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Constitutional Law -- The Decline of Male Chauvinism?

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denied these same constitutional safeguards."[67] As each right is considered by the Court and the juvenile process is said to be indistinguishable from a criminal trial for the purpose of that right, the methodology of selective incorporation in the context of the juvenile court system becomes increasingly difficult to justify.

CHARLES B. WAYNE

Constitutional Law—The Decline of Male Chauvinism?

The Supreme Court once stated that woman is destined for an inferior role in the societal scheme of things, that she is properly placed in a class by herself, and that the law of the Creator deems that she perform the duties of wife and mother and no other.[1] In the years since, the Supreme Court has softened its "romantic paternalism" toward the "weaker" sex and now views woman essentially as man's equal.[2] This evolution has not been without its difficulties, however, and even the current Supreme Court stance on sex discrimination is obscure. The principal difficulties seem to be the determination of the standard[3] with which to judge the discrimination in such cases and a determination of how stringently that standard will be applied.

Stanton v. Stanton[4] is the most recent Supreme Court exposition on sex discrimination and the equal protection clause of the fourteenth amendment.[5] In an almost unanimous decision[6] the Court held that a Utah statute which fixed the age of majority at eighteen for girls and

67. 387 U.S. at 61 (Black, J., concurring). The same arguments were made by the dissenters in McKeiver v. Pennsylvania, 403 U.S. at 557-63.

1. Muller v. Oregon, 208 U.S. 412 (1908); Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872).

2. This evolutionary change is examined in 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 (1972). *See also* Note, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969); Note, *Constitutional Law: The Equal Protection Clause and Women's Rights*, 19 LOY. L. REV. 542 (1973); Note, *The Decline and Fall of the New Equal Protection: A Polemical Approach*, 58 VA. L. REV. 1489 (1972).

3. *See* text accompanying notes 14-25 *infra*.

4. 95 S. Ct. 1373 (1975).

5. U.S. CONST. amend. XIV, § 1. This section is the principal vehicle used by litigants to challenge statutes that allegedly discriminate against females on the basis of sex.

6. Only Justice Rehnquist dissented.

at twenty-one for boys could not, under any standard, survive an attack based on equal protection. On the surface, the treatment of the sex discrimination issue in *Stanton* is characteristic of recent Supreme Court holdings involving equal protection; yet, when analyzed, *Stanton* seems to be another step forward in toughening the approach of the Court toward statutory classifications which afford different treatment of the sexes.

Thelma Stanton, the plaintiff, and her husband James, the defendant, obtained a divorce in Utah in 1960. At that time the court awarded custody of the two Stanton children[7] to plaintiff and, in a separate agreement, provided that defendant was to pay a certain sum per month for each child as "child support." Defendant discontinued these payments when his daughter turned eighteen in 1971. Plaintiff then moved in the divorce court for judgment in her favor ordering support of the child after she attained the age of eighteen. The court, under the provisions of the Utah majority statute,[8] concluded that defendant was not obligated to support his daughter beyond the age of eighteen although he *was* obligated to support his son until age twenty-one.

On appeal to the Utah Supreme Court,[9] plaintiff argued that the statute was invidiously discriminatory and denied equal protection of the laws. The Utah court held that the statute was not unconstitutional, that the different treatment of men and women was founded on a reasonable basis, and that some of our ancestors' "old notions" on the fundamental differences between the sexes were viable today and should continue to prevail.[10] These "old notions" formed the rationale of the state court's decision and included the beliefs that it is man's primary responsibility to provide a home, that it is a salutary thing for him to get a good education before he undertakes those responsibilities, that girls tend to mature physically, emotionally and mentally at an earlier age than boys, and that girls generally tend to marry earlier. Thus, the court concluded that there was "no basis" upon which the majority

7. The two children were Rick who was five and Sherri who was seven. 95 S. Ct. at 1375.

8. UTAH CODE ANN. § 15-2-1 (1953). The statute reads: "*Period of minority.*— The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years; but all minors obtain their majority by marriage." The Court determined that section 15-2-1, which has little legislative history, was applicable due to the Utah court's determination that support money is for the benefit of "minor" children. 95 S. Ct. at 1375-76.

