

# Supreme Court of the United States

OCTOBER TERM, 1970

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Supreme Court, U. S.

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In the Matter of:

Docket No. 5257

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LOU BERTHA LABINE, NATURAL TUTRIX  
OF MINOR CHILD, RITA NELL VINCENT,

Appellant,

v.

SIMON VINCENT, ADMINISTRATOR OF  
THE SUCCESSION OF EZRA VINCENT

Appellee  
-----X

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C O N T E N T S

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|       | 5  | On behalf of Appellant  |       |
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|       | 7  | JAMES A. LEITHEAD, ESQ. | 24    |
|       | 8  | Lake Charles, Louisiana |       |
|       | 9  | On Behalf of Appellees  |       |
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1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1970

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5 LOU BERTHA LABINE, NATURAL TUTRIX :  
6 OF MINOR CHILD, RITA NELL VINCENT, :  
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Appellant

v.

No. 5257

SIMON VINCENT, ADMINISTRATOR OF  
THE SUCCESSION OF EZRA VINCENT

Appellee

Washington, D.C.  
Tuesday, January 19, 1971

The above entitled matter came on for discussion  
at 1:00 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice  
HUGO L. BLACK, Associate Justice  
WILLIAM O. DOUGLAS, Associate Justice  
JOHN M. HARLAN, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HENRY BLACKMUN, Associate Justice

1 APPEARANCES:

2 JAMES J. COX , ESQ.  
3 Lake Charles, Louisiana  
4 On Behalf of Appellant

5 JAMES A. LEITHEAD, ESQ.  
6 Lake Charles, Louisiana  
7 On Behalf of Appellee

8 \*\*\*\*\*



P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in No. 5257, Labine against Vincent. Mr. Cox?

ARGUMENT OF JAMES J. COX, ESQ.

ON BEHALF OF APPELLANT

MR. COX: Mr. Chief Justice and may it please the Court.

This case involves the equal protection rights of an eight year old Negro girl, from Lake Charles, Louisiana, who is the daughter of the decedent, Ezra Vincent.

Ezra Vincent died without having left a will, but he bequeathed upon his child formal proof of the child's ancestry by a formal act of acknowledgement before a notary public which was recorded in the Division of Public Health Statistics along with the child's birth certificate which corroborated proof of parentage of Ezra Vincent of the child Rita Nell Vincent.

1 Q Mr. Cox, in many if not most states, that  
2 k kind of acknowledgement --- the whole question.

3 A That's right, and it should, Your Honor.

4 Q Well, I mean as a matter of statute. The  
5 statute expressly provides that the acknowledgement has the  
6 consequence of establishing legitimacy. But the Louisiana  
7 statute---

8 A Does not, Your Honor. Mr Chief Justice  
9 Burger, I think that this is the crux and the real issue of the  
10 case. It is not a question of whether or not the state, as was  
11 so aptly put in Mr. Justice Harlan's dissent, and the Levy and  
12 Glona cases, has the right to require a formal burden of proof  
13 standards or criteria which are meaningful and relevant in  
14 determining the question of the state's application of its laws  
15 but in this case no matter what burden of proof was met by this  
16 particular child, because of the fact that the child is saddled  
17 with the stigma of illegitimacy, this child can inherit nothing  
18 and in fact has what is a different standard of requesting  
19 support from the decedent's estate.

20 This particular child had much better proof of her  
21 relationship with the decedent, Ezra Vincent, than did the  
22 brothers and sisters of the decedent who came from Washington,  
23 D.C, and other faraway places to claim the decedent's estate  
24 and were granted the decedent's estate by the Louisiana courts.

1           That is the sister could produce no marriage license  
2 to show whether her parents were married. They could produce  
3 no birth certificates to show that they were children of the  
4 same parents as the decedent, Ezra Vincent, their reputation  
5 of proof was extremely sketchy.

6           None of the witnesses other than family members, the  
7 brothers and sisters themselves could recite the names of the  
8 brothers and sisters of the decedent. And yet the Louisiana  
9 courts because of its penalty burden of proof situation and be-  
10 cause of its tradition of prejudice against illegitimates  
11 awarded the estate to the brothers and sisters rather than to  
12 the little child.

13           Q           I suppose the brothers and sisters were  
14 rather aged people, weren't they?

15           A           They were, Your Honor, and in fairness---

16           Q           The father was 70, the father who acknowledg-  
17 ed this child as his child, was 70---

18           A           Yes.

19           Q           ---wasn't he? At the time he did that?

20           A           Yes, Your Honor, but that's not beyond the---

21           Q           I suppose at least some of his brothers  
22 and sisters were older than he, and---

23           A           In fairness, Justice Stewart, I would say  
24 that records were not kept in Louisiana. There were courthouse  
25 fires and other reasons why it was difficult to prove relation-

1 ship. By the same token the fact of burden of proof and the  
2 fact of proof of relationship is extremely significant in a  
3 case of this sort because it goes to the question of what is  
4 the state's legitimate interest in legislating against a partic-  
5 ular class of people.

6 Q How old was the mother?

7 A The mother was 51 years old.

8 Q And she's now married to Mr. Labine.

9 A Mr. Labine is deceased, Your Honor.

10 Q I see. She was married after---

11 A She was married to James Brooks and then  
12 married Mr. Labine and Mr. Labine is now deceased, and she's  
13 unmarried. She was also the mother of, it will be brought out,  
14 I'm sure, in adverse argument, of other illegitimate children.

15 Q At the time of the birth of this child, she  
16 was what, in between marriages?

17 A There was no marriage, Your Honor, at the  
18 time of the birth of the child.

19 Q She had never been married.

20 A She had been married first to Mr. Brooks,  
21 and then to Mr. Labine who is deceased.

22 Q Yes, and where along the line was this  
23 child born?

24 A This child was born after the death of Mr.  
25 Labine.



1 Q I see. She was a widow.

2 A Yes, Your Honor.

3 Q Is there any disability from the two par-  
4 ents marrying at the time, in that one might have been married  
5 to someone else?

6 A Ezra Vincent, Your Honor, was not married,  
7 neither was Mrs. Labine, there was no disability.

8 Q As you move along in your argument, will  
9 you touch upon the question whether if you prevail with respect  
10 to this little child, the same would be true with any illegiti-  
11 mate child whether acknowledged or not, if paternity were  
12 established?

