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Constitutional Law- Mandatory Maternity Leave for Public School Teachers Does Not Violate Equal Protection Clause

Constitutional Law—MANDATORY MATERNITY LEAVE FOR PUBLIC SCHOOL TEACHERS DOES NOT VIOLATE EQUAL PROTECTION CLAUSE—*Cohen v. Chesterfield County School Board*, 474 F.2d 395 (4th Cir. 1973), *cert. granted*, 411 U.S. 947 (1973).*

The fourteenth amendment[1] permits states to enact laws affecting some groups or citizens differently from others unless the group or citizen classification is for reasons wholly irrelevant to the objective sought by the state in enacting the regulation.[2] In the context of sex discrimination, the United States Supreme Court only recently found a classification based on sex to be in violation of the equal protection clause.[3] The Court's decision represents the beginning of a judicial assault on sex discrimination, conforming to modern social trends in this area.[4] Protection of the female, the basic idea underlying the treatment of women by Western culture,[5] was often the

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* Reversal on January 21, 1974. The Supreme Court found the mandatory maternity leave's termination provision violated the *Due Process Clause* of the 14th Amendment. 42 U.S.L.W. 4186.

1. U.S. CONST. amend. XIV, § 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Reed v. Reed, 404 U.S. 71, 75 (1971); McDonald v. Board of Election Comm'rs, 394 U.S. 802, 808-09 (1969); McGowan v. Maryland, 366 U.S. 420, 425-26 (1961); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911); Barbier v. Connolly, 113 U.S. 27, 31-32 (1885).

3. Reed v. Reed, 404 U.S. 71 (1971). For a discussion of the case see 1972 WIS. L. REV. 626. At common law women were legal nonentities which raised some doubts as to whether the Constitution was originally meant to include women. The only express inclusion of women in the Constitution was in the nineteenth amendment. The fourteenth amendment, and especially the equal protection clause, at first only applied to prevent discrimination against blacks. *See* Crozier, *Constitutionality of Discrimination Based on Sex*, 15 B.U.L. REV. 723 (1935).

Reed v. Reed became the springboard for Frontiero v. Richardson, 411 U.S. 677 (1973), which changed the Court's nineteenth century attitude toward women:

> There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women not on a pedestal, but in a cage. *Id.* at 684.

4. A leader in the feminist movement summarizes the modern trend. Siedenberg, *The Submissive Majority: Modern Trends in the Law Concerning Women's Rights*, 55 CORNELL L. REV. 262 (1970):

> Recently, however, there has been an upsurge of the feminist movement, and men are being forced to take a second look at some of the paternalistic laws they have propounded. Although challenge to the laws adversely affecting women is presently at about the same stage that the civil rights movement occupied in the 1930's, in the last few years there has nevertheless been a small beginning towards equal rights. *Id.* at 262.

5. Early Supreme Court pronouncements illustrate the protective view:

> The paramount destiny and mission of woman are to fulfill the noble and benign

rationale for upholding various statutes and regulations.[6] However, a more complex and novel issue concerning women is that of mandatory maternity leave regulations for teachers.[7] In the area of mandatory maternity leaves,[8]

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offices of wife and mother. This is the law of the Creator. Bradwell v. State, 83 U.S. (16 Wall.) 130, 141 (1872) (Bradley, J., concurring).

Still again, history discloses the fact that woman has always been dependent upon man . . . she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. Muller v. Oregon, 208 U.S. 412, 421-22 (1908).

See Gilbertson, *Women and the Equal Protection Clause*, 20 CLEV. ST. L. REV. 351, 351 (1971); Note, *Sex Discrimination and Equal Protection: Do We Need a Constitutional Amendment?*, 84 HARV. L. REV. 1499, 1502 (1971); Comment, *Are Sex-Based Classifications Constitutionally Suspect?*, 66 NW. U.L. REV. 481, 484 (1971).