9. 30 Utah 2d 315, 517 P.2d 1010 (1974).

10. *Id.* at 318-19, 517 P.2d at 1012.

statute could not be justified and that plaintiff was not entitled to support money for her eighteen-year-old daughter.

The Supreme Court reversed, holding that under the *Reed*[11] test the Utah majority statute violated the equal protection clause of the United States Constitution. Justice Blackmun explained that the "old notions" cited by the Utah court did not justify the different treatment imposed by the statute. He related:

> A child, male or female, is still a child. No longer is the female destined solely for the home . . . and only the male for the marketplace and the world of ideas. Women's activities and responsibilities are increasing and expanding. . . . If a specified age of minority is required for the boy in order to assure him parental support while he attains his education and training, so, too, it is for the girl. . . . [I]f the female is not supported so long as the male, she hardly can be expected to attend school as long as he does, and bringing her education to an end earlier coincides with the role-typing society has long imposed.[12]

The Supreme Court, therefore, concluded that the age-sex differential embodied in the Utah majority statute was unconstitutional.[13]

Long before *Stanton*, the Supreme Court's approach to a classification providing for different treatment of the sexes was to examine the statute and determine if there was a "rational basis" for the legislative categorization.[14] If there was such a basis, the statute was valid. This approach was the traditional or passive review standard which was designed and intended to preserve state legislative autonomy with as little interference from the judiciary as possible.[15]

Another test developed to cover other situations in which the

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11. *See* text accompanying notes 29-31 *infra*.

12. 95 S. Ct. at 1378.

13. The case was remanded to determine whether once the age-sex differential was eliminated, the appellant was entitled to the support money for Sherri between the ages of eighteen and twenty-one. The appellant argued that the common law should apply and that the age of minority should end at twenty-one for both boys and girls. She cited UTAH CODE ANN. §§ 78-45-1 to -13 (1953) which provide that every man and woman shall support his child and that "child" means son or daughter under the age of twenty-one. The appellee urged that the inequality is to be remedied by treating males as adults at eighteen. This age would correspond with the right to vote and other privileges of adulthood. In any event, the appellant may have won her lawsuit but it remains distinctly possible that she will not be entitled to the support money. *See* 95 S. Ct. at 1379.

14. *See, e.g.*, Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 81 (1872) (where the fourteenth amendment was initially limited to racial discrimination). The clause was soon expanded to include any denial of equal protection. *See also* Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872).

15. *See generally* Note, 58 VA. L. REV., *supra* note 2.

Supreme Court deemed that more than legislative reasonableness was required to uphold different statutory treatment. Thus, the "strict scrutiny" test was designed to place the statute into active review and force upon states the burden of showing a "compelling interest" for certain classifications that invidiously discriminated. In order for strict scrutiny to be applied, the discrimination must involve a "fundamental right," or the classification upon which the discrimination rests must be "suspect". Accordingly, the Supreme Court has denoted that religion,[16] associational freedom,[17] work,[18] voting,[19] procreation,[20] and travel[21] are all fundamental rights while race,[22] lineage,[23] and alienage[24] are inherently suspect categories.[25]

A classification based on sex, however, has never been declared by a majority of the Supreme Court to be inherently suspect.[26] This refusal has resulted in application of the passive review standard—a standard that has not once overturned a sex classification.[27] In fact, the only bright spot for women's rights in the years between the adoption of the fourteenth amendment and 1971 was the passage of the nineteenth amendment giving women the right to vote.[28]

Despite this bleak history, in 1971 *Reed v. Reed*[29] became the first Supreme Court case to declare a statute providing for different treatment of the sexes invalid under the equal protection clause. The case