13 A Mr. Justice Blackmun, the question of  
14 burden of proof and standards of proof are questions which  
15 would be more appropriately resolved by judicial declarations  
16 and statutes. Statutes from the standpoint of setting reason-  
17 able burdens and judicial declarations if the burdens are un-  
18 reasonable.

19 Here we have a case where there's an impossible  
20 burden, either the parents of the child would have had to marry,  
21 in order to satisfy the statute or would have had to adopt the  
22 child, or would have had to go through a procedure whereby a  
23 certain shiboleth would have had to be observed, that is they  
24 would have had to state the Declaration of Intent to legit-  
25 imate the child, or---

1 Q Or draw a will.

2 A Or draw a will. On the other hand, the  
3 state, it is our contention, Justice Blackmun and we respectfully  
4 submit to Your Honor, the state cannot presume a discriminatory  
5 intention, and that is what the state has done in  
6 this case.

7 In fact the state of Louisiana has filed an amicus  
8 curiae brief stating that illegitimate children are the  
9 proper subjects of this sort of legislation and inferring that  
10 robbers can be classified, why cannot illegitimates be classified?  
11

12 And we realize that---

13 Q Well I just wanted to be sure that your  
14 due process argument wouldn't be carried all the way to benefit  
15 any other illegitimate child. Once paternity was established. I  
16 take it you're drawing a line between the two.

17 A As a matter of standing before the Court  
18 as an officer of the court I would say that to draw the line  
19 at formal acknowledgement would be perhaps an inappropriate  
20 line. The uniform probate code recommended by the Uniform  
21 Commissioners on State Laws recommends that any child should  
22 be treated as legitimate if proof of paternity is established  
23 during the lifetime of the parent, the father. Or thereafter  
24 by clear and convincing proof.

25 Ours is not that hard a case. But this perhaps is good

1 legislation.

2 Ours is a case where the proof of paternity is so  
3 clear and unequivocal that we have to look at the states  
4 intentions in discriminating against the child. Admittedly,  
5 we stand to throw this out of the court asking that not centu-  
6 ries, but thousands of years of discrimination against illegit-  
7 imates be set aside.

8 This court has never hesitated in the past to confront  
9 issues wherein clear and convincing proof of discrimination  
10 against a particular class is shown, no matter what the histor-  
11 ical antecedents may have been.

12 In fact in Levy and Glona the fact of discrimination  
13 against illegitimates has been held to be unconstitutional,  
14 in the context of wrongful death actions., which involves  
15 property rights as well.

16 Q Mr. Cox, do you need to do more than per-  
17 suade that where there has been formal acknowledgement in a  
18 lifetime of the alleged father, that that's enough to satisfy  
19 the claim?

20 A This is the case and controversy before  
21 this court.

22 Q Well, do you have to do any more than  
23 that? Do you have to take on this whole class including those  
24 who have never had the benefit of that acknowledgement?

25 A Only in order to answer hypothesis posed by

1 Your Honors. Becuase I think that if formal acknowledgement is  
2 sufficient to carry the burden of proof perhaps other methods  
3 and molds of proof would satisfy Your Honors also.

4 Q You couldn't get anything much stronger  
5 than a formal acknowledgement---

6 A We're very fortunate in that respect---

7 Q That was made here.

8 A We're very fortunate in that respect as  
9 far as having a case and controversy before this Court.

10 Q How many states have a statute that would  
11 be satisfied by the record here, do you happen to know?

12 A In one of the amicus curaie briefs various  
13 references---

14 Q I saw some references---

15 A ---and differentiations are made. The  
16 brief of thE American Civil Liberties Union, written by the  
17 eminent writer in the field, primarily Professor Harry D Krause,  
18 joined by Mr. Melvin Wulf and Mr. Norman Dorsen, he points  
19 out that, I believe in perhaps at least 16 states, if I'm not  
20 mistaken but I don't have the figures before me, Your Honor.

21 Under various conditions, this is at page 12 of his  
22 brief, for example, in Arizona, California, Florida, Idaho, and  
23 I donknew, Your Honor, that North Dakota has changed its law  
24 as a result of the In Re Estate of Jensen case which would  
25 make a fifth of a sixth state in which this particular case



1 WOULD not needs have arisen before this Court.

2 In In Re Estate of Jensen, the state of North Dakota,  
3 after the Levy and Glona cases the North Dakota Supreme Court  
4 rightly applied Levy and Glona to an inheiratanse case and  
5 said that the North Dakota statute was unconstitutional discrim-  
6 ination against illigitimates and allowed an illigitimate to  
7 inheirit.

8 Not only did this illigitimate child not inheirit  
9 her fathers estate but the Louisiana Courts felt that since  
10 she was recieving a hundred dollars a month in Social Security  
11 and V.A. Benefits that she was not entitled to support becuase  
12 of the standard which the statute established as support for  
13 an illigitimate, which is to proove actual necessity.

14 This is a heavier standard than a recognized child  
15 has to establish. The childs needs were shown to be \$192.30  
16 per month but becuase of the fact that she's illigitimate she  
17 must continue to live in a condition of destitution.

18 As we view it, Your Honors, the real issues in this  
19 case is does the denial of inheiratanse rights to illigitimates  
20 promote a genuine state interest in family unity? And if it  
21 does so promote it, can this be promoted in a haphazard fashion?

22 We would concede that family unity is something that  
23 is very much of a concern to the states and something which  
24 could be very well promoted.

25 For instance, the state of Louisiana could well legis-

1 late a bonus for parents who remained together and cared for  
2 their children. To the contrary the state of Louisiana has  
3 passed a statute legislating against parents who stay together  
4 for welfare purposes. If parents remain together and they have  
5 dependent children and they're destitute they're ineligible in  
6 the state of Louisiana for welfare.

7 This appears in Louisiana revised statutes  
8 46:231. Therefore Louisiana certainly is pursuing a most peculiar  
9 course if it's genuinely trying to promote family unity in  
10 the field of legitimate relationships between parents and  
11 children.

12 Furthermore---

13 Q Well, that's true everywhere, isn't it, that  
14 that where a state has a welfare program in cooperation with  
15 the federal government the aid to dependent children program.  
16 That's what you're talking about, isn't it?

17 A Yes, Your Honor. By the same token, some  
18 states in applying this type of statute have tried to go  
19 further against illegitimates by invoking the "substitute father"  
20 doctrine which is that if there were an illegitimate father in  
21 the household he would be presumed to be the parent of all the  
22 children therein and therefore illegitimacy situation would  
23 exclude all of the children from benefits.