6. *See, e.g.*, Williams v. McNair, 401 U.S. 951 (1971), *aff'g* 316 F. Supp. 134 (D.S.C. 1970) (female-only admissions policy for state supported college); Hoyt v. Florida, 368 U.S. 57 (1961) (no woman shall be taken for jury service unless she volunteers for it); West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) (state law setting minimum wages for women only); Radice v. New York, 264 U.S. 292 (1924) (statute prohibiting employment of women in restaurants during certain hours); Gruenwald v. Gardner, 390 F.2d 591 (2d Cir. 1968), *cert. denied*, 393 U.S. 982 (1968) (statute granting women more favorable treatment than men in computing social security benefits).

See Kanowitz, *Constitutional Aspects of Sex-Based Discrimination in American Law*, 48 NEB. L. REV. 131, 132 (1968).

7. For a discussion of maternity leave regulations see: Comment, *Mandatory Maternity Leave Policy in the School Systems—A Survey of Cases*, 22 CLEV. ST. L. REV. 172 (1973); Comment, *The Effect of Title VII and the Proposed Equal Rights Amendment on Mandatory Maternity Leaves for Teachers*, 12 J. FAMILY L. 447 (1972-1973); Comment, *Mandatory Maternity Leaves and the Equal Protection Clause*, 61 KY. L.J. 589 (1973); Comment, *Mandatory Maternity Leave of Absence Policies—An Equal Protection Analysis*, 45 TEMP. L.Q. 240 (1972); 38 BROOKLYN L. REV. 789 (1972); 40 U. CIN. L. REV. 857 (1971).

8. Cases upholding mandatory maternity leaves: Struck v. Secretary of Defense, 460 F.2d 1372 (9th Cir. 1972); Schattman v. Texas Employment Comm'n, 459 F.2d 32 (5th Cir. 1972); Green v. Waterford Bd. of Educ., 349 F. Supp. 687 (D. Conn. 1972), *rev'd*, 473 F.2d 629 (2d Cir. 1973); LaFleur v. Cleveland Bd. of Educ., 326 F. Supp. 1208 (N.D. Ohio 1971), *rev'd*, 465 F.2d 1184 (6th Cir. 1972); Amster v. Board of Educ., 55 Misc. 2d 961, 286 N.Y.S.2d 687 (Sup. Ct. 1967); Cerra v. East Stroudsburg Area School Dist., 3 Pa. Commw. 665, 285 A.2d 206 (1971), *rev'd*, 450 Pa. 207, 299 A.2d 277 (1973).

Cases finding that mandatory maternity leaves deny women equal protection: Green v. Waterford Bd. of Educ., 473 F.2d 629 (2d Cir. 1973); LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184 (6th Cir. 1972); Bravo v. Board of Educ., 345 F. Supp. 155 (N.D. Ill. 1972); Heath v. Westerville Bd. of Educ., 345 F. Supp. 501 (S.D. Ohio 1972); Pocklington v. Duval County School Bd., 345 F. Supp. 163 (M.D. Fla. 1972); Williams v. San Francisco Unified School Dist., 340 F. Supp. 438 (N.D. Cal. 1972); Robinson v. Rand, 340 F. Supp. 37 (D. Colo. 1972) (under fifth amendment due process clause); Doe v. Osteopathic Hosp. of Wichita, Inc., 333 F. Supp. 1357 (D. Kan. 1971) (decided under Title VII of the Civil Rights Act of 1964); Schattman v. Texas Employment Comm'n, 330 F. Supp. 328 (W.D. Texas 1971) (decided under Title VII of the Civil Rights Act of 1964), *rev'd*, 459 F.2d 32 (5th Cir. 1972); Cohen v. Chesterfield County School Bd., 326 F. Supp. 1159 (E.D. Va. 1971), *rev'd*, 474 F.2d 395 (4th Cir. 1973). *See also* Danielson v. Board of Higher Educ., 358 F. Supp. 22 (S.D.N.Y. 1972); Monell v. Department of Social Servs., 357 F. Supp. 1051 (S.D.N.Y. 1972).

the traditional equal protection test places a heavy burden upon the plaintiff to prove the classification "irrational, irrelevant, unreasonable, arbitrary or invidious."[9] The classification, at the minimum, must bear "some rational relationship to a legitimate state purpose."[10]