16. Sherbert v. Verner, 374 U.S. 398, 406 (1963).
17. Bates v. Little Rock, 361 U.S. 516, 524 (1960).
18. Truax v. Raich, 239 U.S. 33, 41 (1915).
19. Reynolds v. Sims, 377 U.S. 533, 561-62 (1964).
20. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).
21. Shapiro v. Thompson, 394 U.S. 618, 634 (1969).
22. Loving v. Virginia, 388 U.S. 1, 9 (1967); McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964).
23. Korematsu v. United States, 323 U.S. 214, 216 (1944).
24. Takahashi v. Fish and Game Comm'n, 334 U.S. 410, 420 (1948); Truax v. Raich, 239 U.S. 33, 43 (1915).
25. The Court has also implied that in certain circumstances poverty and possibly even wealth are suspect categories. *See* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353, 356-57 (1963); Griffin v. Illinois, 351 U.S. 12, 17 (1956). *But cf.* San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973).
26. The closest the Court has come to declaring sex as a suspect classification was Frontiero v. Richardson, 411 U.S. 677 (1973), where a plurality held that such a categorization was inherently suspect. *See* text accompanying note 33 *infra*.
27. In *Stanton* the Court held that the statute was invalid under *any* test but a *Reed* standard was applied. 95 S. Ct. at 1377, 1379.
28. For examples of the Supreme Court's treatment of the sex classification during these years see Hoyt v. Florida, 368 U.S. 57 (1961); Goesaert v. Cleary, 335 U.S. 464 (1948); Muller v. Oregon, 208 U.S. 412 (1908); Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872).
29. 404 U.S. 71 (1971).

involved a challenge to a provision of the Idaho probate code which gave preference to males over females when persons otherwise of the same entitlement applied for appointment as administrator of a decedent's estate. The Court proposed that this different treatment, based upon the sex of the applicant, "establishes a classification subject to *scrutiny*."[30] Although the Court did not say what type of scrutiny it would employ, the standard of review noticeably differed from the traditional, passive review standard. Contrary to the test actually applied, the *Reed* Court quoted language from prior cases which seemed to dictate the use of a rational basis test in sex discrimination cases; nonetheless, the Court seemingly applied a standard that was more means-focused in that the purposes, rather than the basis, of the statute were the subjects of the Court's review.[31] The consequence was that the Court had somewhat hesitantly and muddily broken from the passive review standard.

Frontiero v. Richardson[32] followed the *Reed* breakthrough, with a plurality of the Court holding that a sex classification was inherently suspect.[33] The Court in its opinion noted that *Reed* gave "implicit support" for a determination of suspectness and that strict scrutiny in combination with a *Reed* analysis of the statutory means or objectives resulted in the statute's invalidity. *Frontiero* then was another positive step by the Court toward, at the most, a declaration of sex suspectness or, at the very least, a standard of review that involved more than minimal scrutiny.

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30. *Id.* at 75 (emphasis added).

31. The *Reed* Court determined that "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . . .'" *Id.* at 76, *quoting* Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920) (where the Court said it was applying the passive standard of review). For a discussion of the means-focused approach see Gunther, *supra* note 2. For a discussion of the various types of tests see Note, *Constitutional Law —Mandatory Maternity Leave Termination and Return Provision of School Boards Violate the Due Process Clause of the Fourteenth Amendment*, 23 DRAKE L. REV. 690 (1974).

32. 411 U.S. 677 (1973) (where a statute was invalidated that made it easier for a serviceman to claim his wife as a dependent than for a servicewoman to claim her husband similarly).

33. Justices Brennan, Douglas, Marshall, and White joined in declaring that sex was suspect. Justice Stewart concurred but would not declare suspectness stating only that a sex classification was invidiously discriminatory. This statement left open the possibility that he may yet be persuaded to hold suspectness. Justices Blackmun, Powell and Chief Justice Burger seemed to believe that the Equal Rights Amendment would provide a solution and deferred for the time being any decision of suspectness. *Id.* at 678, 691-92. The *Frontiero* decision reversed a court of appeals finding that had rested on the application of a *Reed* standard. *See* Frontiero v. Laird, 341 F. Supp. 201 (M.D. Ala. 1972).

