the statute of limitations.

The state Court of Common Pleas found that the action was barred under the statute, but the court invalidated the statute on state and federal equal protection grounds. The court relied principally on cases from other states invalidating similar statutes. Those cases focus on the strength of an illegitimate child's interest in obtaining paternal support. They also rely, to some extent, on improvements in blood testing. The Court of Common Pleas also noted that a child could lose his right to support based on the inaction of the mother. This appears to be a due process rather than an equal protection argument.

On appeal, the Pennsylvania Supreme Court reversed. The court relied principally on Mills in reaching this conclusion, finding that six years was long enough to give those with an interest in an illegitimate child a reasonable opportunity to establish paternity, and the attendant support obligation, and that a six-year limitations period was substantially related to the legitimate state interest in preventing the litigation of stale or fraudulent claims. The court also relied on Mills in asserting that improvements in blood testing do not negate this

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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,



Justice Brennan

cc: The Conference

cpm

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,

*Jm.*  
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1983

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

Dear Bill:

In a separate letter, I have joined your opinion. Would you, however, consider a slight change in the third sentence of the paragraph beginning on page 2? That sentence states "Brown denied that he was the father of the child and alleged that he had ...." Could you change it to something like "Brown denied that he was the father of the child, and it is uncontested that he has never acknowledged the child as his own or contributed to the child's support." This would remove any intimation of guilt that arises from the use of the word "alleged." The situation must be embarrassing enough for the man who, for all we know, may not be the father.

Sincerely,



Justice Brennan

HAB

May 31, 1983

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

Dear Bill:

I remain disappointed, but I have joined your opinion.

Sincerely,

HAB

Justice Brennan

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1983

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

Dear Bill:

Please join me.

I am puzzled, and perhaps a little disappointed, about one thing. I had thought that there were six votes to go "all the way," that is, to state unequivocally that the State must allow illegitimate children time to establish paternity for a period as long as it permits legitimate children to obtain support from their fathers. I had hoped that by this case we could get off the "slippery slope" where every now and then we review a statute one year longer than the last one.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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 WILLIAM H. REHNQUIST

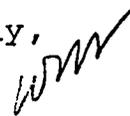
May 31, 1983

Re: No. 82-5576 Pickett v. Brown

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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82-5576

Supreme Court of the United States  
Memorandum

..... 6:6 ....., 1983

Harry -  
I was as surprised  
as you were that  
Bill didn't "go all  
the way" in this case

6 - *Palmer v. Thompson*  
82-5576

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 SANDRA DAY O'CONNOR

May 31, 1983

No. 82-5576 Pickett v. Brown

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

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