24 Now this Court had no trouble with this type of  
25 statute in Arkansas. In Smith vs. King, this Court struck this

1 down as a denial of the equal protection and due process laws.

2 Furthermore, if the state of Louisiana is to be  
3 consistent in pursuing the doctrine of family unity and pro-  
4 moting legitimacy, they should, we feel, pay some attention  
5 to the recent statistics.

6 According to the trends of illegitimacy in the United  
7 States from 1940 - 1965, which was published by the National  
8 Center for Health Statistics in February of 1968, Louisiana  
9 had more illegitimate births per capita than states which did  
10 not follow this particular oppressive approach to illegitimacy.

11 Q I was puzzled by your emphasis on that in  
12 your briefs. Whats the real connection between the two?

13 A Well this was in the amicus curiae briefs,  
14 Your Honor. This is anticipating an argument that the approach  
15 to promoting family unity and encouraging legitimacy is based  
16 on common sense.

17 Q Well, aren't you confusing the declared  
18 purpose of the legislative body in making enactment and the  
19 actual consequence as nearly as anyone can discern? They can  
20 have as a declared purpose legitimately, they objectively state  
21 it doesn't prove anything that the statistics have some ten-  
22 dency to go the other way.

23 A Well, there must be some real and viable  
24 relationship between the declared purpose and the actual state  
25 of facts, Mr. Chief Justice Burger---

1 Q But you don't know---

2 A By the --- admission---

3 Q You don't know, you have no way of knowing  
4 that absent the statute the situation might be a lot worse in  
5 Louisiana. That's my point. I can't see that that's a very  
6 strong ground.

7 A I can't really argue with that---

8 Q That's my point, nobody knows and---

9 A Nobody really knows---

10 Q That's not a very reliable yardstick for  
11 anything.

12 A No, I don't think that pursuing these  
13 figures could come up with anything resembling an answer  
14 except to say that Justice Stewart's observation in the case of  
15 Shelton vs. Tucker is pertinent.

16 This Court in that case pointed out that even though  
17 the government's purpose might be legitimate in this case  
18 perhaps the promotion of family unity by legislating in the  
19 field of legitimacy, this purpose might be legitimate, that  
20 purpose can't be pursued by means that stifle individual rights  
21 and that are overbroad, or overencompassing.

22 Q Is that the First Amendment case?

23 A Yes, it was, Your Honor, --- the language  
24 there, let me pose this question, to you, Justice Stewart. If  
25 legislating against legitimacy is a valid purpose, which we



1 concede it is, would it not be overbroad to say that not only  
2 must a parent formally acknowledge the child, but must also  
3 declare that he intends to legitimate the child, in order  
4 to accomplish that purpose?

5 Q Do you want me to answer that question  
6 now or later?

7 A I'm sure I will receive an answer, but  
8 this is what's going to be the question here from the standpoint  
9 of this child's rights.

10 Q Well Mr. Cox aren't you on stronger grounds  
11 to simply take the old thesis that one of the predicates on  
12 this problem has been that it exposes people to fraudulent  
13 claims which are difficult to establish proof of---. And that  
14 none of those factors are served when a state denies this  
15 right to one as to whom there is no question on the part of  
16 the father?

17 A I would like to take those grounds in my  
18 argument. Blackstone's commentaries, which might be used as the  
19 historical precedent to show that this is not an unusual bit  
20 of legislation, specifically mentions the reason as these fraud-  
21 ulent claims, and for thousands of years in both the civil and  
22 the common law we have this situation that where an overbroad  
23 zealousness and persuading these illegitimates who have had noth-  
24 ing to say about their status.

25 Here this little child could do nothing about her

1 situation. Her father who was attempting to do what he could  
2 about her status, formally acknowledged her, and joining in  
3 this particular approach we feel that it's too much to require  
4 that they go beyond formal acknowledgement.

5 Q Is it quite accurate to say that the father  
6 did what he could? He could have drawn a will.

7 A He could have, Your Honor---

8 Q Which is a lot easier than going through  
9 adoption procedures or---

10 A He could have, Justice Blackmun, but it's  
11 every mans right not to draw a will and I do not feel, speaking  
12 for the little child, I'm not engaging in a colloquy with the  
13 Court, that this child should not have any heavier burden after  
14 the proof of relationship to her parent than any other child  
15 is concerned.

16 The state presumes an intention on the part of those  
17 who don't draw wills in Louisiana to exclude illegitimates. And  
18 this is unconstitutional assumption of state power and dele-  
19 gation of equal protection rights.

20 Q I would suppose, perhaps, that the state  
21 would assume an intention on the part of the decedent who did  
22 not draw a will that his property should go under the state  
23 laws of dissent and distribution. The father of this child  
24 could have drawn a will and left all his property to his  
25 child, since he did not draw a will wouldn't the natural assump-

1 tion be that he intended his property to go by the Louisians  
2 laws of dissent and distribution, i.e. to his brothers and  
3 sisters?

4 A If those laws were constitutional, I would  
5 imagine that the man in the street thinks that the laws are  
6 constitutional, Your Honor, talking to ordinary people, and  
7 that's not before this Court, this doesn't shock, I mean the  
8 idea of an illegitimate inheriting if he's formally acknowledged  
9 he's formally acknowledged, seems to be what most people think  
10 the law would be.

11 And---

12 Q That doesn't meet the problem that is posed,  
13 that the state makes a will for all people who do not take the  
14 trouble to make one for themselves. And a man, it's a common  
15 thing for lawyers, to be consulted by people with no great  
16 means, in finding out what they want to do, to tell them that  
17 they don't need a will because what they want is what is already  
18 provided for by the statutes. Now I'm certain that that's  
19 common to lawyers all over the country.

20 In other words they say the state had made a will for  
21 you so you don't need to bother.

22 A Once lawyers know what this honorable Court  
23 holds to be what the constitution means when it says equal pro-  
24 tection of the law, which most people think they know, then  
25 the attorneys won't be giving advice not to do something one way

1 or another.

2 If you want to exclude your illegitimate child, which  
3 you can't do, by the way, if the child is granted equal pro-  
4 tection by Louisiana, the child would receive a forced  
5 portion.

6 Q That's equal protection with what?

7 A With other children. With children simil-  
8 iarly situated except with the accident of what their parents  
9 had done.

10 Q You're not saying that Louisiana could  
11 not constitutionally leave all children, legitimate, or illegit-  
12 imate, out of the laws of intestacy. Or are you?