Although *Reed* and *Frontiero* seemed to indicate that the Supreme Court would no longer tolerate sex discrimination and that the next step in the evolution would be a majority declaration of suspectness, the cases between *Frontiero* and *Stanton* present a confusing array of differing applications of the passive and active review standards.[34] The result of this conflict was confusion in the federal courts (as well as in the Supreme Court itself) over which standard was applicable. Accordingly, several lower federal courts held during this period that a sex classification is inherently suspect;[35] others continued to apply a standard of passive review[36] while still others concluded that the proper test is somewhere between passive and active review.[37] The *Reed-Frontiero* legacy, in any event, appears to be the impetus for future Supreme Court decisions despite the haziness of the Supreme Court's approach in other cases of the seventies.[38] *Stanton*, indeed, seems to capsulize this legacy.

The trend toward close scrutiny of a sex classification is evident in *Stanton*. Although the Court purports to apply a *Reed* standard, the test actually used is tighter than the standard in *Reed* and, in evolutionary terms, is nearer to a close scrutiny-suspect category type of review.[39] There are several reasons for this conclusion.

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34. *Compare* Kahn v. Shevin, 416 U.S. 351 (1974) (where a discriminatory tax scheme was upheld) *and* Geduldig v. Aiello, 417 U.S. 484 (1974) (where the dissenting justice points out that the majority is retreating from the strict review required by *Reed* and *Frontiero*) *with* Weinberger v. Wiesenfeld, 95 S. Ct. 1225 (1975) (where the Court applied a *Frontiero* standard and upheld a lower federal court's decision that used a strict scrutiny approach).

35. Johnson v. Hodges, 372 F. Supp. 1015 (E.D. Ky. 1974); Wiesenfeld v. Secretary of HEW, 367 F. Supp. 981 (D.N.J. 1973), *aff'd sub nom.* Weinberger v. Wiesenfeld, 95 S. Ct. 1225 (1975); Stern v. Massachusetts Indem. and Life Ins. Co., 365 F. Supp. 433 (E.D. Pa. 1973); O'Neill v. Dent, 364 F. Supp. 565 (E.D.N.Y. 1973).

36. Brenden v. Independent School Dist., 477 F.2d 1292 (8th Cir. 1973); Pendrell v. Chatham College, 370 F. Supp. 494 (W.D. Pa. 1974); Smith v. East Cleveland, 363 F. Supp. 1131 (N.D. Ohio 1973); Healy v. Edwards, 363 F. Supp. 1110 (E.D. La. 1973); Bowen v. Hackett, 361 F. Supp. 854 (D.R.I. 1973).

37. Eslinger v. Thomas, 476 F.2d 225 (4th Cir. 1973); Wark v. Robbins, 458 F.2d 1295 (1st Cir. 1972).

38. As an example of this new impetus, *compare* Hoyt v. Florida, 368 U.S. 57 (1961) *with* Taylor v. Louisiana, 95 S. Ct. 692 (1975). *See also* Justice Marshall's dissent in Dandridge v. Williams, 397 U.S. 471, 521 (1970) (where he foresees a stricter application of the passive review standard—a "balancing test" approach); Note, 58 VA. L. REV., *supra* note 2.

39. Note that the *Stanton* case and a sex classification, in general, meet the definition of "suspectness" conveyed in San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 28 (1973): "[t]he class is not 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."

First, according to *Reed,* an application of an intermediate, means-focused approach involves an analysis of the majority statute's purpose, which must have a fair and substantial relation to the different treatment the statute provides for eighteen-year-old girls and for eighteen-year-old boys.[40] However, instead of focusing upon the purpose of the Utah majority statute—that purpose being the grant of adult status to eighteen-year-old girls while at the same time postponing the majority age grant to boys until they reach the age of twenty-one—the Court looks solely to the legislative reasoning behind the majority statute's purpose.[41] This approach is characteristic of active review, which compels the state to proffer an extraordinary reason or interest to justify its different treatment of the sexes. Indeed, in the *Stanton* case, if the Court had strictly adhered to the *Reed* balancing test,[42] they would have found a fair and substantial relationship; in fact, the "old notions" summarily dismissed by the Court do have credence even today.[43]

The Supreme Court, moreover, placed great importance on the fact that the majority statute itself provided that marriage terminated minority.[44] Notwithstanding the fact that if minors of any age or of either sex get married there is a greater need for them to succeed to the rights of adults and that that need should supersede the corresponding rights of other minors, the Court neglected to examine this purpose of the provision. It instead focused upon the state's interest in having such a statement in a majority statute and impliedly found that the state's reason for including it, together with the "old notions," were not compelling.

