

1979

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Recommended Citation

Thorson, Susan (1979) "Constitutional Law - Regulations Affecting Property in General - Statute Affecting the Right of Illegitimates to Inherit Intestate from Father Upheld," *North Dakota Law Review*. Vol. 56: No. 2, Article 9.

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CONSTITUTIONAL LAW — REGULATIONS AFFECTING PROPERTY IN
GENERAL — STATUTE AFFECTING THE RIGHT OF ILLEGITIMATES TO
INHERIT INTESTATE FROM FATHER UPHELD

Intestate died on January 7, 1973, in the state of New York.¹ The appellant petitioned for a compulsory accounting claiming that he and his sister were illegitimate children of the intestate and as such were entitled to inherit from his estate.² The appellee, administratrix of the estate, opposed the petition on the basis of a New York statute³ which prevents illegitimate children who had not obtained an order of filiation⁴ during the father's lifetime from inheriting from his estate.⁵ Appellant argued that this statute was in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.⁶ The court ruled that the appellant was properly excluded as distributee of the estate and therefore lacked status to petition for a compulsory accounting.⁷ The New York Court of Appeals affirmed.⁸ The case

1. *Lalli v. Lalli*, 439 U.S. 259, 261 (1978).

2. *Id.*

3. The New York statute provides in relevant part as follows:

(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father 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. EST., POWERS & TRUSTS LAW § 4-1.2 (McKinney 1967).

4. 439 U.S. at 262. A filiation proceeding is a "special statutory proceeding, criminal in form, but in the nature of a civil action to enforce a civil obligation or duty specifically for the purpose of establishing parentage and the putative father's duty to support his illegitimate child." BLACK'S LAW DICTIONARY 566 (5th ed. 1979).

5. 439 U.S. at 262.

6. *Id.* The equal protection clause provides that no state shall "deny any person within its jurisdiction the equal protection of the law." U.S. CONST. amend. XIV.

7. 439 U.S. at 263.

8. *Id.*

was then appealed to the United States Supreme Court, which vacated and remanded to permit further consideration in light of *Trimble v. Gordon*.⁹ On remand, the New York Court of Appeals affirmed its earlier decision and the appellant appealed to the United States Supreme Court again.¹⁰ A plurality of the Court¹¹ held that New York's interest in the just and orderly disposition of property at death was substantial and therefore the statute requiring an order of filiation during the father's lifetime was constitutional under the equal protection clause of the fourteenth amendment.¹² *Lalli v. Lalli*, 439 U.S. 259 (1978).

At earliest common law an illegitimate was considered *nullius filius*,¹³ which means the son of no one, and therefore had no inheritance rights.¹⁴ The premise originated in medieval England.¹⁵ During the twelfth and thirteenth centuries, the church and state were so entwined that church courts were given exclusive jurisdiction in certain civil matters, one of which was bastardy.¹⁶ Canon law punished the illegitimate child for the sin of his parents by prohibiting him from obtaining an inheritance.¹⁷ The purpose of such a rule was to encourage marriage and the maintenance of the family.¹⁸ This edict was reinforced by a provision in English law which provided that if there was no claimant to the land other than an illegitimate child, the land escheated to the lord of the estate.¹⁹ Thus, those in authority profited from the promulgation of such a rule. *Nullius filius* became so ingrained in English society that it was not until 1926 that

9. *Id.* In *Trimble* the Court held that the Illinois Probate Code could not prohibit an illegitimate child from inheriting from her father while allowing a legitimate to inherit from both parents. The Court based its decision on the equal protection clause, noting that the statute could not be justified through the state's interest in promoting the family or establishing orderly disposition of property. *Trimble v. Gordon*, 430 U.S. 762 (1977).

The situation in *Lalli* also concerned an illegitimate challenging the restriction of his rights under a statute, using the equal protection clause of the fourteenth amendment. The recent decision of the same issue under a similar statute led the Court to remand *Lalli*. 439 U.S. at 264.

10. 439 U.S. at 264.