13 A That would be---this has never been done in  
14 this state, Mr. Justice Blackmun. I'm not saying that they  
15 couldn't but it certainly wouldn't promote what common sense  
16 dictates, that is that parents support their children, and  
17 leave --- methods of support.

18 Q I come back to the question that I orig-  
19 inally asked, and I realize as the Chief Justice indicated that  
20 you don't have to go this far, but I wonder how you can, if  
21 you prevail constitutionally here, you don't also carry with  
22 you every illegitimate child whose paternity is established  
23 by other methods than formal acknowledgement. I would suspect  
24 that you do.

25 A I would say, Mr. Justice Blackmun, in answer



1 to that question that it would depend upon the way that this  
2 Court rules.

3 I don't believe that because the particular standard  
4 is unconstitutional, that every standard under other circum-  
5 stances would be unconstitutional.

6 I can only appear before this honorable Court with  
7 a case in which a clearly unconstitutional standard has been  
8 placed upon a child under which equal protection has been de-  
9 nied this child.

10 Q Now in this case there were no legitimate  
11 children of the decedent?

12 A There were no legitimate children.

13 Q So in this case, with respect to this  
14 property, there was no discrimination among his children, was  
15 there?

16 A There was discrimination against---

17 Q No child---

18 A --- the child, though.

19 Q The brothers and sisters got the property.

20 A That's right, and---

21 Q There was no discrimination as between  
22 legitimate children and illegitimate children of this decedent,  
23 was there?

24 A There was discrimination as between an  
25 illegitimate child, and legitimate brothers and sisters.

1 But because of the fact that---

2 Q Two quite different classes of people. There  
3 was no, well I think that you have answered by question, if there  
4 were no legitimate children than there was no discrimination  
5 as among children in this case.

6 A That's correct, Your Honor.

7 Q But if this Petitioner had been legitimate  
8 she would have automatically inherited, is that right?

9 A That's correct. This is where I feel that  
10 the discrimination comes in. This particular child was dis-  
11 criminated against solely because this child was illegitimate.

12 And we don't mean to go as far as the briefs filed  
13 by the amicus curiae, which raise the question of racial dis-  
14 crimination. We don't think that the state intends racial dis-  
15 crimination. But we think the state intends a discrimination  
16 between legitimates and illegitimates.

17 Which is a class of discrimination which has gone on  
18 for centuries, in which inroads have been made in other cases.  
19 But when it comes to this particular child, the fact that others  
20 in other states and the Supreme Courts of other states have  
21 said that these were unconstitutional enactments does not help  
22 this child because our Supreme Court says it's perfectly con-  
23 stitutional.

24 So we are forced into a position of having to ask re-  
25 dress from this Court. I'd like to say---

1           Q           Suppose the legislature had passed a law  
2 which said that no father of illegitimate children in this  
3 state should be permitted to exclude their illegitimate child-  
4 ren. That all fathers must give as much to their illegitimate  
5 children as they give to their legitimate children.

6           A           This would be a good and a valid way to  
7 clear the problem.

8           Q           What?

9           A           This would be a good way to clear the  
10 problem, Mr. Justice Black, but when the legislature does not  
11 do it,---

12          Q           The legislature just left it open, I presume  
13 for a man to dispose, let his property go as he felt best, under  
14 the law. Didn't it?

15          A           Admittedly, Mr. Justice Black, the father  
16 could have left to his illegitimate child what he did to his  
17 legitimate brothers and sisters, but we get into the area of  
18 presuming the intention of the testator. This is what the state  
19 has done, the legislature has presumed that all testators intend  
20 to exclude illegitimates.

21               But the legislature also presumes and it said that a  
22 parent cannot exclude legitimate children.

23          Q           Why would n't the next step be, under your  
24 argument to say that it's not fair, it denied equal protections,  
25 it's bad policy for a father not to have to leave some of his

1 money to his illegitimate children? Why shouldn't the Court  
2 decide that denied due proceeds under equal protection?

3 A Well I submit that---

4 Q Why wouldn't that be about the next argu-  
5 ment?

6 A I don't understand.

7 Q Well, the next argument that there's not  
8 law on it but the courts should hold that it denies equal  
9 protection to permit a father to discriminate against his illegi-  
10 timate children.

11 A That step may very well come because a  
12 father cannot discriminate against legitimate children in Lou-  
13 isiana, why should a father be able to discriminate against  
14 illegitimate children?

15 We have a forced heirship law in Louisiana, Mr. Justice  
16 Black. I understand the philosophic argument, but the state  
17 of Louisiana presumes that parents have to provide for their  
18 children, and are not allowed discrimination against children.

19 Q You mean that under Louisiana Law, a man  
20 cannot disinherit his children?

21 A That is correct, Your Honor. But he can  
22 disinherit his illegitimate children by not saying anything.  
23 And he doesn't intend to.

24 Q Well, if he hadn't intended to, he could  
25 have --- it under Louisiana Law. He could have made a will, and

1 left part of his property.

2 A Yes, he could have, Your Honor.

3 Q Well would you answer that for me again,  
4 he could have made a will and what?

5 A He could have made a will and he could have  
6 left his property to his illegitimate child, if he so desired.

7 Q At the expense of his legitimate children?

8 A He had none, so he could not.

9 Q Suppose he did.

10 A No, he could not have. They would have been  
11 forced to the same extent. There's a small disposable portion  
12 that he can distribute---

13 Q So that by will he cannot give his entire  
14 estate to charity, to the exclusion of children, under Louisiana  
15 law?

16 A That's correct, Your Honor. I'd like to  
17 save the balance of my time for rebuttal. Thank you.

18 Q Mr. Leithead.

19 ARGUMENT OF JAMES A. KEITHEAD, ESQ.

20 ON BEHALF OF APPELLEE

21 MR. LEITHEAD: Mr. Chief Justice, and may  
22 it please the Court.

23 This matter factually doesn't present any question.  
24 These people merely came in after Ezra Vincent died, and said  
25 that they were the brothers and sisters and wanted to open his



1 succession. In Louisiana, under the intestate laws, if a per-  
2 son dies leaving no children, then you look to the intestate  
3 laws to see which classes of persons inheirit his estate.

4 Louisiana has legal heirs, in connection with their  
5 intestate succession. In this particular case, since Ezra Vin-  
6 cent didn't leave any children, he left brothers and sisters,  
7 and he left an acknowledged illegitimate child, under the law  
8 of Louisiana, the intestate succession laws, the brothers and  
9 sisters are declared inheirited before the acknowledged illigi-  
10 timate child.