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40. In *Reed* the object of the probate statute was the administrative convenience in simplifying the determination of executors of estates. 404 U.S. at 76.

41. The state interests referred to are the "old notions" proffered originally by the Utah Supreme Court. 30 Utah 2d at 319, 517 P.2d at 1012. Such "old notions" under a rational basis test have in the past been upheld by the courts. *See* Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872); Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974). Also, since the purpose of the statute is not compared with the legislative object, the *Reed* test has not been adhered to. Moreover, the "old notions" do have substantial relation to the purpose of the statute. *See* 1974 UTAH L. REV. 144, 165-66. Thus, the Court apparently treats these "old notions" as "interests" of the state in enacting the statute. The review is correspondingly tighter and more demanding than the previous sex discrimination standards.

42. The different treatment of the sexes is balanced against the purpose of having girls become adults before boys. 95 S. Ct. at 1377-78.

43. For instance, statistics show that girls, on the average, do mature physically, emotionally, and mentally at a faster pace than boys and that at ages eighteen to nineteen girls are much more likely to be married than boys. *See, e.g.,* E. HURLOCK, CHILD DEVELOPMENT 104-05 (5th ed. 1972); U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF U.S. 1973 at 38; TANNER, *Genetics of Human Growth,* in 3 HUMAN GROWTH 54-55 (J. Tanner ed. 1960).

44. UTAH CODE ANN. § 15-2-1 (1953).

Another important court decision has dealt with a situation similar to *Stanton* in which "old notions" were offered as a state interest and in which a *Reed* standard perplexingly would not produce the desired result of invalidating the statute.[45] In *Sail'er Inn, Inc. v. Kirby*[46] the court found that the reasoning behind the sex differential—the "old notions"—would not survive a close scrutiny although a *Reed* test or passive review would result in upholding the statute. That court determined that the sex classification presented for review was inherently suspect and felt compelled to disregard the notions of what is "proper" for a person of either sex.[47] *Reed* was thus rejected as a standard in a manner akin to the *Stanton* Court's renunciation of the Utah sex differential.

The seemingly tighter approach indicates that the Court is seeking in *Stanton* to clarify the confusing *Reed* test.[48] In doing so, the Supreme Court has developed a review that is stricter than *Reed* in that it focuses upon the intent of the legislature to the neglect of the purpose of the statute. It is thus a more demanding approach—placing the burden upon the state to explain that it has substantial reasons for promulgating such a statute.

A second reason for the conclusion that *Stanton* epitomizes the Supreme Court's trend toward close scrutiny of sex categories is the manner in which the Court reached the sex discrimination issue. *Stanton* appears to be the first sex discrimination case in which the constitutionality of a statute is considered "in the context" of another statute.[49] This "context" approach varies from the usual equal protection attack where the statute itself is the focus of the alleged discrimination. For example, *Reed, Frontiero,* and other key cases are all concerned with a statute which itself has victimized the party, and it is always the victimized party who claims discrimination. In this regard,

45. 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971) (where court declared invalid a statute regulating the use of females as bartenders). *But cf.* Goesaert v. Cleary, 335 U.S. 464 (1948).

46. 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

47. *Id.* at 5, 9, 485 P.2d at 533, 537, 95 Cal. Rptr. at 333, 337.