11. *Id.* The plurality held for the state of New York, with two of the justices agreeing with the decision but not joining in the opinion. One justice would affirm on the basis of *Labine v. Vincent*, 401 U.S. 532 (1971), and overrule *Trimble*. 439 U.S. at 276 (Blackmun, J., concurring). The other justice concurred for reasons stated in his *Trimble* dissent, which reasoned that a distinction between legitimates and illegitimates was not irrational and therefore did not violate equal protection because legitimates and illegitimates were not similarly situated. 430 U.S. at 777 (Rehnquist, J., concurring), as cited in 439 U.S. at 276.

12. 439 U.S. at 275-76.

13. 1 W. BLACKSTONE, COMMENTARIES* 459.

14. *Id.*

15. J. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 56 (1971).

16. *Id.*

17. *Id.* at 263.

18. Stenger, *The Supreme Court and Illegitimacy: 1958-1977*, 11 FAM. L. Q. 368 (1978).

19. 2 W. BLACKSTONE, COMMENTARIES* 247.

illegitimates gained inheritance rights in England.²⁰

In the United States the harshness of the common law rule led to statutory modifications much earlier than in England.²¹ While the Supreme Court recognized the common law rule denying illegitimates any and all inheritance rights, it also held that the rule could be modified by statute.²² In *Stevenson's Heirs v. Sullivant*,²³ the Court held that a state statute giving illegitimates and legitimates an equal right to inherit from their mother supplanted the otherwise pervasive common law rule.²⁴ Such statutes were also held to permit illegitimates to inherit from their fathers if the court was satisfied that the intestate was the actual father.²⁵ All of the fifty states eventually passed such statutes eliminating the discriminatory effects of the common law rule.²⁶

In 1968 the United States Supreme Court began to apply the equal protection clause to statutes involving illegitimate classification. Beginning with *Levy v. Louisiana*²⁷ and *Glon v. American Guaranty and Life Insurance Co.*,²⁸ the Court applied the rational basis test for determining whether the distinction between legitimates and illegitimates was discriminatory.²⁹ In determining whether a particular classification of illegitimates has a rational basis, the Court has consistently found that such a basis does not exist where the injury caused has no relation to the illegitimacy of the child.³⁰ Thus in these cases, because suits for wrongful death of an illegitimate's mother³¹ or a mother suing for her illegitimate son's wrongful death³² had no relation to the

20. Legitimacy Act, 1926, 16 & 17 Geo. 15, ch. 60, § 9, as cited in J. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 263 (1971).

21. Annot., 41 L. Ed.2d 1228, 1235 (1974). One of the first of these statutory modifications was the Virginia Act of 1785 which provided that "[w]here a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children if recognized by him shall thereby be legitimated." 1785 VA. ACTS, as cited in *Stevenson's Heirs v. Sullivant*, 18 U.S. (5 Wheat.) 207, 208 (1820).

22. 18 U.S. (5 Wheat.) 207, 261 (1820). Although the Court found the appellant illegitimate could not inherit from his brother because no statute replaced this aspect of common law, it did recognize the right of a state to make a law so as to give illegitimates inheritance rights. *Id.*

23. 18 U.S. (5 Wheat.) 207 (1820).

24. *Id.* at 261.

25. *Cope v. Cope*, 137 U.S. 682 (1891). In *Cope*, the Court allowed an illegitimate son to inherit equally with his legitimate brother, because of a state statute which provided for such equality even though the illegitimate was not acknowledged. *Id.*

26. 47 NOTRE DAME LAW. 392, 398 (1971) (citing DIGEST OF INHERITANCE LAWS (VA Pamphlet 20-66-1) (1966 & Supp. 1969)).

27. 391 U.S. 68 (1968).

28. 391 U.S. 73 (1968).

29. *Levy v. Louisiana*, 391 U.S. 68 (1968). See also *Glon v. American Guar. and Life Ins. Co.*, 391 U.S. 73 (1968). The rational basis test requires the courts to determine "whether the classifications drawn in a statute are reasonable in light of its purpose. . . ." *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964).