Cohen v. Chesterfield County School Board[11] is illustrative of the view that not all sex-based classifications are violative of the equal protection clause. Mrs. Cohen unsuccessfully sought the approval of the Chesterfield County School Board to continue teaching until either the eighth month of her pregnancy[12] or, as recommended by her principal, the end of the current semester, the sixth month of her pregnancy. Following the denial of these requests, Mrs. Cohen commenced an action under the Civil Rights Act of 1871[13] to challenge the maternity leave regulation, requiring her to begin her maternity leave at the end of the fifth month of her pregnancy,[14] on the grounds that the regulation discriminated against her because of her sex and, therefore, constituted a denial of her constitutional rights under the fourteenth amendment.[15] The court held that this maternity leave

9. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 673-74 (1966) (Black, J., dissenting).

10. Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 172 (1972). *See* Police Dep't v. Mosley, 408 U.S. 92, 95 (1972); Levy v. Louisiana, 391 U.S. 68, 71 (1968); Morey v. Doud, 354 U.S. 457, 465 (1957); Gulf, Colo. & Santa Fe Ry. v. Ellis, 165 U.S. 150, 155 (1897).

11. 474 F.2d 395 (4th Cir. 1973) (4-3 decision).

12. Mrs. Cohen's obstetrician gave his written approval to her working as long as she chose. *Id.* at 396.

13. 17 Stat. 13 (1871) (codified at 42 U.S.C. § 1983 (1970)):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

14. The case upheld the constitutionality of a school board regulation which required, with limited flexibility, pregnant female teachers to go on maternity leave at the end of their fifth month of pregnancy. The Chesterfield County School Board maternity leave regulation provides in part:

> a. Notice in writing must be given to the School Board at least six (6) months prior to the date of expected birth.
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> b. Termination of employment of an expectant mother shall become effective at least four (4) months prior to the expected birth of the child. Termination of employment may be extended if the superintendent receives written recommendations from the expectant mother's physician and her principal, and if the superintendent feels that an extension will be in the best interest of the pupils and school involved.
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> c. Maternity Leave
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> 1. Maternity leave must be requested in writing at the time of termination of employment.
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> 2. Maternity leave will be granted only to those persons who have a record of satisfactory performance. 474 F.2d at 396 n.2.

15. Mrs. Cohen also sought relief under the Equal Opportunity Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (1970):

regulation is not an invidious discrimination based upon sex, but rather, that it serves a legitimate state interest in providing for "continuity in the instruction of children."[16] Chief Judge Haynsworth reasoned in the majority opinion that sexual classifications cannot possibly be arbitrary or invidious unless the sexes are in actual or potential competition.[17] Pregnancy and motherhood being a peculiar function of women, men cannot physically compete; nor can laws relieve pregnant women from the burden of motherhood.[18] Thus, reasonable recognition of the fact that pregnancy and maternity are sui generis by a governmental employer does not constitute an arbitrary classification by sex.[19]

Continuity of education, provided by a teacher who can remain with her class throughout the school year without major interruption, is the reasonable objective for a maternity leave regulation.[20] Administrative conveni-

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It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

However, at the time of the proceedings below, state agencies and educational institutions were specifically exempted from the Act. 42 U.S.C. § 2000e(b) (1970), 42 U.S.C. § 2000e-1 (1970). These exemptions were repealed by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e(b) (1972); 42 U.S.C. § 2000e-1 (1972) following oral argument. Therefore, the opinion is limited to a consideration of the equal protection clause of the fourteenth amendment.

16. Cohen v. Chesterfield County School Bd., 474 F.2d 395, 397 (4th Cir. 1973).

17. *Id.* at 397. *Cf.* Rafford v. Randle E. Ambulance Serv., Inc., 348 F. Supp. 316 (S.D. Fla. 1972):

> The discharge of pregnant women or bearded men does not violate the Civil Rights Act of 1964 simply because only women become pregnant and only men grow beards. In neither instance are similarly situated persons of the opposite sex favored. *Id.* at 320.