11 Q Does an acknowledged illegitimate child  
12 come anywhere in the hierarchy?

13 A Yes. the acknowledged illegitimate, some-  
14 body asked why did he acknowledge his child? First in Louis-  
15 iana you have an illegitimate child, which is the lowest you  
16 can get. Then you have an adknnowledged illegitimate child, and  
17 that acknowledged illegitimate child is raised in his status  
18 as being able to inheirit.

19 He can inheirit from his mother just after her li-  
20 gitimate children. He can inheirit from the father just after  
21 the wife, which is just before the state. He doesn't have as  
22 high an inheiritance position in the estate of his father, as  
23 he does in his mother. Becuase Louisiana recognizes the natural  
24 law that a child is closer to its mother than it is to its  
25 father. But he does have inheiritance rights.

1                   Q           If this decedent had died, leaving no  
2 brothers and sisters and no issue of any siblings, would this  
3 child have inheirited?

4                   A           This child would have inheirited, because  
5 the law states that if a man dies leaving no legitimate child-  
6 ren, no mother and father, and no surviving wife, than his  
7 acknowledged child inheirits.

8                   Q           Well, wait a minute. This man didn't have  
9 a mother or a wife, did he?

10                  A           No. I say, that's why the child would have  
11 inheirited, if he did not have brothers and sisters.

12                  Q           Oh, yes, because the brothers and sisters,  
13 in this case the brothers and sisters come ahead, don't they?

14                  A           Yes.

15                  Q           But if there had been no brothers and sis-  
16 ters here, the appellant would have inheirited.

17                  A           That's correct.

18                  Q           Under the laws of dissent and distribution.

19                  A           That is correct.

20                  Q           And from the natural mother I suppose you  
21 dont need to have any certification of parenthood, from the  
22 mother, do you?

23                  A           Proof of the motherhood is very easily made,  
24 the mother knows, there's ususlly a witmess, a midwife or some-  
25 thing, to the birth of the child. But the children of the mother

1 come in just after her legitimate children. If she had no legit-  
2 imate children they would inherit to the exclusion of all  
3 persons, under the intestate laws of the state.

4 Q Well what is the reason for drawing the  
5 line between legitimate and illegitimate children insofar as  
6 the mother is concerned?

7 A The state realizes that the mother has  
8 a close family connection to the---well to answer your question  
9 completely--

10 Q Why should she have more of a close family  
11 relation with the illegitimate children than with the legitimate  
12 children?

13 A The state of Louisiana now has a policy  
14 of preferring legitimacy over illegitimacy. And in connection  
15 with that policy, it's obvious that they prefer legitimate  
16 heirs to illegitimate heirs. And their policy is to promote  
17 marriage and discourage illegitimacy and also for the protection  
18 of their land titles.

19 Q To promote the marriage of the illegitimate  
20 child or its mother? Because the illegitimate child is the  
21 one that suffers.

22 A That is correct. But if the parents wish to  
23 they could prevent the illegitimate child from suffering by doing  
24 some other things and that is they could legitimate the child  
25 by informally acknowledging the child before or after a marriage,

1 if they could marry. They could adopt him or they could leave  
2 a will.

3 So there is an avenue that they could choose the  
4 course of events.

5 Q Waat course of events can the child change?

6 A the child cannot change any course of events

7 Q That's what I thought.

8 A Yes, sir.

9 Q Somewhere in these briefs I thought I re-  
10 called the figure on the estimated total number of illegitimate  
11 people in the country. Do you recall the figure?

12 A I don't remember what those figures are,  
13 Your Honor, they must be in the amicus curiae brief.

14 Q It's a very large number, the total number  
15 of all illegitimates.

16 A Yes, sir.

17 I might comment on the factsof this case. In the Levy  
18 case, Justice Douglas stated that the Court assumed that the  
19 minor children there had a family relationship with their  
20 mother. That is the mothers support. That's where the illegiti-  
21 mate children sought under the Louisiana wrongful death statutes  
22 for the death of their natural mother.

23 That there was a family relationship, the mother su-  
24 pported them, she took them to church, took them to school, she  
25 cared for them, she lived with them, but none of those facts are

1 in this case, in the record.

2 This case shows, does not show that Ezra lived with  
3 the child, in fact, the evidence is just to the contrary. If  
4 you'll notice the acknowledgement papers and the birth certifi-  
5 cate it'll show that the address of the mother was something  
6 on Belden Street in Lake Charles, Louisiana, whereas Ezra and  
7 his family lived in a little town called Mossville which is  
8 approximately 10 or 12 miles away.

9 Now the fact that there was no marriage certificate  
10 between Ezra's father and mother is due to the fact that there  
11 were no marriage records in Calcasieu Parish, where this man  
12 lived, prior to 1910. And his brothers and sisters all were  
13 born prior to that time. So there's no marriage records, nor  
14 were there any birth certificates.

15 So we had to prove the marriage relationship of Ezra's  
16 mother and father by their reputation in the community. And in  
17 so doing we found out that this interest in this property that  
18 Ezra Vincent left was property. He had 7 brothers and sisters,  
19 one-eighth of it constituted the bulk of this succession, which  
20 amounted to approximately \$15,000.

21 That was the family home. And Ezra and his brothers  
22 and sisters lived there. They farmed the property, they went  
23 to the Baptist church together, his grandfather was a Baptist  
24 minister. Their reputation in the community was such that it  
25 was the highest. His family was recognized as prominent citizens.



1           So there was a family relationship between Ezra,  
2 his brothers and sisters and their parents. This was not shown  
3 to be the case as by the evidence presented in this case.

4           Now in common law, an illegitimate was known as a non-  
5 person. He was not entitled to inherit anything. Louisiana law  
6 permits them to inherit, but not as high up on the ladder as  
7 legitimate relations. The civil law has historically treated  
8 illegitimates more favorably than illegitimates, by letting them  
9 inherit from their mother.

10           The most modern statutes now permit the illegitimate  
11 children to inherit from their mother, but prohibit or deny  
12 them to inherit from their father.

13           Now we've been talking about the child in this case,  
14 I think the Court should also give some consideration to the  
15 decedent. Now when he died, the laws of the state of Louisiana,  
16 the intestate laws, was that his family property would be in-  
17 herited by his brothers and sisters.

18           Now at that time Ezra had a choice to make. He could  
19 say Now look, I want to leave this child something. I want to  
20 make a will. He could have done that. Or he could have said, I  
21 want to marry the mother of the child. There was no impediment  
22 to the marriage. Or he could have adopted the child. Anyone of  
23 those things would have changed the course of these events.

