

## Syllabus

PAULUSSEN *v.* HERION

## APPEAL FROM THE SUPERIOR COURT OF PENNSYLVANIA

No. 85-88. Argued March 5, 1986—Decided March 25, 1986

In 1980, appellant filed a paternity and child support petition in a Pennsylvania court on behalf of her 7-year-old daughter, who had been born out of wedlock, alleging that appellee was the natural father and had ceased making contributions to the daughter's support in 1975. The court held that the action was barred under the state statute of limitations, which then required that paternity actions be commenced within six years of the child's birth or within two years of the putative father's last voluntary support contribution or written acknowledgment of paternity. Appellant's contention that the statute violated the Equal Protection Clause of the Fourteenth Amendment was rejected. The Pennsylvania Superior Court affirmed.

*Held:* The judgment below is vacated, and the case is remanded for further consideration in light of Pennsylvania's intervening enactment of a new statute providing that a paternity action may be commenced at any time within 18 years of the child's birth. Appellee conceded that he was subject to the new statute and would be liable for child support from the date paternity was established, but he contended that he would not be liable for support payments dating back to when the petition was filed in 1980. If the Pennsylvania court were to interpret the new statute to require payments dating back to 1980, the constitutionality of the 6-year statute of limitations would be irrelevant.

334 Pa. Super. 585, 483 A. 2d 892, vacated and remanded.

*Esther L. Hornik* argued the cause for appellant. With her on the brief were *Angela L. Martinez* and *Donald J. Martin*.

*Joseph N. Onek* argued the cause for appellee. On the brief was *Neil H. Stein*.\*

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\*Briefs of *amici curiae* urging reversal were filed for the Children's Defense Fund et al. by *Constance Jean Chatwood*, *Jane Howard-Martin*, *Marian Wright Edelman*, *James D. Weill*, and *Judith L. Lichtman*; and for the Neighborhood Legal Services Association by *Daniel L. Haller* and *Eileen D. Yacknin*.

## PER CURIAM.

On February 17, 1980, appellant Barbara Paulussen filed a paternity and child support petition in a Bucks County, Pennsylvania, court on behalf of her daughter, who was then seven years old. The petition alleged that the daughter had been born out of wedlock, that appellee George Herion was her natural father, and that he had ceased making contributions to her support in April 1975. Appellee offered as a defense the time bar of the Pennsylvania statute of limitations, which at the time required that paternity actions be commenced within six years of the child's birth or within two years of the putative father's last voluntary support contribution or written acknowledgment of paternity. 42 Pa. Cons. Stat. Ann., § 6704(e) (Purdon 1982) (repealed). The defense was sustained against appellant's contention that the statute violated the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution. The Superior Court affirmed, 334 Pa. Super. 585, 483 A. 2d 892 (1985), and the Supreme Court of Pennsylvania denied discretionary review. Appellant sought appeal in this Court, and, on October 15, 1985, we noted probable jurisdiction. 474 U. S. 899 (1985).

On October 30, 1985, Pennsylvania enacted 1985 Pa. Laws, Act No. 66, to be codified as 23 Pa. Cons. Stat. Ann. § 4343(b), which provides that a child born out of wedlock may commence a paternity action at any time within 18 years of birth. Appellee now concedes that he is subject to § 4343(b) and that, upon a showing of paternity, he would be liable for child support payments from the date paternity was established. Brief for Appellee 5. He contends, however, that, even on such a showing, he would not be liable for payments dating back to the date the initial petition was filed in 1980.

Our examination of Pennsylvania law leaves us uncertain as to the legal consequences of the enactment of the new 18-year statute of limitations. If, however, Pennsylvania were

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Per Curiam

to interpret §4343(b) to require support payments dating back to the filing of the original petition, the constitutionality of the 6-year statute of limitations would be irrelevant. Because Pennsylvania should have an opportunity in the first instance to resolve this issue of state law, and because we are reluctant to address a federal constitutional question until it is clearly necessary to do so, we vacate the judgment below and remand for further consideration in light of the intervening change in state law.

*It is so ordered.*