18. The burdens of motherhood may vest upon the father. *See* Danielson v. Board of Higher Educ., 358 F. Supp. 22 (S.D.N.Y. 1972), wherein the father chose to stop work and provide child care while the mother returned to her job shortly after giving birth. The father's employer refused to extend to the father the benefits of the employer's maternity leave policy.

19. Other arguments have been advanced to sustain maternity leave regulations as constitutional, but not without criticism. The safety of the unborn child and the mother was a prime consideration in the district court decision of LaFleur v. Cleveland Bd. of Educ., 326 F. Supp. 1208, 1210-11 (N.D. Ohio 1971), *rev'd*, 465 F.2d 1184 (6th Cir. 1972), which cited past incidents of violence in the city's schools and questioned the physical ability of a teacher in the advanced stages of pregnancy to attend to her duties. *Contra*, Cohen v. Chesterfield County School Bd., 326 F. Supp. 1159 (E.D. Va. 1971), *rev'd*, 474 F.2d 395 (4th Cir. 1973): "As a matter of fact, pregnant women are more likely to be incapacitated in the early stages of pregnancy than the last four months." *Id.* at 1160. *See* 40 U. CIN. L. REV. 857, 861-62 (1971). Even though violence is always a possibility, it does not justify the rule because the regulation does not consider the variations in the locations of schools and the ages of students. Green v. Waterford Bd. of Educ., 473 F.2d 629, 635 (2d Cir. 1973).

20. Other cases suggest that the notice a pregnant teacher gives in advance of her leaving

ence is the justification for placing in the control of school officials the decision as to when the maternity leave should begin. Following such reasoning, *Cohen* is in line with those cases which apply the traditional equal protection test to affirm mandatory maternity leave provisions.[21]

According to *Cohen*, mandatory maternity leaves are not subject to the compelling state interest test. Triggered by one of two fact situations, the compelling state interest test demands active review or strict scrutiny where either a suspect classification or a fundamental right is involved.[22] In either event, the state must show the statute is necessary to promote a compelling governmental interest,[23] and that the statute is the least onerous means possible to promote the compelling state interest.[24] Express rejection of the applicability of the compelling state interest equal protection test in mandatory maternity leave cases relies on the exclusion of male participation in the maternity process.[25] Since men cannot become pregnant, the regulation does not classify women on an arbitrary basis, rather, it classifies on the basis of a physical condition which is peculiarly female. *Cohen* holds that pregnancy is most often voluntary, permitting one to anticipate and prepare for the resulting period of confinement, unlike illnesses and other physical disabilities.[26] This conclusion disagrees with the

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contributes to preserving educational continuity by affording "more, not less, time to procure a satisfactory long-term substitute." Green v. Waterford Bd. of Educ., 473 F.2d 629, 635 (2d Cir. 1973). Evidence showing that a rigid timetable for maternity leaves actually contributes to discontinuity was brought out in testimony by a school official in Bravo v. Board of Educ., 345 F. Supp. 155, 158 (N.D. Ill. 1972). As an example, Mrs. Cohen was denied permission to complete the semester in which she was currently teaching although she would be leaving only one month later than required.

21. *See, e.g.*, Schattman v. Texas Employment Comm'n, 459 F.2d 32, 39 (5th Cir. 1972); LaFleur v. Cleveland Bd. of Educ., 326 F. Supp. 1208, 1210 (N.D. Ohio 1971), *rev'd*, 465 F.2d 1184 (6th Cir. 1972); Amster v. Board of Educ., 55 Misc. 2d 961, 286 N.Y.2d 687 (Sup. Ct. 1967). *Contra*, Williams v. San Francisco Unified School Dist., 340 F. Supp. 438, 445 (N.D. Cal. 1972).

22. Examples of suspect classifications: Oyama v. California, 332 U.S. 633 (1948) (nationality); Korematsu v. United States, 323 U.S. 214 (1944) (race); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (alienage).

Examples of fundamental rights: Shapiro v. Thompson, 394 U.S. 618 (1969) (interstate travel); Loving v. Virginia, 388 U.S. 1 (1967) (marriage); Reynolds v. Sims, 377 U.S. 533 (1964) (voting); Skinner v. Oklahoma, 316 U.S. 535 (1942) (procreation); Truax v. Raich, 239 U.S. 33 (1915) (right to employment).

23. Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

24. A legitimate state objective may exist, but by its terms a statute may be so harsh as to deny equal protection. *See* Carrington v. Rash, 380 U.S. 89, 96 (1965).

25. *But see* Danielson v. Board of Higher Educ., 358 F. Supp. 22 (S.D.N.Y. 1972).

26. Cohen v. Chesterfield County School Bd., 474 F.2d 395, 398 (4th Cir. 1973). *See Are Sex-Based Classifications Constitutionally Suspect?, supra* note 5, at 496.

All pregnancies are not voluntary. Likewise, the full ramifications of the treatment of maternity leaves are not at issue here. For a far-ranging discussion of the effects of maternity

unrefuted medical evidence in the record and the finding of the district court.[27] Considering the distinction as amply made, the court does not consider the argument that men are also subject to crises of the body, some of which provide ample warning and require elective surgery, such as a cataract operation or a prostatectomy. Men in such situations are not subject to premature leave because of the forthcoming medical problem,[28] nor do the general sick leave requirements require notice by any teacher for any elective surgery.[29]

The use of pregnancy as a permissible classifying trait eliminates the imposition of the compelling state interest test. It is not clear what criteria must be met by a given classification to be judged suspect or as involving a fundamental right, although suggestions are made and analogies are drawn.[30] However, sex has been found to be a suspect classification by the Supreme Court.[31] Viewed from a different perspective, maternity leave regulations may trigger active review by the alternative fundamental rights branch of the compelling state interest doctrine.[32] Here the right to

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leaves and benefits see generally Comment, *Love's Labors Lost: New Conceptions of Maternity Leaves*, 7 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 260 (1972).

27. Cohen v. Chesterfield County School Bd., 326 F. Supp. 1159, 1160 (E.D. Va. 1971), *rev'd*, 474 F.2d 395 (4th Cir. 1973).

28. *See* LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184, 1188 (6th Cir. 1972); Bravo v. Board of Educ., 345 F. Supp. 155, 159 (N.D. Ill. 1972); Heath v. Westerville Bd. of Educ., 345 F. Supp. 501, 505 (S.D. Ohio 1972); Pocklington v. Duval County School Bd., 345 F. Supp. 163, 164 (M.D. Fla. 1972); Williams v. San Francisco Unified School Dist., 340 F. Supp. 438, 442 (N.D. Cal. 1972).

29. Cohen v. Chesterfield County School Bd., 474 F.2d 395, 401 (4th Cir. 1973) (Winter, J., dissenting).

30. *See* Frontiero v. Richardson, 411 U.S. 677, 685 (1973) (analogy of sex and race); *Sex Discrimination and Equal Protection: Do We Need a Constitutional Amendment?*, *supra* note 5, at 1507-08 (1971) (analogy of sex and race); *The Supreme Court, 1969 Term*, 84 HARV. L. REV. 32, 65-66 (1970) (determinants for classification); *Are Sex-Based Classifications Constitutionally Suspect?*, *supra* note 5, at 493-96 (characteristics of a suspect classification).

Race and sex are comparable on the following points:

(1) Both have highly visible characteristics.

(2) Both belong to large, natural groups determined at birth.

(3) Both slaves and women were at one time under the complete command of the male head of the house.

(4) The legal position of slaves was historically justified by the analogy of the legal status of women.

31. Frontiero v. Richardson, 411 U.S. 677 (1973). Prior to *Frontiero*, the California Supreme Court was alone in applying the compelling interest test to a statute in finding sex a suspect classification. Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

The far-reaching implications of labeling all classifications based upon sex as suspect and the desire not to preempt a major political decision, namely, adoption of the equal rights amendment, are given as reasons not to find sex inherently suspect. Frontiero v. Richardson, 411 U.S. 677, 691-92 (1973) (Powell, J., concurring in judgment).