24           Now once Ezra died, he no longer can exercise any  
25 choice. The die was cast. This Court cannot reverse this case

1 back to before his death and say Now Ezra, you have the choice  
2 what do you want to do, because what he did indicates what his  
3 choice was.

4 Q But if the child had been legitimate and  
5 hadn't seen her father for the past 50 years, and was now living  
6 in Rome, she would have inheirited?

7 A That's correct.

8 Q He could have made a will, I suppose, and  
9 given her at least part of his property to somebody else.

10 A If you have one child, the forced portion is  
11 one-third that you have to leave the child.

12 Q Two thirds of the property he could have  
13 given still to his brothers and sisters.

14 A Right.

15 Q While you're pausing here, I'm looking at  
16 page 8 of the Appendix, that's the certificate of Acknowledgement  
17 of Paternity. Do I read that correctly, that it's also signed  
18 by the mother?

19 A That's correct.

20 Q Than, before a Notary Public and two wit-  
21 nesses.

22 A Right, Your Honor.

23 Q So that, is the formality of executing a  
24 will in Louisiana any more complex than this?

25 A There is, No sir. A will may be executed in

1 Louisiana before a Notary Public and two witnesses.

2 Q The same as this--

3 A The same as this. The Notary Public has  
4 authority to take a will. So at the same time these two parties  
5 were doing this, if Ezra wanted to he could have signed a will,  
6 and left his property to his acknowledged child.

7 So all of that indicates that it was not his intention  
8 to leave the family property to this acknowledged child but  
9 rather to keep it with his brothers and sisters.

10 Q That indicates what?

11 A It indicates to my way of thinking that  
12 Ezra was in the Notary's office and had two witnessas and did  
13 not sign a will at that time, leaving his property to his ac-  
14 knowledged child, it would indicate that he did not want to  
15 do that.

16 Q Well what would be the purpose of acknow-  
17 ledging the child?

18 A To provide for the child's support. Now the  
19 child did immediately receive \$35 a month from the Social Se-  
20 curity Administration while Ezra was living, and after his  
21 death is receiving between Social Security and Veterans Ad-  
22 ministration \$100 a month.

23 Q What date was this acknowledgement made?

24 A It's on page 8 of the Appendix.

25 Q 1962, apparently?

1 A 1962, Your Honor.

2 Q The Social Security Act was passed some time  
3 before that, I think.

4 A Yes. Your Honor.

5 Q By reason of the --- ---

6 A Yes, Your Honor.

7 Q By the acknowledgement that he was the  
8 father of the child.

9 A Yes, sir.

10 Q Did the child recieve as his child?

11 A Yes, sir. Under the Social Security Act.

12 Q ---Social Security and Veterans benefits  
13 totaling \$100 a month from the United States government, and  
14 then all of his property went to his brothers and sisters.

15 A That's correct.

16 Q Then there's no way of knowing that that's  
17 not exactly what he intended.

18 A No, that's exactly correct. Now by statute  
19 under the Social Security Administration and the V. A. Admin-  
20 istration, the acknowledged child.

21 Now I'm not saying that this is not a hard case  
22 factor. It is. But Chief Justice---

23 Q What do you mean by that?

24 A Well it means that a man that came in and  
25 acknowledged his child and the child, the brothers and sisters

1 come in and inherit before the child. This might be considered  
2 by some to be a hard case factually.

3 Q The acknowledgement did serve to make  
4 her eligible to receive \$100 a month---

5 A That---

6 Q From the United States government.

7 A Right, and that's equivalent to \$24,000 at  
8 5% interest.

9 Q I assume that parents frequently distinguish  
10 in the amounts that they leave to their children.

11 A That is true, and in some cases, in some  
12 states, I'm informed there's no forced heirship. And the child  
13 may be left just by testimony a mere pittance, where another  
14 child may be---

15 Q Or omitted entirely.

16 A Or omitted entirely.

17 Q As long as it's clear that the omission  
18 wasn't an oversight.

19 A Yes, sir.

20 Q In almost all the states in this country  
21 that's true, isn't it?

22 A Yes sir, but in Louisiana, no, you cannot  
23 do that.

24 Q That's because of the point of the---

25 A Civil law----



1 Q Civil law, isn't it?

2 A You must leave the forced heirs with a  
3 portion, and the forced heirs in Louisiana are lawful children  
4 and parents.

5 As I say this may appear to some to be a hard case  
6 factually. But I'd like to remind the Court of a speech made  
7 by Chief Justice Burger, while then a United States Circuit  
8 Court Judge, when he delivered an address at the conference of  
9 judges in Columbus, Ohio, on September 4, 1968, from which the  
10 following is an excerpt, and I think it is pertinent. This  
11 copy was given me by Mr. Ben Miller from Baton Rouge.

12 The Chief Justicesaid: "These hard cases usually come  
13 to the Court with a narrow record of but one case which fre-  
14 quently presents emotionally appealing situations that confuse  
15 and blur the bedrock consequences of a broad holding."

16 The address was published in the Ohio Bar, Volume  
17 41, No. 46, dated November 25, 1968, pages 1440, and 1441.  
18 Now in my opinion, Pandora's Box would be opened by any holding  
19 that federal law, as declared by federal courts and not even  
20 by Congress, and not by state law, would govern succession  
21 rights in all of the 50 states, and overrule a states law on  
22 inheritance of property in that state.

23 Q May I ask if the record shows how much a  
24 state gets if there's any left?

25 A The record does show, and it's approximately

1 \$15,000 in property, real estate.

2 Q \$15,000.

3 Q Yes, sir.

4 Q And the benefit that he concurred by this  
5 acknowledgement has a capitalized value of \$24,000, did you say?

6 A Capitalized at \$5, yes, Your Honor.

7 Q Do I understand that had there been no  
8 Veterans and no Social Security provision for this child's sup-  
9 port that there might have been an order of forced part out of  
10 the decedent's estate?

11 A Yes, Your Honor, the child would have had  
12 to come in and prove the paternity.

13 Q Even though there had been the acknowledge-  
14 ment?

15 A No. If there had been the acknowledgement,  
16 the father's estate would still have to support the child, that  
17 is correct, Your Honor.

18 Q And when is it that the father's estate is  
19 not subject to child support?

20 A It supports the child until he is 21, or if  
21 the child can earn a living for himself.

22 Q Why is it in this instance, wasn't there  
23 an effort here to have the estate contribute to this child's  
24 support?