30. 391 U.S. 68, 72 (1968).

31. *Id.*

32. 391 U.S. 73 (1968).

illegitimate status, statutes denying these rights were held unconstitutional.³³

Illegitimacy as a classification has, however, been found valid when such a classification would serve a legitimate state interest.³⁴ In *Labine v. Vincent*³⁵ the Court used the rational basis test to deny an illegitimate, acknowledged but not legitimated by her father, sole rights to his estate, when other relatives also claimed the estate.³⁶ The Court cited the state's interest in promoting the family³⁷ and efficient disposition of property³⁸ as proper objectives for the distinction between legitimates and illegitimates. Attention was focused on alternatives the father could have pursued if he had intended the child to inherit.³⁹ Because there was no insurmountable barrier to prevent inheritance, the Court found the statute valid.⁴⁰

While the Court has stated that punishing an illegitimate for his parent's irresponsible liaisons beyond the bonds of marriage was "illogical and unjust,"⁴¹ it has nevertheless denied illegitimates the protection of strict scrutiny.⁴² This status⁴³ has been denied because while illegitimacy is, like race and sex, an accident of birth, it lacks

33. 391 U.S. 68 (1968), 391 U.S. 73 (1968).

34. 391 U.S. 68, 71 (1968).

35. 401 U.S. 532 (1971). In *Labine* an illegitimate's right to sole inheritance was denied even though she was acknowledged. The Court ruled in favor of collateral relatives and upheld a Louisiana statute which required the illegitimate to be legitimated as well as acknowledged. *Id.*

36. *Id.* The relevant parts of the Louisiana Civil Code provide that "[i]llegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. . . ." LA. CIV. CODE ANN. art. 206 (1870). Further, "[n]atural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State." LA. CIV. CODE ANN. art. 919 (1870).

37. 401 U.S. at 536-39. The Court pointed out that a state has the right to make a social judgment to promote the family and to pass laws to promote such an objective. *Id.*

38. *Id.* at 538. The Court emphasized that it could not place its judgment above the state's in deciding what furthered either family life or estate disposition. *Id.*

39. *Id.* at 539. The Court suggested that the child's father could have left a will, or married his daughter's mother, or finally, that he could have stated in his acknowledgment of paternity his desire to legitimate his daughter. *Id.*

40. *Id.*

41. *Weber v. Aetna Cas. & Surety Co.*, 406 U.S. 164, 175 (1972). In *Weber* the Court applied *Levy v. Louisiana*, 391 U.S. 68 (1968), rather than *Labine v. Vincent*, 401 U.S. 532 (1971), emphasizing that the facts in *Weber* dealt with illegitimate's rights to workmen's compensation. The Court explained that a state traditionally has a strong prerogative to regulate the disposition of property within its borders, which was at issue in *Labine*, but that its right to regulate in other areas could not be connected with such a substantial state purpose. 406 U.S. at 175.

42. *Mathews v. Lucas*, 427 U.S. 495, 506 (1976) (citing *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1 (1973)). In *Rodriguez*, the Court found those entitled to strict scrutiny to be "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." 411 U.S. at 28.

43. 406 U.S. at 172 (1972). The Court will apply the strict scrutiny standard to state statutory classifications which approach sensitive fundamental personal rights. *Brown v. Board of Education*, 347 U.S. 483 (1954). The application of "strict" scrutiny is so "aggressive" that its end result is the rejection of the statute. See Gunther, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

the traditional hardships that these categories have endured.⁴⁴ The comparative lack of discrimination illegitimates have faced has prompted the Court to deny them the extraordinary protection given a suspect class.⁴⁵

It must be kept in mind, however, that while the Court will not apply the standard of strict scrutiny, it has stated in *Mathews v. Lucas*⁴⁶ that illegitimates are not to endure "toothless" scrutiny.⁴⁷ Although the exact meaning of this term has not been explained, the Court has tended to focus on the child and his rights⁴⁸ and shown disapproval for statutes which exclude both parent and child from claiming equality for the child.⁴⁹