32. *See, e.g.*, Williams v. San Francisco Unified School Dist., 340 F. Supp. 438 (N.D. Cal. 1972).

employment free of discrimination unrelated to individual capabilities is deemed to be the basic civil right involved,[33] consequently requiring a showing that the regulation promotes a compelling governmental interest.[34]

In comparison to recent Supreme Court pronouncements, the essence of the decision in *Cohen* is the rigid application of the traditional equal protection test. Without rejecting either the compelling state interest test or the traditional basis approach, the Supreme Court has intensified its scrutiny under traditional equal protection guidelines to the point of abandoning the presumption of constitutionality and concerning itself with the means, rather than seeking any alternative, however imagined, to justify a statute.[35] Only when the sex-related means is considered can the decision in *Reed v. Reed*, finding the statute violative of the equal protection clause, be understood.[36] Justice Brennan analyzed *Reed v. Reed* as a departure from traditional rational basis analysis with respect to sex-based classifications. However, Justice Brennan emphasized that the challenged statute in *Reed*, as in *Frontiero v. Richardson*, provided "dissimilar treatment for men and women who are . . . similarly situated."[37] This reasoning later became the basis which Chief Judge Haynsworth used to distinguish *Cohen* from *Reed*. The requirement found in *Reed* that the sexes must be similarly situated cannot be summarily dismissed, as suggested by *Cohen*, since male and female public school teachers are similarly situated as to the effect administrative treatment of medical conditions has on their employment status. Indeed, under the strict scrutiny test made applicable by *Frontiero* to sex-based classifications, *Cohen* would fail because administrative convenience is not sufficient justification under this standard.[38]

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33. *Id.* at 443. *See Mandatory Maternity Leave of Absence Policies—An Equal Protection Analysis, supra* note 7, at 249-50.

Sex cannot be a basis for employment decisions unless sex is a "bona fide occupational qualification." 42 U.S.C. § 2000e *et seq.* (1972). Specifically, the Equal Employment Opportunity Comm'n has set forth guidelines prohibiting the employment of females because of pregnancy. 29 C.F.R. § 1604.10 (1972). *See* Comment, *Mandatory Maternity Leaves and the Equal Protection Clause*, 61 KY. L.J. 589, 598-99 (1973).

34. Shapiro v. Thompson, 394 U.S. 618, 627 (1969).

35. Flemming v. Nestor, 363 U.S. 603, 621 (1960). This alternate method of review has been suggested by early decisions of the Burger Court and would at least subject the maternity leave provisions to greater scrutiny than the traditional test. *See generally* Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

36. Gunther, *supra* note 35, at 34. The old equal protection test was applied in *Reed v. Reed* and the new equal protection test was met by the state, but the statute was found to be in violation of the equal protection clause.

37. Frontiero v. Richardson, 411 U.S. 677, 683 (1973).

38. There is no compelling reason for discrimination because of administrative efficiency

The maternity leave regulation in *Cohen* is upheld without consideration of its true discriminatory effect which is brought about by its being mandatory.[39] By setting an arbitrary and fixed date for the commencement of maternity leave, the regulation treats female teachers differently from male teachers. In effect, the regulation denies the pregnant female teacher the right to work, often without medical reason.[40] There is no compelling reason for such a discriminatory regulation.

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since "the Constitution recognizes higher values than speed and efficiency." Stanley v. Illinois, 405 U.S. 645, 656 (1972).

39. A new maternity leave policy (incorporating a flexible determination of how long a prospective mother may teach before the expected birth of her child and based on a decision by teacher and principal as to the last date of employment) was held to have mooted the question of the constitutionality of the prior mandatory maternity leave policy on which the action was brought. Guelich v. Mounds View Independent Pub. School Dist., 334 F. Supp. 1276 (D. Minn. 1972). The courts have made suggestions as to alternate provisions. Williams v. San Francisco Unified School Dist., 340 F. Supp. 438, 449-50 (N.D. Cal. 1972).

40. Legislative concern for a pregnant teacher's health is said to be irrational because regulations treat all pregnancies alike. *See, e.g.*, Bravo v. Board of Educ., 345 F. Supp. 155, 158 (N.D. Ill. 1972); Williams v. San Francisco Unified School Dist., 340 F. Supp. 438, 443-44 (N.D. Cal. 1972).