48. In *Reed* the language of the test is a paraphrase of the passive review standard applied in *Royster Guano*; the case also cites as authority McGowan v. Maryland, 366 U.S. 420 (1961) (where the Court applied a "close scrutiny" review because of the fundamental right involved—the first amendment—and related, *id.* at 425, that the test applied is that the unequal treatment have a "[s]ubstantial and rational relation to the object of the legislation"). Therefore, when *Reed* is seen in the light of the *Royster Guano* and *McGowan* opinions, one must wonder what *Reed* really stands for.

49. The Court states that "§ 15-2-1 *in the context of child support* does not survive an equal protection attack." 95 S. Ct. at 1379 (emphasis added).

Stanton portrays a situation where the victimized party, the Stanton's daughter, is not a litigant nor is she entiled to the support money.[50] For that reason, the Court determined that the majority statute must be visualized in light of other statutes for it to be found discriminatory to the appellant. In other words, the majority statute *alone* is not unconstitutional but in the context of the statutory provisions for child support it is. Thus, the Court has taken its sex classification analysis one step further, not only by allowing one who has not been victimized directly by the statute to challenge its validity, but also, for the first time, by invalidating a statute that would not necessarily be of itself unconstitutional but, when applied in conjunction with other statutes, denies equal protection of the laws.

Furthermore, the Court reached this conclusion on shaky statutory grounds. The majority statute comes into play solely on the basis of a 1946 case which describes support money "as compensation to a spouse for the support of *minor* children."[51] However, in 1957, Utah enacted the Uniform Civil Liability for Support Act which specifically provides that the parent shall support his children and that a "child" is a son or daughter under twenty-one years of age.[52] The Court did not fully discuss whether the 1957 Act is perhaps controlling and thus makes the majority statutory issue moot.[53] On the contrary, it is plainly evident that the Court wished to decide the sex discrimination issue despite the initial difficulties of standing and in the statute itself and despite available statutory alternatives for disposing of the case. This procedure is indicative of the Supreme Court's willingness to carefully scrutinize statutes that result in different treatment based on sex.[54]

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50. For a Utah case holding that the right to support money belongs to the parent and not the child, see Larsen v. Larsen, 5 Utah 2d 224, 228, 300 P.2d 596, 598 (1956).

51. Anderson v. Anderson, 110 Utah 300, 306, 172 P.2d 132, 135 (1946).

52. UTAH CODE ANN. §§ 78-45-1 to -13 (1957).

53. Justice Rehnquist in his dissent felt that the Court should not be passing on this issue. He proposed that the proper jurisdiction was in the Utah Supreme Court where the intention of the parties first needed examination and if the term (the age when support would cease) could not be supplied from the intent, the question was one of interpretation of Utah statutory law. Only if section 15-2-1 were deemed the controlling statute, rather than the child support sections, and Utah upheld its constitutionality could the Supreme Court hear the case. 95 S. Ct. at 1380-81.

54. *See* Johnston, *Sex Discrimination and the Supreme Court—1971-1974*, 49 N.Y.U.L. REV. 617 (1974). For a discussion of the interventionism of the Burger Court and the possibility that the character of the statute and the resulting discrimination may emotively persuade the Court to strictly scrutinize and declare invalidity rather than the situation where if the statute is not outrageous the party attacking it would be given a stern lecture on state legislative autonomy, see Gunther, *supra* note 2; Note, 58 VA. L. REV., *supra* note 2.

Finally, the Supreme Court, by invalidating the Utah majority statute, has implied that a sex classification that unfairly discriminates against *either* sex will not be upheld. Such a rule is contrary to the holding in the recent case of *Kahn v. Shevin*.[55] In *Kahn* a Florida statute which permitted a tax deduction to widows but denied the same deduction to widowers was upheld on the theory that the statute was designed to eliminate past discrimination against women. Thus, in reverse discrimination cases the Court appeared hesitant to invalidate a statute which, on its face, was a denial of equal protection.[56]