25 Q The trial judge reasoned this way: in the

1 divorce cases in Louisiana, in the jurisdiction where we are,  
2 a child in a divorce case gets between 60 and 75 dollars a  
3 month support. The trial judge felt that this child was re-  
4 ceiving \$100 a month, support, and that that was sufficient for  
5 the child's support.

6 Q But the statute itself doesn't fix---

7 A No.

8 Q The amount?

9 A The statute just says what is necessary  
10 for the support of the child, and leaves it up to the discre-  
11 tion of the Court.

12 Q So even had this pension, or whatever it  
13 is, this \$100 a month been only \$50 a month, there might still  
14 have been a holding that the estate was not to pay anything?

15 A Maybe, and it may have been just the op-  
16 posite, that the estate should have had to contribute so much  
17 money.

18 Considering some of the bedrock, I mean some of the  
19 analogies, to this case, and some of the bedrock consequences  
20 which may, we may get into by a broad holding, and this case  
21 before the Court, in the area of adoptions, the rights and  
22 obligations, most states permit a married couple to adopt  
23 a child. Some states permit that an unmarried man and an unmar-  
24 ried woman may adopt, others may say just an unmarried woman  
25 may adopt.

1           Some states may wish to deny inheirittance rights to  
2 an adopted child, or some may want to give the adopted parents  
3 of the child some rights in the child's estate.

4           But what would happen if a state would suddenly de-  
5 clare that they had changed their policy on the prospective, and  
6 deny adopted children the inheirittance rights? In real property  
7 in the state?

8           If that is to be declared unconstitutional as discrim-  
9 inatory against the innocent child, in some other hard case  
10 who believed that he was the child of his parents, but later  
11 it was decided that he was the adopted child. The child would  
12 come out without anything.

13           Q           In this particular case, could this man  
14 alone have adopted this child?

15           A           There's no---

16           Q           In Louisiana.

17           A           There's no prohibitions that I know of that  
18 he could not.

19           Q           And then he would be in the same category of  
20 a legitimate child.

21           A           Yes, sir.

22           Q           So that if an illegitimate child is born to  
23 a pauper who has no access to legal advice or adoption, there's  
24 no way in the world for that child to become able to inherit?

25           A           No, sir.

1 That child is entitled to support---

2 Q Adopted---

3 A He has to be acknowledged. Or legitimated.

4 Q Well that means adopted.

5 A Did you say if the child was adopted?

6 Q No I said has to be adopted.

7 A Or legitimated.

8 Q Well how is legitimated?

9 A Legitimated is when the person, it may be  
10 done by a Notarial Act. where you go to a Notary and you say  
11 this is my child and I want him to be my heir and I want him  
12 to inherit from me. That is a legitimation, it has to be  
13 specific.

14 Q And that's under Louisiana law?

15 A That's under Louisiana Law. Or the part is,  
16 the mother and the father of the child may marry. If they  
17 marry either before or after the child is born, and consider the  
18 child as their child, the child is legitimated by that act of  
19 marriage.

20 Q That's before a Notary?

21 A No, just go into a church and get married.  
22 And just have the child live in the home with them and acknowledge  
23 it.

24 Q Well I thought you said legitimize it before  
25 a Notary.



1           A           There are two ways of doing a legitimizing.  
2 One before a Notary and a document is signed, the other is by  
3 action of the parties, by actually being married. And acknow-  
4 ledging informally or in writing that the child is theirs.

5           Q           But this has to be done Before a Notary  
6 and in Louisiana that's different from Notaries in other countries  
7 that's an official affair.

8           A           Yes, sir.

9           Q           But that's the only way to do it. The only  
10 difference between that child, the child in this case, the  
11 only reason she can't inherit is because her father didn't  
12 do that.

13          A           The father did not legitimize her before  
14 a Notary Public, and he did not marry the natural mother, or  
15 he did not, of course, leave a will, or adopt her.

16          Q           And none of these things, could she on her  
17 own have done, obviously.

18          A           No.

19          Q           Mr. Leithead, under the statutes of Louisiana  
20 would that certificate of Acknowledgement have been valid if  
21 the mother had not also joined in it? Must both of them join  
22 in the acknowledgement?

23          A           My understanding is that they do. Both. Or  
24 if only the husband signs the acknowledgement, it is not binding  
25 on the mother. It's only binding on those who actually acknowledge

1 it.

2 Q I see.

3 A I'm not quite sure, but I believe either  
4 one can acknowledge. But it's only binding on the one who does.

5 Q How much more would they have to say on  
6 this Certificate in order to confer rights of inheritance, by  
7 intestacy?

8 A They would have had to have said that they  
9 acknowledged, Ezra Vincent would have had to say that he was  
10 the father of this child and that he acknowledged the child as  
11 his child and granted him the right, the right to inherit from  
12 him. It has to be specific.

13 Q Just---

14 A It's like a will---

15 Q Q Just five more words.

16 A Well, I'm just giving you those in my words,  
17 it could be maybe less or more than five words, but he would  
18 have had to express his intention, because this does not, in  
19 itself, express his intention to allow the child to inherit from  
20 him.

21 I might say another analogy to this case, the Louisiana  
22 Code prohibits divorced spouses from marrying his or her con-  
23 cubine. Now is a state to be denied this policy, because it might  
24 be denying equal protection under the Constitution?

25 I see my time is running out. I'd like to---

1 Q Does Louisianaa have a common law marriage?

2 A Louisiana does not recognize common law  
3 marriages although many states do.

4 Q Yes.

5 A And Louisiana and other states have dif-  
6 ferent laws in respect to putitave marriages.

7 Q Has there been any question raised yet  
8 about that being unconstitutional?

9 A There's never been any question as to whether  
10 or not, no, sir, that question has never been raised in Louis-  
11 iana. Whether or not that if the constitutional prerogative  
12 of the state in its policy decisions, whether or not not to  
13 recognize common law marriages and to require that people  
14 living together should go through a ceremony. The question has  
15 just not risen.

16 But if it had arisen it would be obliterated by that  
17 would that be constitutional for the state to apass such a  
18 statute.

19 The implications of this case may be far reaching,  
20 far more reaching than the narrow issues that are presented  
21 before this Court.

22 Once this Court decides that the Supreme Court of  
23 the United States is going to pass on the dissent and distri-  
24 bution of lawsiin the 50 stated, in my opinion, the Court  
25 would have to legislate on many items and make decisiona and

1 decide many points in succession law, which will be most com-  
2 plicated.