*Trimble v. Gordon*⁵⁰ concerned the constitutionality of the Illinois Probate Code's⁵¹ distinction between legitimate and illegitimate children for purposes of intestate succession.⁵² Under this statute illegitimate children could inherit from both parents.⁵³ The statute also provided that if an illegitimate wanted to be treated as legitimate for purposes of intestate succession, his father and mother would have to marry and the child must be acknowledged.⁵⁴ The United States Supreme Court held the legitimacy classification for intestate succession violated the equal protection clause of the fourteenth amendment to the United States Constitution.⁵⁵ The Court rejected the state's basis of establishing a method of property disposition through which proof of a lineal relationship was more readily ascertainable.⁵⁶ It noted that significant categories of illegitimate children could be recognized

44. 427 U.S. at 506 (citing *Frontiero v. Richardson*, 411 U.S. 677, 684-86 (1973)). In *Frontiero*, the Court points out some traditional hardships endured because of race or sex, such as slavery and denial of the right to vote. 411 U.S. at 684-86 (1973).

45. 411 U.S. at 684-86.

46. 427 U.S. 495 (1976).

47. *Mathews v. Lucas*, 427 U.S. 495, 510 (1976).

48. 406 U.S. at 170. In *Weber*, which followed *Labine*, the Court emphasized that the situation in *Labine* was upheld by the strong presumption that the state had the right to influence the disposition of estates. *Id.*

49. *Id.*

50. 430 U.S. 762 (1977).

51. ILL. REV. STAT. ch. 3, § 12 (1973). The Illinois statute provides in relevant part as follows:

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate.

Id.

52. *Trimble v. Gordon*, 430 U.S. 762, 765 (1977).

53. *Id.* at 764-65.

54. *Id.* at 765.

55. *Id.* at 765-66.

56. *Id.* at 772.

without jeopardizing the orderly settlement of estates.⁵⁷ The Court reasoned that the statute could not be upheld simply because it mirrored the moral beliefs of the state's citizens.⁵⁸ Instead, the state must consider the effect its standard will have on illegitimates, taking into account both the vast number of disinherited illegitimates and the difficulty of proving paternity.⁵⁹

In *Trimble*, the Court took a view different from *Labine*, which contained a similar fact situation.⁶⁰ One distinguishing feature between *Trimble* and *Labine* may be the almost total exclusion the Illinois statute placed on illegitimates in *Trimble*.⁶¹ There was nothing the child himself could do to gain succession.⁶² The only means available to the child was acknowledgement and the marriage of his parents after his birth. This breaks with the basic premise that one should not be punished for the acts of another⁶³ and thus the Court found it unconstitutional.

A comparison with the *Trimble* case was a major component of the Court's decision in *Lalli*.⁶⁴ The Court noted that the same issue, "whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause,"⁶⁵ was present in both cases.⁶⁶ The two cases were differentiated, however, by the fact that the statute in *Trimble* was so narrow that it did not permit even the judicial branch to intervene on the part of an illegitimate.⁶⁷ In *Lalli*, on the other hand, the denial of inheritance rights in New York was based on purely evidentiary, judicial proceedings which the child himself could initiate.⁶⁸ New York's statute did not foreclose rights of an

57. *Id.* at 771.

58. *Id.* at 775. The statute was enacted to encourage legitimate family relationships and maintain an efficient and accurate method of disposition of an intestate's property. The Court disposed of the first goal by noting that the statute had only the most attenuated relationship to that goal and also that persons will not shun illicit relationships simply because they would not reap the benefits they would if they were legitimate. Secondly, the Court found the statute too narrow to fairly meet the second objective. *Id.* at 768-71.

59. *Id.* at 770.

60. *Id.* at 777. The dissent found *Trimble* indistinguishable from *Labine* and thus would affirm relying on that judgment. *Id.* (Rehnquist, J., dissenting).

61. *Id.* at 770.

62. *Id.*

63. *Id.* at 769-70. See 406 U.S. at 175.