Stanton also involves reverse discrimination. While the underlying purpose of a majority statute is the determination of the age at which the law will no longer protect minors, the prevailing understanding of the result of such a statute is that, at the prescribed age, the minor becomes an adult and receives the rights and privileges which go along with adult status. Thus, Sherri Stanton, at eighteen, was free to make her own contracts, marry without parental consent, sue in court in her own name, serve as administratrix of a decedent's estate or as executrix of a decedent's will, and enjoy all other rights granted and reserved to adults which under the statute could not be enjoyed by boys under twenty-one. Therefore, Sherri had the best of two possible worlds—not only was she legally an adult capable of making her own decisions, but also, under Utah law, was still entitled to parental support until she was twenty-one. The Court noted this effect[57] but nevertheless held the statute invalid despite the precedent of *Kahn*.[58] Hence, the reverse discrimination aspects, the statutory hurdles which could have prevented adjudication, and the tighter use of the *Reed* standard all point to a new and tougher Supreme Court stance on the issue of sex discrimination.

The foregoing analysis leads to the conclusion that the Supreme Court has taken a hesitant step toward a strict scrutiny standard of review in sex discrimination cases. The extension of the *Reed* standard and the cursory manner in which the Court struck down the majority statute are indicative of an evolutionary process of deciding sex discrimination cases. However, the current stance of the Court on this issue

55. 416 U.S. 351 (1974).

56. *See* DeFunis v. Odegaard, 416 U.S. 312 (1974) (per curiam); Note, *Constitutional Law—Tax Exemption for Widows Upheld over Sex Discrimination Challenge*, 53 N.C.L. REV. 551 (1975).

57. 95 S. Ct. at 1379.

58. An example of a case examining the reverse discrimination aspects involved in a majority statute is Jacobson v. Lenhart, 30 Ill. 2d 225, 195 N.E.2d 638 (1964).

remains extremely obscure in view of the conflicting precedent and the various standards that have been employed to test a statutory sex classification. This hit-or-miss approach is exasperating not only to lower courts which must apply some standard but also to the victimized litigants. If the Court intends to await the Equal Rights Amendment[59] and is simply stalling for time, as the *Frontiero* justices suggested, such action is questionable and certainly contrary to the principles of *Marbury v. Madison*[60] which uphold the belief that judicial thought will not be inhibited by tangentially related acts in the political arena. Indeed, the Court should declare sex classifications inherently suspect if only to clear up the confusion and variance which has resulted from its rulings.

Stanton is a step in this direction and should have a substantial effect on laws which make an age-sex differential.[61] It impliedly calls for an end to the "wholly chauvinistic" attitude that has possessed the Court for so many years. Indeed, the time appears ripe for the death of discrimination based on sex. This development would be welcome and would prevent us male chauvinists from speaking with pride the puritanical words of Justice Brewer who once said that ". . . history discloses the fact that woman has always been dependent upon man. He established his control at the outset . . . and this control . . . has continued to the present. . . . [L]ooking at [the situation] from the viewpoint of [woman's] effort to maintain an independent position in life, she is not upon an equality."[62]

JAMES M. ISEMAN, JR.

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59. For a discussion of the Equal Rights Amendment *see* Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871 (1971); Johnston, *supra* note 54.

60. 5 U.S. (1 Cranch) 137 (1803).

61. Other courts have dealt with similar *Stanton* age-sex differentials in statutes. *See* Lamb v. Brown, 456 F.2d 18 (10th Cir. 1972) (statute permitted juvenile court jurisdiction until age sixteen); Petty v. Petty, 252 Ark. 1032, 482 S.W.2d 119 (1972) (majority statute differential); Harrigfeld v. District Ct. of 7th Jud. Dist., 95 Idaho 540, 511 P.2d 822 (1973) (majority statute differential); Jacobson v. Lenhart, 30 Ill. 2d 225, 195 N.E.2d 638 (1964) (statute applied the two year statute of limitations to males after they reach twenty-one and to females after eighteen); Commonwealth v. Butler, 328 A.2d 851 (Pa. 1974) (criminal statute provided that women receive no minimum sentences while men have set minimums). In North Carolina there may be a question of *Stanton's* effect upon automobile liability insurance rates. Boys under twenty-five are placed in a higher risk category than girls of the same age.

62. Muller v. Oregon, 208 U.S. 412, 421-22 (1908).