3 For instance, in this particular, in Louisiana, these  
4 are some of the things that the Court would have to decide.  
5 Whether an illegitimate child, whether the illegitimate child  
6 would inherit from its father equally with a legitimate child.  
7 You see, this makes a difference because in Louisiana we have  
8 a forced heirship. In some of the other common law states it may  
9 not make any difference.

10 Will an adultress' illegitimate child inherit the  
11 same as a <sup>n</sup> illegitimate child who is not an adultress' il-  
12 legitimate child? Should there be a distinction there?

13 Will an illegitimate child who is informally ack-  
14 knowledged inherit just as well as one that is formally ack-  
15 knowledged?

16 Will there be a distinction made if the father had  
17 an illegitimate child and later the mother and the father  
18 married? Would that make any difference as to the rights of  
19 inheritance?

20 Would the illegitimate child of the father, of the  
21 fathers' concubine inherit his one half interest in the  
22 community property of the father with his legitimate wife?

23 Will illegitimate children inherit to the exclusion  
24 of the decedents parents who are forced heirs, if there were  
25 no other children? Or would the illegitimate child, no matter how

1 able to be acknowledged, would he be considered a forced heir?

2           These are all many questions that would have to be  
3 answered and the Court would be legislating, in my opinion, if  
4 they would attempt to decide that the intestate laws before  
5 this Court for decision are unconstitutional.

6           We submit that the decision of the Court below should  
7 be affirmed.

8           Q           Thank you, Mr. Leithead. Mr. Cox, you have  
9 three minutes left. I think I'll hold my question until you  
10 finish so as not to use your time for you.

11                   REBUTTAL ARGUMENT OF JAMES J. COX, ESQ.

12                   ON BEHALF OF APPELLANT

13                   MR. COX: Thank you very much, Mr. Chief  
14 Justice Burger .

15           I think that at the outset I should answer the most  
16 important question raised by Mr. Leithead, and that was the  
17 question of the confusion that would result in property law  
18 if this illegitimate child were considered to be a child of the  
19 decedent.

20           The answer is that if this Court ruled as it has in  
21 Levy and Glona that it's invidious to discriminate against  
22 illegitimates, and that this child should be treated as a legi-  
23 timate since the burden of proof standard has been met here,  
24 then this child would simply inherit like any other child, and  
25 his relationships vis a vis the parents, vis a vis collateral,



1 would be just like any other child. There would be no uncertainty  
2 in Louisiana's property laws as a result of such a ruling.

3 It was cleared up in North Dakota by the North Dakota  
4 Supreme Court, by stating that for all intents and purposes,  
5 a child who has born the burden of proving his parentage should  
6 be treated as a legitimate.

7 Now I think of the other question, that is, the chaos  
8 that might be created in land titles---

9 Q On what ground did North Dakota base that  
10 holding?

11 A The Court of North Dakota in In Re Estate  
12 of Jensen based it on the grounds of the North Dakota Constitution  
13 and the United States Constitution, granting equal protection  
14 of laws to all citizens. It's not strictly relevant, but the  
15 Supreme Court of the state of Italy, under post war consti-  
16 tution some 10 or 15 days ago according to an AP dispatch,  
17 decided that in Italy, the equal protection of the laws under  
18 the post war constitution demanded that a child that had born  
19 the burden of proving within a narrow framework, his relation-  
20 ship to his parents could inherit just like a legitimate child.

21 And this is the only issue that's before this Court.  
22 Not some sort of disruption of the order of legal processes of  
23 the nation, simply their granting of equal protection of the laws  
24 within a narrow framework to children who have nothing to say  
25 except through this Court about their status, the innocent vic-

1 tims of their status, the innocent victims of discrimination.  
2 Levy and Glona are the laws of the land, and to repudiate Levy  
3 and Glona because of the fact that land titles might be involved  
4 is to deny to a particular person, a particular case and con-  
5 troversy, equal justice under the law.

6 Now in the famous case of Muscrat vs. United States,  
7 it was held that actual cases or controversies were the things  
8 presented to the Court. Declaratory judgements about other  
9 peoples rights would not be entered upon by this Court.

10 In U.S. V. Wade, and Gilbert v. California, the Court  
11 ruled that the new standards which were basic standards of due  
12 process in those cases, that is the right of an accused to have  
13 a Counsel in the lineup where this prejudiced his case, would  
14 be applied to Wade and Gilbert, but not to those who had lived  
15 before Wade and Gilbert, or who had transgressed previously.

16 If this Court rules in favor of the little child in  
17 this case, it will apply to her case, and to subsequent cases.  
18 And lawyers will have ample opportunity to make their wills and  
19 provide under the laws for their clients.

20 But under Levy and Glona, this child is entitled to  
21 the most profound consideration of her equal protections rights  
22 by this honorable Court.

23 Q Mr. Cox, I live in Virginia, which permits  
24 a testator to make a will, I think, any way he wants to do it,  
25 he can cut off his children, I suppose that's true in 49 other

1 states. Suppose I make a will, leaving nothing to my children,  
2 if they have a claim because Louisiana, if they lived in Lou-  
3 isiana, I could not have cut them off, that they are thereby  
4 denied equal protection?

5 A No, because, here we have a question of  
6 a class of people, Your Honor, in this particular case we have  
7 a class of people, illegitimates, just like a class of people,  
8 Chinese, in which this honorable Court in cases have said that  
9 in alien land-lost cases, that we couldn't discriminate against  
10 them, either.

11 Q ---got a class. Suppose I had some children,  
12 well, children in Louisiana can inherit, the children in the  
13 other states can't?

14 A I see no ---

15 Q ---equal protection problem there, at all?

16 A I see no reason why children in one state  
17 should not be able to inherit, and children in another state  
18 according to the state's legislative wisdom can inherit only  
19 if their parents say that they can or cannot. But I do see  
20 something invidious in one state saying, or any state saying,  
21 that Japanese, as was the case in Oyama vs. California, that  
22 the child of an alien cannot hold property because it is pre-  
23 sumed to be the alien's property.

24 And I would join with Justice Black, who wanted to  
25 go further, and say that not only could that child hold property,

1 but his parents should be able to hold property.

2 This is a discrimination against a class of children,  
3 Your Honor, not a state trying to carry out a state purpose.

4 Q Thank you, Mr. Cox, thank you, Mr. Leithead,  
5 the case is submitted.

6  
7 (Whereupon, at 2:00 o'clock, p.m., argument  
8 in the above entitled matter was concluded.)

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