64. 439 U.S. at 266.

65. *Id.* The "remaining obstacles" refer to those restrictions left from the common law which prevented an illegitimate from taking any inheritance. *Id.*

66. *Id.*

67. *Id.* While the Court held the *Trimble* statute was too narrow it did recognize the right of states to require a more demanding standard than legitimate children or illegitimates claiming their mother's estate must meet when they attempt to claim their intestate father's estate. 430 U.S. at 770.

68. 439 U.S. at 267. The Court noted that if the appellant in *Trimble* had been governed by the *Lalli* New York statute she would have inherited. *Id.*

illegitimate because of his parents' acts or lack thereof.⁶⁹

The Court also took into account New York's goals in enacting the statute. The rational basis standard⁷⁰ used by the Court required a tie between the statute and a legitimate state objective.⁷¹ The only professed goal of the New York statute was efficient disposition of estates.⁷² The Court recognized that this was a goal which justified substantial interest by the state.⁷³ Procedural problems in estate disposition are further complicated when the relationship between father and child is called into question.⁷⁴ To alleviate this the Court found it within the state's rights to force the child to produce proof of his paternity.⁷⁵ Finality in the decree of an estate disposition is a necessity to make the system efficient.⁷⁶ Because due process⁷⁷ requires that possible beneficiaries be notified before disposition,⁷⁸ limiting the time that illegitimates can claim inheritance rights to the father's time of death allows significant categories of illegitimates to inherit without putting a heavy burden on the system.⁷⁹ The benefits of fixing such a time for suit⁸⁰ justify its existence and outweigh the chance that certain deserving illegitimates might be excluded.⁸¹ Thus, by using the rational basis standard the Court upheld New York's statute qualifying the rights of illegitimates to inherit.⁸²

In North Dakota the rights of illegitimates are governed by the Uniform Parentage Act.⁸³ This act was designed to bring existing law into conformity with the Supreme Court's rulings on the rights

69. *Id.*

70. *Id.* at 273. The Court stated that "inquiry under the Equal Protection Clause does not focus on the abstract 'fairness' of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment." *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 271.

74. *Id.* at 269. The Court identified a number of factors that would counsel states to treat legitimates and illegitimates differently. These factors included the difficulty of proving paternity when the father is not part of the formal family unit. The father may be unaware of the child's birth, or may not be concerned because of lack of ties with the mother. Also, the mother may not be certain who the father is. *Id.*

75. *Id.* at 271.

76. *Id.*

77. *Id.* at 270. The due process clause of the fourteenth amendment to the United States Constitution mandates notice and an opportunity to be heard to all necessary parties. *Id.*

78. *Id.* If illegitimates are given the right to intestate succession, the state would be required to furnish notice to all illegitimates. This would place a considerable burden on the state if the service of process were not significantly limited between the categories of known and unknown illegitimates.

79. *Id.* at 272.

80. *Id.* at 271-72. The Court found that fixing the time by which paternity proceedings must be determined was justified because the administration of an estate would be facilitated, the possibility of uncertainty and delay would be minimized and fraudulent assertions would be much less likely to arise. *Id.*

81. *Id.* at 272-73.

82. *Id.* at 275-76.

83. N.D. CENT. CODE § 14-17-06 (Supp. 1977).

of illegitimates.⁸⁴ It is aimed at insuring equality for illegitimates in those areas in which the Court has mandated such equal treatment.⁸⁵ The Act, however, goes beyond the Court's rulings and attempts to grant equality to even the illegitimate child inheriting from his intestate father.⁸⁶ Basically, the Act enables an illegitimate child to bring an action to determine the existence of the father and child relationship until three years after the child reaches majority.⁸⁷

A comparison of the Uniform Parentage Act with the New York statute at issue in *Lalli* indicates the probable constitutional validity of the North Dakota statute. While the two statutes provide different means for limiting paternity actions — the New York statute based on the father's lifetime,⁸⁸ the North Dakota statute based on the age of the child⁸⁹— both allow a reasonable amount of time to prove paternity. In addition, the Commissioners' Comments to the Uniform Parentage Act emphasize that the framers intended to address the rights of illegitimates in terms of what the child himself could do to claim his inheritance.⁹⁰ The *Lalli* decision involved a statute which provided a judicial proceeding which a child could initiate himself.⁹¹ The decision also stressed the state's interest in the efficient disposition of estates, which the Court readily accepted.⁹² The Uniform Parentage Act based its

84. UNIFORM PARENTAGE ACT, Commissioners' Prefatory Note at 580. The Commissioners quote *Weber v. Actna Cas. & Sur. Co.*, 406 U.S. 164 (1971) and *Gomez v. Perez*, 409 U.S. 535 (1973), which dealt with an illegitimate's right to collect workmen's compensation, as cases granting illegitimates broad equal treatment. UNIFORM PARENTAGE ACT, Commissioners' Prefatory Note at 580-81.

85. UNIFORM PARENTAGE ACT, Commissioners' Prefatory Note at 580.

86. *Id.* at 581.

87. N.D. CENT. CODE § 14-17-06 (Supp. 1977). The statute reads in relevant part as follows:

An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 14-17-04 may not be brought later than three years after the birth of the child, or later than three years after July 1, 1975, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority.

Id.

88. 439 U.S. at 262.

89. N.D. CENT. CODE § 14-17-06 (Supp. 1977).

90. UNIFORM PARENTAGE ACT § 7 Commissioners' Comments. The framers of the Act were specific in their goals when setting the statute of limitations, as explained in the following excerpt:

[T]his Section provides for a twenty-one-year statute of limitations, except that a late paternity action does not affect laws relating to distribution and closing of decedents' estates or to the determination of heirship. Since the U.S. Supreme Court decisions speak in terms of the *child's* substantive right to a legal relationship with his father, it was considered unreasonable to bar the child's action by reason of another person's failure to bring a paternity action at an earlier time.

Id.

91. 439 U.S. at 266.

92. *Id.* at 269.

limitations on the desire that actions be brought as soon as possible.⁹³ Therefore, it appears that the Uniform Parentage Act would be upheld under the *Lalli* standard.

Although other aspects of illegitimate rights, such as the right to workmen's compensation benefits,⁹⁴ seem to have been readily accepted by the Supreme Court, it appears that the *Lalli* decision has firmly implanted the rational basis standard as a means of analyzing the illegitimate's right to inherit from his intestate father. This seems to foreclose the possibility that strict scrutiny would become the standard applied in cases involving illegitimate rights. By limiting the child's right to determine paternity to the father's lifetime, the Court stems the tide for further equality that may have been started in *Trimble*. The Court, however, leaves open the question of what would happen if the father were to die before he could bring an acknowledgment action. In this regard, North Dakota's Uniform Parentage Act, which is based on the child's age, is more responsive.⁹⁵ The *Lalli* decision is, however, likely to influence states to adopt liberal provisions concerning illegitimate rights while at the same time allowing for the protection of estate disposition.

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93. UNIFORM PARENTAGE ACT § 7 Commissioners' Comment. The Comment states in relevant part: "[t]he three year provision stated in the first sentence of this Section will serve as an admonition that paternity actions should be brought promptly." *Id.*

94. *Weber v. Aetna Cas. and Sur. Co.*, 406 U.S. 164 (1971); *Gomez v. Perez*, 409 U.S. 535 (1973).

The Court explained in *Weber* that because both legitimate and illegitimate dependent children would be dependent on their father for the support he would provide, it would be unfair to treat them differently under workmen's compensation provisions. 406 U.S. at 169-70. *Gomez* reiterated these sentiments by stating that legitimates and illegitimates must share equally in the workmen's compensation benefits received as the result of a parent's death. 409 U.S. at 538.

95. N.D. CENT. CODE § 14-17-06 (Supp. 1977). The Uniform Parentage Act allows a child to recover for three years after majority without reference to parental status. *Id.*

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